AGENDA OF A REGULAR MEETING - NATIONAL CITY CITY COUNCIL/ COMMUNITY DEVELOPMENT COMMISSION – HOUSING AUTHORITY OF THE CITY OF NATIONAL CITY

COUNCIL CHAMBERS
CIVIC CENTER
1243 NATIONAL CITY BOULEVARD
NATIONAL CITY, CALIFORNIA
TUESDAY, JANUARY 5, 2016 – 6:00 PM

RON MORRISON
Mayor

JERRY CANO
Vice Mayor

ALBERT MENDIVIL
Councilmember

MONA RIOS
Councilmember

ALEJANDRA SOTELO-SOLIS
Councilmember

ORDER OF BUSINESS: Public sessions of all Regular Meetings of the City Council / Community Development Commission - Housing Authority (hereafter referred to as Elected Body) begin at 6:00 p.m. on the first and third Tuesday of each month. Public Hearings begin at 6:00 p.m. unless otherwise noted. Closed Sessions begin at 5:00 p.m. or such other time as noted. If a workshop is scheduled, the subject and time of the workshop will appear on the agenda. The Mayor and Council members also sit as the Chairperson and Members of the Board of the Community Development Commission (CDC).

REPORTS: All open session agenda items and reports as well as all documents and writings distributed to the Elected Body less than 72 hours prior to the meeting, are available for review at the entry to the Council Chambers. Regular Meetings of the Elected Body are webcast and archived on the City's website **www.nationalcityca.gov**.

PUBLIC COMMENTS: Prior to the Business portion of the agenda, the Elected Body will receive public comments regarding any matters within the jurisdiction of the City and/or the Community Development Commission. Members of the public may also address any item on the agenda at the time the item is considered by the Elected Body. Persons who wish to address the Elected Body are requested to fill out a "Request to Speak" form available at the entrance to the City Council Chambers, and turn in the completed form to the City Clerk. The Mayor or Chairperson will separately call for testimony of those persons who have turned in a "Request to Speak" form. If you wish to speak, please step to the podium at the appropriate time and state your name and address (optional) for the record. The time limit established for public testimony is three minutes per speaker unless a different time limit is announced. Speakers are encouraged to be brief. The Mayor or Chairperson may limit the length of comments due to the number of persons wishing to speak or if comments become repetitious or irrelevant.

1243 National City Blvd.
National City
619-336-4240

WRITTEN AGENDA: With limited exceptions, the Elected Body may take action only upon items appearing on the written agenda. Items not appearing on the agenda must be brought back on a subsequent agenda unless they are of a demonstrated emergency or urgent nature, and the need to take action on such items arose after the agenda was posted.

Meeting agendas and minutes available on web

WWW.NATIONALCITYCA.GOV

CONSENT CALENDAR: Consent calendar items involve matters which are of a routine or noncontroversial nature. All consent items are adopted by approval of a single motion by the City Council. Prior to such approval, any item may be removed from the consent portion of

the agenda and separately considered, upon request of a Councilmember, a staff member, or a member of the public.

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at (619) 336-4228 to request a disability-related modification or accommodation. Notification 24-hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

Spanish audio interpretation is provided during Elected Body Meetings. Audio headphones are available in the lobby at the beginning of the meeting.

Audio interpretación en español se proporciona durante sesiones del Consejo Municipal. Los audiófonos están disponibles en el pasillo al principio de la junta.

COUNCIL REQUESTS THAT ALL CELL PHONES AND PAGERS BE TURNED OFF DURING CITY COUNCIL MEETINGS.

OPEN TO THE PUBLIC

A. CITY COUNCIL

CALL TO ORDER

ROLL CALL

PLEDGE OF ALLEGIANCE TO THE FLAG

PUBLIC COMMENTS (THREE-MINUTE TIME LIMIT)

PROCLAMATIONS

AWARDS AND RECOGNITIONS

PRESENTATIONS

INTERVIEWS / APPOINTMENTS

CONSENT CALENDAR

1. Motion of the City Council of the City of National City approving the waiving of the reading of the text of the Ordinances considered at this meeting and providing that such Ordinances shall be introduced and/or adopted after a reading of the title only. (City Clerk)

PUBLIC HEARINGS

2. City Council consideration of the recommendation by the City of National City Planning Commission that the City Council adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to regulate the cultivation of medical marijuana and to not adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to prohibit the cultivation of medical marijuana; City Council may approve, modify or disapprove the recommendation of the Planning Commission; both Ordinances previously before the Planning Commission (regulation and prohibition) may be considered by the City Council at this public hearing. (Applicant City-Initiated) (Case File 2015-07 A) (Planning)

ORDINANCES FOR INTRODUCTION

3. An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to prohibit cultivation of marijuana. (Applicant: City-Initiated) (Case File 2015-25 A) (Planning)

4. An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to regulate the cultivation of marijuana for qualified patients and primary caregivers. (Applicant: City-Initiated) (Case File 2015-25 A) (Planning)

ORDINANCES FOR ADOPTION

NON CONSENT RESOLUTIONS

NEW BUSINESS

5. Notice of Decision – Planning Commission approval of a Conditional Use Permit for an indoor recreation use to be located at 2602 Transportation Avenue. (Applicant: Jason Richard) (Case File 2015-27 CUP) (Planning)

B. COMMUNITY DEVELOPMENT COMMISSION-HOUSING AUTHORITY

PUBLIC HEARINGS- HOUSING AUTHORITY

CONSENT RESOLUTIONS- HOUSING AUTHORITY

NON CONSENT RESOLUTIONS- HOUSING AUTHORITY

NEW BUSINESS- HOUSING AUTHORITY

C. REPORTS

STAFF REPORTS

MAYOR AND CITY COUNCIL

CLOSED SESSION REPORT

ADJOURNMENT

Regular Meeting of the City Council and Community Development Commission - Housing Authority of the City of National City - Tuesday - January 19, 2016 - 6:00 p.m. - Council Chambers - National City, California.

The following page(s) contain the backup material for Agenda Item: Motion of the City Council of the City of National City approving the waiving of the reading of the text of the Ordinances considered at this meeting and providing that such Ordinances shall be introduced and/or adopted after a reading of the title only. (City Clerk)

ITEM #1

01-05-16

MOTION OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY APPROVING THE WAIVING OF THE READING OF THE TEXT OF THE ORDINANCES CONSIDERED AT THIS MEETING AND PROVIDING THAT SUCH ORDINANCES SHALL BE INTRODUCED AND/OR ADOPTED AFTER A READING OF THE TITLE ONLY.

(CITY CLERK)

The following page(s) contain the backup material for Agenda Item: City Council consideration of the recommendation by the City of National City Planning Commission that the City Council adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to regulate the cultivation of medical marijuana and to not adop

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: January 5, 2016 **AGENDA ITEM NO.**

ITEM TITLE:

City Council consideration of the recommendation by the City of National City Planning Commission that the City Council adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to regulate the cultivation of medical marijuana and to not adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to prohibit the cultivation of medical marijuana; City Council may approve, modify or disapprove the recommendation of the Planning Commission; both Ordinances previously before the Planning Commission (regulation and prohibition) may be considered by the City Council at this public hearing. (Applicant City-Initiated) (Case File 2015-07 A)

PREPARED BY: Martin Reeder, AICP **DEPARTMENT:** Planning

PHONE: 619-336-4313 **APPROVED BY:**

EXPLANATION:

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect on March 1, 2016. The Planning Commission initiated the amendment on November 2, 2015 and asked staff to return with options for both regulation and prohibition of medical marijuana cultivation. The Commission held public hearings on November 23, and December 7, 2016 and ultimately recommended approval of a regulation Ordinance and did not recommend adoption of a prohibition Ordinance. The attached background report describes the proposal in detail.

Ordinances for both prohibition and regulation of medical marijuana cultivation are attached as part of the Planning Commission Resolution making the recommendation (Attachment No. 4). The Council may approve, modify, or disapprove the recommendation of the Planning Commission. The Council may choose to introduce either of these Ordinances, both of which are separate items on tonight's agenda. Whichever Ordinance is introduced will need to be adopted at the regular meeting of January 19, 2016 in order to meet the State's deadline of March 1, 2016.

FINANCIAL STATEMENT: **APPROVED:** _____ **Finance**

ACCOUNT NO. **APPROVED:** _____ **MIS**

ENVIRONMENTAL REVIEW:

Not a project per CEQA

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Recommend approval of an Amendment prohibiting marijuana cultivation.

BOARD / COMMISSION RECOMMENDATION:

The Planning Commission recommended adoption of an Ordinance regulating medical marijuana cultivation.
Ayes: Bush, Flores, Garcia, Yamane Nays: Alvarado, Baca, DeLaPaz

ATTACHMENTS:

1. Background report
2. Recommended Findings
3. Assembly Bill 243
4. Planning Commission Resolution with Ordinances for Regulation & Prohibition
5. Planning Commission staff reports
6. Correspondence received by staff on the item
7. Public Notice

BACKGROUND REPORT

Overview

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect in 2016.

Previous Action

The Planning Commission initiated a Municipal Code Amendment to address marijuana cultivation at their regular meeting of November 2, 2015. The Commission asked staff to return with options for both the regulation and prohibition of medical marijuana cultivation. Although staff had originally suggested an amendment covering deliveries of marijuana and mobile marijuana dispensaries in addition to cultivation, the Commission chose to initiate an amendment that only addresses marijuana cultivation. The Commission requested options for both regulation and prohibition.

The Planning Commission conducted a Public Hearing at a Special Meeting held on November 23, 2016. Staff recommended prohibition due to the short timeframe of the State legislation. Staff explained that there was not enough time to craft a thoughtfully-prepared Ordinance in enough time to meet the State deadline of March 1, 2016. The point was made that prohibition now would not preclude future regulation. The City of San Diego's marijuana cultivation Ordinance was provided to Commission as a framework for a possible regulation Ordinance. The Planning Commission adopted a resolution recommending an Ordinance regulating medical marijuana modeled on San Diego regulations.

As an ordinance regulating medical marijuana had not yet been drafted, a public hearing with the draft ordinance as well as the other ordinance was presented to the Planning Commission on December 7, 2016 for their recommendation. The Planning Commission ultimately recommended approval of a regulation Ordinance and did not recommend adoption of a prohibition Ordinance.

State Legislation

In 1996 California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA"), which is codified as Health & Safety Code Section 11362.5, to allow for the use of medical marijuana for medicinal purposes. The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use. A qualified patient is an individual who has received a physician's recommendation for the use of

marijuana for a medical purpose. A primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a qualified patient.

In 2003 the State Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program. The MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective. In addition, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep.

In 2012 the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340.

On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensing regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries.

AB 243 provides that no person or entity may cultivate medical marijuana without a state license (which is a program to be developed under the new law), and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur. Under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements (which are yet to be developed) and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana cultivation in that local jurisdiction.

Pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration – except for the allowed compensation under the MMP – are exempt activities from the

licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities.

The City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code. In order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation.

Proposal

The general purpose of the amendment is to amend the chapter to address medical marijuana cultivation. Staff is recommending prohibition of marijuana cultivation because additional time is needed to research potential effects of recent legislation and to fully vet other ordinances prior to using them as a framework for the City of National City. As previously mentioned, prohibition now would not preclude future regulation.

Ordinances for both the prohibition and regulation of medical marijuana are before you for consideration. The Ordinances are attached as part of the Planning Commission Resolution making the recommendation (Attachment No. 4); the Planning Commission is recommending a regulatory Ordinance.

Planning Commission Recommendation

The Planning Commission had both a regulatory ordinance and prohibitory ordinance before them for consideration. The regulatory ordinance before them contained various options, which are summarized below. Overall, the Planning Commission recommended a regulatory ordinance, based on the San Diego model, allowing for cultivation in residential and mixed-use zones by qualified patients and primary caregivers, allowing for cultivation in the IL zone for primary caregivers, allowing for outdoor cultivation, and requiring a Conditional Use Permit for primary caregivers seeking to exceed established limits. The recommended ordinance is attached as "Attachment A" of Planning Commission Resolution 2015-27 (a). The prohibitory ordinance was not recommended, and is attached as "Attachment B" of Planning Commission Resolution 2015-27 (a). This resolution is included as Attachment 4 on the Council Agenda Statement for this item.

Regulatory ordinance options before Planning Commission

Based on direction and comments from the Planning Commission, the provided regulatory Ordinance provided three different options for review and consideration. The three options were for the permissible amounts of marijuana based on City of San Diego regulations, State minimum levels, and State maximum levels. In addition, options were provided regarding a Conditional Use Permit. Lastly, the zones in which cultivation may occur were specified, and options were provided related to outdoor cultivation.

C. State Identification Card Holders: Permissible Amounts of Marijuana

Option 1 (based on San Diego model)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

Option 2 (based on State minimum levels)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess six mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and

contained shall not exceed the permissible amounts for indoor plants according to this Section.

Option 3 (based on State maximum levels for exemption from State licensing requirement)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The

amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

The Planning Commission's recommendation is based on Option 1 (based on San Diego model), including allowing for outdoor/greenhouse plants as included in paragraph 5 of Section "C", Option 1 above.

Cultivation Locations

At the special meeting of November 23, 2015, the Planning Commission adopted a resolution related to *qualified patients* or *primary caregivers*. The original intent was to allow for cultivation at residential locations, particularly for qualified patients. However, it is likely that primary caregivers would need additional room outside of their residence if taking care of multiple patients. As such, they could be permitted to cultivate in locations within the Light Industrial (IL zone), subject to the limitations contained in section "C". There are also options related to zones for outdoor cultivation and screening of the use from adjacent areas.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. **[optional]**

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. **[optional]**

The Planning Commission's recommendation includes allowing for outdoor/greenhouse plants in the RS-1 and RS-2 zones and that no evidence of cultivation shall be seen from the public right-of-way, as described in paragraphs 3 and 4 of Section "D" above.

Staff was recommending that if outdoor cultivation is permitted that it be allowed only in an enclosed greenhouse or other structure and only in zones RS-1 or RS-2 because the lots are generally larger than other residential zones, which would minimize impacts to the neighborhood. Also, the ordinance should include a provision to prevent any visual

impacts of cultivation from the public right-of-way in order to discourage theft and other criminal activity.

Another optional element of the regulation of cultivation was whether or not to require a Conditional Use Permit. The CUP regulation could be used to exceed the amounts in section "C", if the cultivation location was associated with a primary caregiver and if located in the IL zone; or, a CUP could be required for all who cultivate. The following optional language was included in the draft Ordinance.

> E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**
>
> A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.
>
> E. Conditional Use Permit. **[Option 2—Any Cultivation in subsection C]**
>
> A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

The intent of this language is to insure that adequate conditions are placed on CUP's regarding impacts related to odor, public nuisance, and discharge of cultivation runoff in to the City's sewer/storm drain system. The CUP would be annual in nature, in order to capture any potential changes in State laws that may be forthcoming. Uses exceeding the normally-permissible amounts would be allowed in the Light Industrial (IL) zone and would be required to be inside a building.

The Planning Commission's recommendation is based on Option 1 (Primary Caregivers who exceed limits in subsection "C"). Option 2 (Any cultivation in section "C" was not part of the recommendation.

As part of the recommendation, Planning Commission included a change to section "F" that was recommended by staff. This section refers to violations and needed to be updated based on a change in state law that had occurred shortly before the hearing.

General Plan consistency

The purpose of the Health and Environmental Justice Element of the General Plan is to *...improve living conditions to foster the physical health and well-being of National City's residents*. Based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes per Proposition 215 (known as the Compassionate Use Act) for those with physical health issues, allowing for the cultivation of medical marijuana to aid in the treatment of physical health issues weigh in favor of finding such use consistent with the General Plan.

Based on information from the Police Department that marijuana poses significant health threats to users, and that cultivation is accompanied by increased criminal activity, the regulation of cultivation would not be consistent with the General Plan. (see Police Department comments below).

California Environmental Quality Act

The proposed Amendment has been reviewed in compliance with the California Environmental Quality Act. Staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Prohibition option: Cultivation is currently not a permitted use and adopting a prohibitory Ordinance would affirm that marijuana cultivation is prohibited. Under this option, it can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment; the activity would not subject to CEQA.

Regulatory option: Cultivation is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City. Therefore, the activity would not subject to CEQA.

Police Department comments

PD staff has relayed concerns related to marijuana cultivation and has suggested a "wait and see" position. PD suggests waiting to see if there are adverse impacts in other

cities due to the recent legislation prior to enacting a regulatory Ordinance in National City. PD's concerns are as follows:

- There are currently no statistics about cultivation and crime
  - The activity is too new for accurate statistics
  - Previous experience shows that cash crops are subject to theft/violence and other quality of life issues
- Enforcement challenges
  - National City PD does not currently have a Vice Team
  - Current staffing levels do not support enforcement
- Proximity to schools and parks
  - Size of National City verses other metropolitan areas
  - Charter schools In National City
  - National City School District schools
  - Sweetwater Union High School District schools
  - WI-TOD
- PD recommends prohibition - wait and see how other cities and communities are impacted by cultivation
- Regulation does not necessarily ensure compliance

Overview

The following matrix was provided to the planning Commission as a quick-reference guide to options. The matrix is intended to provide an "at a glance" view of the limitations on permissible amounts of marijuana that can be grown, stored, and processed; and where the use may be located (zones). The matrix also compares the limitations in AB 243 to the original MMP (Medical Marijuana Program) and to the City of San Diego.

	MMP	AB 243	San Diego Ordinance
Possession of Dried Marijuana ("processed")	8 ounces per qualified patient (minimum)	No regulations.	One pound per qualified patient or amount recommended by physician whichever is less (caregiver may have up to two pounds per patient)
Live Marijuana Plants	6 mature or 12 immature plants (minimum)	Exemption from licensing: • 100 square feet for qualified patient • 500 square feet for a primary caregiver for up to 5 qualified	• A qualified patient may have the lesser of 24 plants or the amount the physician recommends in an area of less than 64 square feet

		patients State licensing for 10 types of cultivators of outdoor/ indoor, with or without artificial lighting, and different sizes	• Caregiver may have the above amount for each patient in his or her care up to 99 plants
Outdoor cultivation	No restrictions.	No restrictions for exempt cultivation and specific licenses required for outdoor cultivation for non-exempt cultivation.	Outdoor cultivation allowed within a fully enclosed yard with 6 foot fences or in a greenhouse/structure that is locked and contained.
Zoning restrictions	2010 and 2011 amendments allow for cities to regulate location or establishment of cooperatives. No regulations specific to cultivation—only limiting the location of cooperatives.	Cities may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activity of marijuana cultivation even if exempt.	No zoning restrictions on personal cultivation by qualified patient or primary caregiver. Cooperatives are allowed in specific zones only (not residential).
Conditional Use Permit for Cultivation	No requirements for a CUP.	Cultivation requires state license and a license, permit or entitlement by local agency provided local agency regulates or prohibits cultivation by March 1, 2016. State standards for licensing to be developed to mitigate environmental and other impacts. City CUP must not be less stringent than state's standards.	Cooperatives, which can cultivate marijuana, require a CUP. Cultivation for personal use by a qualified patient or by a qualified caregiver does not require a CUP.

Summary

Due to the short notice provided by the State, an Ordinance related to the regulation or prohibition of medical marijuana cultivation must be adopted as soon as possible. Although staff has maintained that there is not enough time to fully capture and analyze the issues resulting from regulating cultivation in the City, staff has provided a regulatory Ordinance as complete as reasonably possible – as requested by the Planning Commission. The Commission's recommendation is now before the City Council for its review. The City Council can approve, modify, or disapprove the recommendation. The Police Department and City staff, given the time constraints and pending nature of who can be licensed under the State law and what the State program may look like, recommend a non-regulatory direction.

Options

1. Disapprove the Planning Commission recommendation and introduce an Ordinance adding Section 18.30.345 to the Land Use Code, to prohibit the cultivation of medical marijuana, based on the attached findings; or

2. Approve the Planning Commission recommendation and introduce an Ordinance adding Section 18.30.345 to the Land Use Code, to regulate the cultivation of medical marijuana, based on the attached findings; or

3. Modify the Planning Commission recommendation and recommend changes to the proposed Ordinance regulating the cultivation of medical marijuana, which may require additional review by the Planning Commission, who would need to hold a special meeting prior to the regular City Council meeting of January 19, 2016 in order to maintain the necessary timeline required to have an Ordinance in effect by March 1, 2016.

4. Take no action and allow the State to assume local land use control over cultivation in the City.

RECOMMENDED FINDINGS FOR APPROVAL OF AN ORDINANCE ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

RECOMMENDED FINDINGS FOR APPROVAL OF AN ORDINANCE ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.

2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

5. That the proposed amendment is consistent with the National City General Plan because the purpose of the Health and Environmental Justice Element of the General Plan is to ...*improve living conditions to foster the physical health and well-being of National City's residents*; based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes for those with physical health issues, allowing for the cultivation of medical marijuana to aid in the treatment of physical health issues would be consistent with the General Plan.

6. That the proposed Amendment has been reviewed in compliance with the California Environmental Quality Act, and staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment – cultivation of marijuana is not highly

different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City.

California LEGISLATIVE INFORMATION

AB-243 Medical marijuana. (2015-2016)

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to $10,000,000, and would appropriate $10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the

activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the

Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars ($10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars ($10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

(4) Soil disposal.

(5) Water storage and use.

(6) Irrigation runoff.

(7) Fertilizers and soil.

(8) Pesticides and herbicides.

(9) Petroleum products and other chemicals.

(10) Cultivation-related waste.

(11) Refuse and human waste.

(12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

RESOLUTION NO. 2015-27 (a)

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF NATIONAL CITY, CALIFORNIA,
RECOMMENDING TO THE CITY COUNCIL OF THE
CITY OF NATIONAL CITY ADOPTION OF AN ORDINANCE
ADDING SECTION 18.30.345 OF THE NATIONAL CITY
MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION
OF MARIJUANA FOR QUALIFIED PATIENTS
AND PRIMARY CAREGIVERS
CASE FILE NO. 2015-25 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at duly advertised public hearings held on November 23, 2015 and December 7, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference, along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission of the City of National City recommends approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A"; and

WHEREAS, the Planning Commission of the City of National City does not recommend approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit medical marijuana cultivation, attached hereto as Attachment "B"; and

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

~~WHEREAS, this action is taken in an effort to be compliant with applicable State~~ and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearings held on November 23, 2015 and December 7, 2015, support the following findings:

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.

2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

5. That the proposed amendment is consistent with the National City General Plan because the purpose of the Health and Environmental Justice Element of the General Plan is to *...improve living conditions to foster the physical health and well-being of National City's residents*; based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes for those with physical health issues, allowing for the cultivation of <u>medical</u> marijuana to aid in the treatment of physical health issues would be consistent with the General Plan.

6. That the proposed Amendment has been reviewed in compliance with the California Environmental Quality Act, and staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment – cultivation of marijuana is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A", and

does not recommend the ordinance prohibiting cultivation of marijuana, attached hereto as Attachment "B".

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES: Flores, Bush, Wamane, Garcia

NAYS: Dela Paz, Alvarado, Baca

ABSENT: None

ABSTAIN: None

CHAIRPERSON

ATTACHMENT "A"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Purpose and Intent

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law.

Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 1 – based on San Diego model]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount

consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants [redacted]. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 2 - based on State minimum levels]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess six mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully

enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 3 – based on State maximum for exemption from State licensing requirement]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully ~~enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that~~ must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. [~~optional~~]

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. [~~optional~~]

E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**

A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

E. Conditional Use Permit. **[Option 2—Any Cultivation subsection C]**

A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty

1. TO THE EXTENT NOT PREEMPTED BY STATE LAW, ~~Unless otherwise provided,~~ any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall constitute a separate violation.

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any

reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

ATTACHMENT "B"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Prohibition

1. Cultivation of marijuana for medicinal purposes is prohibited.

2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. Cultivation of marijuana shall mean the planting, growing, cultivating,

harvesting, drying, or processing of marijuana.

2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code" has the same meaning as in California Health & Safety Code Section 11018.

Section 2. The proposed amendment is exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3) – general rule; the project is not considered a project under CEQA as there is no possibility that the activity in question may have a significant impact on the environment; cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

Item no. 9
December 7, 2015

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

PLANNING COMMISSION STAFF REPORT

Title:	PUBLIC HEARING – AN AMENDMENT TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE (MEDICAL MARIJUANA DISPENSARIES) TO ADDRESS CULTIVATION OF MARIJUANA.
Case File No.:	2015-25 A
Location:	Citywide
Staff report by:	Martin Reeder, AICP – Principal Planner
Applicant:	City-initiated
Environmental review:	Not a project under CEQA (no physical change)
Staff recommendation:	Recommend approval of an Amendment prohibiting marijuana cultivation

Background

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect in 2016.

Previous Action

The Planning Commission initiated a Municipal Code Amendment to address marijuana cultivation at their regular meeting of November 2, 2015. The Commission asked staff to return with options for both the regulation and prohibition of medical marijuana cultivation. Although staff had originally suggested an amendment covering deliveries of marijuana and mobile marijuana dispensaries in addition to cultivation, the Commission

chose to initiate an amendment that only addresses marijuana cultivation. Commission requested options for both regulation and prohibition.

The Planning Commission conducted a Public Hearing at a Special Meeting held on November 23, 2016. Staff recommended prohibition due to the short timeframe of the State legislation. Staff felt that there was not enough time to craft a thoughtfully-prepared Ordinance in enough time to meet the State deadline of March 1, 2016. The point was made that prohibition now would not preclude future regulation. The City of San Diego's marijuana cultivation Ordinance was provided to Commission as a framework for a possible regulation Ordinance. The Planning Commission adopted a resolution recommending an Ordinance regulating medical marijuana modeled on San Diego regulations.

As an ordinance regulating medical marijuana had not yet been drafted, a public hearing with the draft ordinance as well as the other ordinance are now before the Planning Commission for their recommendation. The Planning Commission recommendation will be forwarded to the City Council.

State Legislation

In 1996 California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA"), which is codified as Health & Safety Code Section 11362.5, to allow for the use of medical marijuana for medicinal purposes. The CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use. A qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose. A primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a qualified patient.

In 2003 the State Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program. The MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective. In addition, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep.

In 2012 the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340.

On October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensing regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries.

AB 243 provides that no person or entity may cultivate medical marijuana without a state license (which is a program to be developed under the new law), and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur. Under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements (which are yet to be developed) and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana cultivation in that local jurisdiction.

Pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration – except for the allowed compensation under the MMP – are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities.

The City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code. In order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation.

Proposal

Ordinances for prohibition and for regulation are both before you for consideration, so that a complete recommendation can be forwarded to the City Council for their consideration. Two resolutions are provided for your consideration 1) recommending the regulatory Ordinance, and 2) recommending the prohibition Ordinance. As the Planning Commission has already indicated a preference for regulation, the discussion below focuses on the draft regulatory Ordinance provided for your consideration.

The general purpose of the amendment is to amend the chapter to address the regulation of medical marijuana cultivation. Options for regulation are discussed in the 'Analysis' section below. Staff is still recommending prohibition of marijuana cultivation and feels that additional time is needed to research potential effects of recent legislation and to fully vet other Ordinances prior to using them as a framework for the City of National City. As previously mentioned, prohibition now would not preclude future regulation.

Analysis

Based on direction and comments from the Planning Commission, the attached Ordinance provides three different options for review and consideration. The three options are for the permissible amounts of marijuana based on City of San Diego regulations, State minimum levels, and State maximum levels. In addition, options are provided regarding a Conditional Use Permit. Lastly, the zones in which cultivation may occur are specified, and options are provided related to outdoor cultivation.

C. State Identification Card Holders: Permissible Amounts of Marijuana

Option 1 (based on San Diego model)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary

caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

Option 2 (based on State minimum levels)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess six mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

Option 3 (based on State maximum levels for exemption from State licensing requirement)

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity,

or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

Note the option to allow outdoor/greenhouse plants in No. 5 of the three options above. The Commission should consider the issues associated with outdoor cultivation, including theft, security, and odor impacts. The Ordinance can be forwarded with the recommendation to allow or to prohibit outdoor/greenhouse marijuana cultivation.

Cultivation Locations

At the special meeting of November 23, 2015, the Planning Commission adopted a resolution related to *qualified patients* or *primary caregivers*. The original intent was to allow for cultivation at residential locations, particularly for qualified patients. However, it is likely that primary caregivers would need additional room outside of their residence if taking care of multiple patients. As such, they could be permitted to cultivate in locations within the Light Industrial (IL zone), subject to the limitations contained in section "C". There are also options related to zones for outdoor cultivation and screening of the use from adjacent areas.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any

residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. **[optional]**

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. **[optional]**

Staff is recommending that if outdoor cultivation is permitted that it be allowed only in an enclosed greenhouse or other structure and only in zones RS-1 or RS-2 because the lots are generally larger than other residential zones, which would minimize impacts to the neighborhood. Also, the ordinance could include a provision to prevent any visual impacts of cultivation from the public right-of-way in order to discourage theft and other criminal activity.

Another optional element of the regulation of cultivation is whether or not to require a Conditional Use Permit. The CUP regulation could be used to exceed the amounts in section "C", if the cultivation location is associated with a primary caregiver and if located in the IL zone; or, a CUP could be required for all who cultivate. The following optional language is included in the draft Ordinance.

E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**

A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

E. Conditional Use Permit. **[Option 2—Any Cultivation subsection C]**

A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful

for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

The intent of this language is to insure that adequate conditions are placed on CUP's regarding impacts related to odor, public nuisance, and discharge of cultivation runoff in to the City's sewer/storm drain system. The CUP would be annual in nature, in order to capture any potential changes in State laws that may be forthcoming. Uses exceeding the normally-permissible amounts would be allowed in the Light Industrial (IL) zone and would be required to be inside a building.

General Plan consistency

The purpose of the Health and Environmental Justice Element of the General Plan is to *...improve living conditions to foster the physical health and well-being of National City's residents*. Based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes per Proposition 215 (known as the Compassionate Use Act) for those with physical health issues, allowing for the cultivation of medical marijuana to aid in the treatment of physical health issues weigh in favor of finding such use consistent with the General Plan. It should be noted the public safety concerns do appear to weigh against such a finding (see Police Department comments below).

California Environmental Quality Act

The proposed Amendment has been reviewed in compliance with the California Environmental Quality Act. Staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Cultivation is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City. Therefore, the activity is not subject to CEQA.

Police Department comments

PD staff has relayed concerns related to marijuana cultivation and has suggested a "wait and see" position. PD suggests waiting to see if there are adverse impacts in other cities due to the recent legislation prior to enacting a regulatory Ordinance in National City. PD's concerns are as follows:

- There are currently no statistics about cultivation and crime
    - The activity is too new for accurate statistics

- Previous experience shows that cash crops are subject to theft/violence and other quality of life issues
- Enforcement challenges
  - National City PD does not currently have a Vice Team
  - Current staffing levels do not support enforcement
- Proximity to schools and parks
  - Size of National City verses other metropolitan areas
  - Charter schools in National City
  - National City School District schools
  - Sweetwater Union High School District schools
  - WI-TOD
- PD recommends prohibition - wait and see how other cities and communities are impacted by cultivation
- Regulation does not necessarily ensure compliance

Overview

In order to simplify the new regulation contained in the proposed regulation Ordinance, the following matrix is provided. The matrix is intended to provide an "at a glance" view of the limitations on permissible amounts of marijuana that can be grown, stored, and processed; and where the use may be located (zones). The matrix also compares the limitations in AB 243 to the original MMP (Medical Marijuana Program) and to the City of San Diego.

	MMP	AB 243	San Diego Ordinance
Possession of Dried Marijuana ("processed")	8 ounces per qualified patient (minimum)	No regulations.	One pound per qualified patient or amount recommended by physician whichever is less (caregiver may have up to two pounds per patient)
Live Marijuana Plants	6 mature or 12 immature plants (minimum)	Exemption from licensing: • 100 square feet for qualified patient • 500 square feet for a primary caregiver for up to 5 qualified patients State licensing for 10 types of cultivators of outdoor/ indoor, with or without artificial lighting, and different sizes	• A qualified patient may have the lesser of 24 plants or the amount the physician recommends in an area of less than 64 square feet • Caregiver may have the above amount for each patient in his or her care up to 99 plants

Outdoor cultivation	No restrictions.	No restrictions for exempt cultivation and specific licenses required for outdoor cultivation for non-exempt cultivation.	Outdoor cultivation allowed within a fully enclosed yard with 6 foot fences or in a greenhouse/structure that is locked and contained.
Zoning restrictions	2010 and 2011 amendments allow for cities to regulate location or establishment of cooperatives. No regulations specific to cultivation—only limiting the location of cooperatives.	Cities may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activity of marijuana cultivation even if exempt.	No zoning restrictions on personal cultivation by qualified patient or primary caregiver. Cooperatives are allowed in specific zones only (not residential).
Conditional Use Permit for Cultivation	No requirements for a CUP.	Cultivation requires state license and a license, permit or entitlement by local agency provided local agency regulates or prohibits cultivation by March 1, 2016. State standards for licensing to be developed to mitigate environmental and other impacts. City CUP must not be less stringent than state's standards.	Cooperatives, which can cultivate marijuana, require a CUP. Cultivation for personal use by a qualified patient or by a qualified caregiver does not require a CUP.

Summary

Due to the short notice provided by the State, an Ordinance related to the regulation or prohibition of medical marijuana cultivation must be reviewed and a recommendation made to City Council as soon as possible. Although staff has maintained that there is not enough time to fully capture and analyze the issues resulting from regulating cultivation in the City, staff has provided a regulatory Ordinance as complete as reasonably possible – as requested by the Planning Commission. The Commission's recommendation will be forwarded to the City Council at a subsequent public hearing. The Police Department and City staff, given the time constraints and pending nature of who can be licensed under the State law and what the State program may look like, recommend a non-regulatory direction.

OPTIONS

1. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, regulating marijuana cultivation, based on the attached findings; or

2. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, prohibiting marijuana cultivation, based on findings to be made by the Planning Commission; or

3. Continue this meeting for additional discussion, if needed, and adjourn to that continued meeting to be held on December 14, 2015, in order to maintain the necessary timeline required to have an Ordinance in effect by March 1, 2016.

ATTACHMENTS

1. Recommended Findings for Approval of an amendment regulating marijuana cultivation
2. Recommended Findings for Approval of an amendment prohibiting marijuana cultivation
3. Assembly Bill 243
4. Ordinance proposing new Land Use Code Chapter 18.30.345 – Medical Marijuana Cultivation that regulates medical marijuana cultivation.
5. Ordinance proposing new Land Use Code Chapter 18.30.345 – Medical Marijuana Cultivation that prohibits medical marijuana cultivation.
6. Planning Commission staff report from special meeting of November 23, 2015
7. Public comments received and distributed to Planning Commission at the special meeting of November 23, 2015
8. Electronic mail correspondence received since the special meeting of November 23, 2015
9. Public Notice (published in the San Diego Union-Tribune, not mailed)
10. Resolution (a) – recommending regulation
11. Resolution (b) – recommending prohibition

MARTIN REEDER, AICP
Principal Planner

BRAD RAULSTON
Executive Director

RECOMMENDED FINDINGS FOR APPROVAL OF
AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO REGULATE CULTIVATION OF MEDICAL MARIJUANA
AND MARIJUANA GENERALLY.
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.

2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

5. That the proposed amendment is consistent with the National City General Plan because the purpose of the Health and Environmental Justice Element of the General Plan is to *...improve living conditions to foster the physical health and well-being of National City's residents*; based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes for those with physical health issues, allowing for the cultivation of medical marijuana to aid in the treatment of physical health issues would be consistent with the General Plan.

6. That the proposed Amendment has been reviewed in compliance with the California Environmental Quality Act, and staff has determined that the proposed

use is exempt from CEQA under section 15061(b)(3) – general rule, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment – cultivation of marijuana is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City.

RECOMMENDED FINDINGS FOR APPROVAL OF
AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO PROHIBIT CULTIVATION OF MEDICAL MARIJUANA
AND MARIJUANA GENERALLY.
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

5. ~~That the proposed amendment has been reviewed to be in compliance with the~~ California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as

the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Purpose and Intent

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law. Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 1 – based on San Diego model]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. ~~Processed Marijuana - Qualified Patients. An individual who is a qualified~~ patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 2 – based on State minimum levels]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess six mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a

minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 3 –** based on **State maximum for exemption from State licensing requirement]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a ~~minimum six-foot fence perimeter and greenhouses or structures that are locked and contained~~ shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use

zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. **[optional]**

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. **[optional]**

E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**

A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

E. Conditional Use Permit. **[Option 2—Any Cultivation subsection C]**

A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty

1. Unless otherwise provided, any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall constitute a separate violation.

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs,

sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Prohibition

1. Cultivation of marijuana for medicinal purposes is prohibited.

2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. Cultivation of marijuana shall mean the planting, growing, cultivating, harvesting, drying, or processing of marijuana.

2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code" has the same meaning as in California Health & Safety Code Section 11018.

Section 2. The proposed amendment is exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3) – general rule; the project is not considered a project under CEQA as there is no possibility that the activity in question may have a significant impact on the environment; cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

Item no. 2
November 23, 2015

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

PLANNING COMMISSION STAFF REPORT

Title:	PUBLIC HEARING – AN AMENDMENT TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE (MEDICAL MARIJUANA DISPENSARIES) TO ADDRESS CULTIVATION OF MARIJUANA.
Case File No.:	2015-25 A
Location:	Citywide
Staff report by:	Martin Reeder, AICP – Principal Planner
Applicant:	City-initiated
Environmental review:	Not a project under CEQA (no physical change)
Staff recommendation:	Recommend approval of an Amendment prohibiting marijuana cultivation

Background

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect in 2016.

Previous Action

The Planning Commission initiated a Municipal Code Amendment to address marijuana cultivation at their regular meeting of November 2, 2015. The Commission asked staff

to return with options for both the regulation and prohibition of medical marijuana cultivation. Although staff had originally suggested an amendment covering deliveries of marijuana and mobile marijuana dispensaries in addition to cultivation, the Commission chose to initiate an amendment that only addresses marijuana cultivation at this time (see discussion related to AB 243 below).

History

On October 9, 2015, Governor Brown approved *The Medical Marijuana Regulation and Safety Act* (The Act), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries. AB 243 has the pressing deadline of March 1, 2016, which is driving the current timeline.

Proposal

The general purpose of the amendment is to amend the chapter to address the cultivation of medical marijuana and marijuana generally (Cultivation); including, but not limited to, regulating and/or prohibiting such land use activities. The recommendation of staff to amend the code to prohibit cultivation is predicated upon existing code language that prohibits medical marijuana dispensaries and that cultivation is not a permitted use. The City's Land Use Code is based upon permissive zoning, which means only enumerated uses are allowed uses. The proposed prohibition is consistent with the City Council's prior adoption of section 18.30.340 (Medical Marijuana Dispensaries – prohibited).

Analysis

Assembly Bill 243 (AB 243) will require immediate attention from local governments if they wish to prohibit or continue to prohibit certain activities related to medical marijuana, including the cultivation of medical marijuana. The Land Use Code currently prohibits Medical Marijuana Dispensaries under section 18.30.340. Cultivation is not expressly prohibited. AB 243 requires the City to have a prohibition ordinance in place by *March 1, 2016*. If not enacted by this date, the City will lose its local land use authority to regulate or ban cultivation. The full text of AB 243 is attached for your review.

The Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City

as it is not specifically permitted by the Land Use Code. However, in order to ensure clarity in the light of recent enactment of *The Act*, and affirmatively retain local land use control on this issue, the Code should be updated to be specific as to the prohibition or regulation of cultivation.

Other jurisdictions

Of the eighteen cities in the County of San Diego, only the City of San Diego permits marijuana cultivation. The City of San Marcos recently approved the introduction of an ordinance that would prohibit the cultivation, delivery and sale of medical marijuana. The City of Vista is amending their Development Code to continue for its operation as a permissive zoning code, which would continue to prohibit the cultivation of marijuana (and other uses) being that the use is not expressly permitted.

The City of San Diego permits the cultivation of medicinal marijuana either by a licensed Medical Marijuana Consumer Cooperative, by Qualified Patients, or by Primary Caregivers, the latter two of which are defined as follows [in the San Diego Municipal Code]:

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief in accordance with state law, including California Health and Safety Code section 11362.5.

Option for prohibition

Staff is recommending prohibition of marijuana cultivation for the following reasons:

- There is insufficient time to research, analyze, and prepare an Ordinance establishing a regulatory scheme based on the City of San Diego's Ordinance before the March 1, 2016 deadline.
- City Council adopted the Land Use Code with a specific ban of medical marijuana dispensaries and the proposed prohibition of cultivation is consistent with the Land Use Code.
- Adopting a prohibition of cultivation does not prevent the City from subsequently adopting cultivation regulations, but failing to adopt a prohibition will prevent the City from retaining local land use control, thereby relinquishing local land use to the State in this area.
- Regulation of marijuana cultivation is not consistent with the General Plan (see below)
- The Police Department is firmly opposed to medical marijuana and associated activities in the City for the following reasons:

- Research conducted by the National City Police Department through the DEA concludes that marijuana is a dangerous addictive drug that poses significant health threats to users; marijuana has no medical value that can't be met more effectively by legal drugs; marijuana users are far more likely to use other drugs like cocaine and heroin than non-marijuana users; and proponents of legalizing marijuana use of "medical marijuana" as a red herring in an effort to advocate broader legalization of drug use.

Additional information provided by the Police Department has been attached, including descriptions of Scheduled Controlled Substances per the Controlled Substances Act (CSA), and documented public safety issues from other jurisdictions that allow marijuana cultivation. Some of the documented impacts associated with cultivation include:

- Gun violence associated with robberies or attempted robberies of marijuana plants.
- Increase in traffic accidents and fatalities involving persons under the influence of marijuana.
- Environmental impacts caused by pollutant discharge from growing operations.

The amendment prohibiting cultivation is intended to apply to <u>all</u> marijuana products, medical or otherwise, in order to capture possible regulation changes in the future. It is important to note that a prohibition of cultivation today does not mean that cultivation can never be permitted in the future. A subsequent amendment of the Land Use Code may

occur at a later time to address cultivation. This would also allow staff to adequately research, analyze, and prepare an Ordinance for review by the Planning Commission and City Council.

Option for regulation

If the Commission chooses to amend the Code to regulate the cultivation of marijuana, staff recommends using the City of San Diego municipal code as a framework. Staff has not had sufficient time, however, to adequately analyze that ordinance. The code sections (Article 2: Health Regulated Businesses and Activities, Division 13: Medical Marijuana Regulations: Patients and Caregivers & Division 15: Medical Marijuana Consumer Cooperatives) are attached for your review and would be used to create language regulating cultivation. That language would be forwarded to the City Council for inclusion into an ordinance, should they choose to take the path of regulation rather than prohibition. While staff is recommending prohibition at this time, regulation would still be possible in the future.

General Plan consistency

The purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents. Based on the information from the Police Department that marijuana poses significant health threats to users and cultivation is accompanied by increased criminal activity, regulating cultivation would not be consistent with the General Plan.

California Environmental Quality Act

The proposed Amendment has been reviewed in compliance with the California Environmental Quality Act. Staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The general rule states that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited. It can be seen with certainty that there is no possibility that the activity in question may have a significant impact on the environment; the activity is not subject to CEQA.

Summary

Due to the short notice provided by the State, there is not enough time to fully capture and analyze the issues resulting from regulating cultivation in the City. The Commission showed interest in the City benefiting from additional revenue streams associated with permitting cultivation. Monetary policy and taxation are matters of City Council policy. It is important to point out that a prohibition of cultivation does not mean that it cannot be

permitted in the future, pending a subsequent amendment of the Land Use Code. Due to the short timeframe needed to fully vet the information for a regulatory scheme and still have an Ordinance in place before March 1, 2016, staff is recommending that the Commission amend the Municipal Code to prohibit marijuana cultivation.

OPTIONS

1. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, prohibiting marijuana cultivation, based on the attached findings; or

2. Recommend approval of the Amendment to Section 18.30.340 of the Land Use Code, regulating marijuana cultivation, based on the attached findings/findings to be made by the Planning Commission; or

3. Recommend denial of the Amendment to Section 18.30.340 of the Land Use Code, based on findings to be determined by the Planning Commission.

ATTACHMENTS

1. Recommended Findings for Approval of an amendment prohibiting marijuana cultivation.
2. Assembly Bill 243
3. Existing Land Use Code Chapter 18.30.340 – Medical Marijuana Dispensaries.
4. Proposed Land Use Code Chapter 18.30.340 – Medical Marijuana Dispensaries (prohibition of cultivation)
5. City of San Diego Municipal Code – Article 2: Health Regulated Businesses and Activities, Division 13: Medical Marijuana Regulations: Patients and Caregivers
6. City of San Diego Municipal Code – Article 2: Health Regulated Businesses and Activities, Division 15: Medical Marijuana Consumer Cooperatives
7. Controlled Substances Act definitions and documented public safety issues related to marijuana cultivation (Police)
8. Public Notice (published in the San Diego Union-Tribune, not mailed)

MARTIN REEDER, AICP
Principal Planner

BRAD RAULSTON
Executive Director

RECOMMENDED FINDINGS FOR APPROVAL OF
AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO PROHIBIT CULTIVATION OF MEDICAL MARIJUANA
AND MARIJUANA GENERALLY.
CASE FILE 2015-25 A

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

Attachment 3

18.30.340 - Medical marijuana dispensaries.

A. Prohibition
   1. Medical marijuana dispensaries are prohibited.
B. Definitions.
   1. For purposes of this section, "medical marijuana dispensary" shall mean a facility where marijuana is made available for medical purposes in accordance with Section 11362.5 of the California Health and Safety Code.
   2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code.

(Ord. No. 2012-2372, Exh. B-1, 2-7-2012)

Attachment 4

18.30.345 - Medical marijuana cultivation.

A. Prohibition.
   1. Cultivation of marijuana for medicinal purposes is prohibited.
   2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions.
   1. Cultivation of marijuana shall mean the planting, growing, cultivating, harvesting, drying, or processing of marijuana.
   2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code.

Attachment 5

Article 2: Health Regulated Businesses and Activities

Division 13: Medical Marijuana Regulations: Patients and Caregivers

("San Diego Medical Cannabis Voluntary Verification Card Program" added 2-25-2002 by O-19036 N.S. (Retitled to "Medical Marijuana Regulations: Patients and Caregivers" and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1301 Purpose and Intent

(a) It is the intent of the Council to adopt regulations consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), to protect the public health, safety, and welfare.

(b) Nothing in this Division is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

(c) Nothing in this Division is intended to reduce the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

(d) This Division shall be interpreted in a manner consistent with state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

(Amended 9-29-2003 by O-19218 N.S.)
(Amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1302 Definitions

For the purpose of this Division the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Processed marijuana means harvested *marijuana* that is in a form other than a live plant.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief in accordance with state law, including California Health and Safety Code section 11362.5.

SDPD means the City of San Diego Police Department.

State identification card means the card issued to a patient or caregiver in accordance with California Health and Safety Code sections 11362.71-11362.76.
(Amended 9-29-2003 by O-19218 N.S.)
(Amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1303 State Identification Card Holders: Permissible Amounts of Marijuana

A person in possession of a current and valid *state identification card* and who is within the jurisdictional limits of the City, is not subject to arrest by the *SDPD* for possession of *marijuana*, or detention by the *SDPD* longer than necessary to verify his or her status, or seizure by the *SDPD* of *marijuana* in his or her possession, if the amount of *marijuana* possessed is within the following limits:

(a) *Processed Marijuana - Qualified Patients.*

An individual who is a *qualified patient* may possess the total amount of *processed marijuana*, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

(b) *Processed Marijuana - Primary Caregivers.*

An individual who is a *primary caregiver* may possess no more than the amount specified in section 42.1303(a) for each *qualified patient* for whom the individual serves as a verified *primary caregiver*, except that such amount shall not exceed two pounds, or an amount consistent with the physician's recommendation, whichever is less.

(c) Indoor Plants - *Qualified Patients.*

A *qualified patient* may possess a maximum of twenty-four unharvested *marijuana* plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

(d) Indoor Plants - *Primary Caregivers.*

A *primary caregiver* may possess no more than the amount of *marijuana* specified in section 42.1303(c) and growing in the space specified in 42.1303(c), for each *qualified patient* for whom the individual serves as a *primary caregiver*, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

(e) Outdoor/Greenhouse Plants.

