

PUBLIC REVIEW DRAFT

Proposed amendments to the Carlsbad Municipal Code to allow medicinal cannabis delivery businesses consistent with Senate Bill 1186 (MCA2023-0001)

PURPOSE

The state legislature passed, and Gov. Gavin Newsom signed into law in 2022 Senate Bill (SB) 1186, the Medicinal Cannabis Patients' Right of Access Act. Beginning Jan. 1, 2024, jurisdictions are barred from adopting or enforcing any regulation that directly or indirectly prohibits delivery of medicinal cannabis to patients or caregivers in the city. The state law does not, however, prevent a city from adopting reasonable standards to regulate the location and operation of medicinal cannabis service delivery businesses.

Consistent with SB 1186, the following proposed amendments to the Carlsbad Municipal Code will allow the establishment of non-storefront retail medicinal cannabis delivery businesses in the city subject to zoning requirements, security/public health and safety requirements, licensing requirements and compliance with restrictions imposed on cannabis businesses by state law or regulations issued by the California Department of Cannabis Control (DCC). The city's current prohibition on all other aspects of commercial cannabis activities (i.e., cultivation, manufacturing, storing, testing, retail sales, and retail delivery) are unaffected by the proposed changes.

REVISIONS TO CHAPTER 5.04 LICENSING BUSINESS GENERALLY

~~5.04.160 — Businesses, operations or uses contravening state or federal law.~~

~~Notwithstanding any provision in this code to the contrary, any business, operation or use that cannot be conducted or carried out without being in violation of state or federal law shall be prohibited in all planning areas, districts, or zones within the city.~~

REVISIONS TO PORTIONS OF CHAPTER 8.90 CANNABIS

8.90.010 Purpose.

This chapter is declarative of existing law. The Carlsbad Municipal Code, Title 21 (Zoning), only allows land uses permitted by the code. No provision of the Carlsbad Municipal Code allows any cannabis operation or land use of any kind within any zone, with the exception of cannabis deliveries pursuant to California Code of Regulations, Title 16, Division 42, Section 5416, and licensed medicinal cannabis delivery service businesses pursuant to Chapter 8.95 of this code. The purpose and intent of this chapter is to clarify the intent of the Carlsbad Municipal Code to prevent the cultivation, delivery, distribution, and sale of cannabis within Carlsbad city limits to the fullest extent of the law. Commercial cannabis activity has judicially recognized adverse secondary effects on the community, including, but not limited to, increases in crime in the vicinity of or as a result of the commercial cannabis activity; increases of fraud in obtaining or using state-issued identification cards and licenses; interference with residential property owners' enjoyment of their properties when such properties are located in the vicinity of commercial cannabis activity as a result of increases in crime, litter, noise, and vandalism; and the deterioration of neighborhoods. Prohibition of commercial cannabis activity is necessary to prevent these adverse secondary effects and the blighting or degradation of the neighborhoods in the vicinity of commercial cannabis activity while at the same time protecting the rights of those individuals who desire to use cannabis within ~~his or her~~ a private residence as authorized under the Adult Use of Marijuana Act.

Further, it is the intent of this chapter to limit the demands on police and other city resources and allow time for the state to establish and implement its regulatory and licensing programs under the Medical Cannabis Regulation

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and Safety Act of 2015, the Adult Use of Marijuana Act of 2016, and the Medicinal and Adult-Use Cannabis Regulation and Safety Act of 2017.

This chapter is not intended to conflict with federal or state law. ~~It is the intention of t~~The city council intends that this chapter be interpreted to be compatible with federal and state law. To the extent that this chapter may be deemed to conflict with any provision of state law, the city council has determined that the subject of the conflict is a municipal affair.

8.90.020 Definitions.

For the purposes of this chapter and Chapter 8.95 of this code, the following definitions apply:

"Applicant" means a person or entity who has submitted an application for a medicinal cannabis delivery service license under Chapter 8.95 of this code.

"Business owner" or "business ownership" means any of the following: (1) A person with an aggregate ownership interest of twenty percent or more in the medicinal cannabis delivery service business, unless the interest is solely a security, lien, or encumbrance; (2) the chief executive officer of a nonprofit or other entity applying for, or holding, such license; (3) a member of the board of directors of a nonprofit applying for, or holding, such license; or (4) an individual participating in the direction, control, or management of the person applying for, or holding, such license.

