

CITY OF RIVERBANK

ORDINANCE 2024-003

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, AMENDING SECTION 120.60, PERMIT APPEALS PROCEDURE, SECTION 120.62, ADMINISTRATIVE PENALTY APPEALS PROCEDURE, AND ADDING SECTION 120.63. COST RECOVERY TO CHAPTER 120, CANNABIS REGULATIONS OF TITLE XI, BUSINESS REGULATION, OF THE RIVERBANK CODE OF ORDINANCES RELATED TO CANNABIS BUSINESS CITATIONS

WHEREAS, in 2017, pursuant to a statewide voter initiative, the State of California enacted the Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), which is codified in Business and Professions Code Sections 26000 to 26260; and

WHEREAS, the stated purpose of MAUCRSA was "to establish a comprehensive system to control and regulate the cultivation, distribution, transport, storage, manufacturing, processing, and sale" of medicinal and adult-use cannabis, and to set forth "the power and duties of the state agencies responsible for controlling and regulating the commercial medicinal and adult-use cannabis industry"; and

WHEREAS, MAUCRSA explicitly provides that it "shall not be interpreted to supersede or limit the authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under this division, including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more types of businesses licensed under this division within the local jurisdiction"; and

WHEREAS, MAUCRSA further provides that it "shall not be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local license, permit, or other authorization requirements"; and

WHEREAS, on August 22, 2017, the City of Riverbank ("City") adopted Ordinance No. 2017-007, which added "Chapter 120: Cannabis Regulations" ("Cannabis Regulations") to Title XI, Business Regulations to the City's Municipal Code ("Municipal Code"); and

WHEREAS, the stated purpose of the City's Cannabis Regulations is "to encourage responsible, personal, and commercial cannabis activities and to discourage violations of related state laws, especially those that prohibit the sale, use, or distribution of cannabis and cannabis products to minors"; and

WHEREAS, since enacting the City's Cannabis Regulations in 2017, the appeals procedure under Chapter 120 has proven difficult to administer and requires amendment to streamline the process for the appeal of administrative penalties; and

WHEREAS, the amendments will clarify and streamline the appeals of administrative citations related to the City's Cannabis Regulations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIVERBANK DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 120.60, Appeals Procedure, of Chapter 120, Cannabis Regulations, of Title XI, Business Regulations, of the Riverbank Municipal Code shall be repealed in its entirety and replaced with a new section 120.60 that shall read as follows:

§ 120.60 PERMIT APPEALS PROCEDURE

- (A) Any permit applicant may appeal any adverse decision taken with respect to a permit application under this chapter to the City Council.
- (B) Appeals of adverse decisions related to permit applications must be taken within thirty (30) days after the adverse action by filing with the office of the City Clerk a written notice of appeal specifying the grounds thereof. An appeal shall be accompanied by a non-refundable filing fee, as established by resolution adopted by the City Council from time to time.
- (C) The City Clerk, upon the filing of such appeal and payment of an appeal fee, shall place the matter upon the agenda for the next regular meeting of the City Council occurring not earlier than five (5) days after the filing of the appeal, and shall notify the appealing permit applicant by letter of the meeting date and place at which the appeal will be heard.

SECTION 2. Section 120.62, Cost Recovery, of Chapter 120, Cannabis Regulations, of Title XI, Business Regulations, of the Riverbank Municipal Code shall be repealed in its entirety and replaced with a new section 120.62 that shall read as follows:

§ 120.62 ADMINISTRATIVE PENALTY APPEALS PROCEDURE

(A) Administrative penalties issued under this chapter may be appealed as follows:

- (1) Request for Appeal Hearing; Any person, corporation, entity, or responsible party against whom administrative penalties have been assessed under this chapter may appeal the violation and the issued administrative citation penalty, administrative penalty, or administrative fines by filing a written notice of appeal with the City Clerk within thirty (30) days of the date stated on the citation or notice of violation, which shall be accompanied by a non-refundable filing fee, as established by resolution adopted by the City Council. The appeal fee is intended to cover the costs, expenses, and city employees' time incurred by the city in processing, preparing for, and hearing the appeal.
- (2) Deposit; person, corporation, entity, or responsible party requesting a hearing under this section must pay a deposit to the City equal to fifty percent (50%) of the full amount of the penalty indicated on the notice of violation upon submitting the hearing request with the City. Failure to deposit fifty percent (50%) of the amount of all fines appealed within the thirty (30) day filing period shall result in the request for an appeal hearing being incomplete and untimely, and therefore will not be accepted.
- (3) Failure to timely file an appeal hearing request form with the City Clerk, along with the filing fee and deposit shall constitute a waiver of the right to any appeal hearing, and the penalties stated on the administrative citation or notice of violation shall be deemed confirmed and final.
- (4) Hardship waiver; If within the thirty 30-day filing period, the appealing party establishes to the satisfaction of the Director of Finance or designee, by means of tax returns, pay stubs or other similar documentary evidence, and submits a declaration under penalty of perjury that paying the deposit amount would cause undue financial hardship to the appealing party, the Director of Finance or designee may grant a waiver or reduction of the deposit amount required. the Director of Finance's determination is not appealable and shall be final as to the hardship waiver request.

(B) Procedures for Appeal Hearings for Administrative Penalties Under Chapter 120.

- (1) Hearing Officer; For any appeal of administrative penalties assessed or otherwise imposed under this chapter, the appeal shall be heard by a neutral hearing officer.

- (a) The City Manager is authorized to develop policies and procedures relating to the qualification, disqualification and appointment of hearing officers, hearing officer powers, hearing procedures, scope of the hearing, and other matters relating to administrative appeal hearings. Any person designated to serve as a hearing officer is subject to disqualification for bias, prejudice, a conflict of interest or for any other reason for which a judge may be disqualified in a court of law.
 - (b) The City Council or City Manager shall appoint independent hearing officers for administrative appeal hearings or contract with an organization that provides independent hearing officers.
- (2) Notice; The person, business, entity, or responsible party requesting the appeal hearing under this section shall be notified by the City Clerk of the time and place set for the hearing at least ten (10) business days prior to the date of the hearing.
- (3) Conduct of Appeal Hearing.
- (a) Testimony at the hearing; At the time set for the appeal hearing, the hearing officer shall proceed to hear testimony from the representative of the City, the appellant, and any other competent persons with respect to the determination of a violation and nuisance or the imposition of an administrative penalty.
 - (b) Record of oral evidence at hearing; The proceedings at the hearing shall be reported by a tape recording. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the requesting party's own expense.
 - (c) Continuances; The hearing officer may, upon request by the person, corporation, or entity against whom a penalty is to be imposed, or upon request of the city, grant continuances from time to time for extreme or unusual cause shown, or upon the hearing officer's own motion.
 - (d) Oaths; certification. The hearing officer or certified shorthand reporter shall administer the oath or affirmation.
 - (e) Evidence rules: Cal. Gov't Code § 11513(a), (b), and (c) shall apply to all administrative hearings. At the hearing officer's sole discretion, other relevant evidence may be admissible and hearsay evidence may be used for the purpose of supplementing and explaining other evidence.

- (f) Burden of proof; The accuracy of the notice and order containing the description of the violations or public nuisance and the actions required to abate such violation or nuisance is deemed a rebuttable presumption and the burden is on the appellant to provide such facts and information to overcome such presumption by a preponderance of the evidence.

(4) Rights of Parties

- (a) Each party shall have the following rights among others: To call and examine witnesses on any matter relevant to the issues of the hearing; to introduce documentary and physical evidence; to cross-examine opposing witnesses on any matter relevant to the issues of the hearing; to impeach any witness regardless of which party first called that witness to testify; to rebut the evidence against him or her; to represent himself or herself or to be represented by anyone of his or her choice.

- (b) If a party does not proficiently speak or understand the English language, that party may provide an interpreter, at that party's own cost, to translate for the party. An interpreter shall not have been a resident of the premises or have had any personal relationship with or involvement in the parties or issues of the case prior to the hearing.

- (5) Official Notice. In reaching a decision, the hearing officer may take official notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state, or which may appear in any of the official records of the city or Stanislaus County or any of their departments.

- (6) Hearing Officer's Decision. Within thirty (30) days of the hearing, the hearing officer shall serve a written order, stating the decision made and the reasons for the decision. The order shall become final on the date of service of the order, and a copy shall be served on the appellant by first class mail to the address provided by appellant in the written notice of appeal, and on the City Clerk by first class mail.

(7) Right to Judicial Review.

- (a) The failure of the person, corporation, entity, or responsible party contesting the administrative penalty under this section to appear at the appeal hearing shall result in a forfeiture of the right to appeal the administrative penalty and shall constitute a failure to exhaust administrative remedies.