No unsupervised outdoor *marijuana* cultivation shall be permitted. Growing *marijuana* shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter or a greenhouse or structure that must be locked and contained. The amount of *marijuana* grown in the enclosed yard with a minimum six-foot fence perimeter or greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to sections 42.1303(c) and 42.1303(d).

(f) Possession of *marijuana* in amounts which exceed those set forth in section 42.1303(a)-(d) by persons with *state identification cards* will be evaluated by *SDPD* on a case-by-case basis according to the totality of the circumstances, taking into account facts such as whether the amount possessed is consistent with a physician's recommendation.

(Renumbered from former Section 42.1308, retitled to "State Identification Card Holders: Permissible Amounts of Marijuana" and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011. Former Section 42.1303 repealed.)

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§42.1304 Smoking

Qualified patients, including those with *state identification cards*, are prohibited from smoking *marijuana* in any public place or in any place open to the public. Any person who violates this section is guilty of an infraction.
(Renumbered from former Section 42.1313, and amended 4-27-2011 by O-20043 N.S.; effective 5-27-2011. Former Section 42.1304 repealed.)

Attachment 6

Article 2: Health Regulated Businesses and Activities

Division 15: Medical Marijuana Consumer Cooperatives

("Medical Marijuana Consumer Cooperatives" added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1501 Purpose and Intent

It is the intent of this Division to promote and protect the public health, safety, and welfare of the citizens of San Diego by allowing and strictly regulating the cooperative cultivation and exchange of medical *marijuana* among *qualified patients, primary caregivers,* and *state identification card* holders consistent with state law. It is further the intent of this Division to ensure that *marijuana* is not diverted for illegal purposes, and to limit its use to those persons authorized under state law. Nothing in this Division is intended to authorize the sale, distribution, possession of *marijuana*, or other transaction, in violation of state law.

It is not the intent of this Division to supersede or conflict with state law, but to implement the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program (California Health and Safety Code sections 11362.7-11362.83). Further, the California Corporations Code may allow some conduct for consumer cooperatives that is not otherwise permissible under the California Health and Safety Code and this Division, such as the distribution of profits to members; in those circumstances, it is the intent of the City that the state and municipal laws governing medical *marijuana* control.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1502 Definitions

For the purpose of this Division, the following definitions shall apply and appear in italicized letters:

Marijuana has the same meaning as in California Health and Safety Code section 11018.

Medical marijuana consumer cooperative means a facility where marijuana is transferred to qualified patients or primary caregivers in accordance with the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, set forth in California Health and Safety Code sections 11362.5 through 11362.83. A *medical marijuana consumer cooperative* shall not include clinics licensed by the State of California pursuant to Chapters 1, 2, 3.01, 3.2, or 8 of Division 2 of the California Health and Safety Code.

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Primary caregiver means the individual designated by the *qualified patient* who has consistently assumed responsibility for the housing, health, or safety of the *qualified patient*, in accordance with state law, including California Health and Safety Code section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a *primary caregiver* is a person who consistently provides caregiving to a *qualified patient*, independent of any assistance in taking medical *marijuana*, at or before the time he or she assumed responsibility for assisting with medical *marijuana*.

Qualified patient means a California resident having the right to obtain and use *marijuana* for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of *marijuana* in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which *marijuana* provides relief, in accordance with state law, including California Health and Safety Code section 11362.5.

Reasonable compensation means compensation for directors, managers, and *responsible persons* of the *medical marijuana consumer cooperative* commensurate with reasonable wages and benefits paid to employees of IRS qualified non-profit organizations who have similar descriptions and duties.

Responsible person has the same meaning as in San Diego Municipal Code section 11.0210, and includes an employee and each person upon whom a duty, requirement or obligation is imposed by this Division, or who is otherwise responsible for the operation, management, direction, or policy of a *medical marijuana consumer cooperative*. It also includes an employee who is in apparent charge of the *medical marijuana consumer cooperative*.

State identification card means the card issued to a *qualified patient* or *primary caregiver* in accordance with California Health and Safety Code sections 11362.71-11362.76.

Violent felony means the same as it does in California Penal Code section 667.5(c) as may be amended from time to time.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

§42.1503 Cooperatives–Organization

All persons who organize to collectively and cooperatively cultivate medical *marijuana* pursuant to state law shall organize as a "Consumer Cooperative Corporation" pursuant to California Corporations Code Title 1, Division 3, Part 2. *(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)*

§42.1504 Cooperatives–Permit Required

(a) It is unlawful for any person to operate any *Medical marijuana consumer cooperative* without a *Medical Marijuana Consumer Cooperative* Permit issued pursuant to this Division.

(b) In addition to any other information requested by the City, a permit applicant must provide evidence that the applicant is in compliance with section 42.1503.

(c) The *medical marijuana consumer cooperative* shall designate one of its officers or managers to act as its responsible managing officer. The responsible managing officer may complete and sign the permit application on behalf of the *medical marijuana consumer cooperative.*

(d) The issuance of a *Medical Marijuana Consumer Cooperative* Permit pursuant to this Division does not relieve any person from obtaining any other permit, license, certificate, or other similar approval that may be required by the City, the County of San Diego, or state or federal law.

(e) A permit applicant must obtain a Conditional Use Permit as required by Chapter 12, Article 6, Division 3, prior to obtaining a permit under this Division.

(f) Applications for *Medical Marijuana Consumer Cooperative* Permits shall be filed with the City Manager.

(g) The City Manager shall act upon the application within thirty calendar days, except that notice of an incomplete application shall be given within five business days.

(h) *Medical Marijuana Consumer Cooperative* Permits issued pursuant to this Division shall be valid for one year.

(i) An application for a *Medical Marijuana Consumer Cooperative* Permit shall be denied if the permit was revoked by the City Manager within the past twelve months.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

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§42.1505 Exemptions

This Division does not apply to the cultivation of *marijuana* by a *qualified patient* at that patient's home, so long as the patient is only growing for his or her own personal medical needs in a manner consistent with state law.
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

§42.1506 Cooperatives–Cost Recovery Fees

Notwithstanding any other provision of this Code, the City may recover its costs in the form of a permit fee for the costs of permitting and regulating *medical marijuana consumer cooperatives.*
(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)

§42.1507 Cooperatives–Background Checks

(a) All *responsible persons* in the *medical marijuana consumer cooperative* shall undergo fingerprinting prior to acting as a *responsible person*. The fingerprints shall be provided to and kept on file with the City.

(b) The City shall conduct a background check of all *responsible persons*. Any person who has been convicted of a *violent felony* or a crime of moral turpitude within the past seven years, cannot act as a *responsible person* in the *medical marijuana consumer cooperative*.

(c) It is unlawful for any *responsible person* in a *medical marijuana consumer cooperative* to act as a *responsible person* for the *medical marijuana consumer cooperative* if he or she:

(1) fails to provide their fingerprints to the City; or

(2) has been convicted of a *violent felony* or crime of moral turpitude within the past seven years.

(d) The cost of the fingerprinting and attendant background check shall be borne by the *responsible person*.

(Added 4-27-2011 by O-20043 N.S.; effective 5-27-2011.)
(Amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

§42.1508 Cooperatives–Operational Requirements

(a) Verification and Documentation

(1) *Responsible persons* shall ensure that all transactions involving money, in-kind contributions, reimbursements, *reasonable compensation*, and *marijuana* are fully documented, including documenting each member's contribution of labor, resources, or money to the *medical marijuana consumer cooperative*, and the source of their *marijuana*.

(2) Upon the City's request, *responsible persons* for the *medical marijuana consumer cooperative* shall provide to the City an audit of its operations for the previous calendar year, completed and certified by an independent certified public accountant in accordance with generally accepted auditing and accounting principles.

(3) A *medical marijuana consumer cooperative* shall maintain and provide upon request by the City a current list of all *responsible persons*.

(b) Not-for-Profit

Responsible persons shall ensure that:

(1) No *medical marijuana consumer cooperative* operates for profit for itself or its members. Cash and in-kind contributions, reimbursements, and *reasonable compensation* provided by members towards the *medical marijuana consumer cooperative's* actual expenses for the growth, cultivation, and provision of medical *marijuana* shall be allowed in accordance with state law.

(2) *Medical marijuana consumer cooperative responsible persons*, including directors, managers, and employees, are limited to receiving *reasonable compensation* and shall not receive a bonus.

(3) Members who bring medical *marijuana* from their own personal grows to the *medical marijuana consumer cooperative*, may be compensated by cash or trade in-kind. Members may be compensated for their expenses as provided by state law at the time the harvest is brought to the *medical marijuana consumer cooperative*.

(c) Age Limitations

(1) No person under the age of eighteen is allowed at or in any *medical marijuana consumer cooperative* unless the person is a *qualified patient* or *state identification card* holder and accompanied by their parent, legal guardian, or a *primary caregiver* who is over the age of eighteen.

(2) No person under the age of eighteen may be employed by or act as a *responsible person* on behalf of the *medical marijuana consumer cooperative*.

(d) Transporation

All persons transporting medical *marijuana* in connection with a *medical marijuana consumer cooperative* shall do so in accordance with state law.

(e) Packaging and Labeling

Responsible persons for the *medical marijuana consumer cooperative* shall ensure that medical *marijuana*, edible products containing medical *marijuana*, and concentrates comply with the following packaging and labeling requirements:

(1) *Marijuana* must be sealed in an airtight manner, and must have a label affixed to the package containing the following information:

(A) Patient's name;

(B) Dispensing date;

(C) Name and address of dispensing cooperative;

(D) Name of product;

(E) Product ingredients;

(F) Product must be used as recommended;

(G) Product must be kept out of the reach of children;

(H) Product users must not operate heavy machinery while under the influence of *marijuana*;

(I) Sale or transfer of product to non-patients is prohibited;

(J) Product is intended for medical use only. Cal. Health & Safety Code § 11362.5; and

(K) Any additional use instructions and warnings that may be applicable.

(2) Edible Products and Concentrates must be labeled with the following:

(A) Patient's name;

(B) Dispensing date;

(C) Name and address of dispensing cooperative;

(D) A warning label that contains the cannabis patient advisory information required in section 42.1508(f); and

(E) The source of the food production.

(3) *Medical Marijuana Consumer Cooperatives* are encouraged to label products for potency.

(4) The City of San Diego may at any time have medical *marijuana* tested for pesticides, mold, mildew, and/or bacteria, and make such testing results available to consumers.

(f) Interior Signage

A sign shall be posted on a wall in the *medical marijuana consumer cooperative* which states the following:

CANNABIS PATIENT ADVISORY

THIS IS A WARNING REGARDING EDIBLE CANNABIS/MARIJUANA PRODUCTS

CAUTION – Edible marijuana products contain cannabis extracts (THC – Tetra Hydro Cannabinol).

Marijuana is not regulated as a food ingredient and therefore the County Department of Environmental Health does not have any regulatory authority over this ingredient in edibles.

(Retitled from "Cooperatives–Verification and Documentation" to "Cooperatives–Operational Requirements" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

§42.1509 Cooperatives-Regulatory Actions on Permit

(a) In addition to any penalties and remedies provided by law, a *Medical Marijuana Consumer Cooperative* Permit is subject to any of the following regulatory actions:

(1) non-compliance with this Division or any condition of this permit;

(2) conviction of any crime which would have been grounds for denial of the permit;

(3) failure to take corrective action after timely written notice of a violation; or

(4) failure to supervise the business, resulting in a pattern of violations of the San Diego Municipal Code or other provisions of law by the *responsible persons* or patrons, or both. A revocation based on the act or omission of a patron may be based on a determination that a *responsible person* caused or condoned the act or omission, or failed to take reasonable corrective action after a timely written notice of violation.

(b) Regulatory action includes the following:

(1) Issuance of a verbal warning;

(2) Issuance of a written warning;

(3) Issuance of a notice of violation;

(4) Placing conditions upon the permit which are reasonably related to any violation. Unless otherwise stated as part of the condition, all such conditions expire when the permit expires, excluding any time stayed during an appeal;

(5) Suspension of the *Medical Marijuana Consumer Cooperative* Permit; or

(6) Revocation of the *Medical Marijuana Consumer Cooperative* Permit.

(c) Written notice of the regulatory actions taken pursuant to section 142.1509(b)(2) through (b)(6) shall be provided to the individual identified as the responsible managing officer pursuant to section 42.1504(c).

(d) A request for an appeal hearing of the regulatory actions taken pursuant to section 142.1509(b)(2) through (b)(6) may be made by the responsible managing officer.

(e) The request for an appeal hearing must be made in writing to the City Manager within ten calendar days of the receipt of the notice of regulatory action.

(f) Upon receiving the request for a hearing, the City Manager shall set hearing not more than thirty calendar days from the date of the receipt of the request, unless a later date is agreed to by the City and the responsible managing officer in writing.

(g) The City Manager shall notify the responsible managing officer of the date, time, and place of the hearing by means of registered or certified mail, or hand delivery.

(h) The hearing shall be conducted by a hearing officer provided by the City Manager.

(i) The hearing officer may affirm, deny, or modify the regulatory action, and shall furnish the reason for the decision to the responsible managing officer in writing within thirty calendar days of the conclusion of the hearing.

(j) The regulatory action shall be suspended while an appeal is pending, or until the time for filing such an appeal has expired, except for regulatory action taken when the City Manager determines there is a need to take immediate action to protect the public from injury or harm or when the *Medical Marijuana Consumer Cooperative* Permit was based on material misrepresentations in the application and the permit would not have been issued but for the material misrepresentations.

(Retitled from "Cooperatives–Not-for-Profit" to "Cooperatives-Regulatory Actions on Permit" and amended 2-6-2015 by O-20460 N.S.; effective 3-8-2015.)

Attachment 7

Description of Scheduled Controlled Substances Per the CSA

Drugs and other substances that are considered controlled substances under the Controlled Substances Act (CSA) are divided into five schedules. An updated and complete list of the schedules is published annually in Title 21 Code of Federal Regulations (C.F.R.) §§ 1308.11 through 1308.15. Substances are placed in their respective schedules based on whether they have a currently accepted medical use in treatment in the United States, their relative abuse potential, and likelihood of causing dependence when abused. Some examples of the drugs in each schedule are listed below.

Schedule I Controlled Substances

Substances in this schedule have no currently accepted medical use in the United States, a lack of accepted safety for use under medical supervision, and a high potential for abuse.

Some examples of substances listed in Schedule I are: heroin, lysergic acid diethylamide (LSD), marijuana (cannabis), peyote, methaqualone, and 3,4-methylenedioxymethamphetamine ("Ecstasy").

Schedule II/IIN Controlled Substances (2/2N)

Substances in this schedule have a high potential for abuse which may lead to severe psychological or physical dependence.

Examples of Schedule II narcotics include: hydromorphone (Dilaudid®), methadone (Dolophine®), meperidine (Demerol®), oxycodone (OxyContin®, Percocet®), and fentanyl (Sublimaze®, Duragesic®). Other Schedule II narcotics include: morphine, opium, codeine, and hydrocodone.

Examples of Schedule IIN stimulants include: amphetamine (Dexedrine®, Adderall®), methamphetamine (Desoxyn®), and methylphenidate (Ritalin®).

Other Schedule II substances include: amobarbital, glutethimide, and pentobarbital.

Schedule III/IIIN Controlled Substances (3/3N)

Substances in this schedule have a potential for abuse less than substances in Schedules I or II and abuse may lead to moderate or low physical dependence or high psychological dependence.

Examples of Schedule III narcotics include: products containing not more than 90 milligrams of codeine per dosage unit (Tylenol with Codeine®), and buprenorphine (Suboxone®).

Examples of Schedule IIIN non-narcotics include: benzphetamine (Didrex®), phendimetrazine, ketamine, and anabolic steroids such as Depo®-Testosterone.

Schedule IV Controlled Substances

Substances in this schedule have a low potential for abuse relative to substances in Schedule III.

Examples of Schedule IV substances include: alprazolam (Xanax®), carisoprodol (Soma®), clonazepam (Klonopin®), clorazepate (Tranxene®), diazepam (Valium®), lorazepam (Ativan®), midazolam (Versed®), temazepam (Restoril®), and triazolam (Halcion®).

Schedule V Controlled Substances

Substances in this schedule have a low potential for abuse relative to substances listed in Schedule IV and consist primarily of preparations containing limited quantities of certain narcotics.

Examples of Schedule V substances include: cough preparations containing not more than 200 milligrams of codeine per 100 milliliters or per 100 grams (Robitussin AC®, Phenergan with Codeine®), and ezogabine.

Schedule I drugs are those that have the following characteristic according to the United States Drug Enforcement Agency:

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical treatment use in the U.S.
- there is a lack of accepted safety for use of the drug or substance under medical supervision.

No prescriptions may be written for Schedule I substances, and they are not readily available for clinical use. Tetrahydrocannabinol (THC, marijuana) is still considered a Schedule 1 drug by the DEA.

Marijuana

SCHEDULE 1 (CLASS I) DRUGS are illegal because they have high abuse potential, no medical use, and severe safety concerns; for example, narcotics such as **Heroin, LSD, and cocaine. Marijuana** is also included as a Class 1 drug.

The Unexpected Side Effects of Legalizing Marijuana Cultivation

In jurisdictions where cultivation of marijuana was legalized (mostly in Northern California), residents are fed up with crime and environmental problems associated with the cultivation, and legalization for recreational use of marijuana. The two major issues that residents and city officials are experiencing and causing them to regret their decision to legalize cultivation and sale of marijuana in their jurisdictions are public safety issues and environmental issues that are on the increase within their jurisdiction.

Public Safety Issues with Legalizing Marijuana Cultivation:

Marijuana Cultivation is a nuisance that diminishes the quality of life on neighborhood streets and puts the whole neighborhood at risk of robbery, burglary and other crimes.

- February 23 , 2015 - Acacia Lane house (northern California)there was a deadly shootout revealed a large-scale marijuana processing operation with a hash oil lab, cocaine, cash and guns, according to police.

- March 7, 2015 - In California alone, marijuana cultivation operations have drawn considerable violence into residential areas, including a predawn shootout at a Rincon Valley home (California) The home's resident, who shot and killed a man trying to break down his door to get to his marijuana cultivation operation. An alleged accomplice of one of the reported intruders has been charged with murder.

- Santa Rosa Police Sgt. Dave Linscomb said the violent crimes team has investigated at least five home-invasion robberies since September 2014 involving marijuana, and they suspect many more go unreported. Of those, only one involved a situation in which no marijuana was found, according to police reports.

- Sonoma County Sheriff – Steve Freitas said that it may be too late to stem the tide of violence associated with marijuana cultivation. Sheriff Steve Freitas said it was too early for him to comment on whether new changes to local ordinances might help law enforcement stem marijuana-related crime. But he said the violence needs to be addressed.

- In a Glen Ellen neighborhood (Central California), neighbors have a common list of complaints about the pungent odor and risk of crime brought by a man who moved into a house in September and set up cultivation of potted marijuana plants in the backyard. Auto thefts, auto burglaries, house burglaries, assaults

and people smoking marijuana in close proximity to where marijuana is cultivated then driving away from the area.

In Colorado:

The information compares the early medical marijuana era (2006 – 2008), the medical marijuana commercialization and expansion era (2009 – current) and the recreational marijuana era (2013 – current) in Colorado.

- **2006 – 2008:** There were between 1,000 and 4,800 medical marijuana cardholders and no known dispensaries operating in Colorado.

- **2009 – Current:** There were over 108,000 medical marijuana cardholders and 532 licensed dispensaries operating in Colorado by the end of 2012. See the introduction at the beginning of this report for more details on the commercialization and explosion of Colorado's medical marijuana trade.

- **2013 – Current:** In November 2012, Colorado voters passed Constitutional Amendment 64 which legalized marijuana for recreational purposes for anyone over 21 years of age. The amendment also allowed for licensed marijuana retail stores, cultivation operations and edibles manufacturing.

    - Overall, traffic fatalities in Colorado decreased **14.8 percent,** from 2007 to 2012. During the same five years in Colorado, traffic fatalities involving operators testing positive for marijuana increased **100 percent.**
    - In 2007, Colorado traffic fatalities involving operators testing positive for marijuana represented **7.04 percent** of the total traffic fatalities. By 2012, that number more than doubled to **16.53 percent**

Environmental issues:

- In March of this year plants at several growing facilities in the Denver area had to be quarantined because of the misuse of "pesticides." The pesticides, it turns out, were improvised concoctions of chemicals, including some unidentifiable mixtures. Cannabis growers have been left to improvise since no commercial pesticides are labeled for legal use on cannabis plants.

- Discharge of polluted water into storm water system causing city governments to be fined by the EPA

- Illegal disposal of chemicals and growing on public lands requiring city governments to foot the cost for hazmat to respond and clean the areas up.

Other Issues:

- Not enough personnel to regulate and license individuals who cultivate marijuana "farms."

Attachment 8

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF PUBLIC HEARING
SPECIAL MEETING TO DISCUSS AN AMENDMENT TO TITLE 18 (ZONING)
CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE
(MEDICAL MARIJUANA DISPENSARIES)
TO ADDRESS CULTIVATION OF MARIJUANA.
CASE FILE NO: 2015-25 A

The National City Planning Commission will hold a public hearing at a special meeting after the hour of 6:00 p.m. **Monday, November 23, 2015**, in the City Council Chambers, 1243 National City Blvd., National City, California on a proposed Amendment to the Municipal Code, Chapter 18.30.340 – Medical Marijuana Dispensaries. The general purpose of the amendment is to amend the chapter to address the cultivation of medical marijuana and marijuana generally; including, but not limited to, regulating and/or prohibiting such land use activities.

Members of the public are invited to comment. Any person interested in this matter may appear at the above time and place and be heard. Written comments should be received by the Planning Department on or before 12 p.m., **November 23, 2015**. Planning Department staff may be contacted at 619-336-4310 or planning@nationalcityca.gov.

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the public hearing entity conducting the hearing at, or prior to, the public hearing.

NATIONAL CITY PLANNING DEPARTMENT

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF PUBLIC HEARING
MEETING TO DISCUSS AN AMENDMENT TO TITLE 18 (ZONING) CHAPTER 18.30.340 OF THE NATIONAL CITY MUNICIPAL CODE (MEDICAL MARIJUANA DISPENSARIES) TO ADDRESS CULTIVATION OF MARIJUANA.
CASE FILE NO: 2015-25 A

The National City Planning Commission will hold a public hearing after the hour of 6:00 p.m. **Monday, December 7, 2015**, in the City Council Chambers, 1243 National City Blvd., National City, California on a proposed Amendment to the Municipal Code, Chapter 18.30.340 – Medical Marijuana Dispensaries. The general purpose of this amendment is to amend the chapter to either prohibit cultivation or add regulations for the cultivation of medical marijuana and marijuana generally; this public hearing will include ordinances for both options: prohibition or regulation; the Planning Commission previously recommended regulating cultivation and this public hearing will allow for the Planning Commission to complete its review and recommendations.

Members of the public are invited to comment. Any person interested in this matter may appear at the above time and place and be heard. Written comments should be received by the Planning Department on or before 12 p.m., **December 7, 2015.** Planning Department staff may be contacted at 619-336-4310 or planning@nationalcityca.gov.

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the public hearing entity conducting the hearing at, or prior to, the public hearing.

NATIONAL CITY PLANNING DEPARTMENT

RESOLUTION NO. 2015-27 (a)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NATIONAL CITY, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTION OF AN ORDINANCE ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS
CASE FILE NO. 2015-25 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at duly advertised public hearings held on November 23, 2015 and December 7, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference, along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission of the City of National City recommends approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A"; and

WHEREAS, the Planning Commission of the City of National City does not recommend approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit medical marijuana cultivation, attached hereto as Attachment "B"; and

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearings held on November 23, 2015 and December 7, 2015, support the following findings:

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.

2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

5. That the proposed amendment is consistent with the National City General Plan because the purpose of the Health and Environmental Justice Element of the General Plan is to ...*improve living conditions to foster the physical health and well-being of National City's residents*; based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes for those with physical health issues, allowing for the cultivation of medical marijuana to aid in the treatment of physical health issues would be consistent with the General Plan.

6. That the proposed Amendment has been reviewed in compliance with the California Environmental Quality Act, and staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment – cultivation of marijuana is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A", and

does not recommend the ordinance prohibiting cultivation of marijuana, attached hereto as Attachment "B".

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

CHAIRPERSON

RESOLUTION NO. 2015-27 (b)

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF NATIONAL CITY, CALIFORNIA,
RECOMMENDING TO THE CITY COUNCIL OF THE
CITY OF NATIONAL CITY ADOPTION OF AN ORDINANCE
ADDING SECTION 18.30.345 OF THE NATIONAL CITY
MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA CULTIVATION
CASE FILE NO. 2015-25 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at duly advertised public hearings held on November 23, 2015 and December 7, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference; along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission of the City of National City recommends approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit medical marijuana cultivation, attached hereto as Attachment "A"; and

WHEREAS, the Planning Commission of the City of National City does not recommend approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers attached hereto as Attachment "B"; and

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearings held on November 23, 2015 and December 7, 2015, support the following findings:

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit cultivation of marijuana, attached hereto as Attachment "A", and does not recommend approval of an ordinance to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "B".

BE IT FURTHER RESOLVED that Planning Commission Resolution 2015-25 (b) recommending approval of a regulatory ordinance is hereby repealed.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

CHAIRPERSON

Item no. 10

December 7, 2015

RESOLUTION NO. 2015-27 (a)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NATIONAL CITY, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTION OF AN ORDINANCE ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS CASE FILE NO. 2015-25 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at duly advertised public hearings held on November 23, 2015 and December 7, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference, along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission of the City of National City recommends approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A"; and

WHEREAS, the Planning Commission of the City of National City does not recommend approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit medical marijuana cultivation, attached hereto as Attachment "B"; and

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning Commission at the public hearings held on November 23, 2015 and December 7, 2015, support the following findings:

1. That the proposed amendment is in the public interest because proposed regulations related to medical marijuana cultivation will be consistent with California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana Program), which are designed to protect the public health, safety, and welfare.

2. That the proposed amendment is in the public interest because nothing in the proposed regulation will be intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. That the proposed amendment is in the public interest because the proposed regulations will maintain the rights of a *qualified patient* or *primary caregiver* otherwise authorized by California Health and Safety Code section 11362.5(d).

4. That the proposed amendment is in the public interest because nothing in the proposed regulations will be intended to authorize the sale, distribution, possession of *marijuana*, or any other transaction, in violation of state law.

5. That the proposed amendment is consistent with the National City General Plan because the purpose of the Health and Environmental Justice Element of the General Plan is to *...improve living conditions to foster the physical health and well-being of National City's residents*; based on the intent of California Health and Safety Code section 11362.5 (Compassionate Use Act) and California Health and Safety Code sections 11362.7-11362.83 (Medical Marijuana), which allows for the use of medical marijuana for medicinal purposes for those with physical health issues, allowing for the cultivation of <u>medical</u> marijuana to aid in the treatment of physical health issues would be consistent with the General Plan.

6. That the proposed Amendment has been reviewed in compliance with the California Environmental Quality Act, and staff has determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule, which states that CEQA applies only to projects which have the potential for causing a significant effect on the environment – cultivation of marijuana is not highly different from the cultivation of standard crops, the raising of which is an allowed use in several zones throughout the City.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "A", and does not recommend the ordinance prohibiting cultivation of marijuana, attached hereto as Attachment "B".

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

CHAIRPERSON

ATTACHMENT "A"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Purpose and Intent

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law.

Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 1 –** based on **San Diego model]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount

consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 2 – based on State minimum levels]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

~~3. Indoor Plants - Qualified Patients. A qualified patient may possess six~~ mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully

enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 3 –** based on **State maximum for exemption from State licensing requirement]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully ~~enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that~~ must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. **[optional]**

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. **[optional]**

E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**

A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

E. Conditional Use Permit. **[Option 2—Any Cultivation subsection C]**

A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty

1. Unless otherwise provided, any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall constitute a separate violation.

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any

reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

ATTACHMENT "B"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Prohibition

1. Cultivation of marijuana for medicinal purposes is prohibited.

2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. Cultivation of marijuana shall mean the planting, growing, cultivating,

harvesting, drying, or processing of marijuana.

2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code" has the same meaning as in California Health & Safety Code Section 11018.

Section 2. The proposed amendment is exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3) – general rule; the project is not considered a project under CEQA as there is no possibility that the activity in question may have a significant impact on the environment; cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

Item no. 10

December 7, 2015

RESOLUTION NO. 2015-27 (b)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF NATIONAL CITY, CALIFORNIA, RECOMMENDING TO THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADOPTION OF AN ORDINANCE ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT MEDICAL MARIJUANA CULTIVATION CASE FILE NO. 2015-25 A

WHEREAS, pursuant to the terms and provisions of the Government Code of the State of California, proceedings were duly initiated for the amendment of the National City Municipal Code, Chapter 18. 30.340; and,

WHEREAS, the Planning Commission of the City of National City, California, considered said proposed amendment at duly advertised public hearings held on November 23, 2015 and December 7, 2015, at which time the Planning Commission considered evidence; and,

WHEREAS, at said public hearing the Planning Commission considered the staff report provided for Case File No. 2015-25 A, which is maintained by the City and incorporated herein by reference; along with any other evidence presented at said hearing; and,

WHEREAS, the Planning Commission of the City of National City recommends approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit medical marijuana cultivation, attached hereto as Attachment "A"; and

WHEREAS, the Planning Commission of the City of National City does not recommend approval of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to provide for the cultivation of marijuana for qualified patients and primary caregivers attached hereto as Attachment "B"; and

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, this action is taken in an effort to be compliant with applicable State and Federal law; and,

WHEREAS, the action hereby taken is found to be essential for the preservation of the public health, safety and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the City Planning Commission of the City of National City, California, that the evidence presented to the Planning

Commission at the public hearings held on November 23, 2015 and December 7, 2015, support the following findings:

1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

2. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

3. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

4. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

5. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3) – general rule. The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

BE IT FURTHER RESOLVED that the Planning Commission recommends approval to the City Council of an amendment to Title 18 (Zoning) adding section 18.30.345 of the National City Municipal Code to prohibit cultivation of marijuana, attached hereto as Attachment "A", and does not recommend approval of an ordinance to provide for the cultivation of marijuana for qualified patients and primary caregivers, attached hereto as Attachment "B".

BE IT FURTHER RESOLVED that Planning Commission Resolution 2015-25 (b) recommending approval of a regulatory ordinance is hereby repealed.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

_____

CHAIRPERSON

ATTACHMENT "A"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

<u>18.30.345 Medical Marijuana Cultivation</u>

A. Prohibition

1. Cultivation of marijuana for medicinal purposes is prohibited.

2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. Cultivation of marijuana shall mean the planting, growing, cultivating,

harvesting, drying, or processing of marijuana.

2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code" has the same meaning as in California Health & Safety Code Section 11018.

Section 2. The proposed amendment is exempt from the California Environmental Quality Act (CEQA) under section 15061(b)(3) – general rule; the project is not considered a project under CEQA as there is no possibility that the activity in question may have a significant impact on the environment; cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

ATTACHMENT "B"

ORDINANCE NO. 2015 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROVIDE FOR THE CULTIVATION OF MARIJUANA FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment. The Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

18.30.345 Medical Marijuana Cultivation

A. Purpose and Intent

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law.

Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions

For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 1 –** based on **San Diego model]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount

consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 2 – based on State minimum levels]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed eight ounces, or an amount consistent with the physician's recommendation, whichever is more.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed eight ounces for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the physician's recommendation, whichever is more, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess six mature or 12 immature marijuana plants, or an amount consistent with the physician's recommendation, whichever is more.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess six mature or 12 immature marijuana plants for each qualified patient for whom the individual serves as a primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is more.

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully

enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

C. State Identification Card Holders: Permissible Amounts of Marijuana **[Option 3 –** based on **State maximum for exemption from State licensing requirement]**

A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may cultivate marijuana plants in an area not to exceed 100 square feet provided he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate or provide marijuana to any other person or entity, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may cultivate marijuana plants in an area of not to exceed 500 square feet provided he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Health & Safety Code Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with Health & Safety Code Section 11362.765(c).

5. Outdoor/Greenhouse Plants **[optional]**. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully ~~enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that~~ must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2. **[optional]**

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana. **[optional]**

E. Conditional Use Permit. **[Option 1—Primary Caregivers who exceed limits in subsection C]**

A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

E. Conditional Use Permit. **[Option 2—Any Cultivation subsection C]**

A primary caregiver or qualified patient may cultivate medical marijuana under subsection (C), or a primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty

1. Unless otherwise provided, any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall ~~constitute a separate violation.~~

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any

reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

EFFECTIVE DATE: This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

INTRODUCED at a regular meeting of the City Council of the City of National, California held on the __ day of _____ 2015, and thereafter,

PASSED, APPROVED and ADOPTED this _____ day of _____, 2015.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

901 National City Boulevard
National City, CA 91950-3203
Business: 619 477-9339
Fax: 619 477-5018
Web site: www.nationalcitychamber.org

November 23, 2015

National City Planning Commission
City of National City
1243 National City Blvd.
National City, CA 91950

Cc Mayor and City Council

To Whom It May Concern:

The National City Chamber of Commerce supports the city's efforts to address the zoning and regulation of cultivation, distribution, and delivery of medical marijuana in the City of National City. The medical marijuana industry is a growing economic, healthcare, and public safety policy issue that is rapidly evolving. We encourage National City's leaders to maintain tight supervision and remain engaged in the policy development discussion to assure that our community remains competitive in future opportunities that may benefit our residents.

Our Board of Directors feel that we must preserve the City's right to regulate the cultivation, distribution, and delivery of medical marijuana. Imposing a permanent prohibition can be cumbersome to lift at a future time. As state and federal laws develop, the city would benefit by being in a position to react swiftly to address local concerns and take advantage of market conditions and public health developments.

The City of San Diego may serve as a model to demonstrate the benefits of local regulation versus prohibition. Since the adoption of medical marijuana regulations for dispensaries, the city has gained new revenue and community benefits, and the business community has experienced market growth. Implementing strict regulations has resulted in responsible licensed operators, no major public safety issues, and stringent accountability measures that protect the city and its residents.

Moreover, there are nine jurisdictions in the state of California that have adopted ordinances that include cultivation regulation for the City to review. There is precedent for responsible regulation that National City may follow. And, resources are available to craft a comprehensive medical marijuana cultivation ordinance in a timely manner before the March 2016 state deadline.

The National City Chamber of Commerce remains committed to ensure that our members benefit from local, state, and federal regulations, and protect the economic interests of our membership. We strive to improve the quality of life of the community through responsible governance and support the City's evolution as a proactive policy maker.

We support the National City Planning Commission's request for staff to pursue regulation of medical marijuana cultivation. We thank you for your time and consideration in assessing this issue carefully.

Sincerely,

Jacqueline Reynoso
President/ CEO

Denise Davis

From: Michael Mossbarger <expressfund@gmail.com>
Sent: Monday, November 23, 2015 1:12 PM
To: Denise Davis
Subject: Attn: Planning Commission, Fwd: Safe Access to Medical Cannabis

Hello Denise,

Can you please make sure all members of the Planning Commission get a copy of this letter before tonight's meeting? It can be made public.

Please let me know if anything is needed from me to facilitate.

Best,

Mike Mossbarger
619.794.6677 mobile

---------- Forwarded message ----------
From: **Michael Mossbarger** <expressfund@gmail.com>
Date: Fri, Nov 20, 2015 at 1:41 PM
Subject: Safe Access to Medical Cannabis
To: rmorrison@nationalcityca.gov
Cc: cynara@cannabisprofessionals.org, ilegalsmile@hotmail.com, dr.d.blair@gmail.com

Hi Mayor Morrison,

I wanted to reach out to you to let you know how I feel about medical marijuana (cannabis) as a resident and home owner here in National City. I am a positive member of our community: I'm a former Nuclear Electrician in the US Navy with high level security clearances; I hold a BA in Finance and am working on a master's degree; am a 3-time business owner and dedicated entrepreneur; serve as President of my home owner's association and volunteer as a small business counselor in addition to many other non-profit activities; I have served as an adviser to national and international bodies on cyber security, and have personally visited and advised decision-makers in the DoD and DoT in Washington DC; and am father of two boys in the National School District and husband of 13 years. I call National City home and am dedicated to making it a great place.... I love it here!

I feel strongly that it is vital for National City to embrace the movement toward legalization and safe access to medial cannabis. This means regulation and taxation - not prohibition! I say this from the standpoint of a businessman as much as from the standpoint of an anti-prohibitionist. The end to prohibition is here - it is fact, it is a reality. The people of California have passed anti-prohibition measures by popular vote and more recently the legislature and governor of California have embraced legalization and passes regulatory measures just this year. San Diego has licensed dispensaries. It is important that we acknowledge that there is no longer a question of legalization - it is here regardless of our own personal feelings on the topic. The reality is that people in National City will continue to use medical cannabis in large and ever increasing numbers as is their right under the law.

The question before National City is what will we do in the face of this new reality of legalization? National City has the opportunity to show *leadership* in San Diego county and join the City of San Diego in regulating and allowing legitimate actors in this new industry.

Embracing and regulating medical cannabis will bring massive amounts of tax revenue to the city; wil fill vacancies in retail and commercial real estate; will create jobs for service workers and agricultural worker in the city that often pay more than they could earn in other industries; and will draw visitors from affluent communities (that have unwisely banned dispensaries and cultivation) into our city to spend money and pay taxes. Perhaps most importantly regulation and licensing of cannabis facilities and businesses will end the horribly detrimental effect that prohibition has had on our city and will allow ill patients that desperately need access to their medications the safe and legitimate access they deserve. On the other hand If National City caves to fear and chooses to ban this industry from the city then it will have the opposite effect - residents of our city will be forced to spend their money in other cities, giving these cities tax revenue that should rightfully be National City's. Such an unwise move would also deny residents safe access to their treatment as is their right under California law, and perhaps worse would impose an invisible tax on National City patients who would have to travel longer distances to get their medication.

There are many people in National City that feel passionately about having safe access to their medications who will support regulation and safe access in National City; I am one of these people! It is irresponsible and distasteful to me that any body or individual that serves our community to oppose safe access which the voters have passed.

I ask you to learn as much as you can about this safe, legitimate medical substance as well as the businesses that have acted in good faith and with integrity to follow the law in offering cannabis to the patients that need it. There is precedent for regulation and clear road maps our legislators can follow. This is a big opportunity for National City!

I have already appeared at meetings of the Planning Commission and will continue to do so, and I am committed to helping our community better understand this important issue. I was especially disappointed that City Staff recently chose to ignore the Commission's direction to provide advisement on regulation, and chose instead to waste the commission's time as well as the time of attendees by again pushing a prohibition-only agenda. Shame on them!

I'd love to speak with you if you can fit in a little time in your busy schedule.

Additionally - Happy Holidays to you and yours!

Best,

--

Best,

Mike Mossbarger
619-794-6677 mobile

IMPORTANT NOTICE: This e-mail message is intended to be received only by persons entitled to receive the confidential information it may contain. E-mail messages originating from (or sent by) expressfund@gmail.com may contain information that is confidential and may be legally privileged.

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Best,

Mike Mossbarger

IMPORTANT NOTICE: This e-mail message is intended to be received only by persons entitled to receive the confidential information it may contain. E-mail messages originating from (or sent by) expressfund@gmail.com may contain information that is confidential and may be legally privileged.

Provable Facts about Cannabis (Marijuana)

Addiction and Abuse

Cannabis (marijuana) has a lower risk of abuse than coffee and alcohol. Assertions that cannabis is an addictive substance are unfounded in fact unless the discussion is in relation to substances like coffee.

1. According to a 1994 study by the National Institute on Drug Abuse cannabis (marijuana) abuse/addiction risk ranked about 9% versus coffee at 11%, alcohol at 15%, cocaine at 17%, heroine at 23%, and nicotine (tobacco) at 32%. (Anthony, 1994)
2. The 2013 National Survey on Drug Use and Health, a study conducted by the federal government, found that an individual only 2.6 percent of those who try it when they're at least 18 are at risk for abusing the drug. This number is higher for youths at 11.5% showing that regulation based on age is important to lowers risk to an insignificant level.

Cannabis as Medicine

Medical experts all around the country have confirmed the multitude of medicinal benefits of cannabis, possible most notably CNN's chief medical correspondent Sanjay Gupta. Any assertion that cannabis has little or no medicinal value is absurd. There is a mountain of evidence; for a great listing visit Business Insider's website at http://www.businessinsider.com/health-benefits-of-medical-marijuana-2014-4.

Crime

Numerous studies have evidenced that "the sky has not fallen" as predicted by law enforcement when it comes to crime and legalization of cannabis.

1. A 2014 nationwide study showed legalization of cannabis did not correlate with an increase in crime but *may actually be correlated with a reduction in homicide and assault rates*. (Morris, 2014)
2. A 2011 UCLA study of Los Angeles dispensaries showed no correlation between dispensaries and violent crime. (Kepple, 2012)
3. Since Colorado legalized cannabis for recreational use beginning in January 2014 the one year anniversary of this legalization showed a *decrease in violent crimes* in the state following a similar trend in 2013. In other words, legalizing cannabis has shown no increase in violent crime; traffic fatalities were down in the same period as well.
4. As reported in the Washington Post, decriminalization of cannabis in California has been extraordinary positive when taken as a whole as can be seen in the following table based on research by the Center for Juvenile and Criminal Justice (Males, 2014):

Index		Year before (2010)	Year after (2011)	2 years after (2012)	Change
Violent Deaths	California	28.5	27.4	24.7	**-4%**
	Rest of US	38.3	37.9	N/A	**-1%**
Drug Overdose Deaths	California	3.0	2.4	2.3	**-20%**
	Rest of US	3.9	4.0	N/A	**4%**
Suicide	California	5.3	5.8	4.6	**9%**
	Rest of US	7.8	8.7	N/A	**11%**
Criminal Arrest	California	9,505.3	7,712.0	6,612.2	**-30%**
	Rest of US	14,711.1	13,572.8	11,908.0	**-19%**
Drug arrests*	California	718.4	593.8	551.6	**-23%**
	Rest of US	2,013.7	1,794.0	1,734.4	**-14%**
Property crime arrests	California	2,272.1	1,996.1	1,708.0	**-25%**
	Rest of US	3,229.1	3,045.4	2,784.4	**-14%**
DWI, marijuana**	California	0.289	0.240	0.282	**-3%**
	Rest of US	0.119	0.131	0.129	**+9%**
School dropout rate	California	14.7%	13.1%	11.4%	**-22%**
	Rest of US	N/A	N/A	N/A	

References

1. Anthony, J., Warner, L., Kessler, R. (1994). National Institute for Drug Abuse. Comparative Epidemiology of Dependence on Tobacco, Alcohol, Controlled Substances, and Inhalants: Basic Findings From the National Comorbidity Survey
2. Kepple, N.J. & Freisthler, B. (2012). Exploring the ecological association between crime and medical marijuana dispensaries. *Journal of Studies on Alcohol and Drugs, 73*, 523-530.
3. Males, M. (2014). Reforming Marijuana Laws: Which Approach Best Reduces the Harms of Criminalization. *Center on Juvenile and Criminal Justice.*
4. Morris R.G., TenEyck M., Barnes J.C., Kovandzic T.V. (2014). The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006. PLoS ONE 9(3): e92816. doi:10.1371/journal.pone.0092816

Dr. David R. Blair's Responses to Planning Commission's Staff Report 11/23/2015

Don't we want to help the sick and in-firmed in our community? Of course we should.

In response to staff recommendations; we are not asking the City to open a dispensary. We are asking the city to grow and not dispense.

Please try to remember the attempts to prohibit alcohol in the last century. The prohibition was a miserable failure. The example parallels the City's attempt to prohibit medical cannabis. Prohibition does not work for those ill with cancer, HIV/AIDS, seizure disorder, severe pain, and a number of other illnesses.

Change is happening all around us, and those of us who suffer from illnesses that effect our lives, we we need to embrace the change that began nearly 20 years ago in the State of California.

With four (4) grow cycles a year, we will be paying National City between $32M to $35M each year. Think what improvements can be imagined with a steady revenue source such as this.

When thinking about the City of San Diego, they are already surrounding National City with safe access to those in need, and we were the first to be selected by San Diego DSD staff. The reason, we exceeded what the City asked of us.

National City already has Caregivers and ill patients in accordance with California laws established nearly 20 years ago.

We can either stick our heads in the sand and hope dearly that change does not occur around us, or we can embrace change and make certain the change is controlled and closely regulated. Other than death, the only thing we can always count on is change. Republicans, Independents and Democrats support the use of medical cannabis. This is no longer a political fight/

Insufficient time is not the answer. Staff could reach out to other cities with ordinances already in place and make the appropriate changes to align with National City's values. Instead of throwing our hands in the air and using the excuse of not having enough time to complete the task, local and state organizations are available and willing to help. We had the United Patients' Alliance here in San Diego County, and there is California Cannabis Industry Association waiting to help the City in developing a rapid and City appropriate ordinances and regulations. Not having enough time to complete the task is not accurate. The very same recommendations were made by me to City staff.

Growing cannabis indoors within an unmarked facility will not increase crime in the area. We use armed guards to secure our facility in Otay Mesa, and the same would hold true. Unfortunately, the National City Police force has provided you with outdated and misinformation. When a guard is present, the entire area is safer than it was before we

opened our doors in Otay Mesa. We would welcome a visit to our shop to show you our shining example of helping thousands of ill people seeking relief from a natural growing plant, as well as many other medication resources we offer to the sick and in-firmed, many coming for relief and healing.

We welcome opening up our doors for City inspection as open as the Police department wishes. We have nothing to hide. Today, we have many mechanical systems available to cleanse the air that outflows from our facility so no one will notice any hint that medical cannabis is being grown at the site.

City staff is right on and correct in it's CEQA assessment. "There is no possibility that the activity in question have a significant impact on the environment".

The four (4) points that staff has provided the Commission under Recommended Findings for approval of Amendment to Title 18 (Zoning) are spot on.

1. Cultivation is in the public interest and consistent with California Health and Safety Code section 11362.5, the Compassionate use act, and 11362.7-11362.83 written and passed to "protect the public health, safety, and welfare.
2. We fully recognize a peace officer's judgement and discretion in viewing our site at any time, and we will gladly open our doors for any peace officer.
3. Cultivation is in the public's best interests because the regulations will adhere to the rights that qualified patients and caregivers are authorized by the State's health and safety codes, as well as the State's new trio of laws including AB 266, AB 243 and AB 643.
4. We are not requesting the authorization to sell or distribute from National City. Nothing precludes us from cultivation by highly trained and seasoned master growers.

MEDICAL MARIJUANA CULTIVATION ORDINANCE

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, in 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, establish a comprehensive regulatory framework for the production, transportation, and sale of medical marijuana.

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of medical marijuana enterprises in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of National City as follows:

Section 1. Definitions

"Qualified Patient" as defined in the California Health and Safety Code, Section 11362.7.

"Premise" is defined to mean the legal parcel(s) of land and the improvements on it, including building(s), store(s), shop(s), apartment(s), or other designated structure.

"Dispensary" is defined to mean a physical retail establishment where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, to Qualified Patients and their Primary Caregivers, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

"*Cultivation*" is defined to mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"*Cultivation Site*" is defined to mean the physical location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed.

"*Cultivator*" is defined to mean the organization holding the Conditional Use Permit for *cultivation* activity at a location authorized by the City.

"*Plant Canopy*" is defined to mean the amount of cannabis that can be grown which is the aggregate area of vegetative growth of live marijuana plants.

"*Small Specialty Indoor Cultivation*" is defined to mean cultivation in compliance with the regulations for a Cultivation License Type 1A (Specialty Indoor License), as defined in the California Health and Safety Code Section 11362.777, meeting the requirements to qualify for a state issued license.

"*Nursery Cultivation*" is defined to mean cultivation in compliance with the regulations for a State Cultivation License Type 4 (Nursery License), as defined in the California Health and Safety Code Section 11362.777, meeting the requirements to qualify for a state issued cultivation license of Type 4.

Section 2. Personal Use *Cultivation*

In accordance with California Health and Safety Code section 1362.777, a *qualified patient* may cultivate medical marijuana for their own personal use, at their place of residence, in an indoor area that does not exceed 100 square feet. A *qualified patient* may only cultivate marijuana for his or her personal medical use and may not sell, distribute, donate, or provide marijuana to any other person or entity. Landlords and building owners may limit or prohibit personal *cultivation* on the *premise*.