"Cannabis" means all parts of the plant *Cannabis sativa* Linnaeus, *Cannabis indica*, or *Cannabis ruderalis*, whether growing or not; the seeds ~~thereof~~ the plant; the resin extracted from any part of the plant, whether crude or purified; every compound, manufacture, salt, derivative, mixture, concentrate, or preparation of the plant, its seeds, or resin; and edible or topical products containing any of the above. "Cannabis" does not include industrial hemp, as defined in California Health and Safety Code Section 11018.5.

"Cannabis products" has the same meaning as in Section 26001 of the Business and Professions Code.

"Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code.

"Commercial cannabis activity" means any cultivation, possession, manufacture, distribution, processing, storing, laboratory testing, packaging, labeling, transportation, distribution, delivery, or sale of cannabis requiring a license from the State under Division 10 of the California Business and Professions Code, whether or not carried on for profit and including medical cannabis cooperatives and collectives, except as approved by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

"Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Delivery" means the transfer of cannabis, including the use of any technology platform to arrange for or facilitate the transfer of cannabis, by any business, cooperative, or collective, whether or not carried on for profit, to or from any location within the city of Carlsbad.

"Delivery personnel" means persons employed by a state and locally licensed cannabis business who deliver cannabis and cannabis products from the business premises to customers, or in the case of medicinal cannabis to qualified patients or caregivers, at a physical address location.

"Distribution" means the procurement, sale, and transport of cannabis or cannabis products between entities licensed pursuant to the MAUCRSA and any subsequent State of California legislation regarding the same.

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“Indoors” means a ~~code-compliant~~ [code-compliance](#) space within a building, greenhouse, or other structure which is fully enclosed, with a complete roof enclosure supported by connecting walls extending from the ground to the roof that is secured against unauthorized entry, and accessible only through one or more locking doors.

[“MAUCRSA” means the Medical and Adult Use Cannabis Regulation and Safety Act or Senate Bill 94, signed into state law in 2017.](#)

[“Medicinal cannabis” or “medicinal cannabis product” means medicinal cannabis or medicinal cannabis products, as those terms are defined in Section 26001 of the California Business and Professions Code. Medicinal cannabis does not include industrial hemp as defined by Section 81000 of the California Food and Agricultural Code or Section 11018.5 of the California Health and Safety Code. This definition does not include cannabis accessories, branded merchandise of the licensee, or promotional materials, which are prohibited from delivery within the city of Carlsbad by medicinal cannabis delivery service businesses.](#)

[“Medicinal cannabis activity” means cultivation, manufacture, processing, laboratory testing, transporting, delivery, distribution, or sale of medicinal cannabis or a medicinal cannabis product, within the meaning of California Business and Professions Code Section 19300 et seq.](#)

[“Medicinal cannabis delivery service business” means a business or operation, whether for profit or nonprofit, whose premises are closed to the public and which sells medicinal cannabis and/or medicinal cannabis products exclusively by delivery, which requires a state license \(Type 9-Non-storefront Retailer\) under Business and Professions Code Section 26000 et seq. and which requires a medicinal cannabis delivery service license issued by the city of Carlsbad to legally operate. This definition does not include any storefront component whereby customers purchase or pick up medicinal cannabis or medicinal cannabis products at the physical premises of a retail establishment.](#)

[“Medicinal cannabis delivery service license” means a city of Carlsbad regulatory license issued pursuant to Chapter 8.95 to a medicinal cannabis delivery service business.](#)

[“Medicinal cannabis delivery service vehicle” means a vehicle used by a medicinal cannabis delivery service business to deliver medicinal cannabis or medicinal cannabis products. A medicinal cannabis delivery service vehicle must comply with all requirements of the Chapter 8.95 of this code and California Code of Regulations, Title 4, Division 19, to legally operate.](#)

[“Person with an identification card” means a qualified patient, caregiver, or primary caregiver who possesses a valid identification card as described in California Health and Safety Code Section 11362.7.](#)

[“Physical address location” means a real property structure from where a medicinal cannabis delivery service business conducts its operations. This location may be one of several business locations and does not need to be the primary business location or headquarters.](#)

“Private residence” means a house, an apartment unit, a mobile home, or other similar dwelling unit.

