

ORDINANCE NO. 843-C.S.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFICA REPEALING AND REPLACING CHAPTER 16 OF TITLE 4 (MARIJUANA PUBLIC SAFETY LICENSES) OF THE PACIFICA MUNICIPAL CODE AND FINDING ADOPTION OF THE ORDINANCE EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

WHEREAS, in 1996, the voters of the State of California approved Proposition 215 (the "Compassionate Use Act" or "CUA"); and

WHEREAS, on January 1, 2004, the California Legislature enacted the "Medical Marijuana Program Act" or "MMPA," to clarify the scope of the Compassionate Use Act, to establish a voluntary program for identification cards issued by counties for qualified patients and primary caregivers, and to provide criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana, including the collective or cooperative cultivation of medical marijuana; and

WHEREAS, on October 9, 2015, Assembly Bills 243 and 266 and Senate Bill 643 (collectively, the "Medical Marijuana Regulation and Safety Act" or "MMRSA") were enacted to create a state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, the manufacturing of medical marijuana products, and physician recommendations for medical marijuana; and

WHEREAS, on June 27, 2016, Senate Bill 837 was enacted, which included a number of technical changes to the MMRSA, including renaming the act to the Medical Cannabis Regulation and Safety Act (the "MCRSA"); and

WHEREAS, on November 8, 2016, the voters of the State of California approved Proposition 64, known as the "Control, Regulate and Tax Adult Use of Marijuana Act" (the "AUMA"), under which a variety of non-medical marijuana businesses can operate subject to local ordinances and individuals may grow, possess and use limited amounts of non-medical marijuana; and

WHEREAS, on July 10, 2017, the City Council adopted Ordinance No. 818-C.S. which established the City's marijuana public safety licenses; and

WHEREAS, subsequent to introduction but prior to adoption of the City's marijuana public safety licenses, on June 27, 2017, Senate Bill 94 ("SB 94") was enacted that integrated MCRSA with AUMA to create the Medicinal and Adult-Use Cannabis Regulation and Safety Act (the "MAUCRSA"), under which, a single regulatory system governs the medicinal and adult-use cannabis industry in California; and

WHEREAS, the City Council is concurrently considering ordinances to amend the Marijuana Regulations and Marijuana Tax, based on City Council's direction to draft amendments which would increase the number of allowed marijuana retail operations in the Rockaway Beach and Sharp Park Marijuana Operation Overlay Districts, allow marijuana testing and manufacturing operations to proceed through the marijuana use permit process separate from the established initial application phase, add an additional finding for approval of marijuana use permit, provide priority to existing lottery list applicants, allow manufacturers to extract cannabinoids using non-hazardous methods, develop parking requirements, and other administrative amendments to create efficiencies in the cannabis permitting process; and

WHEREAS, on January 14, 2019, the City Council also directed staff to draft amendments which would incorporate recent State law updates as a result of SB 94, including exchanging the use of the term "marijuana" to "cannabis"; and

WHEREAS, the City Council of the City of Pacifica held a duly noticed public hearing on the proposed changes on April 22, 2019, and introduced Ordinance No. 843-C.S. on April 22, 2019.

NOW, THEREFORE, the City Council of the City of Pacifica does ordain as follows:

Section 1. Recitals. The City Council of the City of Pacifica does hereby find that the above referenced recitals are true and correct and material to the adoption of this Ordinance.

Section 2. Repeal and Replacement.

Chapter 16 "Marijuana Public Safety Licenses" of Title 4 "Public Safety" of the Pacifica Municipal Code shall be repealed and replaced to read in its entirety as follows:

"CHAPTER 16. - CANNABIS PUBLIC SAFETY LICENSES

Sec. 4-16.01. - Purpose and intent.

It is the purpose and intent of this Article to establish a cannabis public safety license and the procedures for issuance of said license. A cannabis public safety license shall be required as a condition for the continued operation of any cannabis operation as set forth in Pacifica Municipal Code Title 9, Chapter 4, Article 48. The regulations in this article are meant to ensure the health, safety, and welfare of the residents of the City of Pacifica. Cannabis operations within the City must comply with all provisions of the Pacifica Municipal Code for obtaining permits and licenses for a cannabis operation and must comply with the state cannabis laws and all other applicable local and state laws. Nothing in this article permits activities that are otherwise illegal under state or local laws.

Sec. 4-16.02. - Definitions.