Section 3. Commercial *Cultivation*

Cultivation Sites are prohibited in residential, commercial, mixed-use and agricultural zones. *Cultivation Sites* may be permitted with a Conditional Use Permit in Industrial Zones, subject to the following regulations:

Commented [CV1]: Enumerate zones here

a) All *cultivation* must occur on the interior of a building using exclusively artificial lighting.

b) A Conditional Use Permit may be issued for *Small Specialty Indoor Cultivation* or *Nursery Cultivation*, all other cultivation is strictly prohibited. A Conditional Use Permit applicant must specify whether the applicant will be cultivating *Small Specialty Indoor Cultivation* or *Nursery Cultivation* on site. Only one cultivation type will be permitted per location. Any cultivation must conform to the *plant canopy* and other limits set forth by the applicable California State License Category for the *cultivation site*.

Commented [CV2]: Licensing type allowed, plant and canopy limits

c) Plants may only be cultivated in response to a pre-existing purchasing agreement with a licensed *dispensary* or *distributor*. For each plant, the *cultivator* must be able to show an active purchase order requiring this plant from a licensed *dispensary* or *distributor*. The *dispensary* or *distributor* with which a *cultivator* has a purchase agreement must be licensed by a municipal or county jurisdiction within the state of California.

a) A unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant. This unique identifier shall identify the *dispensary* or *distributor* for which the plant is being grown, as well as a

unique id assigned to the individual plant. Records of plants, as identified by their unique identifiers, and their associated *dispensary* or *distributor* must be kept by the *cultivator*, and must be made available to City auditors upon request. .

d) Security shall be provided at the *cultivation site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.

Commented [CV3]: Safety regulations

e) From a public right of way, there shall be no visual evidence of *cultivation* either within or outside the facility. Adverse impacts of *cultivation* shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

f) No external signage shall be allowed.

g) No public access or sales shall be allowed on the *premise*, only employees and contractors authorized by the *cultivator* may be present on the *premise*.

Commented [CV4]: No public access to cultivation sites

h) All employees of the organization to which the Conditional Use Permit is issued shall be subject to a background check. Any person who has been convicted of a felony may not be employed by *cultivator*.

i) The City encourages *cultivators* to operate in an environmentally sustainable manner. Preference will be given to applicant for Conditional Use Permits who show their commitment to environmentally sustainable practices including building LEED certification and adoption of EPA WaterSense identified water saving technologies.

j) To discourage theft and vandalism, the City will not publish, or provide to the general public, the exact addresses of *cultivation sites*. Other aggregate information regarding conditional use permits for *cultivation* including, but not limited to, number of permits issued, districts where said permits were issued, and the organizations to whom such permits were issued shall be available upon request.

k) Applicants for Conditional Use Permit for *cultivation* must provide written proof that the building owner and management condone *cultivation* activity on the *premise*.

l) A Conditional Use Permit for *cultivation site* may be revoked or suspended due to legitimate smell complaints, noise complaints, upon City confirmation of the smell or noise nuisance, or non-compliance with the regulations set forth in this ordinance.

Commented [CV5]: Conditions to revoke a permit

m) The City has may establish a set application fee for a Conditional Use Permit for a *cultivation site* and, as well as set annual fee for maintaining the *cultivation site* Conditional Use Permit Such fees shall be established by the City planning department.

Commented [CV6]: Establish a fee structure

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Denise Davis

From: Roberto Garcia Ozua <roberto.garcia.ozua@gmail.com>
Sent: Monday, November 23, 2015 3:43 PM
To: Denise Davis
Cc: Ditas Yamane; George Baca (gbaca1962@yahoo.com); Marcus Bush (mbush619 @yahoo.com); Al Alvarado (alvaradorosalie@gmail.com); Dolores Flores (dolores.m.flores@sbcglobal.net); suhialumni@yahoo.com; Martin Reeder; Ray Pe; Brad Raulston; Claudia Silva; Michael Fellows
Subject: Re: FW: Attn: Planning Commission, Fwd: Safe Access to Medical Cannabis

Hi,

A local National City resident also provided me this link when asked his thoughts on this matter:

http://www.attn.com/stories/4026/colorado-marijuana-revenue?utm_source=dailydot&utm_medium=fbpost&utm_campaign=syndication

There are multiple ways in which revenue can be used for specific initiatives.

Thank you,

RG

On Mon, Nov 23, 2015 at 2:07 PM, Denise Davis <ddavis@nationalcityca.gov> wrote:

> Good afternoon Planning Commissioners,
>
> I am forwarding an email letter received today in regards to the PC meeting to be held this evening.
>
> Sincerely,
>
> Denise
>
> ---
>
> **From:** Michael Mossbarger [mailto:expressfund@gmail.com]
> **Sent:** Monday, November 23, 2015 1:12 PM
> **To:** Denise Davis <ddavis@nationalcityca.gov>
> **Subject:** Attn: Planning Commission, Fwd: Safe Access to Medical Cannabis
>
> Hello Denise,

11 Things Colorado Can Now Fund Thanks to Legal Marijuana

NOVEMBER 5TH 2015
By: Kyle Jaeger@KYLEJAEGER
ShareTweetMailSMS

On Election Day, Colorado voters had to decide whether they wanted $66 million in marijuana tax revenue to be returned to taxpayers and pot growers or let the state distribute the money for public services. With almost 70 percent of the vote, residents chose to give the money to the state. That means that revenue from marijuana sales will go toward funding educational programs, school construction, and various other services in Colorado that voters evidently prioritize.

RELATED: Colorado is Making Way More on Marijuana Than They Thought

Colorado legalized recreational marijuana in 2012, and the system has proved so popular that the state brought in more than $100 million in pot tax revenue in August alone. There's a ten percent sales tax and 15 percent excise tax on recreational pot, but an accounting error almost forced the state to return that revenue, the Associated Press reported. So lawmakers crafted Proposition BB, a measure that let the voters decide for themselves at the polls.

Here are 11 ways the state will use the $66 million in marijuana tax revenue.

TUMBLR

1. $40 million for school construction.

WIKIMEDIA

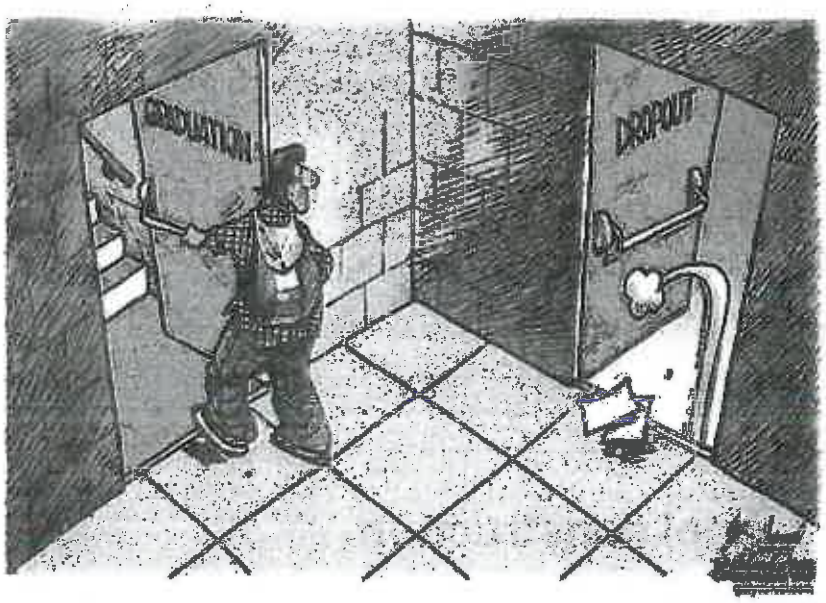
2. $2.5 million for marijuana education and prevention campaigns.

WIKIMEDIA

3. $2 million for bullying prevention school grants.

WIKIMEDIA

4. $2 million for drop-out prevention school grants.



MATRIX NAVIGATION

5. $2 million for youth mentoring services.

WIKIMEDIA

6. $1 million for poison control centers.

1-800-222-1222 AAPCC

7. $1 million for local government marijuana impact grants.

WIKIMEDIA

8. $500,000 for substance abuse screening, intervention, and referral.

WIKIMEDIA

9. $500,000 for substance abuse treatment.

WIKIMEDIA

10. $300,000 for Future Farmers of America and 4-H programs at the State Fair.

WIKIMEDIA

11. $200,000 for roadside impaired-driving enforcement training for peace officers

WIKIMEDIA

RELATED: In One Year, Here's How Much Money WA State Has Made Since Legalizing Pot

Because the state made way more than lawmakers had anticipated, there is an additional $8 million in marijuana revenue that has yet to be allocated.

"The measure's main author, Democratic state Sen. Pat Steadman, said the $8 million will go to the Marijuana Tax Cash Fund, which can be used for numerous educational and anti-drug efforts," the AP reported.

Share your opinion

Would your state be better off if it had marijuana tax money rolling in?

Would your state be better off if it had marijuana tax money rolling in? ○ Yes ○ No
Enter your email address and we will let you know the results.

The AuthorKyle Jaeger

Kyle Jaeger is a Los Angeles-based reporter for ATTN:. He's formerly written for VICE, The Hollywood Reporter, and The Morning News, among other publications.

@KYLEJAEGER
Featured Image:Wikimedia Commons/W. Wayne Marlow
NOVEMBER 5TH 2015
By: Kyle Jaeger@KYLEJAEGER
ShareTweetMailSMS

Denise Davis

From: outlook_ed7d1a76c94e3170@outlook.com on behalf of Cynara Velazquez <cynara@communityengagementresources.com>
Sent: Monday, November 23, 2015 10:07 AM
To: Denise Davis; Marcus Bush
Subject: Re: Response to Staff Report related to Medical Marijuana Cultivation Ordinance
Attachments: Arcata_Cultivation_Ordinance.pdf; City_of_Napa_Dispensary_w_Cultivation.pdf; City_of_Tulare_Dispensary_Ordinance.pdf; Clearlake_Dispensary_Ordinance_W_Cultivation.pdf; Eureka_Cultivation_Regulation.pdf; Fairfax_Dispensary_w_Cultivation.pdf; Richmond2.pdf; San_Carlos.pdf; Santa_Cruz_City2.pdf

Dear Planning Commission,

Attached are a sample of ordinances from other jurisdictions that address cultivation. Please note that most of these ordinances are focused primarily on dispensaries and to a lesser extent on cultivation regulation, since prior to October of this year the state had not yet set up licensing categories for cultivation, therefore, municipalities had less incentive to regulate this use. That said, the ordinances attached do clearly address the relevant cultivation regulation components - zoning, plant limits, patient and building requirements, safety requirements, etc..

I hope this will give guidance to city staff and the planning commission in your investigations into cultivation regulation..

Regards,
Cynara Velazquez
Association of Cannabis Professionals
619-208-0567

On Fri, Nov 20, 2015 at 4:33 PM, Cynara Velazquez <cynara@cannabisprofessionals.org> wrote:

> Dear Planning Commission,
>
> We were extremely disappointed to receive the Staff Report prepared for the discussion related to a medical marijuana cultivation regulation. Staff clearly, and completely, disregarded the directive of the planning commission to prepare language for the regulation of medical marijuana cultivation, choosing instead to present only a ban alternative, in disregard of the task they had been assigned.
>
> We would both like to dispute the findings of this report and present a regulation proposal, in order to fulfill the clearly stated desire of the planning commission to have a regulatory option.

Please note that we reached out to city staff offering guidance and input in the crafting of a regulatory proposal, we were happy to provide sample language and guidance. We did not receive a response from staff. Dr. Blair, at a Green Alternative, has communicated to us that staff did solicit his input regarding regulation, however, he directed staff to contact myself, Cynara Velazquez. No contact was ever made.

Staff cites other regulation in San Diego County - two ban ordinances and the dispensary ordinance in San Diego City, noting that none contain guidance on cultivation. That said, there are medical marijuana ordinances already in place in multiple municipalities around the state that do address cultivation. We have attached ordinances from 9 jurisdictions that include cultivation regulation to this message, for the planning commissions review.

Staff has also argued that prohibiting now would not exclude National City from creating regulatory language in the future. However, adding prohibition language to the code will set a clear precedent for prohibition. Indeed, staff has argued that the reason for the preference for prohibition for cultivation is based on the existing prohibition for store front dispensaries. We find this argument to be disingenuous, because existing code (shown below), says nothing related to cultivation, and is clearly specific to dispensing. Indeed, the argument is often made that storefront dispensaries are not necessary, since other options for access exist. Therefore, a prohibition of storefront dispensaries does not necessarily indicate any city direction on other forms of access.

Here is the current code in the National City municipal code, related to medical marijuana dispensaries.

> *National City Municipal Code 18.30.340 - MEDICAL MARIJUANA DISPENSARIES*
> *A. Prohibition*
> *1. Medical Marijuana Dispensaries are prohibited.*
> *B. Definitions*
> *1. For purposes of this section, "Medical Marijuana Dispensary" shall mean a facility where marijuana is made available for medical purposes in accordance with Section 11362.5 of the California Health and Safety Code.*
> *2. For purposes of this section, "Marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code.*

Response to Findings of Staff Report

We fully dispute the findings contained in the staff report. Our response to the findings is as follows:

Finding 1. That the proposed amendment is in the public interest because it retains local land use authority by the City; and local land use should remain with the City, because the City should retain its legislative function to determine what uses are most appropriate within its jurisdiction.

Response: The City may have greater land use authority related to medical marijuana cultivation if it were to pass regulations by March 2016, since the state has given this deadline as to when it will enact criteria for cultivation in jurisdictions that do not yet have an ordinance. That said, there is nothing in this regulation deadline that suggests that municipalities should ban instead of regulate.

Finding 2: The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

Response: We believe that City staff is fully capable of creating a land use proposal in a timely manner. To further this objective, we are providing sample legislation and guidance along with this document, along with examples of ordinances from other municipalities. We believe that whatever legislation regarding medical marijuana cultivation is passed now will set a clear precedent, therefore it is important that such legislation is compatible with the intent of the planning commission and the city council. A ban ordinance may not be compatible with this intent.

Finding 3. The compressed time frame from the State of California to enact an ordinance so that the City can continue local land use control over cultivation does not provide sufficient time to fully research and analyze the issues regarding allowing cultivation in the City; and prohibition of cultivation preserves local land use control while allowing for a subsequent amendment establishing regulation over cultivation at a later date, if so desired.

Response: We do not believe that it is beyond the ability of National City staff to craft a regulatory proposal in a timely manner. To assist in this effort, we have outlined, below, the components of comprehensive cultivation regulation. These components - zoning, limits, safety measures and fees are standard components to regulating any use, and therefore, should not be beyond the means of city staff to contemplate and develop. We are happy to be a resource for regulatory suggestions and guidance.

Finding 4. That the proposed amendment is in the public interest because marijuana cultivation in other California jurisdictions has resulted in impacts such as increased gun violence, robberies, traffic accidents/fatalities, and environmental impacts caused by pollutant discharge from growing operations, which would pose significant health threats to National City residents.

Response: This finding is disingenuous, because it fails to distinguish between unregulated, illegal, marijuana related activity and regulated marijuana cultivation. We fully agree that unregulated, black market, activity, including marijuana cultivation, will indeed lead to increases in crime, due to the fact that those that choose to pursue black market activity, i.e. unlawful acts, are by definition, criminals. Regulated activities, pursued by legitimate operators, following strict health and safety regulations, with oversight from municipal authorities, have not been shown to increase crime. Therefore, we feel that by adding regulations, National City will create standards that will lead to higher levels of public, and operator, safety.

Finding 5. That the proposed amendment is in the public interest and is consistent with General Plan policy, because the purpose of the Health and Environmental Justice Element of the General Plan is to identify public health risks and environmental justice concerns and improve living conditions to foster the physical health and well-being of National City's residents, and because the Police Department has concluded that marijuana poses significant health threats to users.

Response: The bias of staff on this issue is most evidently shown by the fact that in this 15 page document, the benefits of access to the sick are never once mentioned, but "health risks" are cited as a reason to continue restricting access. Access to medical marijuana was approved by the voters of the state of California, and the legislature of California enacted rules to ensure and regulate this access, because of the health benefits associated with marijuana use for terminally and severely ill pain, cancer, and AIDS patients in the state of California. Like any medication, there is the potential for abuse, but the voters and citizens of this state have determined that the benefit to those who need an effective, low cost pain medication, with a low risk of addiction and zero chance of a deadly overdose, greatly outweigh the comparatively low risks associated with abuse. The medical cannabis research center at the University of California, San Diego, has established significant benefits to AIDS, MS and cancer patients associated with the use of medical marijuana. The health and well-being of National City residents who have these, and other severe pain conditions, would be improved with its access.

Finding 6. That the proposed amendment has been reviewed to be in compliance with the California Environmental Quality Act (CEQA), because it has been determined that the proposed use is exempt from CEQA under section 15061(b)(3)- general rule.

The project is not considered a project under CEQA; there is no possibility that the activity in question may have a significant impact on the environment. Cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

Response: Cultivation regulation can also be fully complaint with CEQA. Therefore, CEQA is not a relevant factor in this decision.

Regulatory Proposal for Medical Marijuana Cultivation

Below, we have outlined the basic components and decisions that needed to be decided by a municipality in order to create a comprehensive medical marijuana cultivation ordinance. Additionally, we have attached a template annotated regulatory proposal for your reference, with suggested zoning, limits, safety regulations and fees.

A comprehensive medical marijuana cultivation ordinance is composed of two basic provisions - regulations for personal use and regulation for commercial cultivation.

Personal Cultivation

State law allows a qualified patient to cultivate medical marijuana for their own personal use in an area that does not exceed 100 square feet State law specifies that the qualified patient may only cultivates marijuana for her personal medical use and may not sell, distribute, donate, or provide marijuana to any other person or entity. Our recommendation is that any municipal regulation regarding personal cultivation continue to reference state law and adhere strictly to the state guidelines and limits.

Commercial Cultivation

The state allows for different classes of commercial cultivation with distinct limits to plant count and canopy associated with class. The most straightforward mechanism for a municipality to adopt local regulations is to compliment the state licensing structure, issuing permits for certain licensing classes for cultivation use and defining the zoning for these uses. Additionally a city may adopt a cost recovery structure and additional local safety regulations. (The state will also be adopting uniform safety restriction to be applied statewide, but these regulations have not yet been defined and additional local regulations are permitted.)

Therefore, a comprehensive regulatory proposal for medical marijuana cultivation would include the following components, related to commercial cultivation:

- State Licensing Classes Allowed - Defines the associated plant count, canopy size and whether to allow indoor or outdoor cultivation
- Associated Zones Permitted – Defines in which zones cultivation will be permitted to occur, under the conditions outlined per the state licensing class.
- Associated Fees and Taxes – Defines, per state tax code. Additional local sales taxes are not permitted, however, additional municipal fees and/or excise taxes are permitted, and can be set by the municipality.

- Additionally Safety Regulations – Defines regulations related to operating hours, public access, background checks, signage, security personnel, alarms, and enhanced building security features.

In the attached template document, MMJZoningCultivationOrdinance_NC.pdf, we have provided suggested regulations as outlined above.

We would like to offer this template as a model for National City's cultivation regulations.

Thank You for Your Consideration,

Cynara Velazquez

Association of Cannabis Professionals

619-208-0567

cynara@cannabisprofessionals.org

STAFF REPORT
City Council Agenda
City Council Meeting of November 19, 2008

To: Michael Hackett, City Manager

From: Joe Mateer, Senior Planner

Date: November 12, 2008

Subject: Adopt Ordinance 1382 to amend the Arcata Municipal Code, Title IX, the Land Use Code by adding §9.42.105 – Medical Marijuana: Cultivation and Dispensing as a new standard for specific land use; and associated revisions to: Allowable Land Uses and Permit Requirement Tables 2-1, 2-4, and 2-10; add associated definitions to Article 10 – Glossary; revise text of §9.42.040 – Accessory Uses, and §9.42.090 – Home Occupations.

RECOMMENDATION: It is recommended the City Council adopt Ordinance 1382, waive reading of text, and consent to read by title only.

INTRODUCTION: The Council introduced Ordinance 1382 at the November 5, 2008 regular meeting to amend the 2008 Arcata Land Use Code with specific land use standards for medical marijuana. The Council requested staff revise several items and bring the item back to the Council for adoption. Attachment A with accompanying exhibits reflects the revisions requested by the Council. If the Council makes revisions that require the ordinance to come back for reintroduction, staff intends to bring the item back to the new Council on December 17, 2008.

DISCUSSION: The adoption of Ordinance 1382 requires an additional 30 day period prior to the medical marijuana land use standards becoming effective in the areas outside the City's Coastal Zone boundary.

BUDGET / FINANCIAL IMPACT: The zone amendment is considered an advance planning project, thus the costs are funded by the general fund. Use Permit applications are project driven with the costs of permit processing the responsibility of the applicant. Staff has anticipated the Land Use Code amendments and has delayed some document copying to allow the amendment to be incorporated. Otherwise the project should have no additional budget or financial impact on the City.

ATTACHMENTS

A. Ordinance Number 1382 including:
   - Exhibit 1 - Land Use Code Revisions for Medical Marijuana: §9.42.105 – Medical Marijuana: Cultivation and Dispensing;
   - Exhibit 2 - Allowable Land Uses and Permit Requirement: Table 2-1; Page 2-11;
   - Exhibit 3 - Allowable Land Uses and Permit Requirement: Table 2-4; Page 2-19;
   - Exhibit 4 - Allowable Land Uses and Permit Requirement: Table 2-10; Pages 2-31 and 2-34;
   - Exhibit 5 – § 9.100.010 – Glossary (seven new terms defined)
   - Exhibit 6 - § 9.42.040 – Accessory Uses;
   - Exhibit 7 - § 9.42.090 – Home Occupations, Pages 4-15 and 4-16 (text revision occurs on page 4-16);

Previous Attachments from 10/01/08 and 11/05/08 Staff Reports are incorporated into project proposal. These items should be retained by the City Council and brought to each meeting where this item is on the agenda.

Draft **ORDINANCE NO. 1382**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE, TITLE IX, THE LAND USE CODE BY ADDING *§9.42.105 – MEDICAL MARIJUANA: CULTIVATION AND DISPENSING* AS A NEW STANDARD FOR SPECIFIC LAND USE; AND ASSOCIATED REVISIONS TO: *ALLOWABLE LAND USES AND PERMIT REQUIREMENT TABLES 2-1, 2-4,* and *2-10*; ADD ASSOCIATED DEFINITIONS TO *ARTICLE 10 – GLOSSARY*; REVISE TEXT OF *§9.42.040 – ACCESSORY USES*, AND *§9.42.090 – HOME OCCUPATIONS.*

The City Council of the City of Arcata does hereby ordain as follows:

SECTION 1. Amendment of the 2008 City of Arcata Land Use Code

Title IX of the Arcata Municipal Code is hereby amended as follows:

1. Add §9.42.105 – Medical Marijuana: Cultivation and Dispensing as attached as Exhibit 1;
2. Revise Tables 2-1, 2-4, and 2-10: Allowable Land Uses and Permit Requirement as attached as Exhibits 2, 3, 4;
3. Add definitions to Article 10 – Glossary as attached as Exhibit 5;
4. Revise text of §9.42.040 – Accessory Uses as attached as Exhibit 6;
5. Revise text of §9.42.090 – Home Occupations as attached as Exhibit 7.

SECTION 2. Findings of Approval

Based upon information received in the public hearing, including the Arcata Planning Commission Staff Reports and Resolution PC-08-14 the following findings are hereby adopted.

1. The proposed amendment is consistent with the General Plan in accordance with the California Government Code, Section 65860.
2. The public health, safety, and general welfare require the adoption of the proposed amendment.

SECTION 3. Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 4. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

SECTION 5. Effective Date

This ordinance shall take effect thirty (30) days after its adoption by the City Council.

DATED:

ATTEST:

City Clerk, City of Arcata

Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1382, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the th day of , 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

City Clerk, City of Arcata

9.42.105 – Medical Marijuana: Cultivation and Dispensing

A. **Purpose.** The purpose and intent of this section is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law.

B. **Applicability.** No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and dispensing of medical marijuana in the City of Arcata is controlled by the provisions of this section of the Land Use Code. Accessory uses and home occupations, where medical marijuana is involved shall be governed by the provisions of this section.

C. **Release of Liability and Hold Harmless.** The owner and permittee of a medical marijuana cooperative, collective or cultivation facility shall release the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each medical marijuana cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Arcata and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of medical marijuana provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director.

D. **Medical Marijuana for Personal Use.** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:

1. One medical marijuana cultivation area shall not exceed 30 square feet and not exceed ten feet (10') in height per residence;

   a. Medical marijuana cultivation lighting shall not exceed 1200 watts;

   b. The use of gas products (CO_2, butane, etc.) for medical marijuana cultivation or processing is prohibited;

   c. In accordance with Section 9.42.090.A.2., medical marijuana cultivation and sale is prohibited as a Home Occupation. Per Section 9.42.040, Accessory Uses, medical marijuana cultivation and sales is not considered an accessory use. No sale or dispensing of medical marijuana for personal use is allowed;

   d. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation either within or outside the residence;

   e. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;

f. The qualified patient shall not participate in medical marijuana cultivation in any other residential location within the City of Arcata;

g. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation;

h. The medical marijuana cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)); and

i. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

2. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 9.42.105 D. 1. shall require a Zoning Administrator Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for interpretation shall include written permission from the property owner. The Zoning Administrator shall review the submitted information and make an interpretation in accordance with Section 9.10.050. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers. Approved medical marijuana cultivation for personal use that exceeds 50 square feet shall conform to the following standards:

a. Shall be in compliance with §9.42.105 D 1 a. – i. above; and

b. The medical marijuana cultivation area shall not exceed an additional 50 square feet for the total of 100 square feet and not exceed ten feet (10') in height per residence; and

c. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board; and

d. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

E. **Permit requirements for Medical Marijuana Cooperatives or Collectives:** Medical marijuana cooperatives or collectives may be established only in those zoning districts listed in Table 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cooperatives or collectives shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a medical marijuana cooperative or collective. A medical marijuana cooperative or collective shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical marijuana.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing cooperative or collective in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. Specific Regulations. The following specific regulations apply to medical marijuana cooperatives or collectives.

   a. The total number of medical marijuana cooperatives or collectives within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the four (4) cooperatives or collectives ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2).

   b. In addition to Section 9.72.080 F (Use Permit Findings and decision), the review authority should give special consideration to approving cooperatives or collectives located: within a 300 foot radius from any existing residential zoning district, within 500 feet of any other medical marijuana cooperative or collective as defined in the glossary which is located either inside or outside the jurisdiction of the City, or within 500 feet from any existing public park, playground, day care, or school.

   c. Source of medical marijuana. A medical marijuana cooperative or collective shall only dispense marijuana from the following sources:

      (1) Permitted Cooperative or Collective. If the Use Permit authorizes limited, on-site medical marijuana cultivation at the cooperative or collective, a permitted medical marijuana cooperatives' or collectives' on-site cultivation shall not exceed twenty-five (25) percent of the cooperatives' or collectives' total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.

      (2) Off-site Permitted Cultivation. The cooperative or collective cultivates medical marijuana in an off-site location in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually.

      (3) Qualified Patients. In the case of a medical marijuana cooperative or collective, the medical marijuana is acquired from an individual qualified patient who cultivated the medical marijuana in accordance with the standards in Section 9.42.105.D., the qualified patient received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Pursuant to California Health and Safety Code §11362.765 (c) a collective or cooperative my credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.

   d. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cooperative or collective application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

      (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

      (2) A description of the staff screening process including appropriate background checks;

      (3) The hours and days of the week the medical marijuana cooperative or collective will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cooperative or collective. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) A description of the screening, registration and validation process for qualified patients;

(7) A description of qualified patient records acquisition and retention procedures;

(8) The process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources;

(9) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;

(10) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(11) Other information required by the Community Development Director.

2. Operating Standards. Medical marijuana cooperatives or collectives shall comply with all of the following operating standards.

a. No dispensing medical marijuana to an individual qualified patient or primary caregiver more than twice a day;

b. Medical marijuana cooperatives or collectives shall only dispense medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid;

c. Medical cooperatives or collectives shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. The client rules and/or regulations shall include, but not limited to:

(1) Each building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana on the premises or in the vicinity of the cooperative or collective is prohibited unless specifically authorized with the Use Permit.

(2) The building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and/or they are under the supervision of their parent or legal guardian.

f. Medical marijuana cooperatives or collectives shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);

g. Medical marijuana cooperatives or collectives shall only permit the distribution of live plants, starts and clones as allowed by the approved Use Permit. Such distribution shall be limited to qualified patients or primary caregiver;

h. Medical marijuana cooperatives or collectives shall only permit the on-site display or sale of marijuana paraphernalia used for the consumption of medical marijuana as allowed by the approved Use Permit;

i. Medical marijuana cooperatives or collectives shall comply with other conditions as outlined in the Use Permit;

j. Medical marijuana cooperatives or collectives shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;

k. Medical marijuana cooperatives or collectives shall implement procedures as outlined in their approved Operations Manual;

l. Medical marijuana cooperatives or collectives shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and dispensing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

3. Permit Revocation or Modification. A use permit may be revoked or modified according to Section 9.96.070 (Permit Revocation or Modification). Use Permit revocation proceedings may occur for non-compliance with one or more of the items 2.a. through l. above.

4. Transfer of Use Permit. The rights of an approved Use Permit to operate a medical marijuana cooperative or collective may be transferred to another cooperative or collective as a Use Permit modification according to Section 9.96.070 (Permit Revocation or Modification).

F. **Medical Marijuana Cultivation for Cooperative or Collective.** Except as permitted in Section 9.42.105 E. 1. c. (1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only in those zoning districts listed in Table 2-1 ("Allowable Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts" and 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cultivation and processing for a medical marijuana cooperative or collective shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate medical marijuana cultivation or processing facility.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing medical marijuana cultivation and processing structure or use in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

(1. **Specific Regulations.** The following specific regulations apply to medical marijuana cultivation and processing.

(a. The total number of medical marijuana cultivation and processing facilities within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the cultivation and processing facilities ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2). If a medical marijuana cooperative or collective allows for marijuana cultivation and processing pursuant to Section 9.42.105 E. 1. c. (1), the cooperative or collective shall be counted as one of the four (4) (or three (3), or two (2) as noted above) allowed marijuana cultivation and processing facilities.

(b. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, shall be ventilated with odor control, and shall not create a humidity or mold problem;

(c. The medical marijuana cultivation and processing facility shall not adversely affect the health or safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes;

(d. The medical marijuana cultivation and processing facility must be permitted in conjunction with an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;

(e. The medical marijuana cultivation and processing facility shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;

(f. The size and scale of the cultivation shall be proportional to the qualified patient load of an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;

(g. Medical marijuana cultivation and processing facilities shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);

(h. Medical marijuana cultivation and processing facilities shall not permit the on-site display or sale of paraphernalia used for the use or consumption of medical marijuana;

i. Medical marijuana cultivation and processing facilities shall comply with other conditions as outlined in the Use Permit;

j. Medical marijuana cultivation and processing facilities shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cultivation and processing facilities shall also provide invoices to vendors to ensure vendor's tax liability responsibility;

k. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cultivation and processing application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) A description of the staff screening process including appropriate background checks;

(3) The hours and days of the week the medical marijuana cultivation and processing facility will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cultivation and processing facility. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) The process for tracking medical marijuana quantities and inventory controls;

(7) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;

(8) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(9) Other information required by the Community Development Director.

n. Medical marijuana cultivation and processing facilities shall implement procedures as outlined in their approved Operations Manual;

o. Medical marijuana cultivation and processing facilities shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual", and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and processing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

TABLE 2-1 Allowed Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts	P — Permitted Use; Zoning Clearance required MUP — Minor Use Permit required UP — Use Permit required S — Permit determined by specific use regulations — — Use not allowed					
LAND USE (1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	AE	AE-CZ	AR	NR-TP	NR-PT	
AGRICULTURAL & OPEN SPACE USES						
Agricultural accessory structure, 4,000 sf or less	P	P	MUP	MUP	MUP	9.22.060, 9.42.030
Agricultural accessory structure, larger than 4,000 sf	MUP	MUP	MUP	MUP	MUP	
* Agricultural cultivation – medical marijuana	UP	UP	—	—	—	9.42.105
Agricultural processing - Very low impact	P	P	P	P	P	
Agricultural processing - Low impact	MUP	MUP	MUP	MUP	MUP	
Agricultural Processing - Moderate impact	UP	UP	UP	—	—	
Animal keeping	S	S	S	S	S	9.22.060, 9.42.050
Aquaculture - Ocean dependent	—	MUP	—	MUP	MUP	
Commercial greenhouse - Perimeter foundation, 1,000 sf or less	P	MUP	MUP	—	—	
Commercial greenhouse - Perimeter foundation, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Commercial greenhouse - Slab foundation	UP	—	UP	—	—	
Commercial greenhouse - Soil dependent, 1,000 sf or less	P	P	P	—	—	9.22.060
Commercial greenhouse - Soil dependent, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Crop production, horticulture, orchard, vineyard	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Forestry	MUP	—	MUP	P(2)	—	
Nature preserves, habitat and wetland restoration	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Winery	UP	UP	UP	—	—	
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES						
Boat launching facility	—	MUP	—	—	UP	9.22.060
Coastal access trail	P	P	P	—	P	9.22.060
Equestrian facility, maintaining 8 or fewer horses	P	MUP	UP	—	—	9.42.050
Equestrian facility, maintaining 9 or more horses	MUP	MUP	UP	—	—	9.42.050
Interpretive center	—	—	—	UP	UP	9.22.060
Non-vehicular recreation	P	P	P	P	P	9.22.060
Meeting facility, public or private	—	—	UP	UP	UP	
Parks and playgrounds	—	—	MUP	UP	UP	

Key to Zoning District Symbols

AE	Agriculture - Exclusive	NR-TP	Natural Resource - Timber Production
AE-CZ	Agriculture - Exclusive - Coastal Zone	NR-PT	Natural Resource - Public Trust
AR	Agriculture - Residential		

Notes:
(1) See Article 10 for land use definitions.
(2) Zoning Clearance not required.

TABLE 2-4
Allowed Land Uses and Permit Requirements for Residential Zoning Districts

P = Permitted Use, Zoning Clearance required
MUP = Minor Use Permit required
UP = Use Permit required
S = Permit determined by Specific Use Regulations
— = Use not allowed

LAND USE (1)	PERMIT REQUIRED BY DISTRICT				Specific Use Regulation
	RVL	RL	RM	RH	
AGRICULTURAL & OPEN SPACE USES					
Agricultural accessory structure	MUP	UP	UP	UP	9.42.030
Agricultural cultivation - medical marijuana	—	—	—	—	9.42.105
Animal keeping	S	S	S	S	9.42.050
Crop production, horticulture, orchard, vineyard	MUP	MUP	MUP	MUP	
Greenhouse and nursery structures, 300 sf or less	UP	UP	—	—	
Greenhouse and nursery structures, larger than 300 sf	—	—	—	—	
Produce stand, 1,000 sf maximum	MUP	MUP	MUP	MUP	9.42.140F
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES					
Equestrian facility	UP	—	—	—	9.42.050
Meeting facility, public or private	MUP	MUP	MUP	MUP	
Parks and playgrounds, public	P	P	P	P	
Private residential recreation facility	—	MUP	MUP	MUP	
School - Public or private, elementary or secondary	MUP	MUP	MUP	MUP	
RESIDENTIAL USES					
Home occupation	P	P	P	P	9.42.090
Mobile home - Outside of mobile home park	P	P	P	P	9.42.120
Mobile home park, including individual mobile homes	UP	UP	UP	UP	9.42.120
Multi-family housing, 2 units	—	P	P	P	9.42.130
Multi-family housing, 3 to 9 units	—	MUP(2)	P	P	9.42.130
Multi-family housing, 10 or more units	—	—	P	P	9.42.130
Organizational house (sorority, monastery, religious, etc.)	UP	UP	UP	UP	
Residential accessory use or structure	P	P	P	P	9.42.030
Residential care facility, 6 or fewer clients	P	P	P	P	
Residential care facility, 7 or more clients	UP	UP	UP	UP	
Rooming or boarding house	—	UP	P	P	
Second dwelling unit	P	P	P	P	9.42.170
Single-family dwelling	P	P	P	P	
Transitional housing	UP	UP	UP	UP	

Key to Zoning District Symbols

RVL	Residential - Very Low Density	RM	Residential - Medium Density
RL	Residential - Low Density	RH	Residential - High Density

Notes:
(1) See Article 10 (Glossary) for land use definitions.
(2) Allowed only in compliance with Section 9.24.060.B (RL Alternative Development Option).

TABLE 2-10
Allowed Land Uses and Permit Requirements for Commercial, Industrial, And Public Facility Zoning Districts

P — Permitted Use - Zoning Clearance required
MUP — Minor Use Permit required
UP — Use Permit required (2)
S — Permit determined by specific use regulations
— Use not allowed

LAND USE (1)	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	CC	CG	CV	IL	IG	IC	PF	
INDUSTRY, MANUFACTURING & PROCESSING, WHOLESALING								
Agricultural cultivation - medical marijuana	—	—	—	—	UP	UP	—	9.42.105
Agricultural processing - Very-low impact	—	—	—	—	P	P	—	
Agricultural processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Biodiesel production	—	—	—	—	UP	UP	—	
Composting	—	—	—	—	MUP	MUP	—	
Construction contractors	—	—	—	—	P	P	—	
Furniture and fixtures manufacturing, cabinet shop	—	UP	—	—	P	P	—	
Laboratory - Medical, analytical, R&D	—	P	—	—	P	P	—	
Laundry, dry cleaning plant	—	UP	—	UP	P	P	—	
Manufacturing/processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Manufacturing/processing - Moderate impact	—	—	—	—	MUP	MUP	—	
Manufacturing/processing - High impact	—	—	—	—	—	UP	—	
Media production	P	P	—	—	P	P	—	
Printing and publishing	P	P	—	—	P	P	—	
Recycling - Processing facility	—	—	—	—	MUP	P	—	9.42.160
Recycling - Reverse vending machines	—	P	P	—	P	P	—	9.42.160
Recycling - Scrap and dismantling yards	—	—	—	—	—	MUP	—	9.42.160
Recycling - Small collection facility	—	MUP	—	—	MUP	P	P	9.42.160
Solid waste disposal/transfer station	—	—	—	—	UP	UP	—	
Storage - Business records	MUP	MUP	—	—	MUP	MUP	—	
Storage - Outdoor	MUP	MUP	MUP	MUP	P	P	P	9.42.150
Storage - Personal storage facility (mini-storage)	—	UP	—	—	P	P	—	
Storage - Warehouse, indoor storage	—	UP	—	—	P	P	—	
Wholesaling and distribution	—	P	—	—	P	P	—	

Key to Zoning District Symbols

CC	Commercial - Central	IL	Industrial - Limited
CG	Commercial - General	IG	Industrial - General
CV	Commercial - Visitor Serving	PF	Public Facility
CMU	Commercial - Mixed Use Center		

Notes:

(1) See Article 10 (Glossary) for land use definitions.

(2) Use Permit required for any proposed retail use with either: (a) a floor greater than 30,000 sf; or (b) physical alteration of eight or more acres; or (c) generation of 1,000 or more vehicle trips per day. See also Section 9.26.060.

(3) Residential units should only be located above nonresidential uses or at ground level behind the street-fronting nonresidential uses pursuant to Section 9.42.110.

(4) Allowed only in conjunction with the on-site retail sale of products produced on the site.

TABLE 2-10
ALLOWABLE LAND USES AND PERMIT REQUIREMENTS FOR COMMERCIAL, INDUSTRIAL AND PUBLIC FACILITY ZONING DISTRICTS

P = Permitted Use, zoning clearance required
MUP = Minor Use Permit required
UP = Use Permit required
S = Permit determined by specified use regulations
— = Use not allowed

LAND USE (1)	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	CC	CG	CV	CM	IL	IG	PF	
SERVICES - BUSINESS, FINANCIAL, PROFESSIONAL								
ATM	P	P	P	P	—	—	—	
Bank, financial services	P	P	MUP	P	—	—	—	
Business support service	P	P	—	P	—	—	—	
Medical services - Doctor office	P	P	P	P	—	—	MUP	
Medical services - Clinic, lab, urgent care	MUP	MUP	MUP	MUP	—	—	MUP	
Medical services - Extended care	MUP	—	—	MUP	—	—	MUP	
Medical services - Hospital	—	UP	UP	—	—	—	UP	
* Medical services - medical marijuana dispensary	UP	UP	—	—	—	—	—	9.42.105
Office - Accessory	P	P	P	P	P	P	P	
Office - Business/service	P	P	—	P	P	—	—	
Office - Government	P	P	—	P	P	—	—	
Office - Processing	P	P	—	P	P	—	—	
Office - Professional	P	P	—	P	P	—	—	
SERVICES -GENERAL								
Adult day care - 14 or fewer clients	P	P	—	P	—	—	MUP	
Adult day care - 15 or more clients	MUP	MUP	—	MUP	—	—	MUP	
Catering service	—	P	—	—	P	P	—	
Cemetery	—	—	—	—	—	—	UP	
Child day care center	MUP	MUP	—	MUP	MUP	UP	MUP	9.42.070
Child day care - large or small family day care home	P	P	—	P	P	—	—	
Drive-through service	—	MUP	MUP	MUP	—	—	—	9.42.080
Drop-in center	—	UP	—	—	UP	UP	MUP	
Equipment rental	—	MUP	—	—	P	P	—	
Kennel, animal boarding	—	—	—	—	MUP	MUP	—	
Lodging - Bed & breakfast inn (B&B)	MUP	MUP	MUP	MUP	—	—	—	9.42.060
Lodging - Hostel	MUP	MUP	MUP	MUP	—	—	—	
Lodging - Hotel or motel	P	MUP	P	MUP	—	—	—	
Lodging - Recreational vehicle (RV) park	—	—	UP	—	—	—	—	
Maintenance service - Client site services	P	P	—	—	P	P	—	
Mortuary, funeral home	—	MUP	—	—	—	—	—	
Personal services	P	P	—	P	P	—	—	
Personal services - Restricted	—	P	—	—	—	—	—	
Public safety facility	—	—	—	—	—	—	MUP	
Repair service - Equipment, large appliances, etc.	—	—	—	—	P	P	—	
Social service organization	P	P	—	P	P	—	MUP	
Vehicle services - Major repair/body work	—	MUP	MUP	—	P	P	—	
Vehicle services - Minor maintenance/repair/retread	—	P	P	MUP	P	P	—	
Veterinary clinic, animal hospital	—	MUP	MUP	MUP	—	—	—	

The following definitions will be added to **Article 10 Glossary**

Marijuana. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination.

Medical Marijuana. Means marijuana used in strict accordance with the Compassionate Use Act of 1996 (Health and Safety Code §11362.5 et seq) and The Medical Marijuana Program (Health and Safety Code §11362.7 et seq.).

Medical Marijuana Identification Card. A document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any as per California Health and Safety Code §11362.7, and as may be amended.

Medical Marijuana Cooperative or Collective.
"Medical Marijuana Cooperative of Collective " means an affiliation or association of individuals whose collective intent is to provide education, referral or network services and to assist in the lawful acquisition and distribution of medical marijuana in a safe and affordable manner between primary caregivers and qualified patients as permitted in accordance with the Compassionate Use Act of 1996.

Person with an Identification Card. Means an individual who is a qualified patient who has applied for and received a valid identification card as per the California Health and Safety Code §11362.7, and as may be amended.

Primary caregiver. Means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as more particularly as set forth in California Health and Safety Code §11362.7, and as may be amended.

Qualified patient. Means a person who has a physician's recommendation and is entitled to the protections of Section 11362.5 of the California Health and Safety Code, but who does not have an identification card issued as set forth in California Health and Safety Code §11362.7, and as may be amended.

9.42.040 - Accessory Uses

In addition to the uses expressly permitted in each zoning district by Article 2 (Zoning Districts and Allowable Land Uses), the following accessory uses are also permitted in compliance with this Section. See also Section 9.42.020 (Accessory Retail and Service Uses). These do not include uses covered in Section 9.42.105 (Medical Marijuana).

A. Administrative office. The administrative office for an approved primary use on the same lot.

B. Parking. Off-street parking and loading serving a primary use, located, designed, and constructed in compliance with Chapter 9.36 (Parking and Loading), but only if the parking is reserved for the residents, employees, patrons, or other persons participating in the primary activity on the site.

C. Production of goods. The production of goods for sale by a firm engaged in an approved primary commercial use on the same lot, if:

1. All goods produced are sold at retail by the same firm either on the same or other lots; and

2. Production does not occupy more than 50 percent of the total floor area and open sales, display, storage, and service area occupied by the firm on the lot, or more than 3,000 square feet, whichever is less.

D. Sales. Wholesale or retail sales to a buyer's custom order, of goods produced by an approved primary industrial use on the same lot.

E. Storage. The storage of goods sold by an approved primary commercial use on the same lot, or used in or produced by an approved primary industrial use on the same lot.

9.42.090 - Home Occupations

The following standards for home occupations are intended to encourage reasonable opportunities for employment within the home, while avoiding changes to the residential character of a dwelling that accommodates a home occupation, or the surrounding neighborhood, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Permit requirements. A home occupation in compliance with this Section shall require a City Business License. A home occupation that does not comply with each applicable requirement of this Section may be authorized by Minor Use Permit, provided that the review authority first makes the following findings, in addition to those required by Section 9.72.080 for Minor Use Permits:

1. The operating characteristics of the business will be such that it will have no significant adverse impact on the owners or occupants of neighboring properties; and

2. The specific location, building type, orientation, access characteristics or other features of the subject property warrant the approval of the proposed use although it would not typically conform to zoning limitations.

Before receiving a City business license for a home occupation, all applicants shall sign an affidavit attesting that they have read, understand, and will comply with the standards and requirements of this Section, and that they agree to pay for all City costs incurred in the enforcement of these provisions, including attorneys' fees, if they are subsequently found to be operating a business in violation of the Municipal Code or other City ordinance.

B. Limitations on use. The following are examples of business activities that may be approved as home occupations, and uses that are prohibited as home occupations.

1. Uses allowed as home occupations. The following and other uses determined by the Director to be similar may be approved by the Director in compliance with this Section.

a. Art and craft work (ceramics, painting, photography, sculpture, etc.);

b. Tailors, sewing;

c. Office-only uses, including an office for an architect, attorney, consultant, counselor, doctor, insurance agent, planner, tutor, writer, and electronic commerce; and

d. Personal trainers and licensed massage therapy and physical therapy.

2. Uses prohibited as home occupations. Businesses with operating characteristics that have significant adverse impacts on the owners or occupants of the neighboring residential properties shall be prohibited as home occupations. Examples of such operating characteristics are: dust, glare, heat, noise, noxious gasses, odor, smoke, excessive traffic, vibration, use of explosives or highly combustible materials, and use of hazardous or toxic materials. The types of businesses that will be prohibited as home occupations include: vehicle repair, animal hospitals and boarding facilities, storage yards, medical clinics and laboratories, sex-oriented businesses, wood cutting businesses, welding and machine shop operations, and other similar businesses, and all uses covered in Section 9.42.105 (Medical Marijuana).

C. Operating standards. Home occupations shall comply with all of the following operating standards.

1. Accessory use. The home occupation shall be clearly secondary to the full-time use of the property as a residence.

2. Visibility. The use shall not require any exterior modification to the structure not customarily found in a dwelling, nor shall the home occupation activity be visible from a public right-of-way, or from neighboring residential properties.

3. Signs. There shall be no signs, other than one name plate, not exceeding two square feet in area, and only if attached flush to a wall of the structure. Hand lettered or magnetic door vehicle signs identifying the business are allowed; however, no vehicle sign shall be used to direct clients to the home occupation from off the site, pursuant to Section 9.38, Signs.

4. Safety. Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises. The use shall not employ the storage of explosive, flammable, or hazardous materials beyond those normally associated with a residential use.

5. Off-site effects. No home occupation activity shall create dust, electrical interference, fumes, gas, glare, light, noise, odor, smoke, toxic/hazardous materials, vibration, or other hazards or nuisances as determined by the Director.