[“Property owner” or “property ownership” means the individual or entity who is the record owner of the property or premises where a medicinal cannabis delivery service business may be located or is proposed to be located.](#)

[“Public park” means an area created, established, designated, or maintained by a special district, county, the state, or the federal government for public play, recreation, enjoyment, or for the protection of natural resources and features at the site.](#)

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“Qualified patient” has the same meaning as that term is defined in Section 11362.7 of the California Health and Safety Code, a person who possesses a physician’s recommendation that complies with Article 25 (commencing with Section 2525) of Chapter 5 of Division 2 of the California Business and Professions Code, or a primary caregiver for a qualified patient.

“State license” means a permit or license issued by the State of California, or one of its departments or divisions, under MAUCRSA to engage in medicinal cannabis activity.

“Transport” means the transfer of medicinal cannabis or medicinal cannabis products from the licensed business location of one licensee to the licensed business location of another licensee, for the purpose of conducting medicinal cannabis activity authorized by the MAUCRSA.

“Transporter” means a person authorized to transport medicinal cannabis or medicinal cannabis products in amounts authorized by the State of California, or by one of its departments or divisions under the MAUCRSA.

“Youth center” has the same meaning as that term is defined in California Health and Safety Code Section 11353.1.

8.90.030 Prohibited activities.

A. Commercial cannabis activity is prohibited within the city of Carlsbad. No person shall engage in any commercial cannabis activity. No permit, license, or other authorization shall be issued for any commercial cannabis activity. This prohibition does not apply to licensed medicinal cannabis delivery service businesses pursuant to Chapter 8.95 of this code, cannabis delivery businesses pursuant to California Code of Regulations, Title 16, Division 42, Section 5416, and the carriage of cannabis on public roads in the city of Carlsbad to the limited extent required by Sections 26080(b) and 26090(e) of the California Business and Professions Code.

~~B. To the extent not already covered by subsection A, delivery of cannabis is prohibited. No person shall conduct delivery or participate in the delivery of cannabis.~~

BC. Cultivation of cannabis is prohibited, except indoors at a private residence as authorized by Section 11362.2(a) of the California Health and Safety Code. Cannabis grown indoors shall be completely screened from view from public places and neighboring properties. Nothing in this chapter is intended to, nor shall it be construed to, preclude any owner of real property from limiting or prohibiting cannabis cultivation by its tenants.

CD. No person shall smoke or ingest cannabis in any public place.

ADDITION OF CHAPTER 8.95 MEDICINAL CANNABIS DELIVERY SERVICE BUSINESS

Chapter 8.95

MEDICINAL CANNABIS DELIVERY SERVICE BUSINESS

Sections:

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8.95.070 Violations, inspections and enforcement.

8.95.080 Appeals.

8.95.090 Limitations of city's liability.

8.95.100 Severability.

8.95.010 Purpose and intent.

The purpose and intent of this chapter is to implement the provisions of Chapter 26 (commencing with Section 26320) to Division 10 of the California Business and Professions Code, referred to as the Medicinal Cannabis Patients' Right to Access Act, which, as of January 1, 2024, prohibits a city from adopting or enforcing any regulations that prohibit or have the effect of prohibiting the delivery of medicinal cannabis to patients or their primary caregivers by licensed medicinal cannabis delivery service businesses in a timely and readily accessible manner. This chapter also imposes a regulatory licensing scheme and reasonable regulations to protect the city's neighborhoods, residents, and businesses from negative impacts associated with the transporting, delivery, and distribution of medicinal cannabis and medicinal cannabis products.

8.95.020 Definitions.

All definitions in Chapter 8.90 of this code also apply to this chapter.