- (a) "Applicant" shall mean a person or entity that submits an application or an application for renewal of a cannabis public safety license.
- (b) "Application for renewal" shall mean an application for a renewed cannabis public safety license, which application may be submitted by a licensee.
- (c) "Cannabis" shall have the meaning as defined in Health and Safety Code section 11018 and Business and Professions Code section 26001(f).
- (d) "Commercial cannabis activity" shall have the meaning set forth in Business and Professions Code section 26001(k), as may be subsequently amended from time to time.
- (e) "Cultivation" shall mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.
- (f) "Licensee" shall mean the person owning or operating the cannabis operation as identified to the City, and to whom a cannabis public safety license pursuant to this chapter has been issued.
- (g) "Marijuana" shall have the same meaning as "cannabis".
- (h) "Cannabis operation" shall mean any commercial cannabis.
- (i) "Operator" shall mean any person or entity responsible for the operation or management of the cannabis operation; any person listed on the cannabis operation's articles of incorporation or articles of organization or operating agreement as an officer, manager or director; any

person or entity with a financial interest in the cannabis operation as defined in Title 16, California Code of Regulations section 5004, except those financial interests listed in subsection (c) thereof; and any person that supervises another employee of the cannabis operation.

- (j) "Owner" shall mean:
 - (1) For publicly traded companies, "Owner" means the chief executive officer or any person or entity with an aggregate ownership interest of five (5%) percent or more.
 - (2) For all businesses other than publicly traded companies, an owner is:
 - (i) An individual that has an aggregate ownership interest, other than a security interest, lien, or encumbrance, of twenty (20%) percent or more in the cannabis operation;
 - (ii) The chief executive officer and all members of the board of directors of an entity when that entity has an aggregate ownership interest other than a security interest, lien or encumbrance of twenty (20%) percent or more in the cannabis operation; or
 - (iii) An individual that will be participating in the direction, control or management of the licensed cannabis operation. For the purposes of this section, participating in the direction, control, or management of the licensed cannabis operation means that the individual has been delegated discretionary powers to organize, direct, carry on or control the operations of the licensed cannabis operation.
 - (3) "Owner" shall also include those individuals that are considered an owner under state cannabis laws, including Business and Professions Code 26001(al) and Title 16, California Code of Regulations section 5003, as may be subsequently amended.
- (k) "Police Chief" shall mean the Chief of the City of Pacifica Police Department.
- (l) "State cannabis laws" means and includes California Health and Safety Code sections 11362.1 through 11362.45; California Health and Safety Code section 11362.5 (Compassionate Use Act of 1996); California Health and Safety Code sections 11362.7 to 11362.83 (Medical Marijuana Program); all state laws enacted or amended pursuant to SB-94, Statutes of 2017, Chapter 27 (Medicinal and Adult-Use Cannabis Regulation and Safety Act ("MAUCRSA"), including but not limited to California Business and Professions Code sections 26000, et seq.); California Revenue and Taxation Code sections 31020 and 34010 through 34021.5; California Fish and Game Code section 12029; California Water Code Section 13276; the California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, as such guidelines may be revised from time to time by action of the Attorney General; California Labor Code section 147.5; all state regulations adopted pursuant to MAUCRSA; any license issued pursuant to MAUCRSA; and all other applicable laws of the State of California regulating cannabis.
- (m) "State license" shall mean a license issued pursuant to sections 26050 et seq. of the California Business and Professions Code.

Sec. 4-16.03. - Cannabis operations—General provisions.

- (a) *Cannabis activity permit and public safety license required to operate.* It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon property located within the City, the operation of a cannabis operation unless that person has first obtained and continues to maintain in full force and effect a valid cannabis activity permit issued by the City for that property and that type of cannabis operation and a valid cannabis public safety license issued by the City to the owner and/or operator of the cannabis operation, pursuant to this article.
- (b) *Imposition of public safety license fees.*
 - (1) ~~Every application for a cannabis public safety license or renewal of such license shall be accompanied by a license fee in an amount set forth by separate resolution of the~~

City Council, which amount is calculated to recover the City's full cost of reviewing, issuing and administering said license. The application fee shall include the standard City fees for fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies.

(2) A fee for renewal of a public safety license will be due annually.

(c) *Conditions of operation.*

(1) *Security plan.* A licensee shall provide adequate security on the premises of the cannabis operation. The following minimum security standards shall be maintained at all times:

(i) *Surveillance system.*

(aa) Each cannabis operation shall be monitored at all times by closed-circuit television surveillance system. The camera and video recording surveillance system must be capable of providing surveillance of both interior and exterior areas of the cannabis operation and must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the property. The recordings shall be maintained at the cannabis operation for a period of not less than thirty (30) days and shall be provided to the City Police Department within twenty-four (24) hours of a written request from the Police Department for any recordings. Each licensee shall notify the Chief of Police immediately after discovering any of the following: diversion, theft, loss, or any criminal activity involving the cannabis operation; significant discrepancies identified during inventory; or any other breach of security.