6. Outdoor display or storage. There shall be no window display or outdoor storage or display of equipment, materials, or supplies associated with the home occupation.

7. Employees. A home occupation shall have no on-site employees other than full-time residents of the dwelling, unless a Minor Use Permit is obtained that would allow on-site employees.

8. Client/customer visits. The home occupation shall be operated so as to not require more than 12 vehicle trips per day of clients, customers, and/or visitors to the residence. On-site presence of clients or customers shall be limited to one client or family at a time, and only between the hours of 9:00 a.m. and 8:00 p.m.

9. Deliveries. The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential usage, except for FedEx, UPS, or USPS-type home pick-ups and deliveries.

10. Utility service modifications. No electric or gas utility service to the dwelling shall be modified solely to accommodate a home occupation, other than as required for normal residential use.

BILL NO. 835-C.S.
ORDINANCE NO. ___-C.S.

AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 CHAPTER 158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.
Title 15, Chapter 158, Section, is hereby amended to read as follows:

CHAPTER 158: MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Section

General Provisions

158.001 Findings and purpose
158.002 Interpretation and applicability
158.003 Release of liability and hold harmless
158.004 Definitions
158.005 Severability

Personal Use - Requirements & Regulations

158.010 Cultivation
158.011 Processing
158.012 Distributing

Cooperatives & Collectives - Requirements & Regulations

158.020 Offices and Labs
158.021 Number of Facilities
158.022 Cultivation or processing
158.023 Distributing
~~158.024 Delivery Services~~
158.025 Inspection and Monitoring

Permits

158.030 Fees and taxes
158.031 Enforcement

Non-medical Marijuana Use – Requirements & Regulations

158.040 Personal Use Cultivation, Processing, and Distributing

GENERAL PROVISIONS

§ 158.001 FINDINGS AND PURPOSE.

(A) The City Council of the City of Eureka, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation, processing and distribution of medical cannabis in the City of Eureka has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(B) The City Council of the City of Eureka also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(C) The purpose and intent of this chapter is to regulate the cultivation, processing and distribution of medical cannabis in a manner that protects the public health, safety and welfare of the community and mitigates for the costs to the community of the oversight of these activities.

§ 158.002 INTERPRETATION AND APPLICABILITY.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and distribution of medical cannabis in the City of Eureka is controlled by the provisions of this chapter of the Eureka Municipal Code. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this chapter.

(B) Nothing in this ordinance is intended, nor shall it be construed, to burden any ~~defense to criminal prosecution otherwise afforded by California law.~~

(C) Nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter, regardless if the cultivation, processing or distribution existed or occurred prior to adoption of this chapter.

§ 158.003 RELEASE OF LIABILITY AND HOLD HARMLESS.

As a condition of approval of any conditional use permit approved for a medical cannabis cultivation, processing, and/or distribution facility, the owner or permittee of each medical cannabis collective, cooperative, cultivation, processing or distribution facility shall indemnify and hold harmless the City of Eureka and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the collective, cooperative, cultivation, processing or distribution facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation, processing or distribution of medical cannabis.

§ 158.004 DEFINITIONS.

DWELLING UNIT. A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

FACILITIES.

MEDICAL CANNABIS CULTIVATION FACILITY. A facility at which medical cannabis is grown and harvested for supply to a ***MEDICAL CANNABIS PROCESSING FACILITY*** and/or a ***MEDICAL CANNABIS DISTRIBUTION FACILITY.***

MEDICAL CANNABIS DISTRIBUTION FACILITY. Any facility or location where medical cannabis is distributed as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).

MEDICAL CANNABIS PROCESSING FACILITY. A facility at which medical cannabis is processed for supply to a ***MEDICAL CANNABIS DISTRIBUTION FACILITY***.

MEDICAL CANNABIS. (also known as *medical marijuana*) Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, processing or distribution of medical cannabis.

MEDICAL CANNABIS CULTIVATION AREA. The maximum dimensions used for the cultivation of medical cannabis. For the purpose of this chapter, the allowable cultivation area shall be the cumulative gross area used for cultivation of medical cannabis and shall be measured using either (a) the outward edge of the trays, pots or other containers used for cultivation or (b) the vegetative canopy, whichever is greater.

MEDICAL CANNABIS DISTRIBUTION. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.

MEDICAL CANNABIS PROCESSING. Medical cannabis processing includes, but is not limited to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling.

MEDICAL CANNABIS PROCESSING AREA. The maximum dimensions used for the processing of medical cannabis. For the purpose of this chapter, the allowable processing area shall be the cumulative gross floor area used for processing medical cannabis. Where the processing area occupies the majority of a room or rooms, the processing area shall be calculated as the total gross floor area of the room or rooms used for processing medical cannabis.

PRIMARY CAREGIVER. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

QUALIFIED PATIENT. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

RESIDENCE. A legal dwelling unit.

§ 158.005 SEVERABILITY

If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining parts of this ordinance.

PERSONAL USE - REQUIREMENTS & REGULATIONS

§ 158.010 CULTIVATION.

(A) A qualified patient shall be allowed to cultivate medical cannabis for their own personal use. The medical cannabis cultivation area shall not cumulatively exceed 50 square feet per residence. Cultivation of medical cannabis for personal use shall be in conformance with the following standards:

(1) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property;

(2) The qualified patient shall reside in the residence where the medical cannabis cultivation occurs;

(3) Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient. Cultivation of medical cannabis for personal use shall not displace required off-street parking;

(4) The medical cannabis cultivation area shall not exceed 50 square feet and shall not exceed 10 feet in height per residence, regardless if cultivated within the residence or in an accessory building unless an exception request is obtained per section 158.010(B);

(5) If required by Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8" Type X moisture resistant drywall;

(6) The medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) Medical cannabis cultivation lighting shall not cumulatively exceed 1200 watts unless an exception request is obtained per section 158.010(B);

(9) All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation of medical cannabis is prohibited;

(10) Any electrical wiring/rewiring shall first require an electrical permit from the Building Department;

(11) The use of gas products (e.g., CO_2, butane, etc.) for medical cannabis cultivation is prohibited unless an exception request is obtained per section 158.010(B); and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

(B) The medical cannabis cultivation area may exceed the 50 square foot maximum per residence, up to a total of 100 square feet of cultivation area, or the standards in section 158.010(A)(4)(8) or (11) above may be modified, upon approval of an Exception Request issued by the Director of Community Development. An Exception Request shall not allow more than a total of 100 square feet per residence regardless if cultivated within the residence or an accessory building.

(1) An application for an Exception Request shall include the following information:

(a) Written permission from the property owner;

(b) An application fee set by resolution of the City Council;

(c) Adequate information and documentation, such as a physician's recommendation, or verification of more than one qualified patient living in the residence, to demonstrate why the cultivation area should be allowed to exceed 50 square feet;

(d) The specified location and size of the requested cannabis cultivation area not to exceed 100 square feet and not to exceed 10 feet in height;

(e) A materials storage, handling and disposal plan, and

(f) If the Exception Request includes a request to modify the standards prescribed in section 158.010(A)(4)(8) or (11), documentation and information shall be provided identifying which standards are proposed to be modified and why such modification would not detrimentally affect the use of the dwelling unit for its intended residential occupancy.

(2) If required by Building or Fire Code, the applicant shall make specified improvements to the residence with a Building Permit, if one is needed. Such improvements may include, but are not limited to, electrical system upgrades.

(3) The Director of Community Development in consultation with the Chief Building Official and Fire Marshal shall review the submitted application and determine if the specific circumstances warrant granting an Exception Request.

(4) The Exception Request shall become void, and the cannabis cultivation area in excess of 50 square feet shall be removed one year following the date on which the Exception Request was issued unless the Exception Request is renewed prior to expiration.

(C) Medical cannabis cultivation is prohibited as a Home Occupation. Medical cannabis cultivation shall not be considered a residential accessory use. No distribution of medical cannabis cultivated for personal use shall be allowed.

§ 158.011 PROCESSING.

(A) A qualified patient shall be allowed to process medical cannabis cultivated within his/her private residence. The medical cannabis processing area shall not cumulatively exceed 20 square feet per residence. Processing of medical cannabis cultivated at the residence shall be in conformance with the following standards:

(1) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(2) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis processing shall remain at all times secondary to the residential use of the property;

(3) The medical cannabis processing shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(4) The use of gas products (e.g., CO_2, butane, etc.) for medical cannabis processing is prohibited; and

(5) The processing of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

(B) Medical cannabis processing is prohibited as a Home Occupation. Medical cannabis processing shall not be considered a residential accessory use. No sale or distributing of medical cannabis processed for personal use shall be allowed.

§ 158.012 DISTRIBUTING.

Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective unless specifically allowed under this chapter.

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.020 OFFICES AND LABS

(A) *Offices*. Offices for a cooperative or collective at which no cultivation, processing, storage, handling or distributing of cannabis, in any form, occurs shall be allowed in any zoning district in which offices are allowed. Such offices shall be subject to all regulations and standards applicable to offices as prescribed in the Zoning Regulations of the Eureka Municipal Code.

(B) *Medical Research Labs and Testing Facilities*. Medical cannabis research labs or medical cannabis testing facilities at which no cultivation, processing, or distribution of medical cannabis occurs shall be allowed in any zoning district in which laboratories or medical laboratories are permitted. Such facilities shall be subject to all regulations and standards applicable to labs or medical labs as prescribed in the Zoning Regulations of the Eureka Municipal Code.

§ 158.021 NUMBER OF FACILITIES.

(A) There shall be a maximum of four (4) cultivation/processing facilities permitted within city limits. Each of the cultivation/processing facilities shall be allowed one distribution facility located within city limits which may be located separate from or at the same site where the cultivation and processing occurs.

(B) A maximum of two distribution facilities not associated with any of the four permitted cultivation/processing facilities shall be allowed within city limits.

(C) Only those Collectives or Cooperatives invited by the City Council may submit an application for a conditional use permit. The City Council shall establish the process for the selection of the Collectives or Cooperatives to be invited to submit an application for a conditional use permit. The City Council may elect to invite fewer than the number described in section 158.021(A) and (B).

§ 158.022 CULTIVATION OR PROCESSING.

(A) A cultivation or processing facility which is (a) located on Broadway, 4th or 5th Streets and (b) is not on the same site as its associated medical cannabis distribution facility shall be inconspicuous and shall not draw attention to the use of the building as a medical cannabis cultivation or processing facility. A cultivation or processing facility located on the same site as its associated distribution facility shall comply with the requirements contained in section 158.023(B).

(B) Cultivation or processing facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a cultivation or processing facility for distribution.

(C) Research, testing, or other similar facilities that cultivate medical cannabis for distribution to patients or primary caregivers shall be considered, for the purpose of this chapter, a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

(D) In addition to the conditional use permit required under section 158.022(B), a cultivation or processing facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a cultivation or processing facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the medical cannabis cultivation or processing facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The equipment and methods employed in the cultivation or processing of the medical cannabis;

(4) How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients or primary caregivers;

(5) The hours and days of the week the medical cannabis cultivation or processing facility will be open;

(6) The number of persons, per shift, who will be working at the cultivation or processing facility;

(7) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(8) The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis;

(9) The chemicals stored or used at the premises;

(10) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(11) The name, location and operator of the distribution facility(ies) for which the medical cannabis is being cultivated or processed; and

(12) Any other information required by the Director of Community Development relevant to the ordinance.

(F) Cultivation or processing facilities shall be subject to the following specific regulations.

(1) The cultivation area shall occur only within a self-contained structure that is in compliance with California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(2) The cultivation or processing facility shall comply with stormwater, wastewater, and other applicable requirements of the City;

(3) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(4) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant;

(5) There shall be no off-site signage advertising the medical cannabis facility;

(6) Signs shall not be larger than 6 square feet;

(7) Signs shall not be internally illuminated;

(8) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;

(9) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the cultivation or processing facility;

(10) Cultivation or processing facilities shall maintain all necessary permits, and pay all appropriate taxes;

(11) Cultivation or processing facilities shall provide invoices to vendors to ensure vender's tax liability responsibility;

(12) A cultivation or processing facility located off-site from its associated medical cannabis distribution facility shall not distribute medical cannabis from the cultivation or processing site unless permitted in the conditional use permit;

(13) The cultivation or processing of medical cannabis shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(14) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit;

(15) The processing of medical cannabis into foodstuffs and other edibles by cooking, baking, infusing, grinding, etc., shall comply with the provisions of all relevant local and State laws for the commercial preparation of food;

(16) The packaging of edibles and other similar products shall be nondescript and shall not mimic, resemble or be representational of candy, cookies or other food products that might attract or entice children; and

(17) Medical cannabis cultivation or processing facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) The conditional use permit granted for a cultivation or processing facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a cultivation or processing facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a cultivation or processing facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified cultivation or processing facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.023 DISTRIBUTING.

(A) Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.

(B) A medical cannabis distribution facility located on Broadway, 4th or 5th Streets shall not have a storefront or the patient entrance facing Broadway, 4th or 5th Streets.

(C) Medical cannabis distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a medical cannabis distribution facility.

(D) In addition to the conditional use permit required under section 158.023(C), a distribution facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in of the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a distribution facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the distribution facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The hours and days of the week the distribution facility will be open;

(4) The number of persons, per shift, who will be working at the distribution facility;

(5) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(6) The chemicals stored or used at the premises;

(7) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(8) The name, location and operator of the cultivation or processing facility(ies)supplying the medical cannabis to the distribution facility;

(9) A detailed Operations Manual containing, at a minimum,

(a) The staff screening process including appropriate background checks;

(b) The process for tracking medical cannabis quantities and inventory controls;

(c) A description of the screening, registration and validation process for qualified patients;

(d) A description of qualified patient records acquisition and retention procedures; and

(e) The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources;

(10) A detailed Cannabis Safety Program, which includes at a minimum, the following,

(a) The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient;

(b) The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products effective January 1, 2011, (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants); and

(c) The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis effective January 1, 2011 (e.g., cannabinoids THC, CBD and CBN).

(11) Any other information required by the Director of Community Development that is relevant to the ordinance.

(F) Distribution facilities shall be subject to the following specific regulations:

(1) Distribution facilities associated with cultivation or processing facilities pursuant to §158.021 (A) shall only dispense cannabis cultivated and processed at the associated cultivation or processing facility. Any exceptions shall be confined to emergencies and start-up processes detailed in the conditional use permit for the facility.

(2) No distribution facility shall be located within 1000 feet of any existing park, playground, day care facility, school, or similar facility that primarily serves children under 18 years of age, either inside or outside the city limits;

(3) The distribution facility shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical cannabis;

(4) The distribution facility shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the distribution facility;

(5) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical cannabis on the premises or in the vicinity of the distribution facility is prohibited unless specifically authorized under the conditional use permit;

(6) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient and/or they are under the supervision of their parent or legal guardian;

(7) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid, verified physician's recommendation, or the patient's primary caregiver. The distribution facility shall verify that the physician's recommendation is current and valid;

(8) The distribution facility shall not distribute medical cannabis to a qualified patient or primary caregiver more than twice a day;

(9) The distribution facility shall only permit the distribution of live plants, starts and clones as allowed by the approved conditional use permit. Such distribution shall be limited to qualified patients or primary caregivers;

(10) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant;

(11) There shall be no off-site signage advertising the medical cannabis facility;

(12) Signs shall not be larger than 6 square feet;

(13) Signs shall not be internally illuminated;

(14) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;

(15) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(16) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(17) Distribution facilities shall maintain all necessary permits, and pay all appropriate taxes;

(18) Distribution facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(19) The distribution of medical cannabis shall not adversely affect the health or safety of the employees or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(20) Each and every package or unit of medical cannabis, or medical cannabis product, distributed shall have a label or labels that state the following:

(a) The name of the patient;

(b) The name and contact information of the distributor;

(c) An identification and tracking number for the specific package or unit of medical cannabis, or medical cannabis product;

(d) The species or strain of the medical cannabis;

(e) Identification of the strength and dosage of the medical cannabis;

(f) A statement that the medical cannabis or medical cannabis product has been tested for safety and quality assurance and that the testing results, and chain of custody information is available by contacting the distributor;

(21) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(22) Distribution facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) In addition to the findings specified for a conditional use permit, the Planning Commission shall consider the following when deciding to approve a conditional use permit for a distribution facility:

(1) If the proposed distribution facility is within 300 feet of a residential zoning district either inside or outside the city limits, the potential impacts of the distribution facility on the residents and infrastructure of that district; and

(2) If the proposed distribution facility is within 1000 feet of any other distribution facility, either inside or outside the city limits, the cumulative impacts of the proposed distribution facility on the residents, businesses and infrastructure in the vicinity of the proposed distribution facility.

(H) The conditional use permit granted for a distribution facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of

this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(I) The rights of an approved conditional use permit for a distribution facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a distribution facility shall not be transferred to another permittee or to another location.

(J) The conditional use permit shall remain in effect as long as the specified distribution facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.024 DELIVERY SERVICES

(A) A medical cannabis delivery or transportation service that is associated with a permitted distribution facility located within city limits and for which delivery originates from the distribution facility shall only be allowed when the delivery service is described and included in the conditional use permit for the distribution facility.

(B) Delivery or transportation services originating from outside city limits and delivering medical cannabis within city limits shall only be allowed upon the granting of a Mobile Business License.

(C) Delivery or transportation services originating from within city limits, but not from a permitted distribution facility are prohibited.

§ 158.025 INSPECTION AND MONITORING

(A) The Community Development Department shall inspect each medical cannabis facility on or before January 31st of each calendar year to assure compliance with the approved conditional use permit. The Community Development Department inspector shall be granted access to all parts of the facility. All records kept pursuant to the approved conditional use permit shall be open for visual inspection.

(B) The permittee shall submit to the City on or before January 31st of each calendar year an annual inspection fee set by resolution of the City Council.

(C) If the permittee fails to submit the inspection fee, refuses inspection, or if the inspection finds that the facility is not being operated in compliance with the approved conditional use permit, the conditional use permit shall be subject to revocation pursuant to the provisions of section 155.294.

PERMITS

§ 158.030 FEES AND TAXES

The costs to the City arising from the processing and oversight of Exception Requests under section 158.010, subdivision (B) and permits for Cooperatives and Collectives and Distribution Facilities under sections 158.022 and 158.023, and the costs of monitoring and

ensuring compliance with this Ordinance, will be offset through application fees and annual renewal fees, to be adopted by the City Council by Resolution and updated as necessary from time-to-time. In the administration of the permitting requirements under this Ordinance, the City Manager, or his designee, may require as a condition to granting and renewal of the permits any information reasonably necessary to implement the intent of this Ordinance, to ensure that the cannabis handled under the permit is grown, processed or distributed in a manner not in conflict with this Ordinance, and to ensure that any and all related sales taxes are being properly reported and paid.

§ 158.031 ENFORCEMENT

Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, as set out in Eureka Municipal Code section 10.99, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies.

This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

NON-MEDICAL USE – REQUIREMENTS & REGUATLIONS

§ 158.040 PERSONAL USE CULTIVATION, PROCESSING, AND DISTRIBUTING

The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Use Requirements and Regulations prescribed in section 158.010 (CULTIVATION), section 158.011 (PROCESSING), and section 158.012 (DISTRIBUTING) contained in this chapter.

ORDINANCE NO. 2010-08

AN ORDINANCE OF THE CITY OF SANTA CRUZ
AMENDING TITLE 24 OF THE SANTA CRUZ MUNICIPAL CODE
MODIFYING STANDARDS FOR MEDICAL MARIJUANA DISPENSARIES

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

Section 1. Title 24 of the Santa Cruz Municipal Code is hereby amended as follows:

IG Zone District

24.10.1510 USE PERMIT REQUIREMENT.

1. The following uses require an administrative use permit and are subject to other applicable requirements of the Municipal Code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

a. Agriculture (000);

b. Auto services and repairs, including trucks, heavy equipment and auto towing, subject to performance standards in Section 24.12.900 (350);

c. Boat repairs (340D);

d. Churches (500);

e. Communication and information services (550);

f. Community organizations, associations, clubs and meeting halls (570);

g. Eating and drinking establishments, subject to live entertainment and alcohol regulations of Chapter 24.12 (280);

h. Educational facilities (public/private) (510);

i. Fabricated metal products (150);

j. Food and beverage stores (except liquor and convenience stores) (240);

k. Forestry services (010);

l. Government and public agencies (530);

m. Leather tanning (110);

n. Off-site public/private parking facilities, five or more spaces (930);

o. Other manufacturing and processing industries (except bulk petroleum, scrap and waste materials) (155);

p. Parks (700);

~~q. Stone, clay, glass products (140);~~

r. Temporary structures;

s. Transportation facilities (560);

t. Utilities and resources (540);

u. Wireless telecommunications facilities, subject to the regulations in Part 15 of Chapter 24.12.

2. The following uses require a special use permit and are subject to other applicable requirements of the Municipal Code. All industrial classifications from 125 to 145 shall comply with all performance standards listed in Part 2 of the Environmental Resource Management provisions. (Numerical references at the end of these categories reflect the general use

classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

a. Building material/garden supply stores (220) with 40,000 square feet or more including indoor floor area and outdoor storage, display, or sales areas. For building materials/garden supply stores of which 50% or more of the square footage will occupy an existing building, this threshold will be 75,000 square feet including indoor floor area and outdoor storage, display, or sales areas so long as vacant, available space in existing buildings in the IG zone exceeds 400,000 square feet. When the vacant, available square footage is less than 400,000 square feet, the 40,000 square foot threshold will apply;

b. Chemicals and allied products, subject to performance standards (130);

c. Large family daycare;

d. Group quarters (850);

e. Multiple dwellings or condominiums subject to R-M district regulations (830, 840);

f. Nightclubs/music halls, subject to live entertainment and alcohol regulations of Chapter 24.12 (630);

g. Paper and allied products subject to performance standards (125);

h. Parks and recreation facilities, subject to alcohol regulations in Part 12 of Chapter 24.12 (720);

i. Primary metals and material subject to performance standards (145);

j. Rubber, plastic, miscellaneous materials and products subject to performance standards (135);

k. Medical marijuana provider association dispensaries, as defined in Section 24.22.539 and subject to the siting criteria and performance standards in Section 24.12.1300;

l. Single-room occupancy (SRO) housing (860) under the following conditions:

(1) The site is located within one-quarter mile, (1,320 feet), of a grocery store.

(2) The lot size is less than 6,000 square feet.

(3) The SRO is part of a mixed use project, sharing the site and/or building with a use that is allowed under Section 24.10.1505, Principal Permitted Uses, is in conformance with Section 24.10.1540.2, and complies with the following requirements:

(a) The SRO development and the mixed use business are under one ownership.

(b) The amount of building space occupied by the non-residential use is either at a minimum equal to the SRO or residential use or the non-residential use occupies the entire ground floor of the development.

(4) Ambient interior noise levels can be mitigated below 45 decibels.

(5) Air quality on and around the site, including odors resulting from adjacent land uses, is not considered a potential health hazard and/or objectionable to residential use.

(Ord. 2005-30 § 12, 2005: Ord. 2005-15 § 14, 2005: Ord. 2004-27 § 12, 2004: Ord. 2004-24 § 1 (part), 2004: Ord. 2002-02 § 1 (part), 2002: Ord. 2000-12 § 4, 2000: Ord. 96-39 § 23, 1996: Ord. 95-04 § 8, 1995: Ord. 93-21 § 10, 1993; Ord. 89-37 § 2, 1989; Ord. 88-26 § 14, 1988; Ord. 87-22 § 8, 1987: Ord. 85-05 § 1 (part), 1985).

24.10.1830 USE PERMIT REQUIREMENT.

1. The following uses are subject to approval administrative use permit and a design permit:
   a. Daycare and foster homes for children;
   b. Eating and drinking establishments;
   c. Foster family homes;
   d. Guest ranches;
   e. Off-street parking facilities accessory and incidental to an adjacent commercial use;
   f. Temporary structures;
   g. Veterinary hospitals and clinics;
   h. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
2. The following uses are subject to approval of a special use permit and a design permit:
   a. Agricultural processing plant;
   b. Group care homes;
   c. Helipads;
   d. Institutions for children or the aged;
   e. Kennels and riding stables;
   f. Off-street parking facilities serving commercial districts within three hundred (300) feet of the site;
   g. Outdoor theaters, golf driving ranges, and other similar open-air commercial recreation facilities;
   h. Public and private noncommercial recreation areas, buildings and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs;
   i. Public and quasi-public buildings and uses including administrative, recreational, educational, religious, cultural, public utility or public service uses; but not including corporation yards, storage or repair yards, and warehouses;
   j. Quarters, accommodation, or areas for transient labor, such as labor cabins or labor supply camps;

(Ord. 2000-12 § 5, 2000: Ord. 88-60 § 29, 1988; Ord. 88-26 § 15, 1988: Ord. 85-05 § 1 (part), 1985).

24.22.539 MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

A nonresidential occupancy that is limited to the cultivation, production, acquisition and dispensing of medical marijuana and further by the siting criteria, performance standards and conditions of approval imposed on each establishment by the zoning board and zoning administrator, pursuant to Sections 24.08.040 and 24.12.1300 of this code. In addition, this use shall not be permitted as an accessory use to any other principal, special, or conditional use nor may it be permitted as a home business within any district of the city.

(Ord. 2000-12 § 7, 2000).

24.12.1300 SPECIAL USE PERMIT REQUIREMENT FOR MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

1. Special Use Permit Required. Medical marijuana provider association dispensaries, as defined by Section 24.22.539, may be allowed in C-C (Community Commercial), C-T (Thoroughfare Commercial) and I-G (General Industrial) districts, provided that they meet the siting criteria and performance standards described below and are so authorized pursuant to the procedures described in Section 24.08.040 for a special use permit. Special use permits shall be limited to no more than two dispensaries operating within the City of Santa Cruz and shall include the following conditions and operating procedures, in addition to the other requirements set forth in Sections 24.10.700 through 24.10.750 (for C-C Districts), 24.10.900 through 24.10.950 (for C-T Districts), and 24.10.1500 through 24.10.1540 (for I.G. Districts).

2. Siting Criteria. Applicants for a special use permit for a medical marijuana provider association dispensary must meet the following siting criteria prior to city consideration of a special use permit application:

a. The proposed location shall lie within a Community Commercial (C-C), Thoroughfare Commercial (C-T), or General Industrial (I-G) District.

b. If the proposed location is located within fifty feet of any legal dwelling unit or other residential use, the applicant shall be required to demonstrate to the zoning board that the use would not create an intensity of use that is incompatible with the nearby residential use and that the association would employ security measures that would insure that the use would not adversely affect the security and safety of the residential uses.

c. The proposed location shall not be located within six hundred feet of any residential zone district, any other medical marijuana provider association dispensary establishment, any public or private educational establishment serving persons under the age of 18 years, a public park with a children's playground, an alcohol or other drug abuse recovery or treatment facility, or any community care residential facility providing mental health/social rehabilitation services. For the purpose of this subsection, the six-hundred-foot distance requirement shall be measured from the periphery of the property boundary of such establishments. With respect to a public park with children's playground, the six-hundred-foot distance shall be measured from the periphery of the playground area.

d. The planning commission or the city council on appeal, may grant an exception to the six-hundred-foot distance requirement between the medical marijuana provider association dispensary and the above-referenced uses, except in the case of proximity to public educational uses, only if findings are made that the general public benefit that could be served by the issuance of the special use permit would outweigh concerns regarding intensity of use, land use compatibility and public health and safety. The burden of proof is on the Applicant to demonstrate that the overall effect would be positive.

3. Performance Standards. Medical marijuana provider association dispensaries, once permitted, shall meet the following operating procedures and performance standards for the duration of the use:

a. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana as may be required of the Santa Cruz city council and police department, including security concerns, and/or the county health department or their designee.

b. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana as required by the city council's administrative guidelines for the operation of medical marijuana dispensaries and gardens adopted pursuant to Ordinance 2000-06. (See Chapter 6.90, Personal Medical Marijuana Use.)

c. Dispensaries may possess no more dried marijuana or plants per qualified member patient or caregiver than permitted in strict accordance with State Law. The area within the dispensary used for cultivation of marijuana shall be limited to no more than 3,000 square feet of ADA complaint floor area.

d. No product shall be smoked, ingested or otherwise consumed on the premises.

e. The hours of operation shall be limited to no more than 7:00 AM to 7:00 PM, Monday through Friday if located within fifty feet of a residential use, and shall be limited to no more than 7:00 AM to 7:00 PM Monday through Saturday if located at a distance greater than fifty feet from a residential use.

f. Parking shall be provided according to the standard for retail pharmacy use as set forth in Section 24.12.240(aa). In addition to that requirement, whenever feasible, a passenger drop-off and pick-up parking zone shall be provided on the premises or immediately adjacent to the site. In no case shall double-parking by clients, caretakers, visitors or delivery vehicles be permitted.

g. The association shall prohibit loitering by persons outside the establishment, either on the premises or within fifty feet of the premises.

h. The association shall provide litter removal services each day of operation on and in front of the premises and, if necessary, on public sidewalks within fifty feet of the premises.

i. The association shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

j. Exterior lighting of the parking area shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing surrounding residential or commercial areas.

k. Signage for the establishment shall be limited to one wall sign not to exceed twenty square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

l. The association shall provide the zoning administrator, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The association shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or the zoning administrator.

m. The association shall post a copy of the conditions of approval for the special use permit on the premises in a place where it may be readily viewed by any member of the general public.

n. The association shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the zoning board or zoning administrator at the time of issuance of the special use permit in order to insure that the association will be a good neighbor.

o. In addition to the required application materials, the association shall submit an operations manual to describe the operation of the facility in conformance with these performance standards and Chapter 6.90, Personal Medical Marijuana Use.

p. To offset power consumption, the association shall install solar panels to provide as much power as possible for the indoor cultivation of medical marijuana.

q. No association shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by members towards the associations actual expenses for the growth, cultivation, and provision of medical marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented and a report of such shall be submitted to the City in accordance with Section 6.90 of the Municipal Code.

4. Findings. In approving a special use permit, it shall be determined by the hearing body that all of the following apply:

a. The proposed use complies with all of the mandatory requirements of this section and other applicable sections of this code and applicable policies of the General Plan;

b. The proposed use will not adversely affect the health, safety or welfare of area residents or businesses, or uses, or will not result in an undue concentration in any one neighborhood or district and will not be located within proximity of an incompatible use, such as a children's school, day care facility or children's' play area;

c. The operational characteristics of the proposed use, such as hours of operation, noise, odor, amount and location of parking, signage, loitering and litter, will not have a negative impact upon the surrounding area;

d. The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area, particularly those used primarily by persons under the age of 18;

e. The proposed use is not located in what has been determined by the Santa Cruz police department to be a high-crime area, where a disproportionate number of police service calls occur, or where there is currently parking congestion; and

f. The proposed use, as a nonresidential occupancy, shall meet all the building code requirements for such occupancy and, if proposing to locate in a legal dwelling unit, shall comply with all local standards, requirements and provisions for converting dwelling units to nonresidential use.

5. Conditions. The planning commission, or city council on appeal, may deny any application which is inconsistent with the above-noted findings, or may impose any additional conditions on the applicant or proposed location reasonably related thereto, or to the health, safety or welfare of the community, in addition to the specific requirements set forth in Section 24.12.1300.

6. Violations and Abatement. The zoning administrator may issue a cease and desist order or "stop order" for all activities subject to this special use permit for any establishment deemed by the zoning administrator to be in violation of any condition of approval of the special use permit or to otherwise constitute a public nuisance. The stop order shall be in effect immediately, pursuant to the procedures of Section 24.04.221. Upon issuance of the stop order, the zoning administrator shall schedule a public hearing to consider the revocation of the special use permit pursuant to Section 24.04.225.

(Ord. 2000-12 § 6, 2000).

ORDINANCE NO. 2010-08

Section 2. This Ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 9th day of March, 2010, by the following vote:

AYES: Councilmembers Lane, Mathews, Beiers, Madrigal, Robinson; Mayor Rotkin.

NOES: None.

ABSENT: Vice Mayor Coonerty.

DISQUALIFIED: None.

APPROVED: ss/Mike Rotkin, Mayor

ATTEST: ss/Lorrie Brewer, City Clerk

PASSED FOR FINAL ADOPTION this ___ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010-08 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

_____
City Clerk

ORDINANCE NO. 759

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX REGULATING MEDICAL MARIJUANA DISPENSARIES, TOWN CODE CHAPTER 17.100

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1: TOWN CODE AMENDED

The following is added as a new Chapter 17.110 of the Town Code:

17.110.010 Purpose and Intent.

It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

Interpretation and Applicability.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800, *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

17.110.020 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.

(B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(C) "Town" means the Town of Fairfax.

(D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.

(F) "Medical cannabis dispensing collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

(G) "Medical cannabis patient collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

(H) "Dispensary" means any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5, *et seq*. A dispensary shall **not** include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, *et seq*., or a qualified patient's or caregiver's place of residence.

(I) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(J) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(K) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5, *et seq.*, and as it may be amended from time to time.

(L) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(M) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as it may be amended from time to time.

(N) "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, *et seq.*, and as it may be amended from time to time.

(O) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

17.110.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

17.110.040 Term of Permits and Renewals Required.

(A) A Use Permit issued under this chapter shall expire two years following the date of its issuance.

(B) A Use Permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in section 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

17.110.050 General Tax Liability.

As a prerequisite to obtaining a permit pursuant to the terms of Chapter 17.110, an operator of a dispensary shall also be required to apply for and obtain a Business

License as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law.

17.110.060 Imposition of Fees.

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

17.110.070 Limitations on Number of Dispensaries.

The Planning Commission may not grant or cause to be granted more than three (3) permits for medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

17.110.080 Limitation on Location of Dispensary.

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or

(3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) Criminal History. No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this paragraph.

(B) Minors.

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his/her parent or guardian.

(C) Operating Hours. Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4th of July: closed.

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and Town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with California Health & Safety Code Section 11362.7 ("Identification Card"); or

(b) A current, written physician's recommendation that is confirmed by telephone. The permittee shall maintain a written record of the telephone verification, including the name of the employee who made the telephone call and the name and contact information of the person who verified the physician's recommendation.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed, and at least annually verified with the qualifying patient's medical doctor or doctor of osteopathy unless the patient has provided an Identification Card. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the Town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in 17.110.80.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. All required records shall be subject to inspection by the Chief of Police, or his designee, during the time the dispensary is open for business.

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5, *et seq.*

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

(N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

(O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one Dispensary with the Town.

17.110.100 Criteria for Review.

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.

(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a Town-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(P) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant, has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the

meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

(Q) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

17.110.110 Investigation and Action on Application.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other Town departments as necessary to complete the review of the application.

(B) Following the provision of complete application materials and inter-departmental review, the Planning Department shall schedule the Use Permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission's decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

17.110.120 Appeal from Planning Commission Determination.

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code.

17.110.130 Effect of Denial.

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

17.110.140 Suspension and Revocation.

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear

to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. Mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

17.110.150 Transfer of Permits.

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

17.110.160 Violations.

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

17.110.170 Remedies Cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

17.110.180 Separate Offense for Each Day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

17.110.190 Hold Harmless.

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

17.110.200 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the Town.

17.110.210 Severability.

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

17.110.220 Judicial Review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

SECTION II. EFFECTIVE DATE

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

a. Bulletin Board, Fairfax Town Offices, Town Hall;
b. Bulletin Board, Fairfax Post Office; and
c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

SECTION III: VOTE

The foregoing Ordinance No. 759, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held on April 6, 2011, and was duly passed and adopted at a regular meeting held on May 6, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR LARRY BRAGMAN

ATTEST:

_____
Town Clerk, Judy Anderson

ORDINANCE NO. 759

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX REGULATING MEDICAL MARIJUANA DISPENSARIES, TOWN CODE CHAPTER 17.100

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1: TOWN CODE AMENDED

The following is added as a new Chapter 17.110 of the Town Code:

17.110.010 Purpose and Intent.

It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

Interpretation and Applicability.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800, *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

17.110.020 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.

(B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(C) "Town" means the Town of Fairfax.

(D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.

(F) "Medical cannabis dispensing collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

(G) "Medical cannabis patient collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

(H) "Dispensary" means any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5, *et seq*. A dispensary shall **not** include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, *et seq*., or a qualified patient's or caregiver's place of residence.

(I) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(J) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(K) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5, *et seq.*, and as it may be amended from time to time.

(L) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(M) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as it may be amended from time to time.

(N) "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, *et seq.*, and as it may be amended from time to time.

(O) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

17.110.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

17.110.040 Term of Permits and Renewals Required.

(A) A Use Permit issued under this chapter shall expire two years following the date of its issuance.

(B) A Use Permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in section 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration ~~date shall not stay the expiration date of the permit.~~

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

17.110.050 General Tax Liability.

As a prerequisite to obtaining a permit pursuant to the terms of Chapter 17.110, an operator of a dispensary shall also be required to apply for and obtain a Business

License as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law.

17.110.060 Imposition of Fees.

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

17.110.070 Limitations on Number of Dispensaries.

The Planning Commission may not grant or cause to be granted more than three (3) permits for medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

17.110.080 Limitation on Location of Dispensary.

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or

(3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) Criminal History. No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this paragraph.

(B) Minors.

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his/her parent or guardian.

(C) Operating Hours. Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4th of July: closed.

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and Town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with California Health & Safety Code Section 11362.7 ("Identification Card"); or

(b) ~~Prior to obtaining a Identification Card, patients may be given a 30-day trial membership. A~~ current, written physician's recommendation that is confirmed by telephone, ~~shall be required for a 30-day trial membership. During this trial membership, patients should carry permittee-issued temporary Identification Cards issued by the dispensary.~~ The permittee shall maintain a written record of the telephone verification, including the name of the employee who made the telephone call and the name and contact information of the person who verified the physician's recommendation, ~~for the 30-day period. At the conclusion of the 30-day trial period, the permittee shall verify that the patient has obtained a Identification Card.~~

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed, and at least annually verified with the qualifying patient's medical doctor or doctor of osteopathy unless the patient has provided ~~a Valid Patient ID~~an Identification Card. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently

working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the Town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in 17.110.80.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. All required records shall be subject to inspection by the Chief of Police, or his designee, during the time the dispensary is open for business.

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5, *et seq.*

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

(N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

(O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one Dispensary with the Town.

17.110.100 Criteria for Review.

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.

(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a Town-issued permit, or any provision of any other local or state law, regulation, or order, or any

condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(P) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant, has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

(Q) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

17.110.110 Investigation and Action on Application.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other Town departments as necessary to complete the review of the application.

(B) Following the provision of complete application materials and inter-departmental review, the Planning Department shall schedule the Use Permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission's decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

17.110.120 Appeal from Planning Commission Determination.

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code.

17.110.130 Effect of Denial.

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

17.110.140 Suspension and Revocation.

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. Mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

17.110.150 Transfer of Permits.

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

17.110.160 Violations.

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

17.110.170 Remedies Cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

17.110.180 Separate Offense for Each Day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

17.110.190 Hold Harmless.

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

17.110.200 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the Town.

17.110.210 Severability.

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

17.110.220 Judicial Review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

SECTION II. EFFECTIVE DATE

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

a. Bulletin Board, Fairfax Town Offices, Town Hall;
b. Bulletin Board, Fairfax Post Office; and
c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

SECTION III: VOTE

The foregoing Ordinance No. 759, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held on April 6, 2011, and was duly passed and adopted at a regular meeting held on May 6, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR BRAGMAN

ATTEST:

_____
Town Clerk, Judy Anderson

ORDINANCE NO. ORD-150-2011

AN ORDINANCE ADDING SECTION 20 OF CHAPTER 5, POLICE REGULATIONS, RELATING TO MEDICAL MARIJUANA DISPENSARIES, OF THE MUNICIPAL CODE OF THE CITY OF CLEARLAKE

The City Council of the City of Clearlake, State of California does hereby ordain as follows:

SECTION 1. DECLARATION OF INTENT

The purpose of this Ordinance is to add Section 20, Chapter 5, to the Municipal Code relating to Medical Marijuana Dispensaries.

Voters of the State of California approved proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled "The Compassionate Use Act of 1996." The intent of Proposition 215 was to enable persons residing in the State of California who are in need of marijuana for medical purposes to be able to obtain and use it under limited, specified circumstances, without being subject to criminal prosecution under State of California penal statutes.

The State enacted SB 420 in 2004, being sections 11362.7 et seq., of the Health and Safety Code, identified as the Medical Marijuana Program (Program), to clarify the scope of the Compassionate Use Act of 1996. Except for the limited exemption from criminal prosecution under State criminal laws, the possession and sale of marijuana remains illegal under both state and federal law.

To protect the public health, safety, and welfare, it is the desire of the City Council to modify the City's Municipal Code consistent with the Program, to regulate and restrict the location and operation of Medical Marijuana Dispensaries and promote and protect the health, safety, morals and general welfare of residents and businesses within the City.

SECTION 2. Chapter 5-20 of the Clearlake Municipal Code is hereby added as follows:

CHAPTER 5-20 MEDICAL MARIJUANA DISPENSARY REGULATIONS

Section 5-20.1 Definitions.

For the purpose of this Chapter, the following words and phrases shall mean:

"Applicant" means a person who is required to file an application for a license under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a Medical Marijuana Dispensary, as defined herein.

"City" means the City of Clearlake.

"Compassionate Use Act" shall mean California Health and Safety Code Section 11362.5, as may be amended, also known as the Compassionate Use Act of 1996.

"Drug paraphernalia" shall have the same definition as found in the Health and Safety Code Section 11364.5, and as may be amended.

"Identification card" shall have the same definition as found in the Medical Marijuana Program (Health & Safety Code section 11362.7(g).) and as may be amended.

"Licensee" means the person to whom a Dispensary license is issued under this Chapter, and who is identified in California Health and Safety Code Section 11362.7, subdivision (c) or (d), (e), or (f).

"Medical marijuana dispensary" or **"dispensary"** means any storefront location that provides consumer related products and services primarily found within the City's C-2 and C-3 zone districts which distributes, transmits, gives, or otherwise provides medical marijuana to qualified patients or primary caregivers in accordance with California Health and Safety Code section 11362.5 through section 11362.83, inclusive, commonly referred to as the Compassionate Use Act of 1996 and the Medical Marijuana Program.

The following buildings, premises and uses are not "Dispensaries" pursuant to this Chapter, as long as the location of such uses are otherwise regulated by this Code or applicable law: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; (5) a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code. All of the foregoing buildings, premises and uses must strictly comply with applicable law including, but not limited to, Compassionate Use Act.

A "medical marijuana collective" or "cooperative" means an organization that facilitates the collaborative efforts of medical marijuana patients and caregiver members for use and cultivation of medical marijuana as authorized by law – including the allocation of costs and revenues. A medical marijuana patient growing "collective" or "cooperative" that does not operate as a storefront location or mobile retail outlet that provides consumer related products and services primarily found within the City's C-2 and C-3 zone districts is exempt from the provisions of this ordinance.

"Medical Marijuana Program" shall mean Health and Safety Code Section 11362.7 et. seq.

"Person with an identification card" shall have the same definition as set forth in the Medical Marijuana Program (Health & Safety Code section 11362.7(c).) and as may be amended.

Primary caregiver" (caregiver) shall have the same definition as set forth in the Compassionate Use Act and Medical Marijuana Program.

"Qualified patient" (patient) shall have the same definition as set forth in the Compassionate Use Act and Medical Marijuana Program.

"Youth-Oriented Facility" shall mean a public or private school (K-12) , licensed daycare facilities, public parks, and any establishments that advertise in a manner that identifies the establishment as catering to or providing services primarily intended for minors.

Section 5-20.2 Dispensary License Required to Operate.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a dispensary unless the person first obtains and continues to maintain a valid dispensary license from the City as required by this Chapter.

Section 5-20.3 Limitations on Number and Size of Dispensaries.

A. The City may not grant more than three (3) licenses for Medical Marijuana Dispensaries at any given time. When Clearlake's population reaches 20,000, then the number of licenses granted at any given time shall be increased to four (4).

B. The retail area of a Medical Marijuana Dispensary shall not exceed 1,200 square feet.

Section 5-20.4 Limitations on Location of Dispensary.

A. The three dispensaries specifically mentioned in Section 2.J. of the Moratorium ordinance No. 2009-145 may be located within the Commercial C2 or C2DD zoning districts. Any other future dispensary may be located within the Commercial C4 zoning district by right or in the C-2 zoning district by use permit.

B. A dispensary must be clearly visible from public rights of way and located on a premises that provides unobstructed views of the dispensary entrance.

C. A dispensary shall not be located within 600 feet of a Youth-Oriented Facility. This setback shall be measured in a straight line from the boundary line of the property on which the dispensary is located nearest to the boundary of the property on which the building or structure, or portion of the building or structure, in which the above listed use occurs or is located. The City Council may waive all or part of this requirement if it determines that the proximity does not constitute a risk to public health or safety as it relates to anything other than a K-12 public or private school.

Section 5-20.5 Initial Filing Period.

In order to allow the consideration of competing applications for a dispensary, a ninety (90) day filing period shall commence following the adoption of this Ordinance for the three dispensaries existing as of November 5, 2009. Upon the close of this initial filing period, if multiple applications have been received and deemed complete, they shall be processed concurrently as set forth in this Chapter. If less than three applications are received during the initial filing

period, any applications that are subsequently submitted shall be processed and evaluated individually, in the order in which they are received and deemed complete. If the application of a dispensary existing as of November 5, 2009 cannot be approved under the terms of this Ordinance of if they have not submitted an application within ninety (90) days of the filing period noted above, then that business will have to cease operation within 30 days after so being notified by the City.

Section 5-20.6 Application Preparation and Filing.

A. Any person wishing to operate a dispensary in the City shall complete and file an application. An application is complete if it includes all fees, information and materials required by this Chapter. All license applications shall be filed with the City Administrator, using forms provided by the City. It is the responsibility of the applicant to provide information required for approval of the application. The application shall be signed under penalty of perjury. Existing dispensaries wishing to remain in business under the terms of this Ordinance must file an application within ninety (90) days after the adoption of the Ordinance.

B. An application may only be filed by the owner of the subject property, the lessee of the property where the lease authorizes the lessee to use the premises for a dispensary, or a person with the written authorization of the property owner.

C. The application shall be deemed filed on the date when the City receives the last submission of information or materials required for it to be deemed complete in accordance with requirements specified herein.

D. The City shall notify an applicant in writing, via Certified U.S. Mail, postage pre-paid, sent to the address provided by the applicant on the application, if an application is incomplete. The applicant shall be granted an extension of time to submit all materials required to complete the application within ten (10) days of the date of the notification. If the application remains incomplete in excess of said ten (10) day period, the application shall be deemed withdrawn and new application shall be required. The time period for granting or denying a license shall be stayed during the extension of time.

E. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement to obtain a dispensary license pursuant to this Chapter.

F. Any dispensary license application shall include the following information:

(1) The applicant's full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), current address, and telephone number.

(2) The address where notice of action on the application is to be mailed.

(3) The applicant's previous addresses for the five years immediately prior to his or her present address.

(4) Written proof that the applicant is over the age of eighteen (18) years of age.

(5) The applicant's height, weight, color of eyes and hair.

(6) Two (2) passport-quality photographs of the applicant.

(7) The applicant's businesses, occupations, or employment for the ten years immediately preceding the date of the application.

(8) The applicant's business license and permit history, including whether the applicant has had a permit, approval and/or business license revoked or suspended by the State, or any city or county, the reason therefor, and the business or activity or occupation engaged in by the applicant subsequent to such action of suspension or revocation, and a copy of the applicant's seller's permit (retail sales tax permit) issued by the State Board of Equalization.

(9) All the name or names and addresses of the person or persons who will act as a manager or supervisor of the dispensary.

(10) The printed results of a background investigation from the California Department of Justice resulting from a fingerprint card submission approved by the City of Clearlake, verifying whether the person or person having the management or supervision of the applicant's business has been convicted of a crime(s), or entered a plea of guilty or nolo contendere to a crime, the nature of such offense(s), and the sentence(s) imposed.

(11) Names of all employees, volunteers, and other persons who will work at the dispensary. The applicant also agrees to submit any names for a fingerprint card of individuals who become new owners, managers, supervisors, employees, or volunteers during the year after a license is issued.