8.95.030 License required.

- A. No person shall engage in or conduct any medicinal cannabis delivery service business within the city without an approved medicinal cannabis delivery service license under this chapter.
- B. A separate medicinal cannabis delivery service license shall be required for each physical address location within the city.
- C. An application for a medicinal cannabis delivery service license shall be on forms provided by the Community Development Department and/or the chief of police or designee, which require all information, permits, licenses, criminal background check results, and other approvals necessary to verify compliance with this chapter and all applicable laws. The chief of police or designee reserves the right to request and obtain additional information from any business owner and property owner submitting a medicinal cannabis delivery service license application to show compliance with relevant codes and regulations.
- D. The business owner and the property owner, if different, shall sign the medicinal cannabis delivery service license application form.

8.95.040 Fees.

The city council may impose by resolution a nonrefundable fee to reimburse the city for its reasonable and necessary costs in receiving, processing, reviewing, and inspecting applications and appeals for a medicinal cannabis delivery service license. This fee shall be in addition to the business license fees and taxes required by this chapter and Chapter 5.08 of this code.

8.95.050 Operational Standards.

In addition to all applicable state and local codes and regulations, medicinal cannabis delivery service businesses shall be subject to the following standards. The license application shall specify evidence required to demonstrate that the applicant meets these standards prior to approval of the medicinal cannabis delivery service license.

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A. Structure and use standards

1. Medicinal cannabis delivery service businesses shall be allowed in zones listed in Title 21 that expressly authorize “storage, wholesale, and distribution facilities” as a permitted use.
2. Medicinal cannabis delivery service businesses shall be located at least 1,000 feet from the following sensitive receptors. All measurements shall be taken from the closest property line of the medicinal cannabis delivery service business to the closest property line of the sensitive receptor.
 - a. Residential zones or private residences
 - b. Public or private schools
 - c. Daycare centers
 - d. Churches
 - e. Public parks
 - f. Youth centers
 - g. Any other medicinal cannabis delivery service business
3. The cumulative size of all structures associated with a medicinal cannabis delivery service business shall not exceed 3,000 square feet.
4. All medicinal cannabis or medicinal cannabis products shall be stored in an enclosed permanent structure. Outdoor storage of medicinal cannabis or medicinal cannabis products is prohibited.
5. No markings or indications of cannabis or cannabis products shall be visible from the public right-of-way and/or exterior of the structure(s) associated with the medicinal cannabis delivery service business.

B. Site operations standards.

1. No person shall cause or permit the sale, dispensing, or consumption of alcoholic beverages or cannabis at or within 200 feet of the physical address location.
2. There shall not be a physician located in or near the physical address location at any time for the purpose of evaluating patients for the issuance of a medicinal cannabis prescription or card.
3. Odor control devices and techniques shall be incorporated and maintained in all delivery businesses to ensure that odors from cannabis are not detectable off-site.
4. All cannabis and cannabis products sold or distributed in the city shall be cultivated, manufactured, and transported by licensed facilities that maintain operations in full conformance with state and local regulations.
5. Display of licenses. The original copy of a medicinal cannabis delivery service license issued by the city pursuant to this chapter, along with the medicinal cannabis delivery business’s state cannabis license and city-issued business license, shall be readily available upon request by the chief of police or designee and not visible to the public.
6. Recordkeeping requirements.