(ab) A sign shall be posted inside and at the entrances to the establishment indicating that the premises are under camera/video surveillance.

(ii) *Windows and window coverings.* Storefronts (front facade of the cannabis operation) shall be primarily glass with glass occupying at least forty-five (45%) percent of the entire store front and sixty (60%) percent of the horizontal length of the store. Window and door areas shall not be covered, tinted, or made opaque in any way, or obscured in any way by landscaping, floor displays, equipment, or the like.

(iii) *Loitering adjacent to a cannabis operation.* Licensees shall take reasonable measures to reduce loitering by cannabis operation members, patrons, guests and invitees in public areas, sidewalks, alleys and areas surrounding the property and adjacent premises during the business hours of the cannabis operation.

(2) *Nuisances prohibited.* A licensee shall take reasonable steps to correct objectionable conditions that constitute a nuisance on any public sidewalk or public space abutting the cannabis operation premises.

(i) For purposes of this section, "objectionable conditions that constitute a nuisance" means public consumption of cannabis products, disturbance of the peace, drug trafficking, disposing of litter or trash, or excessive loud noise.

(ii) For purposes of this section, "reasonable steps" means all of the following:

(aa) Calling the local law enforcement agency. Timely calls to the local law enforcement agency that are placed by the licensee, or his or her agents or employees, shall not be construed as evidence of objectionable conditions that constitute a nuisance.

(bb) Requesting those persons engaging in activities causing objectionable conditions to cease those activities, unless the licensee, or his or her agents or employees, feel that their personal safety would be threatened in making that request.

- (cc) Making good faith efforts to remove items that facilitate loitering, such as furniture, except those structures approved or permitted by the local jurisdiction. The licensee shall not be liable for the removal of those items that facilitate loitering.
- (3) *State license required to operate.* Operation of a cannabis operation shall not commence until a licensee has obtained a valid state license. Licensees shall maintain a valid state license at all times during operation of a cannabis operation.
- (d) *Inspection of dispensaries.*
 - (1) City officials may enter and inspect a cannabis operation at any time during normal business hours with reasonable notice on any day of the week or at any reasonable time to ensure compliance and enforcement of the provisions of this article.
 - (2) No licensee or any other person shall refuse, impede, obstruct, or interfere with an inspection pursuant to this article.
- (e) *Transfer of cannabis public safety licenses prohibited.* Licenses issued pursuant to this article shall be nontransferable to a different person or entity. Any attempt to transfer ownership or control of a cannabis operation to a different individual or any transfer of at least fifty-one (51%) percent ownership or title in the original entity that was issued the public safety license shall be grounds for revocation of the cannabis public safety license by the Chief of Police.

Sec. 4-16.04. - Cannabis public safety license—General provisions.

- (a) *Application procedures.*
 - (1) Public safety license application must be approved prior to the applicant initiating the cannabis activity permit application process as set forth more fully in Section 9-4.4804 of this Code.
 - (2) Public safety licenses shall not be issued until after the Planning Commission has approved a cannabis activity permit for the proposed cannabis operation.
- (b) *Application filing requirements.* A complete cannabis public safety license application or application for renewal along with all required fees and materials required by this article, shall be submitted in order for a person, entity, and/or business to be considered for a public safety license. All cannabis public safety license applications or applications for renewal shall be filed with the Pacifica Chief of Police using forms and authorizations provided by the City.
 - (1) Eligibility for filing. Public safety license applications and applications for renewal shall be filed by the owner of the cannabis operation.
 - (2) Public safety license applications and applications for renewal shall include:
 - (i) For each licensee, owner, operator and employee of the cannabis operation, a fully legible copy of one valid government-issued form of photo identification, such as a state driver's license or identification card. Acceptable forms of government-issued identification include, but are not limited to, driver's license or photo identity cards issued by the State Department of Motor Vehicles (or equivalent) that meet REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a permanent resident card.
 - (ii) If the cannabis operation is a corporation or a cooperative, a certified copy of the collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the collective's bylaws.
 - (iii) If the cannabis operation is an unincorporated association, a copy of the articles of association.
 - (iv) The name, address, electronic mail address and mobile phone number of the applicant's or licensee's current designated agent for service of process.
- ~~(v) Emergency contact. The name, electronic mail address, and mobile phone number, of an owner, operator, or manager to act as an on-site community relations staff~~

person to whom the City may provide notice of any operating problems associated with the cannabis operation.