(12) A written plan describing how the dispensary will operate consistent with State law and the provisions of this Chapter, including:

(a) Controls ensuring medical marijuana is not purchased or sold by the dispensary, its owners, managers, supervisors, employees or volunteers, in a manner that would generate a profit.

(b) Controls ensuring medical marijuana will be dispensed only to qualified patients or primary caregivers.

(c) Controls ensuring access to dispensary premises is regularly monitored and restricted to qualified patients and primary caregivers.

(d) Independent verification methods for ensuring that a qualified patient's physician is recommending medical marijuana only for medical use.

(13) A written statement listing the physical size of the dispensary, the number of managers, supervisors, employees and volunteers who will work there, and describing the nature of the proposed use of the dispensary.

(14) A written statement indicating how each of the criteria for review has been satisfied, which shall include documented proof.

(15) A security plan describing security arrangements that will ensure the safety of persons visiting and working at the dispensary, and protect the premises from theft. The plan shall provide for: installation of security cameras; installation of a burglar alarm system monitored by a state-licensed monitoring service; and a periodic (no less than yearly) written security assessment of the site conducted by a qualified professional.

(16) A sketch or diagram depicting the interior configuration of the premises, including the total floor area occupied by the dispensary. The sketch or diagram must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(17) A sketch or diagram showing exterior configuration of the premises, including the outline of all structures, parking and landscape areas, and property boundaries. The sketch or diagram must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six (6) inches.

(18) A straight-line drawing accurately depicting the building (or portion thereof) and premises to be occupied by the dispensary, and all properties within 600 feet of the boundaries of the property on which the dispensary license is requested. The drawing shall indicate the property lines of any Youth-Oriented Facility and all residential zones or uses within 100 feet of the primary entrance of the dispensary.

(19) A lighting plan showing existing and proposed exterior and interior lighting placement and levels to provide adequate security lighting and which comply with all City standards regarding lighting design and installation.

(20) Written authorization for the City, its agents and employees to seek verification of the information contained in the application and/or required pursuant to this Chapter.

(21) A written statement by the applicant certifying under penalty of perjury that he or she has the consent of the property owner and landlord to operate a dispensary at the location, or providing proof that the applicant owns the property.

(22) A written statement by the applicant certifying under penalty of perjury that all the information contained in the application is true and correct.

G. In addition to providing all the materials required for new applications, applications for annual renewal shall also be accompanied by the following information:

(1) The licensee shall provide a detailed description of any changes proposed or that have occurred in dispensary operations, the reasons for such changes, including compliance with applicable local and State law.

(2) The licensee shall identify any problems encountered during operations and how they have been addressed.

(3) The licensee shall describe how the dispensary operations have complied with the requirements of this Chapter and with applicable local and State law.

Section 5-20.7 Investigation and Action on Application.

A. After an applicant files a complete dispensary license application and pays all required fees, the Police Chief shall conduct a background check of the applicant and all the dispensary's identified managers, supervisors, employees and volunteers, and take action as follows:

(1) The Police Chief shall refer the application to any other City departments as necessary to complete his or her review of the application.

(2) The application, or competing applications, if applicable, shall also be subject to a preliminary review conducted by the Police Chief and the City Administrator. The Police Chief and City Administrator shall make such recommendations to the City Council as they deem appropriate based on their review.

B. Within 60 days after completion of the Police Chief's investigation, the application shall be scheduled for a public hearing before the City Council where the Council may either grant or deny the application in accordance with the provisions of this Chapter.

Section 5-20.8 Public Hearing.

The City Council shall consider the application for the issuance or renewal of a dispensary license at a duly noticed public hearing, as set forth in the Municipal Code.

Section 5-20.9 Criteria for Review.

The City Council shall consider the following criteria in determining whether to grant or deny an application to issue or renew a dispensary license:

A. The dispensary will operate or, if a renewal application, currently operates, in conformity with the Compassionate Use Act, the Medical Marijuana Program, and the provisions of this Chapter and the City Code.

B. The dispensary location does not have significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the police department).

C. There have not been excessive numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location (or to a dispensary located in another jurisdiction with which the applicant is affiliated in any way).

D. The applicant, and all managers supervisors, employees and volunteers are at least eighteen (18) years of age.

E. All required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it will comply with the operating requirements and standards specified in this Chapter.

F. That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

G. The physical size of the dispensary conforms with the requirements of this Chapter; and, the dispensary will be, or if a renewal application, currently is, one of three or fewer total licensed dispensaries operating within the City.

H. The location is not prohibited by the provisions of this Chapter or any applicable local or State law, statute, rule or regulation.

I. The site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements of this Chapter. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

J. No dispensary applicant, owner, licensee, agent, or manager, supervisors, employee or volunteer who will work, or, if renewal, currently works at the dispensary, has violated any provision of this Chapter such that grounds exist to suspend or revoke a dispensary license.

K. The dispensary has incorporated all reasonable measures into the operating plan and consistently taken steps to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, uncontrolled crowds in or outside the dispensary, traffic control problems, or creation of a public or private nuisance, or interference of the operation of another business.

L. That the dispensary has not caused or been the site of nuisance activities including disturbances of the peace, illegal drug activity, ingesting medical marijuana in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive

loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

M. No provision of the Municipal Code or condition imposed by a City issued license, or any provision of any other applicable local or State, regulation, order, or any condition imposed by permit issues in compliance with those laws has been violated.

N. The applicant has not violated any applicable local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of medical marijuana.

O. The applicant has neither knowingly made a false statement of material fact, nor knowingly omitted a material fact from the dispensary license application.

P. No person who has been convicted of a felony within the past ten (10) years may be actively engaged in the operation or financing of any dispensary as an owner, licensee, agent, investor, manager, supervisor, employee or volunteer.

Q. The applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

Section 5-20.10 Findings; Decision.

Following a public hearing, the City Council may approve or disapprove an application to issue or renew a dispensary license. In issuing or renewing a dispensary license, the City Council may impose conditions, restrictions or require revisions on the applicant's operating plan to ensure compliance with the provisions, purpose and intent of this Chapter. The City Council shall record the decision and the findings upon which the decision is based. The City Council shall cause a written notice of its decision to issue or deny a license to be mailed to the applicant by certified U.S. mail.

Section 5-20.11 Effect of Denial.

If the City Council denies an application or revokes a dispensary license as provided in this Chapter, no new application for a license shall be accepted from the applicant whose license has been revoked or application denied and no such license shall be issued to such person or to any company, entity or corporation in which s/he shall have any interest for a period of five years after the action denying or revoking the license.

Section 5-20.12 Appeal.

The decision of the City Council to approve, deny, or revoke a license as provided for in this Chapter shall be final and conclusive and there shall be no right of appeal.

Section 5-20.13 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

A. **Criminal History.**

No applicant, his or her agent or employees, nor any person exercising managerial authority over a dispensary on behalf of the applicant shall have been convicted of a felony within the past ten (10) years,

B. **Minors.**

(1) It shall be unlawful for any licensee, supervisor, or manager of any dispensary, to employ any person who is not at least eighteen (18) years of age.

(2) Persons under the age of eighteen (18) shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver, or if they are a minor child in the presence of their parent or guardian.

C. **Operating Hours.**

The maximum dispensary days and hours of operations shall be as follows:

Monday through Saturday: 9 am - 7 pm
Sunday: 12 pm – 5 pm

D. **Dispensary Size and Access:**

(1) The retail sales area of a dispensary shall not exceed 1,200 square feet. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this Chapter and reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on City services.

(2) The entrance into the dispensary building shall be locked at all times with entry strictly controlled; e.g., a "buzz-in" electronic/mechanical entry system. A viewer shall be installed in the door that allows a wide-angle of view of the exterior entrance.

(3) Only dispensary staff, primary caregivers, qualified patients, persons with State issued identification cards, persons inspecting the facilities on behalf of the City, persons engaged in maintenance and repair activities in the building, and persons providing professional services such as accounting and legal services, shall be permitted at a dispensary.

(4) Potential patients or caregivers shall not visit a dispensary without first obtaining a valid written recommendation from their physician recommending medical use of marijuana.

(5) Only primary caregivers and qualified patients shall be permitted in the designated dispensing area; dispensary personnel must be present at such times. All other authorized visitors shall remain in the designated waiting area in the front entrance/lobby.

E. **Dispensary Supply.**

A dispensary may possess no more than (5) pounds of dried marijuana at any one time in addition to live plants for sale for medicinal purposes that are in a vegetative (not mature) state.

F. **Dispensing Operations.**

(1) A dispensary shall only dispense to qualified patients or caregivers with a valid physician's recommendation in compliance with the Compassionate Use Act.

(2) Prior to dispensing medical marijuana, the dispensary shall obtain verbal and signed, written verification from the recommending physician that the individual requesting medical marijuana is a qualified patient.

(3) No dispensary may provide medical marijuana to any persons other than qualified patients or persons with identification cards and designated primary caregivers who are members of the marijuana collective or cooperative.

(4) A dispensary shall only be for the dispensing of medical marijuana and not to evaluate patients and provide a recommendation for medical marijuana.

(5) Medical marijuana collectives shall maintain records reflecting:

a. The full name, address, and telephone number(s) of the owner or lessee of the property.

b. The full name, address, and telephone number(s) of all qualified patients and persons with identification cards and/or primary caregivers who participate in cultivation of marijuana.

c. The full name, address, and telephone number(s) of all qualified patients and persons with identification cards to whom the dispensary provides medical marijuana.

d. The designation, by qualified patient(s) and person(s) with identification cards, of any and all primary caregivers who participate in the collective cultivation of marijuana.

(6) Patient records shall be maintained on-site, either in paper or electronic form, and secured and verified by the City as needed (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law)

and at least every 12 months by the qualifying patient's physician or Doctor of Osteopathy.

(7) The licensee shall annually provide information on prior years' operations verifying compliance with this Chapter to the City Administrator. Licensee shall modify dispensary operations as required by the City Administrator to ensure compliance with all requirements of this Chapter.

G. **Retail Sales and Cultivation**

(1) Subject to this Section, no medical marijuana shall be cultivated on the premises of the dispensary, except in compliance with the Compassionate Use Act and Medical Marijuana Program. No cultivation shall take place outdoors on the premises; all cultivation must occur indoors.

(2) A dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to the Compassionate Use Act and Medical Marijuana Program.

(3) The sale of ancillary products, including books, herbal supplements, and devices facilitating the consumption of medical marijuana shall occur in a manner consistent with this Ordinance, and in compliance with all state requirements.

H. **Operation Requirements.**

(1) Floor plan. The main entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks and site driveways.

(2) Storage. A dispensary shall have a locked safe on the premises, identified as a part of the security plan, for after-hours storage of medical marijuana. A dispensary shall also have a secure area for the storage of immature plants and any other products specifically allowed under the license, which contain medical marijuana.

(3) Minimum Staffing. The dispensary shall be staffed during hours of operation by at least two persons, one of whom must be a manager.

(4) Odors. A dispensary shall have an air treatment system that ensures off-site odors shall not result from its operations.

(5) Security Plan. A dispensary shall provide adequate security on the premises, as approved by the Police Chief and pursuant to this Chapter, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(6) Security cameras. Security cameras required by this Chapter shall be installed to monitor, at the minimum, the main entrance and exterior of the premises to discourage loitering, crime, and illegal or nuisance activities.

(7) Security video retention. Security video shall be retained for 30 days. Images shall be made available to the Police Chief upon a reasonable written request for the specific time period.

(8) Alarm system. A State-licensed professionally monitored robbery and burglary alarm system shall be installed and maintained in good working condition.

(9) Emergency contact. A dispensary shall provide the Police Chief with the name, phone number and facsimile number or email address of an individual working on the dispensary premises, to whom notice of problems associated with the operation of the dispensary can be provided. The dispensary shall keep this information current at all times. The dispensary shall make every good faith effort to encourage neighborhood residents to call this designated person to resolve operating problems, if any, before any calls or complaints are made to the City.

I. **Signage and Notices.**

(1) Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Clearlake Zoning Ordinance.

(2) Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements with the applicable zoning district.

J. **Employee Records.**

Each owner or operator of a dispensary shall maintain a current register of the names of all employees currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this Chapter.

K. **Financial Review.**

Each dispensary shall allow the City to have access to the dispensary's state income tax returns previously filed with the state for the purpose of verifying that the dispensary is

operating on a not-for-profit basis in accordance with the Attorney General's Guidelines. Tax returns shall be produced within 14 days after receipt of the City's written request.

L. **Staff Training.**

(1) Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.

(2) The dispensary shall take those steps necessary to assure that the persons assigned to provide security are properly trained or employed by a private security service in good standing with all supervisory or regulatory bodies exercising jurisdiction over such services.

M. **Site Management.**

(1) The operator of the establishment shall take all reasonable steps to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the patrons of the subject dispensary.

a. "Reasonable steps" shall include calling the police within 30 minutes of observation of the activity, requesting those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.

b. "Nuisance" includes but is not limited to disturbances of peace, open public consumption of medical marijuana or alcohol, excessive pedestrian or vehicular traffic, including the formation of any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

(2) The operator shall provide patients with a list of the rules and regulations governing medical marijuana use and consumption within the city and recommendations on sensible medical marijuana etiquette.

N. **Compliance with Other Requirements.**

The operator shall comply with all provisions of all applicable local or State laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

O. **Confidentiality.**

To the extent protected by law, the information provided for purposes of this section shall remain confidential. It shall be maintained by the City Administrator or Police Chief, as appropriate, and not disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction.

P. **Display of License.**

Every dispensary shall display at all times during business hours the license issued pursuant to the provisions of this Chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

Q. **Payment of Fees.**

A licensee shall pay all annual license fees at the time that an original application is filed or an annual renewal application is submitted.

Section 5-20.14 Annual Term of License and Renewal Required.

A. Licenses issued under this Chapter shall expire one (1) year following the date of their issuance.

B. Licenses may be renewed by the City Administrator for additional one (1) year periods upon application by the licensee, unless the license is suspended or revoked in accordance with the provisions of this Chapter.

C. The dispensary shall be notified by the City on a timely basis that an annual renewal application is due to be filed. Complete applications for renewal shall be made at least forty-five (45) days before the annual expiration date of the license and shall be accompanied by the nonrefundable application fee referenced herein. Applications for renewal shall be governed by the same criteria applicable to initial applications for licenses.

D. Applications for renewal made less than forty-five (45) days before the annual expiration date shall not stay the annual expiration date of the license, and in addition to satisfying all other applicable criteria for license renewal, the applicant shall be required to demonstrate good cause for failing to have timely filed the application for license renewal. The City Administrator shall have the sole discretion to determine whether such good cause is demonstrated.

E. Licenses may be revoked or suspended by the City Council on the grounds and terms provided in this Chapter.

F. In the event that the City Administrator and Police Chief are not able to act upon a license renewal application prior to the date said license expires, and said inability is due to no fault of the City, said license shall expire as of its expiration date and the dispensary shall no longer operate after said expiration date. In such circumstances, should the licensee of the expired license desire to reestablish the right to operate a dispensary, the licensee

must do so by applying for a new dispensary license complying with all requirements of this Chapter applicable to an original application for a dispensary license. Should the City Council approve the license application, said decision shall be deemed effective on the date of the City Council's decision.

G. The establishment of a Youth-Oriented Facility within 600 feet of a dispensary following the initial issuance of the license shall not be grounds for subsequently revoking the license.

Section 5-20.15 Suspension and Revocation.

A. Any license issued under the terms of this Chapter may be suspended or revoked if the City Council finds that the Licensee has violated any of the provisions of this Chapter, or the dispensary is otherwise being operated in a manner that violates any of the provisions this Chapter.

B. Except as otherwise provided in this Chapter, no dispensary license shall be revoked or suspended by virtue of this section absent notice and a hearing. The City shall provide written notice to the Licensee that the City Council will hold a hearing, at a scheduled meeting, regarding the suspension or revocation of his/her dispensary license. The City shall provide such notice no less than fifteen (15) days before the date of said hearing. The notice shall contain a brief statement of the grounds for revoking or suspending the Licensee's dispensary license. Notice may be given either by personal delivery to the Licensee (in which case, service shall have deemed to have been effected upon delivery of the notice), or by certified U.S. mail in a sealed envelope, postage prepaid, return receipt requested, addressed to Licensee at the address appearing on his/her dispensary license application (in which case, service shall be deemed to have been effected on the date the receipt indicates delivery was accomplished).

C. If the City Council finds that sufficient grounds exist for the revocation or suspension of a dispensary license, then said determination shall be announced at the hearing, and written notice of said determination sent to the Licensee by personal delivery or certified U.S. mail in a sealed envelope, postage prepaid, return receipt requested, and addressed to the Licensee at the address appearing on his/her dispensary license application.

D. The decision of the City Council shall be final and conclusive and there shall be no right of appeal.

E. Procedures for the above are not exclusive and the City reserves the right to enforce all applicable laws for any licensee's violation of any law.

Section 5-20.16 Transfer of Licenses.

A. A licensee shall not operate a dispensary under the authority of a dispensary license at any place other than the address of the dispensary stated in the application for the license.

B. A licensee shall not transfer ownership or control of a dispensary or transfer a dispensary license to another person unless and until the transferee obtains an amendment to the license from the City Council stating that the transferee is now the licensee. Such an amendment may be obtained only if the transferee files an application with the City Administrator in accordance with all provisions of this Chapter (as though the transferee were applying for an original dispensary license) accompanied by a transfer fee in an amount set by resolution of the City Council (or if not set, shall be the same amount as the application fee), and the City Council determines (after hearing) in accordance this Chapter that the transferee would be entitled to the issuance of an original license.

C. No license may be transferred when the City Administrator or Police Chief has notified the licensee that the license has been or may be suspended or revoked.

D. Any attempt to transfer a license either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the license.

Section 5-20.17 Imposition of Fees.

A. Every application for a dispensary license or renewal shall be accompanied by a nonrefundable fee, as established by resolution of the City Council from time to time. This application or renewal fee shall include fingerprinting, photographing, and background check costs and shall be in addition to any other costs imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees shall be as established by resolution adopted by the City Council from time to time. The time frames for the implementation of this Ordinance shall not be in effect until the City Council adopts a fee resolution. In the event that employee changes occur during the year, the applicant must submit the new employee for fingerprinting, photographing, and a background check and pay the appropriate fees for those services.

B. All fees established by the Council to implement this Ordinance will reflect the City's costs to complete the requirements of the Ordinance. In addition, there will be a one-time fee to initiate the application process and an annual renewal fee. This one-time fee and the renewal fee will be comparable to the typical cost of obtaining a City Business License.

Section 5-20. 18 Violations.

A. It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this Chapter and/or any dispensary license issued here under.

B. A violation of this Chapter and/or any dispensary license issued here under shall be punished in accordance with the Clearlake Municipal Code.

Section 5-20. 19 Remedies Cumulative.

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

Section 5-20. 20 Separate Offense for Each Day.

Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

Section 5-20. 21 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter and/or any dispensary license issued here under shall be and is hereby declared a public nuisance and may be summarily abated by the City.

Section 5-20. 22 Criminal Penalties.

Any person who violates, causes, or permits another person to violate any provision of this Chapter and/or any dispensary license issued hereunder commits a misdemeanor.

Section 5-20. 23 Civil Injunction.

The violation, or threatened violation, of any provision of this Chapter and/or any dispensary license issued hereunder shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City Council, create a cause of action for injunctive relief, which may be brought by the City Attorney.

Section 5-20. 24 Administrative Remedies.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter and/or any dispensary license issued here under may be subject to administrative remedies as set forth in the Code.

Section 5-20. 25 Conflicts.

All ordinances or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflicts and no further.

Section 5-20. 26 Effective Date.

The effective date of this Ordinance is thirty (30) days after its adoption by the City Council.

PASSED AND ADOPTED this 14th day of July, 2011 by the following vote:

AYES:	Mayor Joyce Overton, Council Member Curt Giambruno, Council Member Jeri Spittler, Council Member Judy Thein
NOES:	None
ABSENT:	Vice Mayor Joey Luiz
ABSTAIN:	None

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake

ORDINANCE O2010 12

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE BY ADDING A NEW SECTION 17.52.275, AMENDING SECTIONS 17.10.020, 17.12.020, AND 17.14.020, AND REPEALING CHAPTER 5.82, ALL RELATED TO PERMITTING AND REGULATING OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND ASSOCIATED CULTIVATION FACILITIES

WHEREAS, in 1996, California voters enacted the Compassionate Use Act (the Act") of 1996, which, as codified in California Health and Safety Code Section 11362.5, decriminalizes the possession and cultivation of medical marijuana for limited personal medical purposes; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medical Marijuana Program, which, as codified in California Health and Safety Code Section 11362.7 *et seq*, clarifies the scope of the Act and sets forth the allowable scope of the use of marijuana for medical purposes; and

WHEREAS, the Act and the Medical Marijuana Program contemplate a clinical relationship between qualified patients (or persons with identification cards issued by Department of Health) and their primary caregivers, under which qualified patients (upon the recommendation of a physician) and primary caregivers may possess or cultivate marijuana for specified medical purposes; and

WHEREAS, State law provides a narrow defense to criminal statutes otherwise criminalizing the possession and cultivation of marijuana for designated primary caregivers and qualified patients and persons with identification cards who associate (collectively or cooperatively) in order to cultivate marijuana for medical purposes; and

WHEREAS, the City Council takes legislative notice that, based upon materials presented to the City Council during public hearings during the legislative process leading to the adoption of this ordinance, several California cities and Counties have experienced serious adverse public safety impacts associated with unregulated medical marijuana dispensaries, or an overconcentration of medical marijuana dispensaries within a single jurisdiction. These impacts include, but are not limited to: increased criminal activity, burglary, loitering, armed robbery, diversion of marijuana for non-medical or recreational purposes, increased incidence of driving under the influence of marijuana and alcohol in the areas surrounding such facilities, adverse traffic impacts, increased sale of recreational marijuana in the areas surrounding such facilities, increase in unreported crime to avoid negative publicity for the facilities, sales of other illegal substances from the facilities, noise and nuisance impacts, and related adverse impacts on surrounding businesses; and

WHEREAS, the City Council takes legislative notice of a California police Chief's Association compilation of police reports, news stories and statistical research regarding such secondary impacts, contained at http://www.californiapolicechiefs.org/navfiles/medicalmarijuana.html ; and

WHEREAS, in August of 2008, the California Attorney General's office, under direct authority of the Medical Marijuana Program, issued a set of guidelines to ensure the security and non-diversion of marijuana grown for medical use; and

WHEREAS, the City Council hereby finds that there exists ample evidence, in the record and in the experiences of other California jurisdictions that have not regulated medical marijuana dispensaries, or that have an overconcentration of such facilities, that such lack of adequate regulation or overconcentration of such facilities within a community pose a direct threat to the public health, safety and welfare; and

WHEREAS, the City has conducted a broad and inclusive public process, including workshops and hearings open to the public regarding the issue of regulating medical marijuana dispensaries and cultivation (including community workshops, a Planning Commission hearing, and City Council hearings, on: August 18, 2009, September 1, 2009, September 15, 2009, December 9, 2009, February 9, 2010, March 16, 2010, April 15, 2010, and June 1, 2010), and has heard public testimony, and adopted a framework of five policy principles to guide the regulation of medical marijuana dispensaries and associated cultivation facilities, which principles include the regulation of the physical aspects of dispensaries, limitations on number and size, separation and appearance standards, establishing a process for review of applications, setting forth regulations for cultivation and supply of medical marijuana to dispensaries, the establishment of regulations regarding residential medical marijuana cultivation by qualified individuals, the establishment of a framework for enforcement of permits and the monitoring of issues related to dispensaries and associated cultivation facilities; and

WHEREAS, under Article XI, section 7 of the California Constitution, California Cities are authorized to make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, an ordinance regulating medical marijuana dispensaries and associated cultivation facilities, limiting the total potential number of permitted dispensaries in the City to two, and establishing regulations regarding residential medical marijuana cultivation by qualified individuals is thus necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the City of Napa; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as

follows:

SECTION 1: Napa Municipal Code Chapter 5.82 repealed. Chapter 5.82 of Title 5 of the Napa Municipal Code, "Medical Marijuana Dispensaries Prohibited," is hereby repealed in its entirety.

SECTION 2: Land Use Regulations amended. Section 17.10.020 of Chapter 17.10 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection C (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Subsection C of the Land Use Regulations table in Section 17.10.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.10.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.10.020

Zoning Districts	CL	CT	CC	CD	CDP Gnd Lvl	CDP Upper Basmt	Added Use Regulations
C. Offices and Related Uses							
2. Medical services (medical, dental and health-related, with accessory sales)							
Medical Marijuana Dispensaries	C		C				Subject to Section 17.52.275

SECTION 3: Land use regulations amended. Section 17.12.020 of Chapter 17.12 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection A (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Section A of the Land Use Regulations table in Section 17.12.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.12.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.12.020

	RO	OC	OM	Added Use Regulations
2. Medical services (medical, dental and health-related, with accessory sales)				
Medical Marijuana Dispensaries			C	Subject to Section 17.52.275

SECTION 4: Land use regulations amended. Section 17.14.020 of Chapter 17.14 of Title 17 of the Napa Municipal Code is hereby amended to: (1) add a new use, "Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit," in the appropriate alphabetical location to the uses listed under Subsection A, "Industrial Uses" within the Land Use Regulations table in Section 17.14.020; and (2) to add a new use under a new Subsection 17.14.020 C (2), "Medical Services (medical, dental, health-related services, accessory sales)" listing "Medical Marijuana Dispensaries" as a use within the table to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.14.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.14.020

Zoning Districts	IL	IP-A	IP-B	IP-C	Added Use Regulation
A. Industrial Uses					
Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit	C			C	Subject to Section 17.52.275
C. Offices and Related Uses					
2. Medical services (medical, dental and health-related, with accessory sales)					
Medical Marijuana Dispensaries	C				Subject to Section 17.52.275 [with particular reference to subsection D.(2)]

SECTION 5: New Section 17.52.275 added to Chapter 17.52. A new Section 17.52.275 is hereby added to Chapter 17.52 of Title 17 of the Napa Municipal Code to read as follows:

17.52.275 Medical Marijuana Dispensaries and Cultivation.

A. Purpose, Scope, and Findings

1. The City Council finds that, in the absence of the regulations set forth in this Section, the adverse impacts directly associated with the cultivation, sale, and distribution of Medical Marijuana, as defined herein, pose a substantial threat to the public health, safety and welfare of residents and businesses within the City. The City Council also finds that it is in the public interest to permit a limited number (not to exceed two) of Medical Marijuana Dispensaries with accessory aggregated cultivation to provide access to Medical Marijuana for the residents of the City of Napa, provided that

any Medical Marijuana Dispensary and any Aggregated Cultivation of Medical Marijuana is in full compliance with this Section.

2. This Section is not intended to, and does not, authorize the violation of State or Federal law.

3. It is the purpose of this Section to provide for a limited number of Medical Marijuana Dispensaries with accessory Aggregated Cultivation Facilities, with regulations as to their location, physical dimensions, appearance, and operations; and to provide for regulated cultivation of Medical Marijuana in residential uses.

4. Notwithstanding the general references in this Section to Chapter 1.16 of this Code, and notwithstanding the general provisions of Chapter 1.20 of this Code, this Section is not intended to, and does not, establish any criminal liability for a violation of this Section. A violation of this Section shall be subject to all other enforcement methods identified in Chapter 1.16 of this Code.

5. This Section is not intended to, and does not, authorize the sale or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) for any non-medical purposes. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own any parcel or location (whether fixed or mobile) where there occurs any sale, distribution, or any other means of providing marijuana for any non-medical purpose. For the purpose of this Section, a "non-medical purpose" shall mean any sale or distribution of marijuana that is not subject to the protections of the Medical Marijuana Laws.

B. Definitions

"Aggregated Cultivation Facility" shall mean any parcel or location, whether fixed or mobile, where Aggregated Cultivation of Medical Marijuana occurs.

"Aggregated Cultivation of Medical Marijuana" shall mean the collective or cooperative cultivation or storing of Medical Marijuana, pursuant to Medical Marijuana Laws. (See California Health and Safety Code Section 11362.775.)

"Director" means the Community Development Director, or a designee of the Community Development Director or City Manager.

"Identification Card" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Medical Marijuana" is marijuana possessed, distributed, or cultivated for medical purposes, in full compliance with Medical Marijuana Laws.

"Medical Marijuana Dispensary" means any parcel or location, whether fixed or mobile, where either: (i) a Primary Caregiver cultivates, makes available, sells, transmits, gives, distributes, or otherwise provides Medical Marijuana to two or more Qualified Patients; or (ii) two or more Qualified Patients and/or Primary Caregivers meet or congregate collectively or cooperatively to cultivate, make available, sell, transmit, give, distribute, or otherwise provide Medical Marijuana under the purported authority of Medical Marijuana Laws. A "Medical Marijuana Dispensary" shall not include any of the following uses, so long as such uses otherwise comply fully with this Code, Medical Marijuana Laws, and other applicable law:

1. A Clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code.

5. A hospice or home health agency, licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Medical Marijuana Laws" shall mean California Health and Safety Code Section 11362.5 (the "Compassionate Use Act of 1996"), and the laws and regulations of the State of California adopted in furtherance thereof, including California Health and Safety Code Sections 11362.7, *et seq.* (the "Medical Marijuana Program Act"), and guidelines adopted by the Attorney General pursuant to California Health and Safety Code Subsection 11362.81(d).

"Person with an Identification Card" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Preferred Applicant" shall mean the person or entity qualified, through a selection process, to file a use permit application for a Medical Marijuana Dispensary.

"Primary Caregiver" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Qualified Patient" shall mean a person who is entitled to the protections of California Health and Safety Code Section 11362.5, whether or not that person has an Identification Card. Thus, for the purpose of this Section, the term "Qualified Patient" shall encompass both the definition of "Qualified Patient" and the definition of "Person

with an Identification Card" (as those terms are used in the Medical Marijuana Laws). (See California Health and Safety Code Section 11362.7.)

"Youth Population Uses" shall mean any elementary or secondary school (whether public or private), and public parks owned and/or maintained by the City of Napa.

C. Permit for Medical Marijuana Dispensary and Cultivation

1. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own a Medical Marijuana Dispensary or an Aggregated Cultivation Facility within the City of Napa, except to the extent established, operated, and owned in accordance with a Medical Marijuana Dispensary Use Permit issued pursuant to this Section and in conformance with other applicable provisions of this Title.

2. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to cultivate medical marijuana unless either: (a) it is conducted at a Medical Marijuana Dispensary or Aggregated Cultivation Facility permitted in accordance with this Section; or (b) it is conducted at the residence of a Qualified Patient for the sole purpose of the personal medical purposes of the resident, in accordance with this Section. A Primary Caregiver shall only cultivate Medical Marijuana at the residence of a Qualified Patient for whom he/she is the Primary Caregiver. Cultivation of Medical Marijuana for personal medical purposes of the resident shall be conducted in conformance with all of the following standards for each residence:

a. The space within any residence in which Medical Marijuana is cultivated shall not exceed a contiguous space of 25 square feet, and ten feet in height, and inclusive of all plant containers, canopies, and specialized equipment. The medical marijuana cultivation area shall be located in one contiguous area of the residence;

b. Medical Marijuana cultivation lighting shall not exceed 1200 watts;

c. The use of manufactured gas products (CO_2, butane, etc.) for Medical Marijuana cultivation or processing is prohibited;

d. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited;

e. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the residence;

f. The Qualified Patient shall reside in the residence where the Medical Marijuana cultivation occurs;

g. No Qualified Patient shall provide Medical Marijuana to any collective or cooperative within the City of Napa, unless it is done in compliance with a Medical Marijuana Dispensary use permit issued pursuant to this Section;

h. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and shall not use those areas for Medical Marijuana cultivation;

i. Any indoor Medical Marijuana cultivation space shall be in compliance with Title 15 of this Code, including but not limited to provisions regarding natural ventilation and mechanical ventilation (or equivalent(s)); and

j. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

k. Any Qualified Patient or Primary Caregiver who asserts that the personal medical purposes of a Qualified Patient require Medical Marijuana cultivation that exceeds the requirements of this Section may submit a request to the Director for a modification of these requirements to permit an expanded Medical Marijuana cultivation area. The applicant shall bear the burden of providing adequate documentation, to the satisfaction of the Director, of the need for an expanded Medical Marijuana cultivation area. The required documentation may include information such as a physician's recommendation, a verification that more than one Qualified Patient is living in the residence, and technical analysis regarding limitations on the Medical Marijuana that may be cultivated in the available space, to show why compliance with the cultivation area standard is not feasible. The Director shall review the submitted documentation and make a determination to approve, conditionally approve, or deny a use permit for the request, subject to compliance with all of the following:

(1) The expanded Medical Marijuana cultivation space (inclusive of all plant containers, canopies, and specialized equipment) shall not exceed the space necessary to serve the personal medical purposes of the resident Qualified Patient, and it shall be a contiguous space in the residence of the Qualified Patient.

(2) At a minimum, the expanded Medical Marijuana cultivation space shall be constructed with a 1-hour firewall assembly of green board. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

(3) The expanded Medical Marijuana cultivation space shall be located in a detached single family residence, or in a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

D. Zone and Separation Standards

1. Zones. Medical Marijuana Dispensary Use Permits may be permitted as a conditional use on properties within the zones so indicated in Sections 17.10.020, 17.12.020 and 17.14.020 of this Title.

2. Conditions Applicable to Medical Marijuana Dispensary Use in the IL Zone. In addition to all other applicable criteria and requirements contained in this Chapter and in Chapter 17.14, all of the following additional provisions shall be applied to Medical Marijuana Dispensaries proposed and permitted within the IL zone:

a. The Medical Marijuana Dispensary shall be operated adjacent to, but separately from, the accessory Aggregated Cultivation Facility.

b. There shall be no direct internal access from the Medical Marijuana Dispensary to the Aggregated Cultivation Facility that is open to the public or members (who are customers) of the Medical Marijuana Dispensary. Any access to the Aggregated Cultivation Facility shall be limited to employees and contractors of the permittee for the purpose of operation in accordance with the permit and this Chapter.

c. The Aggregated Cultivation Facility and the Medical Marijuana Dispensary shall have separate entry doors.

d. The Medical Marijuana Dispensary shall have access to off street parking in compliance with NMC Chapter 17.54, on site and adjacent to the public entry door, provided at a rate equal to one space for each 250 square feet of floor space.

e. The public entry door to the Medical Marijuana Dispensary must be visible from, and within 200 feet of, a public street right-of-way.

f. The area within 50 feet of the public entry door of the Medical Marijuana Dispensary shall be illuminated, to a minimum level of two (2) candle foot, during the time between dusk and the permitted closing time of the Medical Marijuana Dispensary, with such lighting subject to shielding as set forth in NMC Section 17.14.040.L.

3. Separation. The zoning of a property notwithstanding, Medical Marijuana Dispensaries shall also be subject to the following separation standards:

a. A Medical Marijuana Dispensary shall not be located less than 1000 feet from any other Medical Marijuana Dispensary. For the purposes of measuring the separation to between Medical Marijuana Dispensaries, the distance of separation shall be measured from the exterior walls of the building containing the first medical Marijuana Dispensary to the exterior wall of the building containing the second Medical Marijuana Dispensary.

b. A Medical Marijuana Dispensary shall not be located less than 500 feet from any youth population use. For the purpose of measuring the operation between Medical Marijuana Dispensaries and Youth Population Uses, the distance of separation shall be measured from the exterior walls of the building containing the Medical Marijuana Dispensary premises to the property line of the property occupied by the youth population use.

c. The foregoing separation standards may be reduced only to the extent that the City Council finds, based on substantial evidence, that an intervening permanent feature in the landscape (such as a creek or a highway) provides an impenetrable barrier to pedestrian access between the uses, so that the separation of the uses is functionally equivalent to the requirements of this Section.

E. City Council as the Authority to Issue Medical Marijuana Dispensary Use Permits

Notwithstanding Section 17.60.020 of this Title, the City Council shall approve, conditionally approve, or deny any application for a Medical Marijuana Dispensary Use

Permit pursuant to this Section, based on an advisory recommendation from the Planning Commission.

F. Maximum Number of Medical Marijuana Dispensaries

For each competitive application process for a use permit under this Section, the City Council shall issue no more than one Medical Marijuana Dispensary use permit. Following the date of issuance of the first use permit under this Section, the City shall not commence the competitive application process for a second Medical Marijuana Dispensary use permit for 365 days. Notwithstanding the limitations of this Subsection (F), upon the revocation of a permit (pursuant to Subsection 17.52.275(P), the Director is authorized to issue a notice to commence a competitive application process for a replacement permit (pursuant to Subsection 17.52.275(I)).

Following the issuance of the first use permit under this Section, the City shall not commence the competitive application process for any subsequent Medical Marijuana Dispensary use permit unless the City Council finds, by resolution, that the issuance of a Medical Marijuana Dispensary use permit to a subsequent permittee is necessary to adequately serve the needs of the residents of the City of Napa.

At no time shall there be more than two validly-permitted Medical Marijuana Dispensaries within the City of Napa. Nothing in the foregoing shall obligate the approval of any application by the City.

G. Aggregated Cultivation Facilities Accessory to a Medical Marijuana Dispensary

Each permittee of a permitted Medical Marijuana Dispensary may establish and operate an Aggregated Cultivation Facility, subject to the requirements of this Section. The Aggregated Cultivation Facility shall be subject to the following additional requirements.

1. Application for an Aggregated Cultivation Facility, if sought, shall be made concurrently with, and accessory to, the application for a Medical Marijuana Dispensary Use permit, or as a subsequent amendment to an approved Medical Marijuana Dispensary Use permit. The applicant for an Aggregated Cultivation Facility shall be the same entity as the permittee for the Medical Marijuana Dispensary Use permit. The application for the Aggregated Cultivation Facility shall include all information required for the primary use subject to the Medical Marijuana Dispensary Use permit (See Subsections 17.52.275 (J) through (L)).

2. An Aggregated Cultivation Facility may be permitted as a conditional use on properties within the industrial zones so indicated in Section 17.14.020 of this Title.

3. The Aggregated Cultivation Facility shall be subject to all requirements of this Section, including those related to physical security, maintenance of records, employee training, mitigating adverse impacts on neighbors, and the responsibility of the operator for nuisance (See Subsection 17.52.275 (O)). All cultivation activities of an

Aggregated Cultivation Facility shall be conducted indoors. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the facility, except to the extent that signage is authorized pursuant to the use permit. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

4. The Aggregated Cultivation Facility shall be operated for the sole purpose of providing Medical Marijuana to the primary use subject to the Medical Marijuana Dispensary Use Permit. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited. No commercial activity shall occur at the Aggregated Cultivation Facility.

H. Membership Limits for Medical Marijuana Dispensaries

No Medical Marijuana Dispensary use, as permitted in accordance with this Section, shall have a membership of cooperative members exceeding ten percent (10%) of the population of the City of Napa as established by the most recent final United States census. Provided, however, as a part of the annual review of a Medical Marijuana Dispensary Use Permit (pursuant to Subsection 17.52.275(O)(16), the City Council, by resolution, may increase in the maximum membership limitation of this paragraph if it finds that the increase is necessary to adequately serve the needs of the residents of the City of Napa.

I. Notice of Commencing Competitive Application Process

Any person who desires to be considered as an applicant for a Medical Marijuana Dispensary use permit under this Section may submit contact information to the Director. The Director shall maintain the contact information of each such person, on a list of potential applicants, for two years thereafter.

For each competitive application process authorized pursuant to Subsection (F), above, the Director shall provide at least sixty days prior notice for the submittal of applications. The notice shall be provided to the general public and to each individual on the maintained list of potential applicants. The notice shall identify the deadline date on which applications are required to be submitted to the Director, and the location where potential applicants may obtain additional information regarding the selection criteria and process.

J. Screening Application for Competitive Selection of Preferred Applicant

1. Any person seeking a Medical Marijuana Dispensary use permit under this Section shall submit a screening application to the Director no later than the deadline set forth in the notice of commencing competitive application process (issued pursuant

to Subsection (I), above). In the event that the Director determines that a screening application is incomplete or fails to provide the information and documentation required by this Section, the Director shall notify the applicant in writing, and the applicant shall have an additional 30 days (or longer as authorized by the Director) in which to submit needed supplemental information or documentation as specified by the Director. If an application is incomplete after the Director provides an opportunity to submit needed supplemental information or documentation, the Director is authorized to reject the application as incomplete.

2. Each applicant shall submit the following information (for the primary Medical Marijuana Dispensary, and any requested accessory Aggregated Cultivation Facility) in the screening application, in a form acceptable to the Director:

a. The name, address, telephone number and chief executive of the applicant (the cooperative or collective organization to which the permit is to be issued).

b. The name, address and telephone number of the authorized agent for the applicant.

c. Documentation of the legal entity and organizational structure of the applicant organization, demonstrating that it is a collective or cooperative operating in conformance with the requirements of the Medical Marijuana Laws.

d. Documentation of the experience and background of principals and management staff of the applicant, subject to verification by background check to be conducted by the Director. Such documentation shall include: licensing records for any collective or cooperative for which the person is or has been a principal or manager in any other location.

(1) No applicant shall be selected nor shall an application be approved if a principal or manager shall have been convicted of:

- Any offense related to possession, manufacture, sales, or distribution of controlled substance, with the exception of marijuana related offenses; or
- Any offense involving the use of force or violence upon the person of another.

(2) The Director may also consider (as indications of the qualifications of the applicant) but shall not necessarily be obligated to deny an application if a principal or manager shall have been convicted of any other criminal offense, including but not limited to:

- Any offence involving theft, fraud, dishonesty or deceit; and,
- Any offense related to possession, manufacture, sales, or distribution of marijuana related offenses.

(3) For the purpose of this Subsection (J)(2)(d), a conviction includes a plea or verdict of guilty or a conviction following a plea of *nolo contendre*.

e. Proposed plan of operation for the prospective Medical Marijuana Dispensary to demonstrate compliance with the requirements of the Medical Marijuana Laws and this Section. This shall include, but not be limited to an indication of: (1) the manner of maintaining an adequate (and not surplus) of supply, including any intent to operate an Aggregated Cultivation Facility, methods of documenting source of supply,

and methods of precluding supply from illegal "grow houses" in residential zones; (2) limitations that will be imposed on off-site deliveries of Medical Marijuana; (3) methods of focusing the services to residents of Napa; (4) methods of mitigating adverse impacts on neighbors; (5) methods of ensuring compliance with the security plan; and (6) methods of ensuring adequate record-keeping systems and providing regular reports to the City.

(f. Demonstration of a record-keeping system for operational records which will include continuing maintenance of membership records to document collective or cooperative organizational structure (including the ability to sort members into those who cultivate medical marijuana, those who are persons with an Identification Card, those who are qualified patients and those who are primary caregivers), and include documentation that the organization will operate on a not for profit basis.

(g. Demonstration of a record-keeping system for medical records which will allow for continuing maintenance of such records, including procedures to protect patient privacy, document physician recommendations, and primary caregiver and qualified patient status.

(h. Demonstration of screening and training procedures for employees and volunteers, (including maintenance of records, (demonstrating the means of confirming identification, qualifications, and conducting criminal background checks for employees and volunteers.

(i. (A security plan proposal, indicating the methods and measures which would be taken to protect the premises, employees, clients, immediate neighbors, the medical marijuana product, and records files. The security plan shall include the methods and measures for handling and banking cash.

(j. (A statement of any intention to provide consumable products other than raw harvested Medical Marijuana, including edibles, lozenges, other such product preparations, and a demonstration of the means of achieving appropriate health and safety approvals. A statement of the system for providing for necessary consumer safety packaging and labeling for consumable products as well as the raw harvested Medical Marijuana.

(k. Acknowledgment by signature that the chief executive and authorized agent have read all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

(l. (Certification (of the (accuracy (of the (information (submitted, (and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the conditions of the use permit.

(m. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

(n. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable

and shall cease upon lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

o. Such other information as the Director deems reasonably necessary to administer this Section may be required.

3. Selection Process.

a. The Director is authorized to determine which applicant is the "preferred applicant" based on the demonstrated experience, training, capability, and plan to best fulfill the purposes and requirements of this Section. The Director is authorized to establish conditions of approval for the determination of the preferred applicant, and the applicant is required to comply with the conditions of approval as a part of the application for the Medical Marijuana Dispensary use permit.

b. All timely and complete applications shall be evaluated by the Director and a team of application reviewers (City staff and consultants selected by the City Manager). The Director and the application reviewers may interview one or more of the applicants, to the extent the Director determines it would assist in the evaluation process.

c. After consideration of input from the application reviewers, the Director shall make a preliminary determination of which applicant is the preferred applicant, and the Director shall provide written notice of the preliminary determination to each applicant.

d. Within ten working days of the Director's issuance of the notice of preliminary determination, any applicant shall have an opportunity to provide written comments to the Director regarding any bases upon which an applicant asserts that the preliminary determination should not be finalized by the Director.

e. After considering any written comments provided by applicants, the Director shall make a final determination of the preferred applicant. If the Director determines that no applicant has demonstrated the experience, training, capability, and plan to fulfill the objectives and requirements of this Section, the Director may reject all applications, and commence a new competitive application process.

f. The preferred applicant, as determined by the Director, shall be the only entity authorized to submit an application for a Medical Marijuana Dispensary use permit. Notwithstanding the appeal provisions set forth in Subsection 17.52.275(P) and Chapter 17.70, the Director's determination regarding the selection of the preferred applicant shall be final and not subject to appeal.

K. Application for Medical Marijuana Dispensary Use Permit.

The Preferred Applicant, as determined by the Director, may submit an application for a Medical Marijuana Dispensary Use Permit, which shall include all information necessary

to evaluate compliance with this Section for the proposed Medical Marijuana Dispensary and any proposed Aggregated Cultivation Facility. Each application for a Medical Marijuana Dispensary Use Permit shall be made on a form provided by the Director, and shall include the following:

1. Diagrams, plans, tenant improvement plans and photographs of the intended premises sufficient to demonstrate location and intended improvements.

2. Documentation establishing that the premises meet all local building and safety code requirements.

3. A diagram of the premises showing and indicating the number and location of designated on-site parking spaces.

4. All documents required by Chapter 17.60 of this title.

5. All information previously submitted for the screening application, supplemented and updated for the purposes of issuing the use permit for the specified locations of the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, including compliance with any conditions of approval of the preferred applicant determination. This shall specifically include documentation of adequate physical security, including: a well defined separate entrance for the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, limited number of building entrances which are easily securable, main entrances that are visible from a public street, a lobby area that is physically separated from any medical marijuana supply, mitigation of any adverse impacts of potential hidings places on the site, no pay phones within the immediate vicinity of the site, use of security guards to enforce permit compliance for activities on site and in the immediate vicinity of the site, and use of surveillance cameras (and other forms of technology). For the Medical Marijuana Dispensary, the reception area shall be located at the main entrance with a view of visitor parking areas.

6. A 300 foot notification mailing label submittal as provided for in Subsection 17.68.070 (A)(3) of this Title for both the site of the proposed Medical Marijuana Dispensary and its associated aggregated cultivation facility, if any.

7. Acknowledgment by signature that the property owner, the permittee's chief executive officer, and the permittee's authorized agent have read, and will comply with, all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

8. Certification of the accuracy of the information submitted, and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the

conditions of the permit.

9. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

10. Acknowledgement and agreement that claims, requests, objections and arguments not timely raised in the Medical Marijuana Dispensary use permit application are and shall be deemed waived.

11. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable and shall cease upon any lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

12. Such other information as the Director deems reasonably necessary to administer this Section.

L. Fees

Medical Marijuana Dispensary Use Permits shall be subject to the payment of the fees established by Council resolution based on the estimated reasonable costs incurred by the City for processing the application materials consistent with Sections 1.16.050 and 3.04.040 of this Code, as well as the estimated reasonable costs of implementing a regulatory program related to inspecting and monitoring the impacts of the permit. These shall include:

1. A competitive application processing fee, as established by Council resolution, payable by each applicant at the time of application to cover the cost of reviewing applications through the process of screening and identifying the preferred applicant.

2. A use permit processing fee, as established by Council resolution, payable by each preferred applicant at the time of application for each use permit. The processing fee may also include a fee to process applications for an expanded Medical Marijuana cultivation space, pursuant to Subsection 17.52.275(C)(2)(k).

3. A premises inspection and regulatory review fee, as established by Council resolution, payable annually by each permittee. This fee shall include the City's costs of administration of the program, including the costs of preparation of necessary ordinances and resolutions.