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- a. Medicinal cannabis delivery businesses shall comply with all provisions of Chapters 5.04 and 5.08 of this code relating to business license taxes, recordkeeping, and auditing.
 - b. Reporting and Tracking of Product and of Gross Sales. Pursuant to California Code of Regulations, Title 16, Division 42, Section 5048, all medicinal cannabis delivery service businesses shall use a track-and-trace system to track and report on all aspects of the medicinal cannabis delivery service business, including, but not limited to such matters as cannabis tracking, inventory data, and gross sales (by weight and by sale). The system must have the capability to produce historical transactional data relevant to the city of Carlsbad for review by the chief of police or designee.
 - c. In accordance with California Code of Regulations, Title 16, Division 42, Section 5002, all medicinal cannabis delivery service businesses shall maintain a current register of the names and contact information (including the address and telephone number) of anyone owning or holding an interest in the medicinal cannabis delivery service business and all officers, managers, employees, agents, and volunteers currently employed or otherwise engaged by the medicinal cannabis delivery service business. The register required by this paragraph shall be provided to the chief of Police or designee(s) upon a reasonable request.
 - d. All medicinal cannabis delivery service businesses shall maintain a record of all persons, qualified patients, collectives, and primary caregivers served by the business for a period of no less than four years.
 - e. All medicinal cannabis delivery service businesses shall maintain records of their inventory acquired, including the name and address of each supplier, the date of acquisition and the quantity acquired from each supplier, and the location of the cultivation of the supplier, and shall maintain a copy of the supplier's state license to cultivate (if required) for a period of no less than four years.
 - f. Subject to any restrictions under state or federal law, all medicinal cannabis delivery service businesses shall allow the chief of police or designee to have access to the business's books, records, and accounts, together with any other data or documents, for a period of no less than four years for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data or documents will be produced no later than 24 hours after receipt of the city's request, unless otherwise stipulated by the city.
7. Security Measures. Medicinal cannabis delivery service business shall implement security measures that comply with all state law requirements and that deter and prevent the unauthorized entrance into areas containing medicinal cannabis or medicinal cannabis products, and that deter and prevent the theft of such products. These security measures include, but are not limited to the following, to the satisfaction of the chief of police or designee:
- a. Ensure that all medicinal cannabis and medicinal cannabis products are kept in a manner to prevent diversion, theft, and loss.
 - b. Install and maintain surveillance cameras that comply with California Code of Regulations, Title 16, Division 42, Section 5044. The medicinal cannabis delivery service business shall be responsible for ensuring that the security surveillance camera's footage is accessible by the city manager or designee, and the city's police department upon request, and that it is compatible with the city's software and hardware.

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- c. Ensure that all entrances and exits of the medicinal cannabis delivery service business are locked at all times, with entry strictly controlled.
 - d. Make available a designated security representative/liaison who can meet with the chief of police or designee regarding any security related measures and/or operational issues.
- 8. The business owner and property owner may not be convicted of any crimes listed in California Business and Professions Code Section 19323(b)(5) while operating a medicinal cannabis delivery service business. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction or diversion following a plea of nolo contendere.
- 9. Reporting legal matters. The business owner and property owner shall notify the chief of police or designee in writing of the following legal matters pending against them, in their individual capacity or otherwise, within 48 hours of the date of conviction, judgment, order, or final decision.
 - a. Criminal conviction. The written notification to the city shall include the date of the conviction, the court docket number, the name of the court in which the conviction was entered, and the specific offense(s) resulting in a conviction(s).
 - b. Civil penalty or judgment. The written notification shall include the date of verdict, entry of judgment, or order, the court docket number, the name of the court in which the matter was adjudicated, and a description of the civil penalty or judgment rendered.
 - c. Administrative order. The written notification shall include the date of the order, the name of the agency issuing the order, and a description of the administrative penalty or decision rendered against the business owner or property owner.
 - d. Revocation or suspension of a state or local license, permit, or other authorization. The written notification shall include the name of the local agency involved, a written explanation of the proceeding or enforcement action, and the specific violation(s) that led to the revocation or suspension.

C. Delivery Operations Standards

- 1. In accordance with California Code of Regulations, Title 4, Division 19, Section 15417(a), all medicinal cannabis delivery service vehicles shall not have any marking or other indications on the exterior of the vehicle that may indicate that the delivery personnel is carrying cannabis goods for delivery.
- 2. All deliveries of medicinal cannabis and medicinal cannabis products must be to a physical address location other than the cannabis delivery business's physical address location.
- 3. All deliveries of medicinal cannabis and medicinal cannabis products shall only be made to the customer's residence. Deliveries of medicinal cannabis and medicinal cannabis products are prohibited to schools, day care centers, youth centers, public parks and open space, public buildings, and commercial establishments, including but not limited to restaurants and places of work, whether or not members of the public are present.
- 4. Medicinal cannabis and medicinal cannabis products may be transported by one medicinal cannabis delivery service business's physical address location to another medicinal cannabis delivery service business's physical address location if the state retail licenses for both locations are held by the same licensee.