- (vi) A statement dated and signed by each applicant, under penalty of perjury, that the applicant has personal knowledge of the information contained in the application, that the information contained therein is true and correct.
- (3) In addition to a completed public safety license application or application for renewal, applicants or licensees shall provide and submit the following information to the Chief of Police:
- (i) The applicant and each owner, operator and employee shall consent to fingerprinting and a criminal background investigation, and shall undergo fingerprinting and a criminal background investigation.
 - (ii) Security plans. Applicants shall provide a plan to provide adequate security on the premises of the cannabis operation. The plan shall include standards showing the cannabis operation's ability to comply with the conditions of Section 4-16.03(c)(1) of this article.
- (c) *Ongoing filing requirements.* Where a cannabis operation or licensee replaces, hires, appoints or employs new operators and/or employees to its cannabis operation, all such operators and employees shall be required to submit to fingerprinting and a criminal background investigation pursuant to Section 4-16.04(b)(3)(i) of this article.

Sec. 4-16.05. - Public safety license and public safety license renewal—Approval and denial.

- (a) *Criteria for issuance.* Cannabis public safety licenses shall be approved where the Chief of Police confirms that the following criteria have been met:
- (1) The applicant and each owner, operator and employee of the cannabis operation have authorized and completed fingerprinting.
 - (2) The applicant and each owner, operator and employee of the cannabis operation have authorized the use of their fingerprinting results to run a state and nationwide criminal background check.
 - (3) The results of the criminal background checks establish that the applicant, owner(s), operator(s), and employees have not been convicted of an offense that is substantially related to the qualifications, functions, or duties of a cannabis operation. The following offenses are substantially related to the qualifications, functions, or duties of a cannabis operation:
 - (i) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.
 - (ii) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.
 - (iii) A felony conviction involving fraud, deceit, or embezzlement.
 - (iv) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - (v) A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8.
 - (vi) Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.
 - (4) The applicant has not been convicted, cited, fined, or penalized by the state or any city, county, or city and county, or enjoined by any court of law, in the five (5) years immediately preceding the application for a cannabis public safety license or cannabis public safety renewal license, for any unauthorized cannabis activities.
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- (5) The applicant has not been convicted, cited, fined, or penalized by the state or any city, county, or city and county, or enjoined by any court of law, in the five (5) years immediately preceding the application for a cannabis public safety license or cannabis public safety renewal license, for cultivation or production of a controlled substance on public or private lands.
- (6) Security plan. The applicant or licensee has provided a security plan providing the minimum standards set forth in Section 4-16.03(c)(1) of this Code.
- (b) *Criteria for denial.* Cannabis public safety licenses shall not be issued or renewed where the Chief of Police confirms that one or more of the criterion set forth in subsection (a) of this section have not been met. If the Chief of Police denies the cannabis public safety license application or application for renewal, he or she shall specify in writing the reasons for the denial of the application or application for renewal, and notify the applicant that the decision shall become final unless the applicant seeks an appeal pursuant to Section 4-16.05(c) of this article.
- (c) *Appeal from Chief of Police determination.* An applicant who disagrees with the Chief of Police's decision to issue or deny a public safety license may appeal the Police Chief's decision to the City Council in accordance with the appeal provisions of Title 1, Chapter 4 of this Code.

Sec. 4-16.06. - Expiration and renewal of cannabis public safety licenses.

- (a) Cannabis public safety licenses shall expire one year after their issuance.
- (b) Every licensee shall notify the Chief of Police in writing within ten (10) calendar days of any changes to any item listed in the application and upon any transfer of at least fifty-one (51%) percent ownership or title in the original entity that was issued the public safety license. The notification shall be signed and dated by an owner when submitted.
- (c) Public safety licenses must be renewed on an annual basis prior to expiration by filing with the Police Chief a public safety license application for renewal and a renewal fee in an amount set forth by separate resolution of the City Council, which amount is calculated to recover the City's full cost of reviewing, issuing and administering said license.
- (d) The application for renewal and the renewal fee shall be filed at least thirty (30) days, but not more than sixty (60) days, prior to the expiration of the public safety license. If a timely renewal application is filed, the cannabis operation's public safety license shall not expire until the date that the Chief of Police approves or denies the public safety license application for renewal.
- (e) An application for renewal shall be subject to all filing requirements set forth in Sections 4-16.04(b) and (c).
- (f) The Chief of Police shall issue or deny an application for Renewal in accordance with the provisions of Section 4-16.05 of this article.

Sec. 4-16.07. - Suspension and revocation by Chief of Police.