M. Findings

The City Council may approve, or conditionally approve, a Medical Marijuana Dispensary Use Permit (including any accessory Aggregated Cultivation Facility) only if

the City Council first makes all findings (based on substantial evidence) set forth in Section 17.60.070 of this Code as well as all of the following:

1. That the location of the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility, if applicable, complies with the zoning and use separation standards of this Section;

2. That the premises for the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility meet all of the physical requirements of this section; and,

3. That the operator of the Medical Marijuana Dispensary has demonstrated its ability and commitment to operate the facility(ies), and provide adequate security in compliance with the standards of this Section.

4. That the operator of the Medical Marijuana Dispensary has demonstrated its full compliance with the requirements of this Section, and the ability and commitment to adequately mitigate impacts that are potentially detrimental to the public health, safety, or welfare.

N. Conditions of Approval and Term of Permit

As a part of the approval of a Medical Marijuana Dispensary Use permit (including any accessory Aggregated Cultivation Facility), the City Council may impose such conditions in connection with the permit as it deems necessary in order to fulfill the purposes of this Section, and may require such guarantees and evidence that it deems necessary and appropriate to ensure such conditions will be complied with.

O. Permits subject to ongoing restrictions

All Medical Marijuana Dispensary Permits (and any accessory Aggregated Cultivation Facility) shall be subject to the following requirements and restrictions, in addition to all other applicable provisions of this Code.

1. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be the primary uses of their respective premises, and shall not be established or maintained in conjunction with other uses within the same demised tenant space and address;

2. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall have direct access to a public space and shall not take access via any other business or tenancy.

3. Commercial signs pertaining to the Medical Marijuana Dispensary shall be regulated in accordance with the provisions related to professional offices, at NMC Section 15.56.080 (table headed, "The following regulations shall apply in the: MO,

MEDICAL OFFICE, CO, COMMERCIAL OFFICE & RP-12, -25, RESIDENTIAL PROFESSIONAL"). Any Aggregated Cultivation Facility shall have only such signs necessary for tenant identification or address purposes.

4. The operator of a Medical Marijuana Dispensary shall post in a conspicuous place near its entry, the following notices, each in a form subject to review and approval by the Director.

a. A notice that a complete copy of the Medical Marijuana Dispensary Use Permit is available for inspection on the premises;

b. A notice indicating the uncertain status of Federal and State Law pertaining to Medical Marijuana transactions;

c. A notice identifying the scope and limitations of any inspections and certifications (related to consumer product safety) of the products available on the premises;

d. A notice indicating that consumption of Medical Marijuana on the premises of the Medical Marijuana Dispensary is prohibited; and,

e. Any other notice required by the permit, including any annual extension thereof.

5. The hours of operation for Medical Marijuana Dispensaries shall commence no earlier than 7:00AM, nor shall they end later than 7:00PM.

6. Consumption of Medical Marijuana on the premises of a Medical Marijuana Dispensary or any associated Aggregated Cultivation Facility shall be prohibited.

7. A Medical Marijuana Dispensary shall provide a secured storage area on site. All Medical Marijuana products shall be stored in this area during non-business hours. The design features and maintenance of the storage area shall be subject to the review and approval of the Director.

8. The operator of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be responsible for the training of employees in the provisions of these regulations and the conditions and obligations of the Medical Marijuana Dispensary Use Permit.

9. Separate from any permit which may authorize cultivation at an Aggregated Cultivation Facility, Medical Marijuana Dispensaries may conduct limited on site cultivation of Medical Marijuana juveniles as starter plants for residential cultivation as set forth in Subsection 17.52.275 (C)(2), above, subject to the following limitations:

a. Each plant shall be boxed, in flats or individual nursery containers measuring no more than three inches by three inches (3" X 3").

b. Cultivation must take place indoors, within the premises of the Medical Marijuana Dispensary, within a floor area not exceeding one hundred square feet.

10. Medical Marijuana Dispensaries are prohibited from selling, renting or providing group smoking apparatus, including but not limited to hookah pipes, but may sell items designed for the smoking or ingestion of Medical Marijuana products by an individual, including such items as pipes.

11. The issuance of physician recommendations for Medical Marijuana is prohibited on the premises of a Medical Marijuana Dispensary or an Aggregated Cultivation Facility.

12. The permittee of a Medical Marijuana Dispensary Use Permit is responsible for the actions of its employees, members, volunteers in violation of any term of this section or any other applicable provision of this Code.

13. The Medical Marijuana Dispensary shall be operated in full compliance with all requirements of State law. The issuance of a permit pursuant to this Section is not intended to, and does not, authorize the violation of State or Federal law.

14. A Medical Marijuana Dispensary may only provide Medical Marijuana consistent with the Medical Marijuana Laws. This Section is not intended to, and does not, authorize the cultivation, sale, or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) from a Medical Marijuana Dispensary or an Aggregated Cultivation Facility for any non-medical purposes.

15. Based on the personal nature of the obligations and responsibilities of each permittee (as set forth in this Section and in each permit), each Medical Marijuana Dispensary Use Permit shall be personal to the permittee, and shall be non-transferable. Any attempt to transfer the permit to an entity other than the permittee, or any lapse of use of the permit by the permittee for six months in any twelve month period, shall be sufficient grounds for termination or revocation of the permit. Notwithstanding this limitation, the Director is authorized to approve a modification to the organizational or operational structure of the permittee only if the Director determines in writing that the modification is minor and does not adversely impact the ability of the permittee to comply with all requirements of the permit and this Section. If a permittee seeks approval of any such modification, the permittee must submit the request to the Director in writing, and obtain the Director's written approval prior to implementing the modification.

16. Each Medical Marijuana Dispensary Use Permit shall be issued subject to annual review and extension. Each permittee shall submit an annual report to the Director, in a form satisfactory to the Director, to document compliance with all requirements of the permit and this Section. The Director shall review all application records and inspect the premises, and may review all records as listed in the permit application requirements, to assure that the Medical Marijuana Dispensary (and any accessory Aggregated Cultivation Facility) is compliant with this Section, with other

applicable provisions of this Code and with the permit conditions. As a part of the annual review of the permit, the Director is authorized to impose supplemental conditions on the permit to the extent that the Director determines that the supplemental conditions are necessary in order to, either: (a) achieve compliance with the requirements of the permit or this Section; or (b) mitigate adverse impacts on neighboring properties.

P. Enforcement and Appeal

1. The cost of the ongoing administration of Medical Marijuana Dispensary permits shall be borne by the Medical Marijuana Dispensary permittees according to fees established by resolution of the City Council.

2. The Director may conduct an investigation whenever there is reason to believe that any person has failed to comply with the provisions of a Medical Marijuana Dispensary Use Permit or of this Section. The investigation may include an inspection of the premises. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Director is authorized to take any enforcement action as set forth in Chapter 1.24 of this Code. The written notice shall be served on the permittee or authorized agent and shall specify the facts which, in the opinion of the Director, constitute substantial evidence to establish grounds for imposition of the enforcement action. Administrative fines, in accordance with Subsection 1.16.050 of this Code, may be assessed to the permittee as a result of violations of either the Permit or this Section. A permittee, or the recipient of the notice of violation, may request an administrative hearing to contest any administrative citation issued by the Director in accordance with the procedures set forth in Sections 1.24.070 through 1.24.090 of this Code.

3. The Director is authorized to initiate proceedings to revoke, or modify the conditions attached to, a Medical Marijuana Dispensary Use Permit if at any time he or she determines in his or her discretion that: (a) a Medical Marijuana Dispensary use is detrimental to the public health, safety, or welfare; (b) the permittee has provided materially false or misleading information in the application for the permit; or, (c) the permittee has failed to comply with any requirements of the permit or of this Section. Any such proceedings shall be conducted in accordance with the general procedures set forth in Chapter 17.72 of this Title.

4. Except as otherwise provided in Subsection J(3) (authorizing the Director to make final decisions to select the preferred applicant) and Subsection P(3) (for appeals subject to Chapter 17.72 of this Title), any person aggrieved by a determination of the Director pursuant to this Section may appeal by filing a written appeal with the City Clerk. Any such appeal must be received by the City Clerk within ten (10) calendar days of written determination by the Director. Each appeal shall be subject to the following:

a. Any such appeal shall state all factual and legal grounds which the appellant wishes the City to consider. Such grounds to be identified by the appellant shall include, without limitation, any and all constitutional or statutory claims.

b. The appeal shall be decided by an administrative hearing which shall be set and conducted pursuant to the procedural provisions of Sections 1.24.080, 1.24.090, and 1.24.100.

- For purposes of this Subsection P(4), as used in Chapters 1.16 and 1.24 of this Code: (1) the "responsible person" shall be the "appellant"; (2) the "administrative citation" shall be the determination under this Section that is the subject of the appeal.
- Any written reports submitted by the Director to the Hearing Officer shall be served on the appellant at least five days before the hearing.
- At the hearing, the appellant shall be given the opportunity to testify and present evidence, and the appellant shall raise any and all legal and factual issues and claims, concerning the determination under this Section that is the subject of the appeal.
- The decision of the Hearing Officer shall be final.
- If the hearing officer finds, as a part of the hearing officer's written decision, that the City is the prevailing party, the City is entitled to its reasonable costs of defending the appeal.

c. Failure to timely request an administrative hearing, and/or to fully state all factual and legal grounds for the appeal, in the manner required by this Subsection P(4) shall constitute a waiver of the hearing and a failure to exhaust administrative remedies, and shall preclude any and all relief and claims arising in connection with the determination by the Director.

SECTION 6: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA
COUNTY OF NAPA } SS:
CITY OF NAPA

I, Dorothy R. Roadman, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 1st day of June, 2010, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 6th day of July, 2010, by the following vote:

AYES: van Gorder, Mott, Inman, Krider, Techel

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: Dorothy Roadman
CITY CLERK OF THE CITY OF NAPA

Approved as to Form:

Michael W. Barrett
City Attorney

ORDINANCE NO. 31-10 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND CITY COUNCIL AMENDING RICHMOND MUNICIPAL CODE CHAPTER 7.102 (MEDICAL MARIJUANA COLLECTIVES)

THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain that Richmond Municipal Code Chapter 7.102 is hereby amended to read as follows:

SECTION 1. Richmond Municipal Code Chapter 7.102 Table of contents is hereby amended to read as follows:

7.102.010 Purpose and Intent

7.102.020 Definitions

7.102.030. Permit required.

7.102.040 Location and number.

7.102.050 Permit application process.

7.102.055 Appeals from decisions to grant or deny a Permit.

7.102.060 Permit approval and operating conditions.

7.102.070 Permit Non-transferable.

7.102.080 Maintenance of records.

7.102.090 Inspection authority.

7.102.100 Existing Medical Marijuana operations.

7.102.110 Prohibited activity.

7.102.120 Violation and enforcement.

7.102.130 Appeals from revocation or suspension decisions.

SECTION 2. Richmond Municipal Code Section 7.102.040 (Location and number) is hereby amended to read as follows:

A. All Medical Marijuana Collectives shall be located in the Regional Commercial (C-3) Zoning District.

B. All Medical Marijuana Collectives shall be a minimum of one thousand five hundred feet (1,500') from any public or private high school and a minimum of five hundred feet (500') from any park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school, unless, following a public hearing, the Chief of Police makes all of the following findings based on specific facts, stated in writing:

i. The location, design and proposed operating characteristics of the Collective are such that it is highly improbable persons on, in or travelling to or from nearby schools, parks, community centers, youth centers, or child-care centers would be able to view persons in, entering, or leaving the Collective.

ii. Allowing the Collective to locate within one thousand five hundred feet (1,500') of a public or private high school or within five hundred feet (500') of a park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school will not grant the Collective a special privilege not available to other Medical Marijuana Collectives within the City of Richmond.

iii. The Collective has demonstrated that it considered other locations and selected the location that would have the minimum negative impact on the surrounding community while providing necessary services to its Members.

C. The Chief of Police shall permit no more than three (3) Medical Marijuana Collectives to operate in the City of Richmond. When there are fewer than three (3) permitted Collectives operating within the City, the Chief of Police shall publish an Invitation for Applications on the City's website, stating the period during which applications will be accepted.

SECTION 3. Richmond Municipal Code Section 7.102.050 (Permit application process) is hereby amended to read as follows:

Any Medical Marijuana Collective desiring a Permit required by this Chapter shall complete and

file an application on a form supplied by the Chief of Police, and shall submit with the completed application payment of a nonrefundable processing and notification fee, as established by the City Council by resolution. The Medical Marijuana Collective Permit application is established to provide a review process for each proposed Medical Marijuana Collective operation within the City.

A. Filing. The Medical Marijuana Collective shall provide the following information:

1. The address of the Property where the proposed Medical Marijuana Collective will operate.

2. A site plan describing the Property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act. The site plan shall demonstrate that there are separate rooms or partitioned areas within the Collective for the receipt of supplies and for the distribution of Medical Marijuana to Qualified Patients and/or Primary Caregivers.

3. Exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front, rear and side(s) of the proposed Property.

4. Photographs depicting the entire interior of the proposed Property.

5. A security plan including procedures for verifying identification of Qualified Patients and Primary Caregivers both before entering the Collective and again before receiving Medical Marijuana; the number, location and hours of security guards; and a theft prevention plan.

6. If the Property is being rented or leased or is being purchased under contract, a copy of such lease or contract. If the Property is not being rented or leased, written proof that the Property owner has been notified that the Property will be used as a Medical Marijuana Collective.

7. If the Property is being rented or leased, written proof that the Property owner, and landlord if applicable, were given notice that the Property will be used as a Medical Marijuana Collective, and that the Property owner, and landlord if applicable, agree(s) to said operations. If the Collective is to be a subtenant, then "landlord" shall mean the primary tenant.

8. The name, address, telephone number, title and function(s) of each Management Member.

9. For each Management Member, a fully legible copy of one (1) valid government-issued form of photo identification, such as a driver's license.

10. For each Management Member, a summary criminal history ("LiveScan") prepared by the Richmond Police Department not more than two weeks prior to the date of application and demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

11. Written confirmation as to whether the Medical Marijuana Collective, or a collective with one or more Management Members in common with the applicant, previously operated in this or any other county, city or state under a similar license/permit, and whether the Collective applicant ever had such a license/permit revoked or suspended and the reason(s) therefore.

12. Either (a) if the Collective is incorporated, 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 demonstrating that the Collective is organized as a non-profit entity, or (b) if the Collective is unincorporated, a copy of the Collective's notarized creating document demonstrating that the Collective is organized as a non-profit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the Collective will operate.

13. A Seller's Permit from the California Board of Equalization.

14. The name and address of the applicant's current Agent for Service of Process.

15. A copy of the Medical Marijuana Collective operating conditions, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure compliance with all ~~the aforementioned~~ operating conditions.

16. A copy of the Prohibited Activity Checklist, available from the Richmond Police Department, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure that neither the Collective nor its members and Management Members shall engage in the aforementioned prohibited activity.

17. A statement dated and signed by each Management Member, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the Management Member(s).

18. A statement of whether Edible Medical Marijuana will be prepared at the proposed Property and, if so, a certificate from the Contra Costa County Department of Health Services demonstrating compliance with the Food Services Facilities Inspection program.

19. Evidence of a computerized or telephonic system for communicating with all other permitted Collectives within the City of Richmond in order to ensure that a Qualified Patient, directly or through his or her Primary Caregiver(s), does not purchase, obtain, or otherwise receive a total of more than one ounce of Medical Marijuana per day.

B. After the closing of the application period, the Chief of Police will evaluate all applications for completeness. The Chief of Police shall ensure that applications are complete as follows:

1. Within twenty (20) business days of the close of the application period, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall determine whether the applications are ~~is~~ complete. If it is determined an application is incomplete, the applicant shall be notified in writing that the application is not complete and the reasons therefore, including any additional information necessary to render the application complete.

2. The applicant shall have thirty (30) calendar days from the date of a notice of incomplete application to complete the application. Failure to do so within the thirty (30) day period shall render the application null and void. The determination that an application is null and void is not an appealable decision.

3. Within ten (10) business days following the receipt of an amended application or supplemental information, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall again determine whether the application is complete and shall inform the applicant whether additional materials are required to complete the application. Evaluation and notification shall occur as provided above up to three times until such time as the application is found to be complete or in the alternative null and void. If, after three opportunities to complete an application, the applicant fails to provide all necessary information, the application shall be null and void. The determination that an application is null and void is not an appealable decision.

4. All notices required by this Chapter shall be deemed issued upon the date they are either deposited in the United States Postal Service mail or the date upon which personal service of such notice is provided.

C. All complete applications will be circulated to the Planning and Building Services, Fire and Code Enforcement Departments with a rating matrix and directions for evaluating and scoring applications based on criteria to be adopted by separate Resolution of the Council.

D. Except where circumstances justify delay, not later than sixty (60) days from the date the completed Permit applications are circulated for staff review, all complete applications will be considered at a noticed public hearing or series of noticed public hearings conducted by the Chief of Police. Prior to publication of notice of the public hearing(s), the City Council may choose to have the hearing(s) conducted by the Council or a subcommittee thereof. If the Council does not choose to have the hearing(s) conducted by the Council or a subcommittee thereof, then the Chief of Police shall cause the public hearing(s) to be conducted before a rating body consisting of the Chief of Police and representatives of the Planning and Building Services Fire and Code Enforcement Departments. In reviewing and scoring Permit applications, the rating body, City Council, or subcommittee thereof shall consider those criteria to be adopted by separate Resolution of the Council.

E. The Chief of Police shall cause the applicants and the owners of property located within seven-hundred-and-fifty-feet (750') of every proposed Collective location to be sent notice of the date, time, and place of the hearing(s) at least ten (10) business days in advance of the opening of such hearing(s).

F. The Chief of Police or City Council/Subcommittee shall open the public hearing(s) at the date, time, and place specified in the notice, but may continue the hearing(s), and may change the place of any or all hearing(s), as necessary to accommodate all interested parties.

G. The Chief of Police or City Council/Subcommittee shall issue a written report of the decision

on all Permit applications not later than fifteen (15) business days after the hearing or series of hearings is closed. The report shall be in writing and shall include findings of fact, a summary of the relevant evidence, a statement of the issues, and a decision regarding whether each applicant is eligible to receive a Permit. The report will also include any conditions to be imposed on a Permit in addition to the conditions established in Section 7.102.060 and the facts supporting imposition of those conditions. A copy of the report shall be mailed or delivered to every applicant, and to any person who has requested notice of the decision and has paid the required fees for copying and mailing.

SECTION 4. Richmond Municipal Code Section 7.102.055 (Appeals from decisions to grant or deny a Permit) is hereby added to read as follows:

A. If the decision on one or more Permit applications is made by the City Council or a subcommittee thereof, the decision is final.

B If the decision on one or more Permit applications is made by a rating body empanelled by the Chief of Police, it may be appealed to the Public Safety/Public Services Committee within fourteen (14) days from the date the written notice of Permit decision was mailed or delivered by personal service. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police along with an appeal deposit in an amount determined by the City Council by resolution.

C. The Public Safety/Public Services Committee shall conduct a hearing on all appeals at its next regularly scheduled meeting after the close of the appeal period, except where good cause exists to extend this period. Notice of the hearing shall be given in accordance with Section 7.102.050(E) The hearing and rules of evidence shall be conducted pursuant to Chapter 2.62.105 of this Code. The determination of the Public Safety/Public Services Committee on the appeal(s) shall be final.

D. No Permits shall be issued prior to the expiration of the appeals period without the filing of an appeal or, in the event of one or more appeals, the final decision of the Public Safety/Services Committee on all appeals.

SECTION 5. Richmond Municipal Code Section 7.102.060 (Permit approval and operating conditions) is hereby amended to read as follows:

Any permit issued pursuant to this chapter shall include, and each permittee shall continually comply with, all of the following conditions of operation, provided that additional conditions may be imposed as necessary to preserve the public health, safety, and welfare.

A. The Property satisfies all locational and zoning criteria.

B. Exterior building and parking area lighting at the Property are in compliance with all applicable provisions of this Code, as determined by the Planning Division.

C. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry; equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and comply with all applicable Building and Fire Code provisions.

D. The Property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Property is not detected outside the Property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the Medical Marijuana Collective.

E. The Property is monitored at all times by closed-circuit television for security purposes. The camera and recording system 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 Property for a period of not less than thirty (30) days.~~

F. The Property has a centrally-monitored fire and burglar alarm system.

G. A sign is posted in a conspicuous location inside the Property advising:

1. The diversion of marijuana for non-medical purposes is a violation of State law.

2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code Section 647(h).

4. This Medical Marijuana Collective is permitted in accordance with the laws of the City of

Richmond.

H. Each Collective distributing Edible Medical Marijuana or other manufactured infused products for the sole consumption by Qualified Patient members and Qualified Patient Management Members of the Collective shall ensure that the products are manufactured, packaged and labeled in compliance with all applicable state and local laws.

I. The Medical Marijuana Collective meets all applicable state and local laws to ensure that the operations of the Collective are consistent with the protection of the health, safety and welfare of the community, Qualified Patients and their Primary Caregivers, and will not adversely affect surrounding uses.

J. No Collective shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by Management Members and members towards the Collective's actual expenses of the growth, cultivation, and provision of Medical Marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented. The site of cultivation for all in-kind contributions shall be noted and addresses shall be made available to Fire and Building inspectors upon request.

K. Prior to distributing any crop, batch or bundle of Medical Marijuana that it cultivates or acquires for distribution or any Edible Medical Marijuana or other manufactured infused products, a Collective shall submit samples of that crop, batch or bundle to an independent laboratory to be tested using standard analytical methodology for the presence of mold, pesticides, and other additives or adulterants that could be harmful if ingested or applied topically. The Medical Marijuana or manufactured infused product shall not be distributed or consumed before laboratory results demonstrate that it is safe for consumption.

L. Prior to hiring any prospective employee or Management Member, the Richmond Police Department shall prepare a summary criminal history ("LiveScan") demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

SECTION 6. Richmond Municipal Code Section 7.102.080 (Maintenance of records), Subparagraphs A.10 and B, are hereby amended to read as follows:

10. Evidence of (a) verification that all Edible Medical Marijuana and other manufactured infused products are manufactured, packaged, and labeled in compliance with all applicable state and local laws, and (b) laboratory testing as required by Section 7.102.060.

B. These records shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available by the Collective to the City upon request, subject to the authority set forth in Section 7.102.090.

SECTION 7. Richmond Municipal Code Section 7.102.100 (Existing Medical Marijuana operations) is hereby amended to read as follows:

Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until such time, if any, when it complies fully with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this Chapter shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code. Any medical marijuana collective, dispensary, operator, establishment or provider that operates without a Permit after December 31, 2010 shall be ineligible to apply for a Permit.

SECTION 8. Richmond Municipal Code Section 7.102.120 (Violation and enforcement), Subparagraph B, is hereby amended to read as follows:

B. Any person who engages in any Medical Marijuana Collective operations after a Medical Marijuana Collective Permit application has been denied, or a Medical Marijuana Collective Permit has been suspended or revoked, and before a new permit is issued, shall be subject to civil prosecution and fines of up to one thousand dollars ($1,000) per day for each day of unpermitted operation.

SECTION 9. Richmond Municipal Code Section 7.102.130 (Appeals process), is hereby amended to read as follows:

7.102.130 Appeals from revocation or suspension decisions.

A. If a City department determines that the permittee failed to comply with any provision of this Chapter, or with any other provision or requirement of law, the Chief of Police shall revoke or suspend the Medical Marijuana Collective Permit.

B. The Chief of Police shall notify the permittee of the permit revocation or suspension by dated written notice. Said notice shall advise the permittee of the right to appeal the decision to the Public Safety/Public Services Committee within fourteen (14) days from the date the notice. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police.

C. The appeal shall be considered by the Public Safety/Public Services Committee in accordance with Section 7.102.055(C). The decision of the Public Safety/Public Services Committee shall be final.

D. Whenever a Medical Marijuana Collective Permit has been revoked or suspended, no permit application by any of the Managing Members of that Collective shall be considered for a period of three (3) years from either the date notice of the revocation or suspension was mailed, or the date of the final decision of the Public Safety/Public Services Committee, whichever is later.

SECTION 10. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 11. Effective Date.

This Ordinance becomes effective thirty (30) days following its passage and adoption.

First reading at a regular meeting of the Council of the City of Richmond held October 19, 2010 and finally passed and adopted at a joint meeting thereof held November 16, 2010 by the following vote:

AYES:	Councilmembers Bates, Butt, Lopez, Rogers, Viramontes,Vice Mayor Ritterman, and Mayor McLaughlin
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 31-10, finally passed and adopted by the City Council of the City of Richmond at a joint meeting held on November 16, 2010.

ORDINANCE NO. 05-1998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE AMENDING TITLE 5 ADDING CHAPTER 5.96 OF THE TULARE MUNICIPAL CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

SECTION 1. Title 5 of the Tulare Municipal Code is hereby amended by the addition thereto of Chapter 5.96, which shall read as follows:

Chapter 5.96

MEDICAL MARIJUANA DISPENSARIES

5.96.010 Purpose and Intent
5.96.020 Definitions
5.96.030 Enforcement of Chapter
5.96.040 Medical Marijuana Business Permit Required
5.96.050 Applications
5.96.060 Term, Renewals and Fees
5.96.070 Notification
5.96.080 Investigation and Action on Application
5.96.090 Grounds for Denial of Permit
5.96.100 Appeal from Denial
5.96.110 Suspension or Revocation of Permit
5.96.120 Judicial Review
5.96.130 Effect of Denial or Revocation
5.96.140 Operating Requirements
5.96.150 Zoning and Development Standards
5.96.160 Minors
5.96.170 Display of Permit
5.96.180 Transfer of Permits
5.96.190 Violations of Chapter: Enforcement
5.96.200 Severability
5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit

Section 5.96.010 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents and businesses within the city by regulating medical marijuana dispensaries. It is not the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purpose as intended by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of this ordinance to condone or legitimize the use of marijuana.

Section 5.96.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 *et seq.*, as may be amended, including but not limited to the terms "attending physician", "person with an identification card", "serious medical conditions", shall apply under this Ordinance in addition to the definitions set for as follows:

"Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee or agent of a Medical Marijuana Business.

"City Planner" means the Planning and Building Director holding office in the City of Tulare or his or her designee.

"Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.* Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Medical Marijuana Businesses" means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

"Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Collective or Cooperative Cultivation" means the association with California of qualified patients, per sons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Processing of Medical Marijuana" means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.

"Permittee" means the person to whom a Medical Marijuana Business permit is issued.

"Written Recommendation" shall have the same definition as California Health and Safety Code section *11362.7 et seq.*, and as may be amended.

Section 5.96.030 Enforcement of Chapter.

The City Planner of the City of Tulare shall have the responsibility and duty of enforcement of this Chapter.

Section 5.96.040 Medical Marijuana Business Permit Required.

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Tulare the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Tulare as herein required.

B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Tulare business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

Section 5.96.050 Applications.

A. The applicant for a Medical Marijuana Business permit shall submit to the City Planner or designee an application for a permit. The application shall be made under penalty of perjury and shall include the following information:

1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application is to be mailed;
3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over the age of eighteen (18) years of age.
5. Applicant's height, weight, color of eyes and hair;
6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
9. The name or names of the person or persons having the management or supervision of applicant's business;
10. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business;
12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;
13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;
14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;
15. Authorization for the City of Tulare, its agents and employees to seek verification of the information contained within the application;
16. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and

B. If the applicant has completed the application improperly, or if the application is incomplete, the City Planner or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.

C. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Medical Marijuana Business permit.

Section 5.96.060 Term, Renewals and Fees.

A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).

B. Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing or 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.

Section 5.96.070 Notification of Community.

A. Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Planner or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant's intent to open such a business and filing of such application.

B. After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Planner or designee shall determine whether to issue the Medical Marijuana Business permit. The City Planner or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Planner or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

Section 5.96.090 Grounds for Denial of Permit.

The grounds for denial of a permit shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule or regulation.

B. The applicant has violated any local or state law, statute, rule or regulation relating to medical marijuana business.

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

F. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.

G. An applicant is under eighteen (18) years of age.

H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Tulare Municipal Code or the development standards set forth in this Chapter.

I. The required application or renewal fees have not been paid.

Section 5.96.100 Appeal from Denial.

A. An applicant aggrieved by the decision of the City Planner or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Planner's decision shall be final.

B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.

C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.

D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it

may deny the issuance of the permit for any of the grounds specified in this Chapter. The decision of the City Council shall be final.

Section 5.96.110 Suspension or Revocation of Permit.

A. The City Planner or designee may suspend or revoke a permit when the permittee or the permitte's agent or employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.
2. Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity.
3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permitee.
4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
5. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business

6. Violates or fails to comply with the terms and conditions or the permit.

B. Prior to suspension or revocation, the City Planner or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.

C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Planner or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.

D. Any permittee aggrieved by the decision of the City Planner or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Chapter, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Planner or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Chapter. The City Council's decision shall be final

Section 5.96.120 Judicial Review.

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

Section 5.96.130 Effect of Denial or Revocation.

When the City Planner or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Planner or desingee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.

Section 5.96.140 Operating requirements.

A Medical Marijuana Business, once permitted by the City Planner or Designee, shall meet the following operating standards for the duration of the use:

A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.

B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.

C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be "registered" patrons of the Business. The Business's register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 *et seq.*, so as to a protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may increase the amount of dried marijuana per the doctor's recommendation, the dispensary may not posses an amount of marijuana in excess of the registered patient's needs.

F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a Medical Marijuana Business shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Business is prohibited.

G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether matore or immature.

H. No Medical Marijuana Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Business.

I. No Medical Marijuana Business shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and conditions consistent with this Chapter and the Compassionate Use Act of 1996, and any amendments thereto.

J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.

L. A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.

M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 *et seq.*

N. Each Medical Marijuana Business shall allow the City Planner or designee to have access to the Business's books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Planner's written request(s).

O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Planner or designee to ensure that operations of the Business is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

P. The building in which the Medical Marijuana Business is located shall comply with all applicable local, state and federal rules, regulations and laws including, but not limited to, building codes and the Americans with Disability Act, as certified by the Building Official of the City.

Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: "Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer."

R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.

S. A Medical Marijuana Business shall provide to the City Planner or designee, upon request, written evidence to the City Planner or designee's reasonable satisfaction, that the Business is not engaged in interstate commerce.

T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, *e t seq.*, or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

Section 5.96.150 Zoning and Development Standards.

The provisions of Chapter 10.168.09 of Title 10 ("Zoning") of the Municipal Code are applicable to Medical Marijuana Dispensaries and compliance with those provisions shall be considered additional requirements for a permit required by this Chapter.

Section 5.96.160 Minors.

A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not a least eighteen (18) years of age.

B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.

Section 5.96.170 Display of permit.

Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

Section 5.96.180 Transfer of permits.

A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other that the address of the Medical Marijuana Business stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Planner or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Planner or designee in accordance with this Chapter and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manger determines that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the City Planner or designee has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

Section 5.96.190 Violations of Chapter: Enforcement.

A. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

B. Any use of condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Tulare Municipal Code.

C. Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.

D. The violation of any provisions of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

E. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance.

Section 5.96.200 Severability.

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

Section 5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit.

The continued operation of a Medical Marijuana Business in existence before the effective date of this Chapter without having applied for a permit obtained pursuant to the provisions of this Chapter for more than ninety (90) days after the effective date of this Chapter shall constitute a violation of this Chapter.

Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of it passage to print.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 2006.

_____
President of the Council and Ex-
Officio Mayor of the City of Tulare

ATTEST:

_____
Chief Deputy City Clerk and Clerk
of the Council of the City of Tulare

ORDINANCE NO. 1417

ORDINANCE OF THE CITY OF SAN CARLOS ADDING CHAPTER 8.09 TO THE MUNICIPAL CODE: REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA AND REQUIRING LICENSING OF MEDICAL MARIJUANA COLLECTIVES WITHIN THE CITY OF SAN CARLOS.

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

Section 1: RECITALS

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, "the Compassionate Use Act", which was intended to permit cultivation and possession of medical marijuana by single patient, or the patient's caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana; and,

WHEREAS, in 2004, the State Legislature enacted Senate Bill 420, "the Medical Marijuana Program Act", to clarify the scope of the Compassionate Use Act and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to the crimes of possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage or distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance; and,

WHEREAS, the Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person; and,

WHEREAS, the Medical Marijuana Program Act allows cities and counties to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, in August 2008, the California Attorney General issued guidelines that clarify the state's laws governing medical marijuana, and provided guidelines for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets; and

WHEREAS, this chapter is enacted, pursuant to the Compassionate Use Act, and the Medical Marijuana Program Act, the Guidelines issued by the California Attorney General, and the City's constitutional police power to protect the health, safety

and welfare of the residents of the City of San Carlos; and

WHEREAS, since the sale of medical marijuana is unlawful, it is necessary to place restrictions on the exterior appearance of medical marijuana collectives in order to prevent the misunderstanding that collectives are places where marijuana may be purchased;

SECTION 2: Chapter 8.09 - REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA is added to the Municipal Code as follows:

Chapter 8.09

REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA

8.09.010 Purpose and Intent
8.09.020 Definitions
8.09.030 Enforcement of Chapter
8.09.040 Registration
8.09.050 Operating Restrictions
8.09.060 Permit Requirements
8.09.070 Revocation
8.09.080 Marijuana Produced for On-Site Consumption
8.09.090 Violation and Penalties
8.09.100 Marijuana produced for individual residential on-site Consumption
8.09.110 Appeals
8.09.120 Severability

8.09.010 Purpose and Intent.

It is the purpose and intent of this chapter to:

A. Regulate the collective cultivation and distribution of medical marijuana within the City limits; and

B. Provide that Medical Marijuana Collectives be appropriately located to provide for the health, safety and welfare of the public; and

C. Regulate Medical Marijuana Collectives consistent with the Compassionate Use Act, and the Medical Marijuana Program Act, the Guidelines issued by the California Attorney General, and the County's constitutional police power to protect the health, safety and welfare of the residents of the City of San Carlos; and

D. Provide lawful restrictions on the exterior appearance of Medical Marijuana Collectives in order to prevent the misunderstanding that such collectives are places where marijuana may be purchased; and

E. Provide for the adoption and enforcement of rules consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines issued by the California Attorney General, which will provide for the health, safety and welfare of the public by regulating the collective cultivation and possession of medical marijuana within the City of San Carlos, consistent with state law; and

F. This chapter is not intended to and does not criminalize activity which is otherwise permitted under state law, and it is not intended to and does not authorize conduct that is otherwise prohibited by state law, or to prohibit conduct that is authorized by state law.

G. The ordinance codified in this chapter, in compliance with California Health and Safety Code Section 11362, does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to state law.

8.09.020 Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

A. Medical Marijuana Collective or Collective means a location where marijuana is cultivated collectively by more than one qualified patient, person with valid identification card or designated primary caregiver of a person with a valid identification card, within the City of San Carlos in order collectively or cooperatively to cultivate and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775.

B. Person with a valid identification card means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to California Health and Safety Code Section 11362.7. The identification card must be obtained via written recommendation from the individual's attending licensed physician, after an examination.

C. An Attending Physician is defined as a duly licensed medical doctor who has the patient's medical records. Those patients who seek medical services from clinics are required to obtain identification cards from said clinics.

D. Police Chief means the City's chief of police or the chief's designee.

E. Primary Caregiver means a primary caregiver as that term is defined in Health and Safety Code Section 11362.7, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, et seq. A primary caregiver shall be at least **eighteen years of age, unless the primary caregiver is the parent of a minor child who** is a qualified patient, and the parent of such minor child is also a minor.

F. Qualified Patient means a person who is entitled to the protections of California Health and Safety Code Section 11362.7, but who does not have a valid identification card issued pursuant to California Health and Safety Code Section 11362. A qualified patient is someone who could possess a valid identification card pursuant to California Health and Safety Code Section 11362.7, but has either failed to apply for such a card, or not yet received such a card. The patient is deemed as qualified, if a licensed physician would have recommended the patient use marijuana for medical relief.

G. Residential district means any of the following zoning districts in the City's zoning ordinance: R1-LD (Ch. 18.24), R-1 (Ch. 18.28), multifamily residential (Ch. 18.30), P-r (Ch. 18.44), and P-C with residential use (18.104).

8.09.030 Enforcement of Chapter.

A. The Police Chief and City Attorney shall have the authority to enforce any violations of this chapter, and to report and enforce against any violations of the conditions of approval attached to use permits obtained under the authority of the Zoning Ordinance. The Police Chief shall provide a report of all violations of these provisions to the City Attorney and Planning Director for possible enforcement.

B. The Planning Director shall have the duty and responsibility of processing and referring to the Planning Commission all use permit applications, which shall include as conditions the registration restrictions in Section 8.09.040 and the operating restrictions in 8.09.050.

8.09.040 Registration

(a) Primary caregivers, qualified patients and persons with valid identification cards cultivating medical marijuana at such collectives shall register the collective with the Police Chief, providing the name of a responsible party, a telephone number, the place of operation of the medical marijuana collective and shall be subject to the following restrictions:

(1. Only qualified patients, persons with valid identification cards and primary

caregivers may cultivate medical marijuana collectively or associate for the purpose of doing so;

2. No collective shall consist of more than ten (10) qualified patients or persons with valid identification cards and no qualified patients or persons with valid identification cards shall be members of more than one collective in the City of San Carlos.

3. Absolutely no advertising of marijuana is allowed at any time;

4. Exterior signage is limited to site addressing only;

5. The collective site will be monitored at all times by web-based closed circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution, as to allow the ready identification of any individual committing a crime anywhere on the site;

6. A centrally monitored alarm system is required;

7. Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty (40) feet;

8. Windows and roof hatches will be secured with bars on the windows so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency;

9. Absolutely no cultivated marijuana or dried marijuana product may be displayed or visible from the building exterior;

10. The activities that may be conducted at a registered and permitted collective are limited to cultivation and storage of marijuana for personal use and preparation of cultivated marijuana for personal use, such as drying and processing. No further refinement of marijuana, or the preparation of marijuana products, such as but not limited to hashish, hash oil or marijuana butter is allowed;

11. No cooking, sale, preparation, or manufacturing of marijuana enhanced or edible or drinkable products, including but not limited to cookies, candy, drinks, or brownies is allowed;

12. No display or sales of cultivated marijuana are allowed on site;

13. No persons under the age of eighteen (18) are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian;

14. The quantity of marijuana located at the facility where medical marijuana is collectively cultivated may not exceed the maximum quantity per patient of medical marijuana authorized by California Health and Safety Code Section 11362.77, multiplied by the number of participants who are served by the collective, consistent with the regulations set forth in this chapter, and State law;

15. The Chief of Police may inspect the Collective at any reasonable time to ensure that the amounts of medical marijuana on site conform to California Health and Safety Code Section 11362.77. The City reserves the right to require additional security and safety conditions, if necessary, upon receipt of detailed/revised building plans.

16. No individual or group may cultivate or distribute marijuana for profit;

17. No money or any other thing of value shall be exchanged for medical marijuana. A primary caregiver, as defined herein, who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out of pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under this article;

18. Marijuana cultivated in a licensed collective must be secured from public access, and not be visible to the public domain. All cultivated marijuana must be secured in structures consisting of at least four (4) walls and a roof, and conform to specified Security Standards, as to locks, deadbolts and additional security measures;

19. This chapter does not authorize the consumption, use, or smoking of marijuana in the parking areas of a collective, or in vehicles located at or near or under said collective, or under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by state law;

20. The medical marijuana collective shall comply with the all applicable building, zoning, and environmental requirements set forth in the Municipal Code or state law;

21. The medical marijuana collective may not be operated or located in or within one thousand (1000) feet of the grounds of a school, park, recreation center, youth center or playground.

22. The medical marijuana collective may not employ any persons who are felons or who are currently on probation.

23. No designated Primary Caregiver shall be responsible for more than ten (10) qualified patients or persons with valid identification cards. The limit of ten

(10) qualified patients or persons with valid identification cards in a collective shall not be increased by this provision.

24. The California State Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use dated August 2008, and as amended, shall be complied with.

(b) The Chief of Police and City may make additional security and safety conditions, upon receipt of detailed/revised building plans.

8.09.050 Operating Restrictions

In addition to the Registration requirements, as a condition to receipt of a Registration Permit under this chapter, the Collective shall provide the following:

1. A warning that operators, employees, and members of facilities where medical marijuana is collectively cultivated may be subject to prosecution under federal laws.

2. The applicant's waiver and release of the City from any and all legal liability related to or arising from the Registration or the Business License, the registration process, or the enforcement of the conditions of the City's Ordinances, and/or the operation of any facility at which where medical marijuana is collectively cultivated.

3. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, et seq.

4. The Primary Caregiver shall keep a list of his or her assigned ten (10) qualified patients or persons with a valid identification card; such a list must minimally contain those persons' contact information, such that it may be immediately provided to the chief of police upon request, for the purposes of determining the proper legal amounts of cultivated and/or dried marijuana that may be possessed at the collective.

5. Only these three classifications of person may possess or cultivate medical marijuana individually or collectively, in accordance with California Health and Safety Code Section 11362.7.

8.09.060 Permit Requirements.

A. Medical marijuana collectives are required to obtain a use permit to operate within the city limits under Title 18 of the Municipal Code.

8.09.070 Revocation.

A. The Registration Permit may be revoked by the Chief of Police for any violation of state law or this chapter, or for failure to comply with the conditions listed on said registration permit or use permit.

B. Upon the revocation of any Registration Permit issued under this chapter, the Chief of Police shall make his findings and reasons for revocation and transmit them to the registrant whose registration permit has been revoked, and a copy thereof to the City Clerk. Revocation of a Registration permit automatically revokes the business license to which the registration permit applies.

8.09.080 Marijuana Produced for On-Site Consumption.

A. Nothing in this chapter shall be deemed to make it unlawful for an individual to grow marijuana at his or her residence for his or her own consumption at such residence, or for consumption by another person regularly residing at such residence, if such consumption is permitted under Health and Safety Code Sections 11362.5 through 11362.77.

B. Marijuana cultivated pursuant to these sections must be secured from public access, and not be visible from the public domain. All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and be held secure to the satisfaction of the police chief.

C. Medical marijuana cultivated at registered collectives may not be consumed on-site, in the parking areas, inside vehicles, or in those areas already restricted by the California Health and Safety Code Section 11362.79.

8.09.090 Violation and Penalties

Any violation of this chapter shall be deemed a misdemeanor, unless the circumstances that create the violation are subject to prosecution as a felony under state or federal law. Any violation of this chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the City for abatement of public nuisances.

8.09.100 Marijuana produced for individual residential on-site consumption

This chapter does not apply to individual cultivation of marijuana for consumption or use of an individual at his or her residence, or for consumption by another individual or individuals regularly residing at said residence, if such consumption is otherwise permitted by state law.

8.09.110 Appeals

The Chief of Police shall make findings and reasons for disapproval or revocation and transmit the same to the City Clerk, who shall notify the applicant that the application is disapproved or registration permit revoked. Upon the disapproval or revocation, any person aggrieved by the action of the Chief of Police, and the denial of the application for a registration permit or revocation of a registration permit, shall have the right of appeal to the City Council, after paying the required fee. Such appeal shall be taken by filing with the City Council, within ten days after notice of the action complained of has been mailed to the applicant's last known address (or to the applicant's address as appearing on his application or registration permit), a written statement setting forth fully the grounds of appeal. The City Council shall set a time and place for a hearing of such appeal, and notice shall be given to the appellant by mail, postage prepaid, to his address as aforesaid, at least five days prior to the date set for a hearing. The disposition and order of the Council shall be final and conclusive.

8.09.120 Severability

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this ordinance and adopted this Chapter and each section, sentence, clause or phrase thereof, even if one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. The City Clerk is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute.

Section 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

Introduced on the 8th day of February, 2010.

Passed and adopted on the 22nd day of February, 2010 by the following vote:

AYES: COUNCILMEMBERS:_____

NOES: COUNCILMEMBERS:_____

ABSENT: COUNCILMEMBERS:_____

_____

Mayor

ATTEST:

_____

City Clerk

Martin Reeder

From:	cynara@communityengagementresources.com on behalf of Cynara Velazquez <cynara@yourcer.com>
Sent:	Tuesday, December 01, 2015 12:09 AM
To:	Martin Reeder
Subject:	Recommendations for Crafting Regulatory guidelines for Medical Marijuana Cultivation
Attachments:	MMJZoningCultivationOrdinance_NC.pdf

Hi Martin,

To aid in your crafting of a regulatory proposal for medical marijuana cultivation in National City, we would like to provide you with the below outline of the basic components and policy decisions that should be contemplated by a municipality in order to create a comprehensive medical marijuana cultivation ordinance. Additionally, we have attached a template annotated regulatory proposal for your reference, with suggested zoning, limits, safety regulations and fees.

Please feel free to contact me, Cynara Velazquez, regarding any questions or feedback you may have for me regarding these regulatory proposals.

Thank You for Your Consideration,
Cynara Velazquez

Association of Cannabis Professionals

619-208-0567

cynara@cannabisprofessionals.org

Components of a Medical Marijuana Cultivation Ordinance

A comprehensive medical marijuana cultivation ordinance is composed of two basic provisions - regulations for personal use and regulation for commercial cultivation.

Personal Cultivation

State law allows a qualified patient to cultivate medical marijuana for their own personal use in an area that does not exceed 100 square feet State law specifies that the qualified patient may only

cultivates marijuana for her personal medical use and may not sell, distribute, donate, or provide marijuana to any other person or entity. Our recommendation is that any municipal regulation regarding personal cultivation continue to reference state law and adhere strictly to the state guidelines and limits. Additionally, any and all nuisance laws must be strictly adhered to, including nuisance laws related to smell and waste disposal.

Commercial Cultivation

The state allows for different classes of commercial cultivation with distinct limits to plant count and canopy associated with class. The most straightforward mechanism for a municipality to adopt local regulations is to compliment the state licensing structure - issuing permits for certain licensing classes for cultivation use and defining the zoning for these uses. Additionally a city may adopt a cost recovery structure and additional local safety regulations. (The state will also be adopting uniform safety restriction to be applied statewide, but these regulations have not yet been defined and additional local regulations are permitted.)

Therefore, a comprehensive regulatory proposal for medical marijuana cultivation would include the following components, related to commercial cultivation:

- State Licensing Classes Allowed - Defines the associated plant count, canopy size and whether to allow indoor or outdoor cultivation
- Associated Zones Permitted – Defines in which zones cultivation will be permitted to occur, under the conditions outlined per the state licensing class.
- Associated Fees and Taxes – Defines, per state tax code. Additional local sales taxes are not permitted, however, additional municipal fees and/or excise taxes are permitted, and can be set by the municipality.
- Additionally Safety Regulations – Defines regulations related to operating hours, public access, background checks, signage, security personnel, alarms, and enhanced building security features.

MEDICAL MARIJUANA CULTIVATION ORDINANCE

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, in 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, establish a comprehensive regulatory framework for the production, transportation, and sale of medical marijuana.

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in article XI, section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of medical marijuana enterprises in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of National City as follows:

Section 1. Definitions

"Qualified Patient" as defined in the California Health and Safety Code, Section 11362.7.

"Premise" is defined to mean the legal parcel(s) of land and the improvements on it, including building(s), store(s), shop(s), apartment(s), or other designated structure.

"Dispensary" is defined to mean a physical retail establishment where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, to Qualified Patients and their Primary Caregivers, including an establishment that delivers medical cannabis and medical cannabis products as part of a retail sale.

"*Cultivation*" is defined to mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"*Cultivation Site*" is defined to mean the physical location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed.

"*Cultivator*" is defined to mean the organization holding the Conditional Use Permit for *cultivation* activity at a location authorized by the City.

"*Plant Canopy*" is defined to mean the amount of cannabis that can be grown which is the aggregate area of vegetative growth of live marijuana plants.

"*Small Specialty Indoor Cultivation*" is defined to mean cultivation in compliance with the regulations for a Cultivation License Type 1A (Specialty Indoor License), as defined in the California Health and Safety Code Section 11362.777, meeting the requirements to qualify for a state issued license.

"*Nursery Cultivation*" is defined to mean cultivation in compliance with the regulations for a State Cultivation License Type 4 (Nursery License), as defined in the California Health and Safety Code Section 11362.777, meeting the requirements to qualify for a state issued cultivation license of Type 4.