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5. Deliveries of medicinal cannabis and medicinal cannabis products are only permitted during the hours specified under state law.
 6. Only direct employees of a medicinal cannabis delivery service business may serve as delivery personnel. An independent contractor, third-party courier service, or an individual employed through a staffing agency does not qualify as a direct employee.
 7. Before dispensing any medicinal cannabis or medicinal cannabis products to persons requesting delivery, delivery personnel must verify that the requestor and recipient is 18 years of age or older and is a person with an identification card, as defined in this chapter. Any person who causes or permits a delivery of medicinal cannabis or medicinal cannabis products within the city of Carlsbad to be made to a person other than a person with an identification card may be charged with a violation of this section.
- D. Additional standards and regulations. The city manager or designee may adopt any necessary rules, regulations, and processes governing medicinal cannabis delivery service licenses and the operations of medicinal cannabis delivery service businesses.

8.95.060 Decision on the application; license suspension and revocation.

- A. The chief of police, or designee is authorized to approve, deny, suspend, or revoke a medicinal cannabis delivery service license.
- B. Within 14 business days after receipt of a complete medicinal cannabis delivery service license application, the chief of police or designee shall notify the applicant of the decision that approves the license, conditionally approves the license, or denies the license with the reasons for denial stated.
- C. A medicinal cannabis delivery service license issued pursuant to this chapter shall expire 12 months after the date of its issuance, after which time a new license application must be submitted to continue the medicinal cannabis delivery service business. License renewals are not permitted.
- D. License approval and modifications.
 1. A medicinal cannabis delivery service license shall not be issued unless the property owner(s) and business owner(s) successfully pass a criminal background check verifying that they have not been convicted of any crimes listed in California Business and Professions Code Section 19323(b)(5). The criminal background check shall be conducted by the Chief of Police or designee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction or diversion following a plea of nolo contendere.
 2. The chief of police or designee is authorized to impose additional conditions on a medicinal cannabis delivery service license as necessary to ensure compliance with state or local laws and regulations or to preserve the public health, safety, or welfare. Any additional license conditions will be provided in writing to the applicant by the chief of police or designee and may be appealed in accordance with Section 8.95.080 of this chapter.
 3. Modifications or changes to an approved medicinal cannabis delivery service license, including but not limited to modifications to the physical address location or premises, business ownership, or property ownership, require approval of a new medicinal cannabis delivery service license pursuant to this chapter prior to the modifications or changes taking effect. Any such modifications or changes made without approval of a new license constitutes a violation of this chapter.

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- E. License denial. The chief of police, or designee may deny a medicinal cannabis delivery service license for any of the following reasons:
1. Any of the reasons provided in California Business and Professions Code Section 26057(b).
 2. Application deficiencies. The medicinal cannabis delivery service license application requirements cannot be satisfied by applicant's proposed business, the application is incomplete, supportive documentation was not provided, and/or the applicant failed to correct deficiencies in the application or provide additional application information within the response timeframe requested.
 3. The applicant made a false or misleading statement on the application.
 4. The property owner, or business owner has violated any law related to the operations of the medicinal cannabis delivery service business or laws related to any state or local licensure or permitting. In considering whether past violations of law warrant denial of a license, the chief of police or designee may consider the following factors with respect to the applicant, property owner, or business owner:
 - a. The nature of the prior violation(s).
 - b. The number and/or variety of violations.
 - c. Whether the violation(s) were willful.
 - d. All circumstances surrounding the violation(s).
 - e. Previous sanctions imposed.
 - f. Any actual or potential harm to the public.
 - g. Any corrective action(s) taken.
 - h. The likelihood of recurrence of the violation(s).
 - i. The length of time a cannabis license or permit had been held at the time of the violation(s).
 - j. Any other factor that makes the situation unique or the violation(s) of greater concern.
 5. The property owner has failed to take appropriate action to evict or otherwise remove the business owner and persons conducting commercial cannabis activities at the medicinal cannabis delivery service business who do not maintain permits or licenses in good standing with the city or state.
 6. The property owner, or business owner has been denied a license, permit, or other authorization to engage in commercial cannabis activity by a state or local licensing authority, or such license, permit or other authorization is currently suspended, revoked, or non-renewable.
 7. The city or state has determined, based on substantial evidence, that the property owner or business owner is currently in violation of the requirements of this chapter, of this code, state law, or any other applicable law. The property owner or business owner may file a new application pursuant to this chapter once the city or state authority determines that the violation has been corrected.
 8. Facts or circumstances exist which indicate that the property owner or business owner has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

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9. Facts or circumstances exist which indicate that the medicinal cannabis delivery service business does or would very likely constitute a threat to public health, safety, and/or welfare.