- (a) A cannabis public safety license issued under the terms of this article shall be suspended or revoked by the Chief of Police if he or she concludes any of the following:
 - (1) The cannabis operation has violated any of the requirements of this article.
 - (2) The cannabis operation is being operated in a manner which violates the security plan required by this article.
 - (3) The cannabis operation is being operated in a manner which constitutes a nuisance.
 - (4) The cannabis operation has failed to comply with the conditions of operation set forth in Section 4-16.03(c) of this Code.
 - (5) The cannabis operation has ceased to operate for thirty (30) days or more.
 - (6) ~~Results of a criminal background check establish that the licensee, owner(s), operator(s), and/or employees have been convicted of an offense that is substantially~~

related to the qualifications, functions, or duties of a cannabis operation. The following offenses are substantially related to the qualifications, functions, or duties of a cannabis operation:

- (i) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.
 - (ii) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.
 - (iii) A felony conviction involving fraud, deceit, or embezzlement.
 - (iv) A felony conviction for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - (v) A felony conviction for drug trafficking with enhancements pursuant to Section 11370.4 or 11379.8.
 - (vi) Conviction for any controlled substance felony subsequent to licensure shall be grounds for revocation of a license or denial of the renewal of a license.
 - (vii) Conviction for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.
 - (viii) Conviction for unauthorized commercial cannabis activities in any city, county or city and county in the five (5) years immediately preceding the issuance of a cannabis public safety license or cannabis public safety renewal license.
- (7) The applicant has been convicted, cited, fined, or penalized by the state or any city, county, or city and county, or enjoined by any court of law, in the five (5) years immediately preceding the application for a cannabis public safety license or cannabis public safety renewal license, for any unauthorized cannabis activities.
 - (8) The applicant has been convicted, cited, fined, or penalized by the state or any city, county, or city and county, or enjoined by any court of law, in the five (5) years immediately preceding the application for a cannabis public safety license or cannabis public safety renewal license, for cultivation or production of a controlled substance on public or private lands.
 - (9) The cannabis operation is being operated in a manner which conflicts with or violates state cannabis laws.
 - (10) A licensee's cannabis activity permit issued pursuant to Title 9, Chapter 4, Article 48 of this Code has been terminated or revoked.
 - (11) A licensee has attempted to transfer or has transferred a cannabis public safety license to another person or entity, or has transferred at least fifty-one (51%) percent ownership or title in the original entity that was issued the public safety license.
 - (12) A licensee's state license has been suspended, terminated, or revoked.
- (b) Expiration. Any cannabis public safety license revoked pursuant to this subsection shall be deemed to be expired and shall no longer entitle the licensee to any privileges authorized by the cannabis public safety license.
 - (c) Appeal from Chief of Police determination. A licensee who disagrees with the Chief of Police's decision to suspend or revoke a public safety license may appeal the Police Chief's decision to the City Council in accordance with the appeal provisions of Title 1, Chapter 4 of this Code.

Sec. 4-16.08. - No vested rights.

No person(s) shall have any vested rights to public safety license, right or interest under this article, regardless of whether such person(s) cultivated, sold, distributed or otherwise engaged in acts related to the use of cannabis prior to adoption of the ordinance codified in this article.

Section 3. Compliance with CEQA. The City Council hereby finds that the action to adopt this Ordinance is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to Section 15061(b)(3) of the CEQA Guidelines because it can be seen with certainty that there is no possibility the adoption of this Ordinance may have a significant effect on the environment. The City Clerk shall file a Notice of Exemption with the San Mateo County Clerk.

Section 4. Severability. If any section, subsection, sentence, clause or phase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it should have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentence, clauses or phrases be declared unconstitutional.

Section 5. Publication. The City Clerk is hereby ordered and directed to certify the passage of this Ordinance by the City Council of the City of Pacifica, California and cause the same to be published in accordance with State law.

Section 6. Effective Date. This Ordinance shall be in full force and effective thirty (30) days after its adoption and shall be published and posted as required by law.

PASSED AND ADOPTED this 13th day of May, 2019 by the following vote:

AYES: Vaterlaus, Martin, O'Neill, Beckmeyer, Bier.

NOES: None.

ABSTAIN: None.

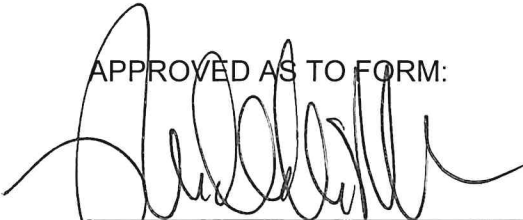
ABSENT: None.


Sue Vaterlaus, Mayor

ATTEST:


Sarah Coffey, City Clerk

APPROVED AS TO FORM:


Michelle Kenyon, City Attorney