Section 2. Personal Use *Cultivation*

In accordance with California Health and Safety Code section 1362.777, a *qualified patient* may cultivate medical marijuana for their own personal use, at their place of residence, in an indoor area that does not exceed 100 square feet. A *qualified patient* may only cultivate marijuana for his or her personal medical use and may not sell, distribute, donate, or provide marijuana to any other person or entity. Landlords and building owners may limit or prohibit personal *cultivation* on the *premise*.

Section 3. Commercial *Cultivation*

Cultivation Sites are prohibited in residential, commercial, mixed-use and agricultural zones. *Cultivation Sites* may be permitted with a Conditional Use Permit in Industrial Zones, subject to the following regulations:

Commented [CV1]: Enumerate zones here

a) All *cultivation* must occur on the interior of a building using exclusively artificial lighting.

b) A Conditional Use Permit may be issued for *Small Specialty Indoor Cultivation* or *Nursery Cultivation*, all other cultivation is strictly prohibited. A Conditional Use Permit applicant must specify whether the applicant will be cultivating *Small Specialty Indoor Cultivation* or *Nursery Cultivation* on site. Only one cultivation type will be permitted per location. Any cultivation must conform to the *plant canopy* and other limits set forth by the applicable California State License Category for the *cultivation site*.

Commented [CV2]: Licensing type allowed, plant and canopy limits

c) Plants may only be cultivated in response to a pre-existing purchasing agreement with a licensed *dispensary* or *distributor*. For each plant, the *cultivator* must be able to show an active purchase order requiring this plant from a licensed *dispensary* or *distributor*. The *dispensary* or *distributor* with which a *cultivator* has a purchase agreement must be licensed by a municipal or county jurisdiction within the state of California.

a) A unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant. This unique identifier shall identify the *dispensary* or *distributor* for which the plant is being grown, as well as a

unique id assigned to the individual plant. Records of plants, as identified by their unique identifiers, and their associated *dispensary* or *distributor* must be kept by the *cultivator*, and must be made available to City auditors upon request. .

d) Security shall be provided at the *cultivation site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.

Commented [CV3]: Safety regulations

e) From a public right of way, there shall be no visual evidence of *cultivation* either within or outside the facility. Adverse impacts of *cultivation* shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

f) No external signage shall be allowed.

g) No public access or sales shall be allowed on the *premise*, only employees and contractors authorized by the *cultivator* may be present on the *premise*.

Commented [CV4]: No public access to cultivation sites

h) All employees of the organization to which the Conditional Use Permit is issued shall be subject to a background check. Any person who has been convicted of a felony may not be employed by *cultivator*.

i) The City encourages *cultivators* to operate in an environmentally sustainable manner. Preference will be given to applicant for Conditional Use Permits who show their commitment to environmentally sustainable practices including building LEED certification and adoption of EPA WaterSense identified water saving technologies.

j) To discourage theft and vandalism, the City will not publish, or provide to the general public, the exact addresses of *cultivation sites*. Other aggregate information regarding conditional use permits for *cultivation* including, but not limited to, number of permits issued, districts where said permits were issued, and the organizations to whom such permits were issued shall be available upon request.

k) Applicants for Conditional Use Permit for *cultivation* must provide written proof that the building owner and management condone *cultivation* activity on the *premise*.

l) A Conditional Use Permit for *cultivation site* may be revoked or suspended due to legitimate smell complaints, noise complaints, upon City confirmation of the smell or noise nuisance, or non-compliance with the regulations set forth in this ordinance.

Commented [CV5]: Conditions to revoke a permit

m) The City has may establish a set application fee for a Conditional Use Permit for a *cultivation site* and, as well as set annual fee for maintaining the *cultivation site* Conditional Use Permit. Such fees shall be established by the City planning department.

Commented [CV6]: Establish a fee structure

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Martin Reeder

From: outlook_ed7d1a76c94e3170@outlook.com on behalf of Cynara Velazquez <cynara@communityengagementresources.com>
Sent: Tuesday, December 01, 2015 12:10 AM
To: Martin Reeder
Subject: Examples of Existing Municipal Ordinances addressing Medical Marijuana Cultivation
Attachments: Arcata_Cultivation_Ordinance.pdf; City_of_Napa_Dispensary_w_Cultivation.pdf; City_of_Tulare_Dispensary_Ordinance.pdf; Clearlake_Dispensary_Ordinance_W_Cultivation.pdf; Eureka_Cultivation_Regulation.pdf; Fairfax_Dispensary_w_Cultivation.pdf; Richmond2.pdf; San_Carlos.pdf; Santa_Cruz_City2.pdf

Hi Martin,

To aid in your medical marijuana cultivation regulatory proposal effort, attached are a sample of ordinances from other jurisdictions that address cultivation. Please note that most of these ordinances are focused primarily on dispensaries and to a lesser extent on cultivation regulation, since prior to October of this year the state had not yet set up licensing categories for cultivation, therefore, municipalities had less incentive to regulate this use. That said, the ordinances attached do clearly address the relevant cultivation regulation components - zoning, plant limits, patient and building requirements, safety requirements, etc..

I hope this will give guidance in your investigations into cultivation regulation..

Regards,
Cynara Velazquez
Association of Cannabis Professionals
619-208-0567

STAFF REPORT
City Council Agenda
City Council Meeting of November 19, 2008

To: Michael Hackett, City Manager

From: Joe Mateer, Senior Planner

Date: November 12, 2008

Subject: Adopt Ordinance 1382 to amend the Arcata Municipal Code, Title IX, the Land Use Code by adding §9.42.105 – Medical Marijuana: Cultivation and Dispensing as a new standard for specific land use; and associated revisions to: Allowable Land Uses and Permit Requirement Tables 2-1, 2-4, and 2-10; add associated definitions to Article 10 – Glossary; revise text of §9.42.040 – Accessory Uses, and §9.42.090 – Home Occupations.

RECOMMENDATION: It is recommended the City Council adopt Ordinance 1382, waive reading of text, and consent to read by title only.

INTRODUCTION: The Council introduced Ordinance 1382 at the November 5, 2008 regular meeting to amend the 2008 Arcata Land Use Code with specific land use standards for medical marijuana. The Council requested staff revise several items and bring the item back to the Council for adoption. Attachment A with accompanying exhibits reflects the revisions requested by the Council. If the Council makes revisions that require the ordinance to come back for reintroduction, staff intends to bring the item back to the new Council on December 17, 2008.

DISCUSSION: The adoption of Ordinance 1382 requires an additional 30 day period prior to the medical marijuana land use standards becoming effective in the areas outside the City's Coastal Zone boundary.

BUDGET / FINANCIAL IMPACT: The zone amendment is considered an advance planning project, thus the costs are funded by the general fund. Use Permit applications are project driven with the costs of permit processing the responsibility of the applicant. Staff has anticipated the Land Use Code amendments and has delayed some document copying to allow the amendment to be incorporated. Otherwise the project should have no additional budget or financial impact on the City.

ATTACHMENTS

A. Ordinance Number 1382 including:
   - Exhibit 1 - Land Use Code Revisions for Medical Marijuana: §9.42.105 – Medical Marijuana: Cultivation and Dispensing;
   - Exhibit 2 - Allowable Land Uses and Permit Requirement: Table 2-1; Page 2-11;
   - Exhibit 3 - Allowable Land Uses and Permit Requirement: Table 2-4; Page 2-19;
   - Exhibit 4 - Allowable Land Uses and Permit Requirement: Table 2-10; Pages 2-31 and 2-34;
   - Exhibit 5 – § 9.100.010 – Glossary (seven new terms defined)
   - Exhibit 6 - § 9.42.040 – Accessory Uses;
   - Exhibit 7 - § 9.42.090 – Home Occupations, Pages 4-15 and 4-16 (text revision occurs on page 4-16);

Previous Attachments from 10/01/08 and 11/05/08 Staff Reports are incorporated into project proposal. These items should be retained by the City Council and brought to each meeting where this item is on the agenda.

Draft **ORDINANCE NO. 1382**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARCATA AMENDING THE ARCATA MUNICIPAL CODE, TITLE IX, THE LAND USE CODE BY ADDING *§9.42.105 – MEDICAL MARIJUANA: CULTIVATION AND DISPENSING* AS A NEW STANDARD FOR SPECIFIC LAND USE; AND ASSOCIATED REVISIONS TO: *ALLOWABLE LAND USES AND PERMIT REQUIREMENT TABLES 2-1, 2-4,* and *2-10*; ADD ASSOCIATED DEFINITIONS TO *ARTICLE 10 – GLOSSARY*; REVISE TEXT OF *§9.42.040 – ACCESSORY USES,* AND *§9.42.090 – HOME OCCUPATIONS.*

The City Council of the City of Arcata does hereby ordain as follows:

SECTION 1. Amendment of the 2008 City of Arcata Land Use Code

Title IX of the Arcata Municipal Code is hereby amended as follows:

1. Add §9.42.105 – Medical Marijuana: Cultivation and Dispensing as attached as Exhibit 1;
2. Revise Tables 2-1, 2-4, and 2-10: Allowable Land Uses and Permit Requirement as attached as Exhibits 2, 3, 4;
3. Add definitions to Article 10 – Glossary as attached as Exhibit 5;
4. Revise text of §9.42.040 – Accessory Uses as attached as Exhibit 6;
5. Revise text of §9.42.090 - Home Occupations as attached as Exhibit 7.

SECTION 2. Findings of Approval

Based upon information received in the public hearing, including the Arcata Planning Commission Staff Reports and Resolution PC-08-14 the following findings are hereby adopted.

1. The proposed amendment is consistent with the General Plan in accordance with the California Government Code, Section 65860.
2. The public health, safety, and general welfare require the adoption of the proposed amendment.

SECTION 3. Severability

If any provision of this ordinance is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.

SECTION 4. Limitation of Actions

Any action to challenge the validity or legality of any provision of this ordinance on any grounds shall be brought by court action commenced within ninety (90) days of the date of adoption of this ordinance.

SECTION 5. Effective Date

This ordinance shall take effect thirty (30) days after its adoption by the City Council.

DATED:

ATTEST:

City Clerk, City of Arcata

Mayor, City of Arcata

CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Ordinance No. 1382, passed and adopted at a regular meeting of the City Council of the City of Arcata, County of Humboldt, State of California, on the th day of , 2008, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

City Clerk, City of Arcata

9.42.105 – Medical Marijuana: Cultivation and Dispensing

A. **Purpose.** The purpose and intent of this section is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law.

B. **Applicability.** No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and dispensing of medical marijuana in the City of Arcata is controlled by the provisions of this section of the Land Use Code. Accessory uses and home occupations, where medical marijuana is involved shall be governed by the provisions of this section.

C. **Release of Liability and Hold Harmless.** The owner and permittee of a medical marijuana cooperative, collective or cultivation facility shall release the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each medical marijuana cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Arcata and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of medical marijuana provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director.

D. **Medical Marijuana for Personal Use.** An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:

1. The medical marijuana cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height per residence;

   a. Medical marijuana cultivation lighting shall not exceed 1200 watts;

   b. The use of gas products (CO_2, butane, etc.) for medical marijuana cultivation or processing is prohibited;

   c. In accordance with Section 9.42.090.B.2., medical marijuana cultivation and sale is prohibited as a Home Occupation. Per Section 9.42.040, Accessory Uses, medical marijuana cultivation and sales is not considered an accessory use. No sale or dispensing of medical marijuana for personal use is allowed;

   d. From a public right of way, there shall be no exterior evidence of medical marijuana cultivation either within or outside the residence;

   e. The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;

f. The qualified patient shall not participate in medical marijuana cultivation in any other residential location within the City of Arcata;

g. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation;

h. The medical marijuana cultivation area shall be in compliance with the current, adopted edition of the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation (or its equivalent(s)); and

i. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

2. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 9.42.105 D. 1. shall require a Zoning Administrator Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Zoning Administrator shall review the submitted information and make an interpretation in accordance with Section 9.10.050. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers. Approved medical marijuana cultivation for personal use that exceeds 50 square feet shall conform to the following standards:

a. Shall be in compliance with §9.42.105 D 1 a. – i. above; and

b. The medical marijuana cultivation area shall not exceed an additional 50 square feet for the total of 100 square feet and not exceed ten feet (10') in height per residence; and

c. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board; and

d. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

E. **Permit requirements for Medical Marijuana Cooperatives or Collectives.** Medical marijuana cooperatives or collectives may be established only in those zoning districts listed in Table 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cooperatives or collectives shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a medical marijuana cooperative or collective. A medical marijuana cooperative or collective shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical marijuana.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing cooperative or collective in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. Specific Regulations. The following specific regulations apply to medical marijuana cooperatives or collectives.

   a. The total number of medical marijuana cooperatives or collectives within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the four (4) cooperatives or collectives ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2).

   b. In addition to Section 9.72.080 F (Use Permit Findings and decision), the review authority should give special consideration to approving cooperatives or collectives located: within a 300 foot radius from any existing residential zoning district, within 500 feet of any other medical marijuana cooperative or collective as defined in the glossary which is located either inside or outside the jurisdiction of the City, or within 500 feet from any existing public park, playground, day care, or school.

   c. Source of medical marijuana. A medical marijuana cooperative or collective shall only dispense marijuana from the following sources:

      (1) Permitted Cooperative or Collective. If the Use Permit authorizes limited, on-site medical marijuana cultivation at the cooperative or collective, a permitted medical marijuana cooperatives' or collectives' on-site cultivation shall not exceed twenty-five (25) percent of the cooperatives' or collectives' total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.

      (2) Off-site Permitted Cultivation. The cooperative or collective cultivates medical marijuana in an off-site location in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually.

      (3) Qualified Patients. In the case of a medical marijuana cooperative or collective, the medical marijuana is acquired from an individual qualified patient who cultivated the medical marijuana in accordance with the standards in Section 9.42.105.D., the qualified patient received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Pursuant to California Health and Safety Code §11362.765 (c) a collective or cooperative my credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.

   d. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cooperative or collective application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

      (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

      (2) A description of the staff screening process including appropriate background checks;

      (3) The hours and days of the week the medical marijuana cooperative or collective will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cooperative or collective. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) A description of the screening, registration and validation process for qualified patients;

(7) A description of qualified patient records acquisition and retention procedures;

(8) The process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources;

(9) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;

(10) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(11) Other information required by the Community Development Director.

2. Operating Standards. Medical marijuana cooperatives or collectives shall comply with all of the following operating standards.

a. No dispensing medical marijuana to an individual qualified patient or primary caregiver more than twice a day;

b. Medical marijuana cooperatives or collectives shall only dispense medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid;

c. Medical cooperatives or collectives shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. The client rules and/or regulations shall include, but not limited to:

(1) Each building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana on the premises or in the vicinity of the cooperative or collective is prohibited unless specifically authorized with the Use Permit.

(2) The building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and/or they are under the supervision of their parent or legal guardian.

f. Medical marijuana cooperatives or collectives shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);

g. Medical marijuana cooperatives or collectives shall only permit the distribution of live plants, starts and clones as allowed by the approved Use Permit. Such distribution shall be limited to qualified patients or primary caregiver;

h. Medical marijuana cooperatives or collectives shall only permit the on-site display or sale of marijuana paraphernalia used for the consumption of medical marijuana as allowed by the approved Use Permit;

i. Medical marijuana cooperatives or collectives shall comply with other conditions as outlined in the Use Permit;

j. Medical marijuana cooperatives or collectives shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;

k. Medical marijuana cooperatives or collectives shall implement procedures as outlined in their approved Operations Manual;

l. Medical marijuana cooperatives or collectives shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and dispensing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

3. Permit Revocation or Modification. A use permit may be revoked or modified according to Section 9.96.070 (Permit Revocation or Modification). Use Permit revocation proceedings may occur for non-compliance with one or more of the items 2.a. through l. above.

4. Transfer of Use Permit. The rights of an approved Use Permit to operate a medical marijuana cooperative or collective may be transferred to another cooperative or collective as a Use Permit modification according to Section 9.96.070 (Permit Revocation or Modification).

F. **Medical Marijuana Cultivation for Cooperative or Collective.** Except as permitted in Section 9.42.105 E. 1. c. (1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only in those zoning districts listed in Table 2-1 "Allowable Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts" and 2-10, "Allowable Land Uses and Permit Requirements for Commercial, Industrial, and Public Facility Zoning Districts." Medical marijuana cultivation and processing for a medical marijuana cooperative or collective shall only be allowed with an approved Use Permit in conformance with Section 9.72.080 (Use Permit and Minor Use Permit). The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate medical marijuana cultivation or processing facility.

Notwithstanding the provisions of Chapter 9 (Nonconforming Uses, Structures, and Parcels), an existing medical marijuana cultivation and processing structure or use in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. **Specific Regulations.** The following specific regulations apply to medical marijuana cultivation and processing.

   a. The total number of medical marijuana cultivation and processing facilities within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the cultivation and processing facilities ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2). If a medical marijuana cooperative or collective allows for marijuana cultivation and processing pursuant to Section 9.42.105 E. 1. c. (1), the cooperative or collective shall be counted as one of the four (4) (or three (3), or two (2) as noted above) allowed marijuana cultivation and processing facilities.

   b. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, shall be ventilated with odor control, and shall not create a humidity or mold problem;

   c. The medical marijuana cultivation and processing facility shall not adversely affect the health or safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes;

   d. The medical marijuana cultivation and processing facility must be permitted in conjunction with an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;

   e. The medical marijuana cultivation and processing facility shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;

   f. The size and scale of the cultivation shall be proportional to the qualified patient load of an associated medical marijuana cooperative or collective in accordance to applicable zoning regulations from the jurisdiction in which it is located;

   g. Medical marijuana cultivation and processing facilities shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);

   h. Medical marijuana cultivation and processing facilities shall not permit the on-site display or sale of paraphernalia used for the use or consumption of medical marijuana;

i. Medical marijuana cultivation and processing facilities shall comply with other conditions as outlined in the Use Permit;

j. Medical marijuana cultivation and processing facilities shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cultivation and processing facilities shall also provide invoices to vendors to ensure vendor's tax liability responsibility;

k. Notwithstanding Section 9.72.080 (Use Permit and Minor Use Permit) a medical marijuana cultivation and processing application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) A description of the staff screening process including appropriate background checks;

(3) The hours and days of the week the medical marijuana cultivation and processing facility will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cultivation and processing facility. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) The process for tracking medical marijuana quantities and inventory controls;

(7) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;

(8) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(9) Other information required by the Community Development Director.

n. Medical marijuana cultivation and processing facilities shall implement procedures as outlined in their approved Operations Manual;

o. Medical marijuana cultivation and processing facilities shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and processing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

TABLE 2-1
Allowed Land Uses and Permit Requirements for Agricultural and Resource Zoning Districts

P — Permitted Use, Zoning Clearance required
MUP — Minor Use Permit required
UP — Use Permit required
S — Permit determined by specific use regulations
— Use not allowed

LAND USE(1)	PERMIT REQUIRED BY DISTRICT					Specific Use Regulations
	AE	AE-CZ	AR	NR-TP	NR-PT	
AGRICULTURAL & OPEN SPACE USES						
Agricultural accessory structure, 4,000 sf or less	P	P	MUP	MUP	MUP	9.22.060, 9.42.030
Agricultural accessory structure, larger than 4,000 sf	MUP	MUP	MUP	MUP	MUP	
Agricultural cultivation – medical marijuana	UP	UP	—	—	—	9.42.105
Agricultural processing - Very low impact	P	P	P	P	P	
Agricultural processing - Low Impact	MUP	MUP	MUP	MUP	MUP	
Agricultural Processing - Moderate Impact	UP	UP	UP	—	—	
Animal keeping	S	S	S	S	S	9.22.060, 9.42.050
Aquaculture - Ocean dependent	—	MUP	—	MUP	MUP	
Commercial greenhouse - Perimeter foundation, 1,000 sf or less	P	MUP	MUP	—	—	
Commercial greenhouse - Perimeter foundation, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Commercial greenhouse - Slab foundation	UP	—	UP	—	—	
Commercial greenhouse - Soil dependent, 1,000 sf or less	P	P	P	—	—	9.22.060
Commercial greenhouse - Soil dependent, larger than 1,000 sf	MUP	MUP	MUP	—	—	
Crop production, horticulture, orchard, vineyard	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Forestry	MUP	—	MUP	P(2)	—	
Nature preserves, habitat and wetland restoration	P(2)	P(2)	P(2)	P(2)	P(2)	9.22.060
Winery	UP	UP	UP	—	—	
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES						
Boat launching facility	—	MUP	—	—	UP	9.22.060
Coastal access trail	P	P	P	—	P	9.22.060
Equestrian facility, maintaining 8 or fewer horses	P	MUP	UP	—	—	9.42.050
Equestrian facility, maintaining 9 or more horses	MUP	MUP	UP	—	—	9.42.050
Interpretive center	—	—	—	UP	UP	9.22.060
Non-vehicular recreation	P	P	P	P	P	9.22.060
Meeting facility, public or private	—	—	UP	UP	UP	
Parks and playgrounds	—	—	MUP	UP	UP	

Key to Zoning District Symbols

AE	Agriculture - Exclusive	NR-TP	Natural Resource - Timber Production
AE-CZ	Agriculture - Exclusive - Coastal Zone	NR-PT	Natural Resource - Public Trust
AR	Agriculture - Residential		

Notes:
(1) See Article 10 for land use definitions.
(2) Zoning Clearance not required.

TABLE 24 Allowed Land Uses and Permit Requirements for Residential Zoning Districts	P = Permitted Use, Zoning Clearance required MUP = Minor Use Permit required UP = Use Permit required S = Permit determined by specific use regulations — = Use not allowed				
LAND USE (1)	PERMIT REQUIRED BY DISTRICT				Specific Use Regulations
	RV	RL	RM	RH	
AGRICULTURAL & OPEN SPACE USES					
Agricultural accessory structure	MUP	UP	UP	UP	9.42.030
Agricultural cultivation - medical marijuana	—	—	—	—	9.42.105
Animal keeping	S	S	S	S	9.42.050
Crop production, horticulture, orchard, vineyard	MUP	MUP	MUP	MUP	
Greenhouse and nursery structures, 300 sf or less	UP	UP	—	—	
Greenhouse and nursery structures, larger than 300 sf	—	—	—	—	
Produce stand, 1,000 sf maximum	MUP	MUP	MUP	MUP	9.42.140F
RECREATION, EDUCATION & PUBLIC ASSEMBLY USES					
Equestrian facility	UP	—	—	—	9.42.050
Meeting facility, public or private	MUP	MUP	MUP	MUP	
Parks and playgrounds, public	P	P	P	P	
Private residential recreation facility	—	MUP	MUP	MUP	
School - Public or private, elementary or secondary	MUP	MUP	MUP	MUP	
RESIDENTIAL USES					
Home occupation	P	P	P	P	9.42.090
Mobile home - Outside of mobile home park	P	P	P	P	9.42.120
Mobile home park, including individual mobile homes	UP	UP	UP	UP	9.42.120
Multi-family housing, 2 units	—	P	P	P	9.42.130
Multi-family housing, 3 to 9 units	—	MUP(2)	P	P	9.42.130
Multi-family housing, 10 or more units	—	—	P	P	9.42.130
Organizational house (sorority, monastery, religious, etc.)	UP	UP	UP	UP	
Residential accessory use or structure	P	P	P	P	9.42.030
Residential care facility, 6 or fewer clients	P	P	P	P	
Residential care facility, 7 or more clients	UP	UP	UP	UP	
Rooming or boarding house	—	UP	P	P	
Second dwelling unit	P	P	P	P	9.42.170
Single-family dwelling	P	P	P	P	
Transitional housing	UP	UP	UP	UP	

Key to Zoning District Symbols

RV	Residential - Very Low Density	RM	Residential - Medium Density
RL	Residential - Low Density	RH	Residential - High Density

Notes:
(1) See Article 10 (Glossary) for land use definitions.
(2) Allowed only in compliance with Section 9.24.060.B (RL Alternative Development Option).

TABLE 2-10
Allowed Land Uses and Permit Requirements
for Commercial, Industrial, And Public Facility
Zoning Districts

P = Permitted Use, Zoning Clearance required
MUP = Minor Use Permit required
UP = Use Permit required (2)
S = Permit determined by specific use regulations
— = Use not allowed

LAND USE	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	CC	CG	CV	CM	IL	IG	P	
INDUSTRY, MANUFACTURING & PROCESSING, WHOLESALING								
* Agricultural cultivation – medical marijuana	—	—	—	—	UP	UP	—	9.42.105
Agricultural processing - Very low impact	—	—	—	—	P	P	—	
Agricultural processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Biodiesel production	—	—	—	—	UP	UP	—	
Composting	—	—	—	—	MUP	MUP	—	
Construction contractors	—	—	—	—	P	P	—	
Furniture and fixtures manufacturing, cabinet shop	—	UP	—	—	P	P	—	
Laboratory - Medical, analytical, R&D	—	P	—	—	P	P	—	
Laundry, dry cleaning plant	—	UP	—	UP	P	P	—	
Manufacturing/processing - Low impact	MUP(4)	MUP(4)	—	—	P	P	—	
Manufacturing/processing - Moderate impact	—	—	—	—	MUP	MUP	—	
Manufacturing/processing - High impact	—	—	—	—	—	UP	—	
Media production	P	P	—	—	P	P	—	
Printing and publishing	P	P	—	—	P	P	—	
Recycling - Processing facility	—	—	—	—	MUP	P	—	9.42.160
Recycling - Reverse vending machines	—	P	P	—	P	P	—	9.42.160
Recycling - Scrap and dismantling yards	—	—	—	—	—	MUP	—	9.42.160
Recycling - Small collection facility	—	MUP	—	—	MUP	P	P	9.42.160
Solid waste disposal/transfer station	—	—	—	—	UP	UP	—	
Storage - Business records	MUP	MUP	—	—	MUP	MUP	—	
Storage - Outdoor	MUP	MUP	MUP	MUP	P	P	P	9.42.150
Storage - Personal storage facility (mini-storage)	—	UP	—	—	P	P	—	
Storage - Warehouse, indoor storage	—	UP	—	—	P	P	—	
Wholesaling and distribution	—	P	—	—	P	P	—	

Key to Zoning District Symbols

CC	Commercial - Central	IL	Industrial - Limited
CG	Commercial - General	IG	Industrial – General
CV	Commercial - Visitor Serving	P	Public Facility
CM	Commercial - Mixed Use Center		

Notes:

(1) See Article 10 (Glossary) for land use definitions.

(2) Use Permit required for any proposed retail use with either: (a) a floor greater than 30,000 sf; or (b) physical alteration of eight or more acres; or (c) generation of 1,000 or more vehicle trips per day. See also Section 9.26.080.

(3) Residential units should only be located above nonresidential uses or at ground level behind the street-fronting nonresidential uses pursuant to Section 9.42.110.

(4) Allowed only in conjunction with the on-site retail sale of products produced on the site.

TABLE 2-L: Permitted Land Uses for Commercial, Industrial, and Public Facility Zoning Districts	PERMIT REQUIRED BY DISTRICT							Specific Use Regulations
	Use not allowed							
LAND USE	CC	CG	CCV	CM	IL	IG	PF	
SERVICES - BUSINESS, FINANCIAL, PROFESSIONAL								
ATM	P	P	P	P	—	—	—	
Bank, financial services	P	P	MUP	P	—	—	—	
Business support service	P	P	—	P	—	—	—	
Medical services - Doctor office	P	P	P	P	—	—	MUP	
Medical services - Clinic, lab, urgent care	MUP	MUP	MUP	MUP	—	—	MUP	
Medical services - Extended care	MUP	—	—	MUP	—	—	MUP	
Medical services - Hospital	—	UP	UP	—	—	—	UP	
* Medical services - medical marijuana dispensary	UP	UP	—	—	—	—	—	9.42.105
Office - Accessory	P	P	P	P	P	P	P	
Office - Business/service	P	P	—	P	P	—	—	
Office - Government	P	P	—	P	P	—	—	
Office - Processing	P	P	—	P	P	—	—	
Office - Professional	P	P	—	P	P	—	—	
SERVICES -GENERAL								
Adult day care - 14 or fewer clients	P	P	—	P	—	—	MUP	
Adult day care - 15 or more clients	MUP	MUP	—	MUP	—	—	MUP	
Catering service	—	P	—	—	P	P	—	
Cemetery	—	—	—	—	—	—	UP	
Child day care center	MUP	MUP	—	MUP	MUP	UP	MUP	9.42.070
Child day care - large or small family day care home	P	P	—	P	P	—	—	
Drive-through service	—	MUP	MUP	MUP	—	—	—	9.42.080
Drop-in center	—	UP	—	—	UP	UP	MUP	
Equipment rental	—	MUP	—	—	P	P	—	
Kennel, animal boarding	—	—	—	—	MUP	MUP	—	
Lodging - Bed & breakfast inn (B&B)	MUP	MUP	MUP	MUP	—	—	—	9.42.060
Lodging - Hostel	MUP	MUP	MUP	MUP	—	—	—	
Lodging - Hotel or motel	P	MUP	P	MUP	—	—	—	
Lodging - Recreational vehicle (RV) park	—	—	UP	—	—	—	—	
Maintenance service - Client site services	P	P	—	—	P	P	—	
Mortuary, funeral home	—	MUP	—	—	—	—	—	
Personal services	P	P	—	P	P	—	—	
Personal services - Restricted	—	P	—	—	—	—	—	
Public safety facility	—	—	—	—	—	—	MUP	
Repair service - Equipment, large appliances, etc.	—	—	—	—	P	P	—	
Social service organization	P	P	—	P	P	—	MUP	
Vehicle services - Major repair/body work	—	MUP	MUP	—	P	P	—	
Vehicle services - Minor maintenance/repair/retread	—	P	P	MUP	P	P	—	
Veterinary clinic, animal hospital	—	MUP	MUP	MUP	—	—	—	

The following definitions will be added to **Article 10 Glossary**

Marijuana. "Marijuana" means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, cake, or the sterilized seed of the plant which is incapable of germination.

Medical Marijuana. Means marijuana used in strict accordance with the Compassionate Use Act of 1996 (Health and Safety Code §11362.5 et seq) and The Medical Marijuana Program (Health and Safety Code §11362.7 et seq.).

Medical Marijuana Identification Card. A document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any as per California Health and Safety Code §11362.7, and as may be amended.

Medical Marijuana Cooperative or Collective.
"Medical Marijuana Cooperative of Collective " means an affiliation or association of individuals whose collective intent is to provide education, referral or network services and to assist in the lawful acquisition and distribution of medical marijuana in a safe and affordable manner between primary caregivers and qualified patients as permitted in accordance with the Compassionate Use Act of 1996.

Person with an Identification Card. Means an individual who is a qualified patient who has applied for and received a valid identification card as per the California Health and Safety Code §11362.7, and as may be amended.

Primary caregiver. Means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as more particularly as set forth in California Health and Safety Code §11362.7, and as may be amended.

Qualified patient. Means a person who has a physician's recommendation and is entitled to the protections of Section 11362.5 of the California Health and Safety Code, but who does not have an identification card issued as set forth in California Health and Safety Code §11362.7, and as may be amended.

9.42.040 - Accessory Uses

In addition to the uses expressly permitted in each zoning district by Article 2 (Zoning Districts and Allowable Land Uses), the following accessory uses are also permitted in compliance with this Section. See also Section 9.42.020 (Accessory Retail and Service Uses). These do not include uses covered in Section 9.42.105 (Medical Marijuana).

A. Administrative office. The administrative office for an approved primary use on the same lot.

B. Parking. Off-street parking and loading serving a primary use, located, designed, and constructed in compliance with Chapter 9.36 (Parking and Loading), but only if the parking is reserved for the residents, employees, patrons, or other persons participating in the primary activity on the site.

C. Production of goods. The production of goods for sale by a firm engaged in an approved primary commercial use on the same lot, if:

1. All goods produced are sold at retail by the same firm either on the same or other lots; and

2. Production does not occupy more than 50 percent of the total floor area and open sales, display, storage, and service area occupied by the firm on the lot, or more than 3,000 square feet, whichever is less.

D. Sales. Wholesale or retail sales to a buyer's custom order, of goods produced by an approved primary industrial use on the same lot.

E. Storage. The storage of goods sold by an approved primary commercial use on the same lot, or used in or produced by an approved primary industrial use on the same lot.

9.42.090 - Home Occupations

The following standards for home occupations are intended to encourage reasonable opportunities for employment within the home, while avoiding changes to the residential character of a dwelling that accommodates a home occupation, or the surrounding neighborhood, where allowed by Article 2 (Zoning Districts and Allowable Land Uses).

A. Permit requirements. A home occupation in compliance with this Section shall require a City Business License. A home occupation that does not comply with each applicable requirement of this Section may be authorized by Minor Use Permit, provided that the review authority first makes the following findings, in addition to those required by Section 9.72.080 for Minor Use Permits:

1. The operating characteristics of the business will be such that it will have no significant adverse impact on the owners or occupants of neighboring properties; and

2. The specific location, building type, orientation, access characteristics or other features of the subject property warrant the approval of the proposed use although it would not typically conform to zoning limitations.

Before receiving a City business license for a home occupation, all applicants shall sign an affidavit attesting that they have read, understand, and will comply with the standards and requirements of this Section, and that they agree to pay for all City costs incurred in the enforcement of these provisions, including attorneys' fees, if they are subsequently found to be operating a business in violation of the Municipal Code or other City ordinance.

B. Limitations on use. The following are examples of business activities that may be approved as home occupations, and uses that are prohibited as home occupations.

1. Uses allowed as home occupations. The following and other uses determined by the Director to be similar may be approved by the Director in compliance with this Section.

a. Art and craft work (ceramics, painting, photography, sculpture, etc.);

b. Tailors, sewing;

c. Office-only uses, including an office for an architect, attorney, consultant, counselor, doctor, insurance agent, planner, tutor, writer, and electronic commerce; and

d. Personal trainers and licensed massage therapy and physical therapy.

2. **Uses prohibited as home occupations.** Businesses with operating characteristics that have significant adverse impacts on the owners or occupants of the neighboring residential properties shall be prohibited as home occupations. Examples of such operating characteristics are: dust, glare, heat, noise, noxious gasses, odor, smoke, excessive traffic, vibration, use of explosives or highly combustible materials, and use of hazardous or toxic materials. The types of businesses that will be prohibited as home occupations include: vehicle repair, animal hospitals and boarding facilities, storage yards, medical clinics and laboratories, sex-oriented businesses, wood cutting businesses, welding and machine shop operations, and other similar businesses, and all uses covered in Section 9.42.105 (Medical Marijuana).

C. **Operating standards.** Home occupations shall comply with all of the following operating standards.

1. **Accessory use.** The home occupation shall be clearly secondary to the full-time use of the property as a residence.

2. **Visibility.** The use shall not require any exterior modification to the structure not customarily found in a dwelling, nor shall the home occupation activity be visible from a public right-of-way, or from neighboring residential properties.

3. **Signs.** There shall be no signs, other than one name plate, not exceeding two square feet in area, and only if attached flush to a wall of the structure. Hand lettered or magnetic door vehicle signs identifying the business are allowed; however, no vehicle sign shall be used to direct clients to the home occupation from off the site, pursuant to Section 9.38, Signs.

4. **Safety.** Activities conducted and equipment or material used shall not change the fire safety or occupancy classifications of the premises. The use shall not employ the storage of explosive, flammable, or hazardous materials beyond those normally associated with a residential use.

5. **Off-site effects.** No home occupation activity shall create dust, electrical interference, fumes, gas, glare, light, noise, odor, smoke, toxic/hazardous materials, vibration, or other hazards or nuisances as determined by the Director.

6. **Outdoor display or storage.** There shall be no window display or outdoor storage or display of equipment, materials, or supplies associated with the home occupation.

7. **Employees.** A home occupation shall have no on-site employees other than full-time residents of the dwelling, unless a Minor Use Permit is obtained that would allow on-site employees.

8. **Client/customer visits.** The home occupation shall be operated so as to not require more than 12 vehicle trips per day of clients, customers, and/or visitors to the residence. On-site presence of clients or customers shall be limited to one client or family at a time, and only between the hours of 9:00 a.m. and 8:00 p.m.

9. **Deliveries.** The home occupation shall not involve the use of commercial vehicles for delivery of materials to or from the premises in a manner different from normal residential usage, except for FedEx, UPS, or USPS-type home pick-ups and deliveries.

10. **Utility service modifications.** No electric or gas utility service to the dwelling shall be modified solely to accommodate a home occupation, other than as required for normal residential use.

ORDINANCE NO. ORD-150-2011

AN ORDINANCE ADDING SECTION 20 OF CHAPTER 5, POLICE REGULATIONS, RELATING TO MEDICAL MARIJUANA DISPENSARIES, OF THE MUNICIPAL CODE OF THE CITY OF CLEARLAKE

The City Council of the City of Clearlake, State of California does hereby ordain as follows:

SECTION 1. DECLARATION OF INTENT

The purpose of this Ordinance is to add Section 20, Chapter 5, to the Municipal Code relating to Medical Marijuana Dispensaries.

Voters of the State of California approved proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled "The Compassionate Use Act of 1996." The intent of Proposition 215 was to enable persons residing in the State of California who are in need of marijuana for medical purposes to be able to obtain and use it under limited, specified circumstances, without being subject to criminal prosecution under State of California penal statutes.

The State enacted SB 420 in 2004, being sections 11362.7 et seq., of the Health and Safety Code, identified as the Medical Marijuana Program (Program), to clarify the scope of the Compassionate Use Act of 1996. Except for the limited exemption from criminal prosecution under State criminal laws, the possession and sale of marijuana remains illegal under both state and federal law.

To protect the public health, safety, and welfare, it is the desire of the City Council to modify the City's Municipal Code consistent with the Program, to regulate and restrict the location and operation of Medical Marijuana Dispensaries and promote and protect the health, safety, morals and general welfare of residents and businesses within the City.

SECTION 2. Chapter 5-20 of the Clearlake Municipal Code is hereby added as follows:

CHAPTER 5-20 MEDICAL MARIJUANA DISPENSARY REGULATIONS

Section 5-20.1 Definitions.

For the purpose of this Chapter, the following words and phrases shall mean:

"Applicant" means a person who is required to file an application for a license under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a Medical Marijuana Dispensary, as defined herein.

"City" means the City of Clearlake.

"Compassionate Use Act" shall mean California Health and Safety Code Section 11362.5, as may be amended, also known as the Compassionate Use Act of 1996.

"Drug paraphernalia" shall have the same definition as found in the Health and Safety Code Section 11364.5, and as may be amended.

"Identification card" shall have the same definition as found in the Medical Marijuana Program (Health & Safety Code section 11362.7(g).) and as may be amended.

"Licensee" means the person to whom a Dispensary license is issued under this Chapter, and who is identified in California Health and Safety Code Section 11362.7, subdivision (c) or (d), (e), or (f).

"Medical marijuana dispensary" or **"dispensary"** means any storefront location that provides consumer related products and services primarily found within the City's C-2 and C-3 zone districts which distributes, transmits, gives, or otherwise provides medical marijuana to qualified patients or primary caregivers in accordance with California Health and Safety Code section 11362.5 through section 11362.83, inclusive, commonly referred to as the Compassionate Use Act of 1996 and the Medical Marijuana Program.

The following buildings, premises and uses are not "Dispensaries" pursuant to this Chapter, as long as the location of such uses are otherwise regulated by this Code or applicable law: (1) a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; (2) a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3) a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; (4) a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; (5) a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code. All of the foregoing buildings, premises and uses must strictly comply with applicable law including, but not limited to, Compassionate Use Act.

A **"medical marijuana collective" or "cooperative"** means an organization that facilitates the collaborative efforts of medical marijuana patients and caregiver members for use and cultivation of medical marijuana as authorized by law – including the allocation of costs and revenues. A medical marijuana patient growing "collective" or "cooperative" that does not operate as a storefront location or mobile retail outlet that provides consumer related products and services primarily found within the City's C-2 and C-3 zone districts is exempt from the provisions of this ordinance.

"Medical Marijuana Program" shall mean Health and Safety Code Section 11362.7 et. seq.

"Person with an identification card" shall have the same definition as set forth in the Medical Marijuana Program (Health & Safety Code section 11362.7(c).) and as may be amended.

Primary caregiver" (caregiver) shall have the same definition as set forth in the Compassionate Use Act and Medical Marijuana Program.

"Qualified patient" (patient) shall have the same definition as set forth in the Compassionate Use Act and Medical Marijuana Program.

"Youth-Oriented Facility" shall mean a public or private school (K-12) , licensed daycare facilities, public parks, and any establishments that advertise in a manner that identifies the establishment as catering to or providing services primarily intended for minors.

Section 5-20.2 Dispensary License Required to Operate.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a dispensary unless the person first obtains and continues to maintain a valid dispensary license from the City as required by this Chapter.

Section 5-20.3 Limitations on Number and Size of Dispensaries.

A. The City may not grant more than three (3) licenses for Medical Marijuana Dispensaries at any given time. When Clearlake's population reaches 20,000, then the number of licenses granted at any given time shall be increased to four (4).

B. The retail area of a Medical Marijuana Dispensary shall not exceed 1,200 square feet.

Section 5-20.4 Limitations on Location of Dispensary.

A. The three dispensaries specifically mentioned in Section 2.J. of the Moratorium ordinance No. 2009-145 may be located within the Commercial C2 or C2DD zoning districts. Any other future dispensary may be located within the Commercial C4 zoning district by right or in the C-2 zoning district by use permit.

B. A dispensary must be clearly visible from public rights of way and located on a premises that provides unobstructed views of the dispensary entrance.

C. A dispensary shall not be located within 600 feet of a Youth-Oriented Facility. This setback shall be measured in a straight line from the boundary line of the property on which the dispensary is located nearest to the boundary of the property on which the building or structure, or portion of the building or structure, in which the above listed use occurs or is located. The City Council may waive all or part of this requirement if it determines that the proximity does not constitute a risk to public health or safety as it relates to anything other than a K-12 public or private school.

Section 5-20.5 Initial Filing Period.

In order to allow the consideration of competing applications for a dispensary, a ninety (90) day filing period shall commence following the adoption of this Ordinance for the three dispensaries existing as of November 5, 2009. Upon the close of this initial filing period, if multiple applications have been received and deemed complete, they shall be processed concurrently as set forth in this Chapter. If less than three applications are received during the initial filing

period, any applications that are subsequently submitted shall be processed and evaluated individually, in the order in which they are received and deemed complete. If the application of a dispensary existing as of November 5, 2009 cannot be approved under the terms of this Ordinance of if they have not submitted an application within ninety (90) days of the filing period noted above, then that business will have to cease operation within 30 days after so being notified by the City.

Section 5-20.6 Application Preparation and Filing.

A. Any person wishing to operate a dispensary in the City shall complete and file an application. An application is complete if it includes all fees, information and materials required by this Chapter. All license applications shall be filed with the City Administrator, using forms provided by the City. It is the responsibility of the applicant to provide information required for approval of the application. The application shall be signed under penalty of perjury. Existing dispensaries wishing to remain in business under the terms of this Ordinance must file an application within ninety (90) days after the adoption of the Ordinance.

B. An application may only be filed by the owner of the subject property, the lessee of the property where the lease authorizes the lessee to use the premises for a dispensary, or a person with the written authorization of the property owner.

C. The application shall be deemed filed on the date when the City receives the last submission of information or materials required for it to be deemed complete in accordance with requirements specified herein.

D. The City shall notify an applicant in writing, via Certified U.S. Mail, postage pre-paid, sent to the address provided by the applicant on the application, if an application is incomplete. The applicant shall be granted an extension of time to submit all materials required to complete the application within ten (10) days of the date of the notification. If the application remains incomplete in excess of said ten (10) day period, the application shall be deemed withdrawn and new application shall be required. The time period for granting or denying a license shall be stayed during the extension of time.

E. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement to obtain a dispensary license pursuant to this Chapter.

F. Any dispensary license application shall include the following information:

(1) The applicant's full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), current address, and telephone number.

(2) The address where notice of action on the application is to be mailed.

(3) The applicant's previous addresses for the five years immediately prior to his or her present address.

(4) Written proof that the applicant is over the age of eighteen (18) years of age.

(5) The applicant's height, weight, color of eyes and hair.

(6) Two (2) passport-quality photographs of the applicant.

(7) The applicant's businesses, occupations, or employment for the ten years immediately preceding the date of the application.

(8) The applicant's business license and permit history, including whether the applicant has had a permit, approval and/or business license revoked or suspended by the State, or any city or county, the reason therefor, and the business or activity or occupation engaged in by the applicant subsequent to such action of suspension or revocation, and a copy of the applicant's seller's permit (retail sales tax permit) issued by the State Board of Equalization.

(9) All the name or names and addresses of the person or persons who will act as a manager or supervisor of the dispensary.

(10) The printed results of a background investigation from the California Department of Justice resulting from a fingerprint card submission approved by the City of Clearlake, verifying whether the person or person having the management or supervision of the applicant's business has been convicted of a crime(s), or entered a plea of guilty or nolo contendere to a crime, the nature of such offense(s), and the sentence(s) imposed.

(11) Names of all employees, volunteers, and other persons who will work at the dispensary. The applicant also agrees to submit any names for a fingerprint card of individuals who become new owners, managers, supervisors, employees, or volunteers during the year after a license is issued.

(12) A written plan describing how the dispensary will operate consistent with State law and the provisions of this Chapter, including:

(a) Controls ensuring medical marijuana is not purchased or sold by the dispensary, its owners, managers, supervisors, employees or volunteers, in a manner that would generate a profit.

(b) Controls ensuring medical marijuana will be dispensed only to qualified patients or primary caregivers.

(c) Controls ensuring access to dispensary premises is regularly monitored and restricted to qualified patients and primary caregivers.

(d) Independent verification methods for ensuring that a qualified patient's physician is recommending medical marijuana only for medical use.

(13) A written statement listing the physical size of the dispensary, the number of managers, supervisors, employees and volunteers who will work there, and describing the nature of the proposed use of the dispensary.

(14) A written statement indicating how each of the criteria for review has been satisfied, which shall include documented proof.

(15) A security plan describing security arrangements that will ensure the safety of persons visiting and working at the dispensary, and protect the premises from theft. The plan shall provide for: installation of security cameras; installation of a burglar alarm system monitored by a state-licensed monitoring service; and a periodic (no less than yearly) written security assessment of the site conducted by a qualified professional.

(16) A sketch or diagram depicting the interior configuration of the premises, including the total floor area occupied by the dispensary. The sketch or diagram must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six (6) inches.

(17) A sketch or diagram showing exterior configuration of the premises, including the outline of all structures, parking and landscape areas, and property boundaries. The sketch or diagram must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six (6) inches.

(18) A straight-line drawing accurately depicting the building (or portion thereof) and premises to be occupied by the dispensary, and all properties within 600 feet of the boundaries of the property on which the dispensary license is requested. The drawing shall indicate the property lines of any Youth-Oriented Facility and all residential zones or uses within 100 feet of the primary entrance of the dispensary.

(19) A lighting plan showing existing and proposed exterior and interior lighting placement and levels to provide adequate security lighting and which comply with all City standards regarding lighting design and installation.

(20) Written authorization for the City, its agents and employees to seek verification of the information contained in the application and/or required pursuant to this Chapter.

(21) A written statement by the applicant certifying under penalty of perjury that he or she has the consent of the property owner and landlord to operate a dispensary at the location, or providing proof that the applicant owns the property.

(22) A written statement by the applicant certifying under penalty of perjury that all the information contained in the application is true and correct.

G. In addition to providing all the materials required for new applications, applications for annual renewal shall also be accompanied by the following information:

(1) The licensee shall provide a detailed description of any changes proposed or that have occurred in dispensary operations, the reasons for such changes, including compliance with applicable local and State law.

(2) The licensee shall identify any problems encountered during operations and how they have been addressed.

(3) The licensee shall describe how the dispensary operations have complied with the requirements of this Chapter and with applicable local and State law.

Section 5-20.7 Investigation and Action on Application.

A. After an applicant files a complete dispensary license application and pays all required fees, the Police Chief shall conduct a background check of the applicant and all the dispensary's identified managers, supervisors, employees and volunteers, and take action as follows:

(1) The Police Chief shall refer the application to any other City departments as necessary to complete his or her review of the application.

(2) The application, or competing applications, if applicable, shall also be subject to a preliminary review conducted by the Police Chief and the City Administrator. The Police Chief and City Administrator shall make such recommendations to the City Council as they deem appropriate based on their review.