F. License revocation or suspension.

1. The chief of police, or designee may revoke or suspend a medicinal cannabis delivery service license for any of the reasons listed in Sections 8.95.060(E) of this chapter.

2. The issuance of three or more administrative citations, verifiable municipal code violations, verifiable violations of a state permit, state license or other state law, or hearing officer determinations concerning medicinal cannabis delivery service license requirements within a 12-month period shall result in revocation of a medicinal cannabis delivery service license. In the event of license revocation, an application to reestablish a medicinal cannabis delivery service license for the same location and/or entity shall not be accepted for a minimum period of 36 months.

3. Any attempt to transfer a medicinal cannabis delivery service license, or any transfer of business ownership, property ownership, or possession or control of either a medicinal cannabis delivery service business or the real property in the city of Carlsbad where the business is located and continued use of a previously issued medicinal cannabis delivery service license, shall result in revocation of the medicinal cannabis delivery service license.

4. Revocation or suspension of a license is subject to a 10-calendar day prior written notice and an opportunity to appeal, if the appeal is requested within 10 calendar days of the date of the written revocation or suspension notice. The appeal procedures shall follow those outlined in Section 8.95.080 of this chapter.

5. Suspension or expiration without timely renewal of a license issued by the State of California, or by any of its departments or divisions, shall immediately suspend the ability of a medicinal cannabis delivery service business to operate within the city until the State of California, or any of its departments or divisions, reinstates or reissues the State license. Revocation or termination of the license of a medicinal cannabis delivery service business by the State of California, or any of its departments or divisions, shall immediately revoke or terminate the ability of a medicinal cannabis delivery service business to operate within the city without notice. If the city becomes aware that a state license has expired or been suspended, revoked, or terminated, it will initiate proceedings under subsection (F)(4) to suspend or revoke a medicinal cannabis delivery service license.

8.95.070 Violations, inspections, and enforcement.

A. Violations declared a public nuisance. Each and every violation of the provisions of this chapter is deemed unlawful and a public nuisance.

B. Each violation a separate offense. Each and every violation of this chapter shall constitute a separate violation, and the city may pursue any and all remedies and actions available under state and local law for any violations committed by a medicinal cannabis delivery service business, a business owner, a property owner, or any other persons related to or associated with any commercial cannabis activity, including suspension or revocation of any license issued pursuant to this chapter is subject to suspension or revocation pursuant to Section 8.95.060(F) of this code. Additionally, as a nuisance per se, any violation of this chapter shall be subject to disgorgement and payment to the city of any monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or in equity.

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- C. Remedies are cumulative and not exclusive. The remedies provided in this chapter or this code are not to be construed as exclusive remedies. The city is authorized to pursue any proceedings or remedies provided by law.
- D. Business owner and property owner responsible for violations. The business owner and property owner shall be responsible for all local and state law violations that occur in or about a physical address location, a medicinal cannabis delivery service vehicle, or delivery personnel, whether or not the violations occur within the presence of the business owner or property owner.
- E. Inspections and enforcement.
 - 1. The chief of police or designee(s), including code enforcement officers and peace officers, are charged with enforcing the provisions of this code and shall be authorized to enter a medicinal cannabis delivery service business or a medicinal cannabis delivery service vehicle operating in the city of Carlsbad at any time during the business's hours of operation with or without notice, subject to constitutional limitations, to do either or both of the following:
 - a. Inspect the medicinal cannabis delivery service business and medicinal cannabis delivery service vehicle as well as any recordings and records required to be maintained pursuant to this chapter or under applicable provisions of state law.
 - b. Obtain cannabis product samples to test for public safety purposes. Any samples obtained by the city shall be logged, recorded, and maintained in accordance with the police department's standards for evidence.
 - 2. The building official and fire marshal, or their designee, reserve the right to schedule a building code or fire code inspection at any time before, during, or after the medicinal cannabis delivery service licensing process.
 - 3. It is unlawful for any person having responsibility over the operation of a medicinal cannabis delivery service business to impede, obstruct, interfere with, or otherwise not allow the city to conduct an inspection, review or copy records, recordings, or other documents required to be maintained by such business under this chapter or under state or local law. It is also unlawful for a person to conceal, destroy, deface, damage, or falsify any records, recordings or other documents required to be maintained by a medicinal cannabis delivery service business under this chapter or under state or local law.