- (b) Subject to the above provisions of subsection (B)(7)(a) of this section, any person aggrieved by an administrative decision of a hearing officer on an administrative penalty may obtain review of the administrative decision by filing an appeal in a court of competent jurisdiction within twenty (20) days after service of the decision in accordance with the provisions of Cal. Gov't Code § 53069.4(b).

SECTION 3. Section 120.63, Cost Recovery, of Chapter 120, Cannabis Regulations, of Title XI, Business Regulations, shall be added to the Riverbank Municipal Code and shall read as follows:

§ 120.63 COST RECOVERY.

(A) The City shall be entitled to recover its abatement and enforcement costs incurred in obtaining compliance with this chapter. Costs incurred by the city are recoverable even if a public nuisance, Municipal Code, or other violation of law is corrected by the property owner or other responsible party.

(B) The cost of abating a public nuisance or enforcing this chapter shall either be a special assessment and lien on the subject property or the personal obligation of the owner of the subject property or the responsible party. If there is more than one responsible party, each party shall be jointly and severally liable for the costs.

(C) For purposes of this chapter, the following additional definitions shall apply:

(1) Abatement costs include the actual and reasonable costs incurred by the City to abate a public nuisance. These costs include all direct and indirect costs to the City that result from the total abatement action, including but not limited to, investigation costs, costs to enforce the Municipal Code and any applicable State or County law, clerical and administrative costs to process paperwork, costs incurred to provide notices and prepare for and conduct administrative appeal hearings, and costs to conduct actual abatement of the nuisance. Costs include personnel costs, administrative overhead, costs for equipment such as cameras and vehicles, staff time to hire a contractor, and reasonable attorneys' fees incurred by City.

(2) Enforcement costs include all actual and reasonable costs incurred by the City to enforce compliance with the Municipal Code and any applicable State, County, or City public health and safety law that are not included within abatement costs. Enforcement costs shall also include, but are not limited to, costs of fringe benefits for personnel, administrative overhead, costs of equipment, costs of materials, costs related to investigations, costs related to issuing and defending administrative or court citations, costs incurred investigating and abating violations of the Municipal Code or State or County law violations, and reasonable attorneys' fees related to these activities.

(3) Responsible party means a person or entity responsible for creating, causing, committing, contributing to, or maintaining the violation of this chapter or State or County law, or any person or entity that owns, occupies, leases, manages, or maintains the property on which the violation has taken place.

(4) Subject property means the real property that is the subject of any abatement or enforcement action by the City for which the City incurred costs and seeks recovery under this chapter.

(D) In any action, administrative proceeding, or special proceeding to abate a nuisance under this Chapter, the prevailing party shall be entitled to recover attorneys' fees. Recovery of attorneys' fees by the prevailing party may be limited to individual actions or proceedings in which the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding, shall an award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding.

SECTION 4. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, phrase or portion of this chapter, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

SECTION 5: This Ordinance shall become effective thirty (30) days from and after its final passage (08/27/2024), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on July 23, 2024. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 27th day of August, 2024; motioned by Councilmember Luis Uribe, seconded by Vice Mayor Leanne Jones Cruz moved said ordinance by a City Council vote of 5/0:

AYES: Councilmember, District 1 Luis Uribe
Councilmember, District 2 Rachel Hernandez
Councilmember, District 4 Darlene Barber-Martinez
Vice-Mayor (CM-D3) Leanne Jones Cruz
Mayor, Richard D. O'Brien

NAYS: None

ABSENT: None

ABSTAINED: None

ATTEST:



A handwritten signature in blue ink, appearing to read 'Gabriela Hernandez', written over a horizontal line.

**Gabriela Hernandez,CMC
City Clerk**

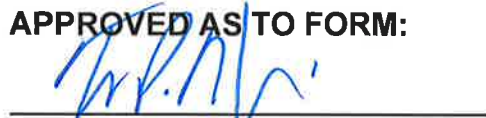
APPROVED:



A handwritten signature in blue ink, appearing to read 'Richard D. O'Brien', written over a horizontal line.

**Richard D. O'Brien
Mayor**

APPROVED AS TO FORM:



A handwritten signature in blue ink, appearing to read 'Tom P. Hallinan', written over a horizontal line.

**Tom P. Hallinan
City Attorney**