8.95.080 Appeals.

- A. Whenever an appeal is provided for in this chapter from a decision of the chief of police or designee, the appeal shall be conducted as prescribed in this section.
- B. Within 10 calendar days after the date of a decision of the chief of police or designee(s) to revoke, suspend or deny a license, or to add conditions to a medicinal cannabis delivery service license, an aggrieved party may appeal such action by filing a written appeal with the city clerk setting forth the reasons why the decision was not proper. The notice of appeal shall specify:
 - 1. The name and address of the appellant;
 - 2. The date that the medicinal cannabis delivery service license application was filed with the city;

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3. The date of the decision to deny, suspend, revoke, or condition the license which is being appealed; and
 4. The factual basis for the appeal.
- C. Upon receipt of a complete and timely filed notice of appeal, the police chief or designee shall schedule a hearing and send written notice to the appellant at the address provided in the notice of appeal, by means of registered mail, certified mail, or hand delivery, that within a period of not less than five days nor more than 14 days from the date of the filing of the notice of appeal with the city clerk, a hearing shall be conducted to determine the existence of any substantial evidence which would refute the grounds for the denial, suspension, or revocation or condition of a medicinal cannabis delivery service license. The hearing notification shall include the date, time, and place of the hearing.
- D. An administrative hearing officer contracted with the city shall be assigned to the hearing in accordance with the city's administrative order governing administrative hearing officers. The hearing shall be conducted pursuant to Chapter 1.10 of this code and any corresponding administrative orders. If the appellant or their legal counsel fails to present any evidence at the hearing, any evidence supporting facts which constitute grounds for the medicinal cannabis delivery service license's denial, suspension, revocation, or additional conditions placed on the license shall be deemed uncontested. Any issue not raised in the hearing is waived. The hearing officer's decision is final.

8.95.090 Limitations of city's liability.

To the fullest extent permitted by law, the city shall not assume any liability whatsoever with respect to having issued a medicinal cannabis delivery service license pursuant to this chapter or otherwise approving the operation of any medicinal cannabis delivery service business. As a condition to the approval of any medicinal cannabis delivery service license, the applicant shall be required to meet all of the following conditions before they can receive the medicinal cannabis delivery service license:

- A. Execute an agreement, in a form approved by the city attorney, agreeing to the fullest extent permitted by law to indemnify, defend (at applicant's sole cost and expense), and hold the city of Carlsbad, and its officers, officials, employees, representatives, and agents, harmless, from any and all claims, losses, damages, injuries, including death, liabilities or losses which arise out of, or which are in any way related to, the city's issuance of the medicinal cannabis delivery service license, the city's decision to approve the medicinal cannabis activity, the process used by the city in making its licensing decision, or the alleged violation of any laws by the medicinal cannabis delivery service business or any of its officers, employees, or agents.
- B. Maintain insurance at coverage limits established by the city's risk manager and with conditions determined necessary and appropriate from time to time by the city attorney.
- C. Reimburse the city for all costs and expenses, including but not limited to attorney fees and costs and court costs, which the city may be required to pay as a result of any legal challenge related to the city's approval of the applicant's medicinal cannabis delivery service license, or related to the city's approval of a medicinal cannabis activity. The city may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve any of the obligations imposed under this section.
- D. Nothing in this chapter creates a mandate to issue a medicinal cannabis delivery service license to a medicinal cannabis delivery service business.

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8.95.100. Severability.

If any portion of this chapter, or its application to particular persons or circumstances, is held to be invalid or unconstitutional by a final decision of a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of this chapter or the application of the chapter to persons or circumstances not similarly situated.

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