B. Within 60 days after completion of the Police Chief's investigation, the application shall be scheduled for a public hearing before the City Council where the Council may either grant or deny the application in accordance with the provisions of this Chapter.

Section 5-20.8 Public Hearing.

The City Council shall consider the application for the issuance or renewal of a dispensary license at a duly noticed public hearing, as set forth in the Municipal Code.

Section 5-20.9 Criteria for Review.

The City Council shall consider the following criteria in determining whether to grant or deny an application to issue or renew a dispensary license:

A. The dispensary will operate or, if a renewal application, currently operates, in conformity with the Compassionate Use Act, the Medical Marijuana Program, and the provisions of this Chapter and the City Code.

B. The dispensary location does not have significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the police department).

C. There have not been excessive numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location (or to a dispensary located in another jurisdiction with which the applicant is affiliated in any way).

D. The applicant, and all managers supervisors, employees and volunteers are at least eighteen (18) years of age.

E. All required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it will comply with the operating requirements and standards specified in this Chapter.

F. That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

G. The physical size of the dispensary conforms with the requirements of this Chapter; and, the dispensary will be, or if a renewal application, currently is, one of three or fewer total licensed dispensaries operating within the City.

H. The location is not prohibited by the provisions of this Chapter or any applicable local or State law, statute, rule or regulation.

I. The site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements of this Chapter. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

J. No dispensary applicant, owner, licensee, agent, or manager, supervisors, employee or volunteer who will work, or, if renewal, currently works at the dispensary, has violated any provision of this Chapter such that grounds exist to suspend or revoke a dispensary license.

K. The dispensary has incorporated all reasonable measures into the operating plan and consistently taken steps to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, uncontrolled crowds in or outside the dispensary, traffic control problems, or creation of a public or private nuisance, or interference of the operation of another business.

L. That the dispensary has not caused or been the site of nuisance activities including disturbances of the peace, illegal drug activity, ingesting medical marijuana in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive

loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

M. No provision of the Municipal Code or condition imposed by a City issued license, or any provision of any other applicable local or State, regulation, order, or any condition imposed by permit issues in compliance with those laws has been violated.

N. The applicant has not violated any applicable local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of medical marijuana.

O. The applicant has neither knowingly made a false statement of material fact, nor knowingly omitted a material fact from the dispensary license application.

P. No person who has been convicted of a felony within the past ten (10) years may be actively engaged in the operation or financing of any dispensary as an owner, licensee, agent, investor, manager, supervisor, employee or volunteer.

Q. The applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

Section 5-20.10 Findings; Decision.

Following a public hearing, the City Council may approve or disapprove an application to issue or renew a dispensary license. In issuing or renewing a dispensary license, the City Council may impose conditions, restrictions or require revisions on the applicant's operating plan to ensure compliance with the provisions, purpose and intent of this Chapter. The City Council shall record the decision and the findings upon which the decision is based. The City Council shall cause a written notice of its decision to issue or deny a license to be mailed to the applicant by certified U.S. mail.

Section 5-20.11 Effect of Denial.

If the City Council denies an application or revokes a dispensary license as provided in this Chapter, no new application for a license shall be accepted from the applicant whose license has been revoked or application denied and no such license shall be issued to such person or to any company, entity or corporation in which s/he shall have any interest for a period of five years after the action denying or revoking the license.

Section 5-20.12 Appeal.

The decision of the City Council to approve, deny, or revoke a license as provided for in this Chapter shall be final and conclusive and there shall be no right of appeal.

Section 5-20.13 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

A. **Criminal History.**

No applicant, his or her agent or employees, nor any person exercising managerial authority over a dispensary on behalf of the applicant shall have been convicted of a felony within the past ten (10) years,

B. **Minors.**

(1) It shall be unlawful for any licensee, supervisor, or manager of any dispensary, to employ any person who is not at least eighteen (18) years of age.

(2) Persons under the age of eighteen (18) shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver, or if they are a minor child in the presence of their parent or guardian.

C. **Operating Hours.**

The maximum dispensary days and hours of operations shall be as follows:

Monday through Saturday: 9 am - 7 pm
Sunday: 12 pm – 5 pm

D. **Dispensary Size and Access:**

(1) The retail sales area of a dispensary shall not exceed 1,200 square feet. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this Chapter and reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on City services.

(2) The entrance into the dispensary building shall be locked at all times with entry strictly controlled; e.g., a "buzz-in" electronic/mechanical entry system. A viewer shall be installed in the door that allows a wide-angle of view of the exterior entrance.

(3) Only dispensary staff, primary caregivers, qualified patients, persons with State issued identification cards, persons inspecting the facilities on behalf of the City, persons engaged in maintenance and repair activities in the building, and persons providing professional services such as accounting and legal services, shall be permitted at a dispensary.

(4) Potential patients or caregivers shall not visit a dispensary without first obtaining a valid written recommendation from their physician recommending medical use of marijuana.

(5) Only primary caregivers and qualified patients shall be permitted in the designated dispensing area; dispensary personnel must be present at such times. All other authorized visitors shall remain in the designated waiting area in the front entrance/lobby.

E. **Dispensary Supply.**

A dispensary may possess no more than (5) pounds of dried marijuana at any one time in addition to live plants for sale for medicinal purposes that are in a vegetative (not mature) state.

F. **Dispensing Operations.**

(1) A dispensary shall only dispense to qualified patients or caregivers with a valid physician's recommendation in compliance with the Compassionate Use Act.

(2) Prior to dispensing medical marijuana, the dispensary shall obtain verbal and signed, written verification from the recommending physician that the individual requesting medical marijuana is a qualified patient.

(3) No dispensary may provide medical marijuana to any persons other than qualified patients or persons with identification cards and designated primary caregivers who are members of the marijuana collective or cooperative.

(4) A dispensary shall only be for the dispensing of medical marijuana and not to evaluate patients and provide a recommendation for medical marijuana.

(5) Medical marijuana collectives shall maintain records reflecting:

a. The full name, address, and telephone number(s) of the owner or lessee of the property.

b. The full name, address, and telephone number(s) of all qualified patients and persons with identification cards and/or primary caregivers who participate in cultivation of marijuana.

c. The full name, address, and telephone number(s) of all qualified patients and persons with identification cards to whom the dispensary provides medical marijuana.

d. The designation, by qualified patient(s) and person(s) with identification cards, of any and all primary caregivers who participate in the collective cultivation of marijuana.

(6) Patient records shall be maintained on-site, either in paper or electronic form, and secured and verified by the City as needed (consistent with requirements pertaining to patient confidentiality pursuant to applicable State and Federal law)

and at least every 12 months by the qualifying patient's physician or Doctor of Osteopathy.

(7) The licensee shall annually provide information on prior years' operations verifying compliance with this Chapter to the City Administrator. Licensee shall modify dispensary operations as required by the City Administrator to ensure compliance with all requirements of this Chapter.

G. **Retail Sales and Cultivation**

(1) Subject to this Section, no medical marijuana shall be cultivated on the premises of the dispensary, except in compliance with the Compassionate Use Act and Medical Marijuana Program. No cultivation shall take place outdoors on the premises; all cultivation must occur indoors.

(2) A dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to the Compassionate Use Act and Medical Marijuana Program.

(3) The sale of ancillary products, including books, herbal supplements, and devices facilitating the consumption of medical marijuana shall occur in a manner consistent with this Ordinance, and in compliance with all state requirements.

H. **Operation Requirements.**

(1) Floor plan. The main entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks and site driveways.

(2) Storage. A dispensary shall have a locked safe on the premises, identified as a part of the security plan, for after-hours storage of medical marijuana. A dispensary shall also have a secure area for the storage of immature plants and any other products specifically allowed under the license, which contain medical marijuana.

(3) Minimum Staffing. The dispensary shall be staffed during hours of operation by at least two persons, one of whom must be a manager.

(4) Odors. A dispensary shall have an air treatment system that ensures off-site odors shall not result from its operations.

(5) Security Plan. A dispensary shall provide adequate security on the premises, as approved by the Police Chief and pursuant to this Chapter, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(6) Security cameras. Security cameras required by this Chapter shall be installed to monitor, at the minimum, the main entrance and exterior of the premises to discourage loitering, crime, and illegal or nuisance activities.

(7) Security video retention. Security video shall be retained for 30 days. Images shall be made available to the Police Chief upon a reasonable written request for the specific time period.

(8) Alarm system. A State-licensed professionally monitored robbery and burglary alarm system shall be installed and maintained in good working condition.

(9) Emergency contact. A dispensary shall provide the Police Chief with the name, phone number and facsimile number or email address of an individual working on the dispensary premises, to whom notice of problems associated with the operation of the dispensary can be provided. The dispensary shall keep this information current at all times. The dispensary shall make every good faith effort to encourage neighborhood residents to call this designated person to resolve operating problems, if any, before any calls or complaints are made to the City.

I. **Signage and Notices.**

(1) Signs on the premises shall not obstruct the entrance or the video surveillance system. The size, location, and design of any signage must conform to the sign provisions in the Clearlake Zoning Ordinance.

(2) Business identification signage shall be limited to that needed for identification only, consisting of a single window sign or wall sign that shall comply with the appropriate sign requirements with the applicable zoning district.

J. **Employee Records.**

Each owner or operator of a dispensary shall maintain a current register of the names of all employees currently employed by the dispensary, and shall disclose such registration for inspection by any City officer or official for purposes of determining compliance with the requirements of this Chapter.

K. **Financial Review.**

Each dispensary shall allow the City to have access to the dispensary's state income tax returns previously filed with the state for the purpose of verifying that the dispensary is

operating on a not-for-profit basis in accordance with the Attorney General's Guidelines. Tax returns shall be produced within 14 days after receipt of the City's written request.

L. **Staff Training.**

(1) Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with State and local law.

(2) The dispensary shall take those steps necessary to assure that the persons assigned to provide security are properly trained or employed by a private security service in good standing with all supervisory or regulatory bodies exercising jurisdiction over such services.

M. **Site Management.**

(1) The operator of the establishment shall take all reasonable steps to discourage and correct conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if related to the patrons of the subject dispensary.

a. "Reasonable steps" shall include calling the police within 30 minutes of observation of the activity, requesting those engaging in activities that constitute a nuisance or are otherwise illegal to cease those activities, unless personal safety would be threatened in making the request.

b. "Nuisance" includes but is not limited to disturbances of peace, open public consumption of medical marijuana or alcohol, excessive pedestrian or vehicular traffic, including the formation of any pedestrian lines outside the building, illegal drug activity, harassment of passersby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct or police detentions and arrests.

(2) The operator shall provide patients with a list of the rules and regulations governing medical marijuana use and consumption within the city and recommendations on sensible medical marijuana etiquette.

N. **Compliance with Other Requirements.**

The operator shall comply with all provisions of all applicable local or State laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

O. **Confidentiality.**

To the extent protected by law, the information provided for purposes of this section shall remain confidential. It shall be maintained by the City Administrator or Police Chief, as appropriate, and not disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction.

P. **Display of License.**

Every dispensary shall display at all times during business hours the license issued pursuant to the provisions of this Chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

Q. **Payment of Fees.**

A licensee shall pay all annual license fees at the time that an original application is filed or an annual renewal application is submitted.

Section 5-20.14 Annual Term of License and Renewal Required.

A. Licenses issued under this Chapter shall expire one (1) year following the date of their issuance.

B. Licenses may be renewed by the City Administrator for additional one (1) year periods upon application by the licensee, unless the license is suspended or revoked in accordance with the provisions of this Chapter.

C. The dispensary shall be notified by the City on a timely basis that an annual renewal application is due to be filed. Complete applications for renewal shall be made at least forty-five (45) days before the annual expiration date of the license and shall be accompanied by the nonrefundable application fee referenced herein. Applications for renewal shall be governed by the same criteria applicable to initial applications for licenses.

D. Applications for renewal made less than forty-five (45) days before the annual expiration date shall not stay the annual expiration date of the license, and in addition to satisfying all other applicable criteria for license renewal, the applicant shall be required to demonstrate good cause for failing to have timely filed the application for license renewal. The City Administrator shall have the sole discretion to determine whether such good cause is demonstrated.

E. Licenses may be revoked or suspended by the City Council on the grounds and terms provided in this Chapter.

F. In the event that the City Administrator and Police Chief are not able to act upon a license renewal application prior to the date said license expires, and said inability is due to no fault of the City, said license shall expire as of its expiration date and the dispensary shall no longer operate after said expiration date. In such circumstances, should the licensee of the expired license desire to reestablish the right to operate a dispensary, the licensee

must do so by applying for a new dispensary license complying with all requirements of this Chapter applicable to an original application for a dispensary license. Should the City Council approve the license application, said decision shall be deemed effective on the date of the City Council's decision.

G. The establishment of a Youth-Oriented Facility within 600 feet of a dispensary following the initial issuance of the license shall not be grounds for subsequently revoking the license.

Section 5-20.15 Suspension and Revocation.

A. Any license issued under the terms of this Chapter may be suspended or revoked if the City Council finds that the Licensee has violated any of the provisions of this Chapter, or the dispensary is otherwise being operated in a manner that violates any of the provisions this Chapter.

B. Except as otherwise provided in this Chapter, no dispensary license shall be revoked or suspended by virtue of this section absent notice and a hearing. The City shall provide written notice to the Licensee that the City Council will hold a hearing, at a scheduled meeting, regarding the suspension or revocation of his/her dispensary license. The City shall provide such notice no less than fifteen (15) days before the date of said hearing. The notice shall contain a brief statement of the grounds for revoking or suspending the Licensee's dispensary license. Notice may be given either by personal delivery to the Licensee (in which case, service shall have deemed to have been effected upon delivery of the notice), or by certified U.S. mail in a sealed envelope, postage prepaid, return receipt requested, addressed to Licensee at the address appearing on his/her dispensary license application (in which case, service shall be deemed to have been effected on the date the receipt indicates delivery was accomplished).

C. If the City Council finds that sufficient grounds exist for the revocation or suspension of a dispensary license, then said determination shall be announced at the hearing, and written notice of said determination sent to the Licensee by personal delivery or certified U.S. mail in a sealed envelope, postage prepaid, return receipt requested, and addressed to the Licensee at the address appearing on his/her dispensary license application.

D. The decision of the City Council shall be final and conclusive and there shall be no right of appeal.

E. Procedures for the above are not exclusive and the City reserves the right to enforce all applicable laws for any licensee's violation of any law.

Section 5-20.16 Transfer of Licenses.

A. A licensee shall not operate a dispensary under the authority of a dispensary license at any place other than the address of the dispensary stated in the application for the license.

B. A licensee shall not transfer ownership or control of a dispensary or transfer a dispensary license to another person unless and until the transferee obtains an amendment to the license from the City Council stating that the transferee is now the licensee. Such an amendment may be obtained only if the transferee files an application with the City Administrator in accordance with all provisions of this Chapter (as though the transferee were applying for an original dispensary license) accompanied by a transfer fee in an amount set by resolution of the City Council (or if not set, shall be the same amount as the application fee), and the City Council determines (after hearing) in accordance this Chapter that the transferee would be entitled to the issuance of an original license.

C. No license may be transferred when the City Administrator or Police Chief has notified the licensee that the license has been or may be suspended or revoked.

D. Any attempt to transfer a license either directly or indirectly in violation of this section is hereby declared void, and such a purported transfer shall be deemed a ground for revocation of the license.

Section 5-20.17 Imposition of Fees.

A. Every application for a dispensary license or renewal shall be accompanied by a nonrefundable fee, as established by resolution of the City Council from time to time. This application or renewal fee shall include fingerprinting, photographing, and background check costs and shall be in addition to any other costs imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees shall be as established by resolution adopted by the City Council from time to time. The time frames for the implementation of this Ordinance shall not be in effect until the City Council adopts a fee resolution. In the event that employee changes occur during the year, the applicant must submit the new employee for fingerprinting, photographing, and a background check and pay the appropriate fees for those services.

B. All fees established by the Council to implement this Ordinance will reflect the City's costs to complete the requirements of the Ordinance. In addition, there will be a one-time fee to initiate the application process and an annual renewal fee. This one-time fee and the renewal fee will be comparable to the typical cost of obtaining a City Business License.

Section 5-20. 18 Violations.

A. It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this Chapter and/or any dispensary license issued here under.

B. A violation of this Chapter and/or any dispensary license issued here under shall be punished in accordance with the Clearlake Municipal Code.

Section 5-20. 19 Remedies Cumulative.

All remedies prescribed under this Chapter shall be cumulative and the use of one or more remedies by the City shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

Section 5-20. 20 Separate Offense for Each Day.

Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

Section 5-20. 21 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this Chapter and/or any dispensary license issued here under shall be and is hereby declared a public nuisance and may be summarily abated by the City.

Section 5-20. 22 Criminal Penalties.

Any person who violates, causes, or permits another person to violate any provision of this Chapter and/or any dispensary license issued hereunder commits a misdemeanor.

Section 5-20. 23 Civil Injunction.

The violation, or threatened violation, of any provision of this Chapter and/or any dispensary license issued hereunder shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City Council, create a cause of action for injunctive relief, which may be brought by the City Attorney.

Section 5-20. 24 Administrative Remedies.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter and/or any dispensary license issued here under may be subject to administrative remedies as set forth in the Code.

Section 5-20. 25 Conflicts.

All ordinances or parts of ordinances or resolutions in conflict herewith are hereby repealed to the extent of such conflicts and no further.

Section 5-20. 26 Effective Date.

The effective date of this Ordinance is thirty (30) days after its adoption by the City Council.

PASSED AND ADOPTED this 14th day of July, 2011 by the following vote:

AYES:	Mayor Joyce Overton, Council Member Curt Giambruno, Council Member Jeri Spittler, Council Member Judy Thein
NOES:	None
ABSENT:	Vice Mayor Joey Luiz
ABSTAIN:	None

Mayor, City of Clearlake

ATTEST:

City Clerk, City of Clearlake

ORDINANCE NO. 31-10 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND CITY COUNCIL AMENDING RICHMOND MUNICIPAL CODE CHAPTER 7.102 (MEDICAL MARIJUANA COLLECTIVES)

THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain that Richmond Municipal Code Chapter 7.102 is hereby amended to read as follows:

SECTION 1. Richmond Municipal Code Chapter 7.102 Table of contents is hereby amended to read as follows:

7.102.010 Purpose and Intent

7.102.020 Definitions

7.102.030. Permit required.

7.102.040 Location and number.

7.102.050 Permit application process.

7.102.055 Appeals from decisions to grant or deny a Permit.

7.102.060 Permit approval and operating conditions.

7.102.070 Permit Non-transferable.

7.102.080 Maintenance of records.

7.102.090 Inspection authority.

7.102.100 Existing Medical Marijuana operations.

7.102.110 Prohibited activity.

7.102.120 Violation and enforcement.

7.102.130 Appeals from revocation or suspension decisions.

SECTION 2. Richmond Municipal Code Section 7.102.040 (Location and number) is hereby amended to read as follows:

A. All Medical Marijuana Collectives shall be located in the Regional Commercial (C-3) Zoning District.

B. All Medical Marijuana Collectives shall be a minimum of one thousand five hundred feet (1,500') from any public or private high school and a minimum of five hundred feet (500') from any park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school, unless, following a public hearing, the Chief of Police makes all of the following findings based on specific facts, stated in writing:

i. The location, design and proposed operating characteristics of the Collective are such that it is highly improbable persons on, in or travelling to or from nearby schools, parks, community centers, youth centers, or child-care centers would be able to view persons in, entering, or leaving the Collective.

ii. Allowing the Collective to locate within one thousand five hundred feet (1,500') of a public or private high school or within five hundred feet (500') of a park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school will not grant the Collective a special privilege not available to other Medical Marijuana Collectives within the City of Richmond.

iii. The Collective has demonstrated that it considered other locations and selected the location that would have the minimum negative impact on the surrounding community while providing necessary services to its Members.

C. The Chief of Police shall permit no more than three (3) Medical Marijuana Collectives to operate in the City of Richmond. When there are fewer than three (3) permitted Collectives operating within the City, the Chief of Police shall publish an Invitation for Applications on the City's website, stating the period during which applications will be accepted.

SECTION 3. Richmond Municipal Code Section 7.102.050 (Permit application process) is hereby amended to read as follows:

Any Medical Marijuana Collective desiring a Permit required by this Chapter shall complete and

file an application on a form supplied by the Chief of Police, and shall submit with the completed application payment of a nonrefundable processing and notification fee, as established by the City Council by resolution. The Medical Marijuana Collective Permit application is established to provide a review process for each proposed Medical Marijuana Collective operation within the City.

A. Filing. The Medical Marijuana Collective shall provide the following information:

1. The address of the Property where the proposed Medical Marijuana Collective will operate.

2. A site plan describing the Property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act. The site plan shall demonstrate that there are separate rooms or partitioned areas within the Collective for the receipt of supplies and for the distribution of Medical Marijuana to Qualified Patients and/or Primary Caregivers.

3. Exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front, rear and side(s) of the proposed Property.

4. Photographs depicting the entire interior of the proposed Property.

5. A security plan including procedures for verifying identification of Qualified Patients and Primary Caregivers both before entering the Collective and again before receiving Medical Marijuana; the number, location and hours of security guards; and a theft prevention plan.

6. If the Property is being rented or leased or is being purchased under contract, a copy of such lease or contract. If the Property is not being rented or leased, written proof that the Property owner has been notified that the Property will be used as a Medical Marijuana Collective.

7. If the Property is being rented or leased, written proof that the Property owner, and landlord if applicable, were given notice that the Property will be used as a Medical Marijuana Collective, and that the Property owner, and landlord if applicable, agree(s) to said operations. If the Collective is to be a subtenant, then "landlord" shall mean the primary tenant.

8. The name, address, telephone number, title and function(s) of each Management Member.

9. For each Management Member, a fully legible copy of one (1) valid government-issued form of photo identification, such as a driver's license.

10. For each Management Member, a summary criminal history ("LiveScan") prepared by the Richmond Police Department not more than two weeks prior to the date of application and demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

11. Written confirmation as to whether the Medical Marijuana Collective, or a collective with one or more Management Members in common with the applicant, previously operated in this or any other county, city or state under a similar license/permit, and whether the Collective applicant ever had such a license/permit revoked or suspended and the reason(s) therefore.

12. Either (a) if the Collective is incorporated, 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 demonstrating that the Collective is organized as a non-profit entity, or (b) if the Collective is unincorporated, a copy of the Collective's notarized creating document demonstrating that the Collective is organized as a non-profit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the Collective will operate.

13. A Seller's Permit from the California Board of Equalization.

14. The name and address of the applicant's current Agent for Service of Process.

15. A copy of the Medical Marijuana Collective operating conditions, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure compliance with all ~~the aforementioned~~ operating conditions.

16. A copy of the Prohibited Activity Checklist, available from the Richmond Police Department, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure that neither the Collective nor its members and Management Members shall engage in the aforementioned prohibited activity.

17. A statement dated and signed by each Management Member, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the Management Member(s).

18. A statement of whether Edible Medical Marijuana will be prepared at the proposed Property and, if so, a certificate from the Contra Costa County Department of Health Services demonstrating compliance with the Food Services Facilities Inspection program.

19. Evidence of a computerized or telephonic system for communicating with all other permitted Collectives within the City of Richmond in order to ensure that a Qualified Patient, directly or through his or her Primary Caregiver(s), does not purchase, obtain, or otherwise receive a total of more than one ounce of Medical Marijuana per day.

B. After the closing of the application period, the Chief of Police will evaluate all applications for completeness. The Chief of Police shall ensure that applications are complete as follows:

1. Within twenty (20) business days of the close of the application period, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall determine whether the applications are ~~is~~ complete. If it is determined an application is incomplete, the applicant shall be notified in writing that the application is not complete and the reasons therefore, including any additional information necessary to render the application complete.

2. The applicant shall have thirty (30) calendar days from the date of a notice of incomplete application to complete the application. Failure to do so within the thirty (30) day period shall render the application null and void. The determination that an application is null and void is not an appealable decision.

3. Within ten (10) business days following the receipt of an amended application or supplemental information, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall again determine whether the application is complete and shall inform the applicant whether additional materials are required to complete the application. Evaluation and notification shall occur as provided above up to three times until such time as the application is found to be complete or in the alternative null and void. If, after three opportunities to complete an application, the applicant fails to provide all necessary information, the application shall be null and void. The determination that an application is null and void is not an appealable decision.

4. All notices required by this Chapter shall be deemed issued upon the date they are either deposited in the United States Postal Service mail or the date upon which personal service of such notice is provided.

C. All complete applications will be circulated to the Planning and Building Services, Fire and Code Enforcement Departments with a rating matrix and directions for evaluating and scoring applications based on criteria to be adopted by separate Resolution of the Council.

D. Except where circumstances justify delay, not later than sixty (60) days from the date the completed Permit applications are circulated for staff review, all complete applications will be considered at a noticed public hearing or series of noticed public hearings conducted by the Chief of Police. Prior to publication of notice of the public hearing(s), the City Council may choose to have the hearing(s) conducted by the Council or a subcommittee thereof. If the Council does not choose to have the hearing(s) conducted by the Council or a subcommittee thereof, then the Chief of Police shall cause the public hearing(s) to be conducted before a rating body consisting of the Chief of Police and representatives of the Planning and Building Services Fire and Code Enforcement Departments. In reviewing and scoring Permit applications, the rating body, City Council, or subcommittee thereof shall consider those criteria to be adopted by separate Resolution of the Council.

E. The Chief of Police shall cause the applicants and the owners of property located within seven-hundred-and-fifty-feet (750') of every proposed Collective location to be sent notice of the date, time, and place of the hearing(s) at least ten (10) business days in advance of the opening of such hearing(s).

F. The Chief of Police or City Council/Subcommittee shall open the public hearing(s) at the date, time, and place specified in the notice, but may continue the hearing(s), and may change the place of any or all hearing(s), as necessary to accommodate all interested parties.

G. The Chief of Police or City Council/Subcommittee shall issue a written report of the decision

on all Permit applications not later than fifteen (15) business days after the hearing or series of hearings is closed. The report shall be in writing and shall include findings of fact, a summary of the relevant evidence, a statement of the issues, and a decision regarding whether each applicant is eligible to receive a Permit. The report will also include any conditions to be imposed on a Permit in addition to the conditions established in Section 7.102.060 and the facts supporting imposition of those conditions. A copy of the report shall be mailed or delivered to every applicant, and to any person who has requested notice of the decision and has paid the required fees for copying and mailing.

SECTION 4. Richmond Municipal Code Section 7.102.055 (Appeals from decisions to grant or deny a Permit) is hereby added to read as follows:

A. If the decision on one or more Permit applications is made by the City Council or a subcommittee thereof, the decision is final.

B If the decision on one or more Permit applications is made by a rating body empanelled by the Chief of Police, it may be appealed to the Public Safety/Public Services Committee within fourteen (14) days from the date the written notice of Permit decision was mailed or delivered by personal service. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police along with an appeal deposit in an amount determined by the City Council by resolution.

C. The Public Safety/Public Services Committee shall conduct a hearing on all appeals at its next regularly scheduled meeting after the close of the appeal period, except where good cause exists to extend this period. Notice of the hearing shall be given in accordance with Section 7.102.050(E) The hearing and rules of evidence shall be conducted pursuant to Chapter 2.62.105 of this Code. The determination of the Public Safety/Public Services Committee on the appeal(s) shall be final.

D. No Permits shall be issued prior to the expiration of the appeals period without the filing of an appeal or, in the event of one or more appeals, the final decision of the Public Safety/Services Committee on all appeals.

SECTION 5. Richmond Municipal Code Section 7.102.060 (Permit approval and operating conditions) is hereby amended to read as follows:

Any permit issued pursuant to this chapter shall include, and each permittee shall continually comply with, all of the following conditions of operation, provided that additional conditions may be imposed as necessary to preserve the public health, safety, and welfare.

A. The Property satisfies all locational and zoning criteria.

B. Exterior building and parking area lighting at the Property are in compliance with all applicable provisions of this Code, as determined by the Planning Division.

C. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry; equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and comply with all applicable Building and Fire Code provisions.

D. The Property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Property is not detected outside the Property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the Medical Marijuana Collective.

E. The Property is monitored at all times by closed-circuit television for security purposes. The camera and recording system 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 Property for a period of not less than thirty (30) days.

F. The Property has a centrally-monitored fire and burglar alarm system.

G. A sign is posted in a conspicuous location inside the Property advising:

1. The diversion of marijuana for non-medical purposes is a violation of State law.

2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code Section 647(h).

4. This Medical Marijuana Collective is permitted in accordance with the laws of the City of

Richmond.

H. Each Collective distributing Edible Medical Marijuana or other manufactured infused products for the sole consumption by Qualified Patient members and Qualified Patient Management Members of the Collective shall ensure that the products are manufactured, packaged and labeled in compliance with all applicable state and local laws.

I. The Medical Marijuana Collective meets all applicable state and local laws to ensure that the operations of the Collective are consistent with the protection of the health, safety and welfare of the community, Qualified Patients and their Primary Caregivers, and will not adversely affect surrounding uses.

J. No Collective shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by Management Members and members towards the Collective's actual expenses of the growth, cultivation, and provision of Medical Marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented. The site of cultivation for all in-kind contributions shall be noted and addresses shall be made available to Fire and Building inspectors upon request.

K. Prior to distributing any crop, batch or bundle of Medical Marijuana that it cultivates or acquires for distribution or any Edible Medical Marijuana or other manufactured infused products, a Collective shall submit samples of that crop, batch or bundle to an independent laboratory to be tested using standard analytical methodology for the presence of mold, pesticides, and other additives or adulterants that could be harmful if ingested or applied topically. The Medical Marijuana or manufactured infused product shall not be distributed or consumed before laboratory results demonstrate that it is safe for consumption.

L. Prior to hiring any prospective employee or Management Member, the Richmond Police Department shall prepare a summary criminal history ("LiveScan") demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

SECTION 6. Richmond Municipal Code Section 7.102.080 (Maintenance of records), Subparagraphs A.10 and B, are hereby amended to read as follows:

10. Evidence of (a) verification that all Edible Medical Marijuana and other manufactured infused products are manufactured, packaged, and labeled in compliance with all applicable state and local laws, and (b) laboratory testing as required by Section 7.102.060.

B. These records shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available by the Collective to the City upon request, subject to the authority set forth in Section 7.102.090.

SECTION 7. Richmond Municipal Code Section 7.102.100 (Existing Medical Marijuana operations) is hereby amended to read as follows:

Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until such time, if any, when it complies fully with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this Chapter shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code. Any medical marijuana collective, dispensary, operator, establishment or provider that operates without a Permit after December 31, 2010 shall be ineligible to apply for a Permit.

SECTION 8. Richmond Municipal Code Section 7.102.120 (Violation and enforcement), Subparagraph B, is hereby amended to read as follows:

B. Any person who engages in any Medical Marijuana Collective operations after a Medical Marijuana Collective Permit application has been denied, or a Medical Marijuana Collective Permit has been suspended or revoked, and before a new permit is issued, shall be subject to civil prosecution and fines of up to one thousand dollars ($1,000) per day for each day of unpermitted operation.

SECTION 9. Richmond Municipal Code Section 7.102.130 (Appeals process), is hereby amended to read as follows:

7.102.130 Appeals from revocation or suspension decisions.

A. If a City department determines that the permittee failed to comply with any provision of this Chapter, or with any other provision or requirement of law, the Chief of Police shall revoke or suspend the Medical Marijuana Collective Permit.

B. The Chief of Police shall notify the permittee of the permit revocation or suspension by dated written notice. Said notice shall advise the permittee of the right to appeal the decision to the Public Safety/Public Services Committee within fourteen (14) days from the date the notice. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police.

C. The appeal shall be considered by the Public Safety/Public Services Committee in accordance with Section 7.102.055(C). The decision of the Public Safety/Public Services Committee shall be final.

D. Whenever a Medical Marijuana Collective Permit has been revoked or suspended, no permit application by any of the Managing Members of that Collective shall be considered for a period of three (3) years from either the date notice of the revocation or suspension was mailed, or the date of the final decision of the Public Safety/Public Services Committee, whichever is later.

SECTION 10. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 11. Effective Date.

This Ordinance becomes effective thirty (30) days following its passage and adoption.

First reading at a regular meeting of the Council of the City of Richmond held October 19, 2010 and finally passed and adopted at a joint meeting thereof held November 16, 2010 by the following vote:

AYES:	Councilmembers Bates, Butt, Lopez, Rogers, Viramontes, Vice Mayor Ritterman, and Mayor McLaughlin
NOES:	None.
ABSTENTIONS:	None.
ABSENT:	None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 31-10, finally passed and adopted by the City Council of the City of Richmond at a joint meeting held on November 16, 2010.

ORDINANCE O2010 12

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE BY ADDING A NEW SECTION 17.52.275, AMENDING SECTIONS 17.10.020, 17.12.020, AND 17.14.020, AND REPEALING CHAPTER 5.82, ALL RELATED TO PERMITTING AND REGULATING OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND ASSOCIATED CULTIVATION FACILITIES

WHEREAS, in 1996, California voters enacted the Compassionate Use Act (the Act") of 1996, which, as codified in California Health and Safety Code Section 11362.5, decriminalizes the possession and cultivation of medical marijuana for limited personal medical purposes; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medical Marijuana Program, which, as codified in California Health and Safety Code Section 11362.7 *et seq*, clarifies the scope of the Act and sets forth the allowable scope of the use of marijuana for medical purposes; and

WHEREAS, the Act and the Medical Marijuana Program contemplate a clinical relationship between qualified patients (or persons with identification cards issued by Department of Health) and their primary caregivers, under which qualified patients (upon the recommendation of a physician) and primary caregivers may possess or cultivate marijuana for specified medical purposes; and

WHEREAS, State law provides a narrow defense to criminal statutes otherwise criminalizing the possession and cultivation of marijuana for designated primary caregivers and qualified patients and persons with identification cards who associate (collectively or cooperatively) in order to cultivate marijuana for medical purposes; and

WHEREAS, the City Council takes legislative notice that, based upon materials presented to the City Council during public hearings during the legislative process leading to the adoption of this ordinance, several California cities and Counties have experienced serious adverse public safety impacts associated with unregulated medical marijuana dispensaries, or an overconcentration of medical marijuana dispensaries within a single jurisdiction. These impacts include, but are not limited to: increased criminal activity, burglary, loitering, armed robbery, diversion of marijuana for non-medical or recreational purposes, increased incidence of driving under the influence of marijuana and alcohol in the areas surrounding such facilities, adverse traffic impacts, increased sale of recreational marijuana in the areas surrounding such facilities, increase in unreported crime to avoid negative publicity for the facilities, sales of other illegal substances from the facilities, noise and nuisance impacts, and related adverse impacts on surrounding businesses; and

WHEREAS, the City Council takes legislative notice of a California police Chief's Association compilation of police reports, news stories and statistical research regarding such secondary impacts, contained at http://www.californiapolicechiefs.org/navfiles/medicalmarijuana.html ; and

WHEREAS, in August of 2008, the California Attorney General's office, under direct authority of the Medical Marijuana Program, issued a set of guidelines to ensure the security and non-diversion of marijuana grown for medical use; and

WHEREAS, the City Council hereby finds that there exists ample evidence, in the record and in the experiences of other California jurisdictions that have not regulated medical marijuana dispensaries, or that have an overconcentration of such facilities, that such lack of adequate regulation or overconcentration of such facilities within a community pose a direct threat to the public health, safety and welfare; and

WHEREAS, the City has conducted a broad and inclusive public process, including workshops and hearings open to the public regarding the issue of regulating medical marijuana dispensaries and cultivation (including community workshops, a Planning Commission hearing, and City Council hearings, on: August 18, 2009, September 1, 2009, September 15, 2009, December 9, 2009, February 9, 2010, March 16, 2010, April 15, 2010, and June 1, 2010), and has heard public testimony, and adopted a framework of five policy principles to guide the regulation of medical marijuana dispensaries and associated cultivation facilities, which principles include the regulation of the physical aspects of dispensaries, limitations on number and size, separation and appearance standards, establishing a process for review of applications, setting forth regulations for cultivation and supply of medical marijuana to dispensaries, the establishment of regulations regarding residential medical marijuana cultivation by qualified individuals, the establishment of a framework for enforcement of permits, and the monitoring of issues related to dispensaries and associated cultivation facilities; and

WHEREAS, under Article XI, section 7 of the California Constitution, California Cities are authorized to make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, an ordinance regulating medical marijuana dispensaries and associated cultivation facilities, limiting the total potential number of permitted dispensaries in the City to two, and establishing regulations regarding residential medical marijuana cultivation by qualified individuals is thus necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the City of Napa; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as

follows:

SECTION 1: Napa Municipal Code Chapter 5.82 repealed. Chapter 5.82 of Title 5 of the Napa Municipal Code, "Medical Marijuana Dispensaries Prohibited," is hereby repealed in its entirety.

SECTION 2: Land Use Regulations amended. Section 17.10.020 of Chapter 17.10 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection C (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Subsection C of the Land Use Regulations table in Section 17.10.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.10.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.10.020

Zoning Districts	CL	CT	CC	CD	CDP Gnd Lvl	CDP Upper Basmt	Added Use Regulations
C. Offices and Related Uses							
2. Medical services (medical, dental and health-related, with accessory sales)							
Medical Marijuana Dispensaries	C		C				Subject to Section *17.52.275*

SECTION 3: Land use regulations amended. Section 17.12.020 of Chapter 17.12 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection A (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Section A of the Land Use Regulations table in Section 17.12.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.12.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.12.020

	RO	OC	OM	Added Use Regulations
2. Medical services (medical, dental and health-related, with accessory sales)				
Medical Marijuana Dispensaries			C	Subject to Section 17.52.275

SECTION 4: Land use regulations amended. Section 17.14.020 of Chapter 17.14 of Title 17 of the Napa Municipal Code is hereby amended to: (1) add a new use, "Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit," in the appropriate alphabetical location to the uses listed under Subsection A, "Industrial Uses" within the Land Use Regulations table in Section 17.14.020; and (2) to add a new use under a new Subsection 17.14.020 C (2), "Medical Services (medical, dental, health-related services, accessory sales)" listing "Medical Marijuana Dispensaries" as a use within the table to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.14.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.14.020

Zoning Districts	IL	IP-A	IP-B	IP-C	Added Use Regulation
A. Industrial Uses					
Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit	C			C	Subject to Section 17.52.275
C. Offices and Related Uses					
2. Medical services (medical, dental and health-related, with accessory sales)					
Medical Marijuana Dispensaries	C				Subject to Section 17.52.275 [with particular reference to subsection D.(2)]

SECTION 5: New Section 17.52.275 added to Chapter 17.52. A new Section 17.52.275 is hereby added to Chapter 17.52 of Title 17 of the Napa Municipal Code to read as follows:

17.52.275 Medical Marijuana Dispensaries and Cultivation.

A. Purpose, Scope, and Findings

1. The City Council finds that, in the absence of the regulations set forth in this Section, the adverse impacts directly associated with the cultivation, sale, and distribution of Medical Marijuana, as defined herein, pose a substantial threat to the public health, safety and welfare of residents and businesses within the City. The City Council also finds that it is in the public interest to permit a limited number (not to exceed two) of Medical Marijuana Dispensaries with accessory aggregated cultivation to provide access to Medical Marijuana for the residents of the City of Napa, provided that

any Medical Marijuana Dispensary and any Aggregated Cultivation of Medical Marijuana is in full compliance with this Section.

2. This Section is not intended to, and does not, authorize the violation of State or Federal law.

3. It is the purpose of this Section to provide for a limited number of Medical Marijuana Dispensaries with accessory Aggregated Cultivation Facilities, with regulations as to their location, physical dimensions, appearance, and operations; and to provide for regulated cultivation of Medical Marijuana in residential uses.

4. Notwithstanding the general references in this Section to Chapter 1.16 of this Code, and notwithstanding the general provisions of Chapter 1.20 of this Code, this Section is not intended to, and does not, establish any criminal liability for a violation of this Section. A violation of this Section shall be subject to all other enforcement methods identified in Chapter 1.16 of this Code.

5. This Section is not intended to, and does not, authorize the sale or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) for any non-medical purposes. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own any parcel or location (whether fixed or mobile) where there occurs any sale, distribution, or any other means of providing marijuana for any non-medical purpose. For the purpose of this Section, a "non-medical purpose" shall mean any sale or distribution of marijuana that is not subject to the protections of the Medical Marijuana Laws.

B. Definitions

"Aggregated Cultivation Facility" shall mean any parcel or location, whether fixed or mobile, where Aggregated Cultivation of Medical Marijuana occurs.

"Aggregated Cultivation of Medical Marijuana" shall mean the collective or cooperative cultivation or storing of Medical Marijuana, pursuant to Medical Marijuana Laws. (See California Health and Safety Code Section 11362.775.)

"Director" means the Community Development Director, or a designee of the Community Development Director or City Manager.

"Identification Card" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Medical Marijuana" is marijuana possessed, distributed, or cultivated for medical purposes, in full compliance with Medical Marijuana Laws.

"Medical Marijuana Dispensary" means any parcel or location, whether fixed or mobile, where either: (i) a Primary Caregiver cultivates, makes available, sells, transmits, gives, distributes, or otherwise provides Medical Marijuana to two or more Qualified Patients; or (ii) two or more Qualified Patients and/or Primary Caregivers meet or congregate collectively or cooperatively to cultivate, make available, sell, transmit, give, distribute, or otherwise provide Medical Marijuana under the purported authority of Medical Marijuana Laws. A "Medical Marijuana Dispensary" shall not include any of the following uses, so long as such uses otherwise comply fully with this Code, Medical Marijuana Laws, and other applicable law:

1. A Clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.

2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code.

4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code.

5. A hospice or home health agency, licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Medical Marijuana Laws" shall mean California Health and Safety Code Section 11362.5 (the "Compassionate Use Act of 1996"), and the laws and regulations of the State of California adopted in furtherance thereof, including California Health and Safety Code Sections 11362.7, *et seq.* (the "Medical Marijuana Program Act"), and guidelines adopted by the Attorney General pursuant to California Health and Safety Code Subsection 11362.81(d).

"Person with an Identification Card" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Preferred Applicant" shall mean the person or entity qualified, through a selection process, to file a use permit application for a Medical Marijuana Dispensary.

"Primary Caregiver" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Qualified Patient" shall mean a person who is entitled to the protections of California Health and Safety Code Section 11362.5, whether or not that person has an Identification Card. Thus, for the purpose of this Section, the term "Qualified Patient" shall encompass both the definition of "Qualified Patient" and the definition of "Person

with an Identification Card" (as those terms are used in the Medical Marijuana Laws). (See California Health and Safety Code Section 11362.7.)

"Youth Population Uses" shall mean any elementary or secondary school (whether public or private), and public parks owned and/or maintained by the City of Napa.

C. Permit for Medical Marijuana Dispensary and Cultivation

1. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own a Medical Marijuana Dispensary or an Aggregated Cultivation Facility within the City of Napa, except to the extent established, operated, and owned in accordance with a Medical Marijuana Dispensary Use Permit issued pursuant to this Section and in conformance with other applicable provisions of this Title.

2. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to cultivate medical marijuana unless either: (a) it is conducted at a Medical Marijuana Dispensary or Aggregated Cultivation Facility permitted in accordance with this Section; or (b) it is conducted at the residence of a Qualified Patient for the sole purpose of the personal medical purposes of the resident, in accordance with this Section. A Primary Caregiver shall only cultivate Medical Marijuana at the residence of a Qualified Patient for whom he/she is the Primary Caregiver. Cultivation of Medical Marijuana for personal medical purposes of the resident shall be conducted in conformance with all of the following standards for each residence:

a. The space within any residence in which Medical Marijuana is cultivated shall not exceed a contiguous space of 25 square feet, and ten feet in height, and inclusive of all plant containers, canopies, and specialized equipment. The medical marijuana cultivation area shall be located in one contiguous area of the residence;

b. Medical Marijuana cultivation lighting shall not exceed 1200 watts;

c. The use of manufactured gas products (CO_2, butane, etc.) for Medical Marijuana cultivation or processing is prohibited;

d. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited;

e. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the residence;

f. The Qualified Patient shall reside in the residence where the Medical Marijuana cultivation occurs;

g. No Qualified Patient shall provide Medical Marijuana to any collective or cooperative within the City of Napa, unless it is done in compliance with a Medical Marijuana Dispensary use permit issued pursuant to this Section;

h. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and shall not use those areas for Medical Marijuana cultivation;

i. Any indoor Medical Marijuana cultivation space shall be in compliance with Title 15 of this Code, including but not limited to provisions regarding natural ventilation and mechanical ventilation (or equivalent(s)); and

j. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

k. Any Qualified Patient or Primary Caregiver who asserts that the personal medical purposes of a Qualified Patient require Medical Marijuana cultivation that exceeds the requirements of this Section may submit a request to the Director for a modification of these requirements to permit an expanded Medical Marijuana cultivation area. The applicant shall bear the burden of providing adequate documentation, to the satisfaction of the Director, of the need for an expanded Medical Marijuana cultivation area. The required documentation may include information such as a physician's recommendation, a verification that more than one Qualified Patient is living in the residence, and technical analysis regarding limitations on the Medical Marijuana that may be cultivated in the available space, to show why compliance with the cultivation area standard is not feasible. The Director shall review the submitted documentation and make a determination to approve, conditionally approve, or deny a use permit for the request, subject to compliance with all of the following:

(1) The expanded Medical Marijuana cultivation space (inclusive of all plant containers, canopies, and specialized equipment) shall not exceed the space necessary to serve the personal medical purposes of the resident Qualified Patient, and it shall be a contiguous space in the residence of the Qualified Patient.

(2) At a minimum, the expanded Medical Marijuana cultivation space shall be constructed with a 1-hour firewall assembly of green board. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

(3) The expanded Medical Marijuana cultivation space shall be located in a detached single family residence, or in a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

D. Zone and Separation Standards

1. Zones. Medical Marijuana Dispensary Use Permits may be permitted as a conditional use on properties within the zones so indicated in Sections 17.10.020, 17.12.020 and 17.14.020 of this Title.

2. Conditions Applicable to Medical Marijuana Dispensary Use in the IL Zone. In addition to all other applicable criteria and requirements contained in this Chapter and in Chapter 17.14, all of the following additional provisions shall be applied to Medical Marijuana Dispensaries proposed and permitted within the IL zone:

a. The Medical Marijuana Dispensary shall be operated adjacent to, but separately from, the accessory Aggregated Cultivation Facility.

b. There shall be no direct internal access from the Medical Marijuana Dispensary to the Aggregated Cultivation Facility that is open to the public or members (who are customers) of the Medical Marijuana Dispensary. Any access to the Aggregated Cultivation Facility shall be limited to employees and contractors of the permittee for the purpose of operation in accordance with the permit and this Chapter.

c. The Aggregated Cultivation Facility and the Medical Marijuana Dispensary shall have separate entry doors.

d. The Medical Marijuana Dispensary shall have access to off street parking in compliance with NMC Chapter 17.54, on site and adjacent to the public entry door, provided at a rate equal to one space for each 250 square feet of floor space.

e. The public entry door to the Medical Marijuana Dispensary must be visible from, and within 200 feet of, a public street right-of-way.

f. The area within 50 feet of the public entry door of the Medical Marijuana Dispensary shall be illuminated, to a minimum level of two (2) candle foot, during the time between dusk and the permitted closing time of the Medical Marijuana Dispensary, with such lighting subject to shielding as set forth in NMC Section 17.14.040.L.

3. Separation. The zoning of a property notwithstanding, Medical Marijuana Dispensaries shall also be subject to the following separation standards:

a. A Medical Marijuana Dispensary shall not be located less than 1000 feet from any other Medical Marijuana Dispensary. For the purposes of measuring the separation to between Medical Marijuana Dispensaries, the distance of separation shall be measured from the exterior walls of the building containing the first medical Marijuana Dispensary to the exterior wall of the building containing the second Medical Marijuana Dispensary.

b. A Medical Marijuana Dispensary shall not be located less than 500 feet from any youth population use. For the purpose of measuring the operation between Medical Marijuana Dispensaries and Youth Population Uses, the distance of separation shall be measured from the exterior walls of the building containing the Medical Marijuana Dispensary premises to the property line of the property occupied by the youth population use.

c. The foregoing separation standards may be reduced only to the extent that the City Council finds, based on substantial evidence, that an intervening permanent feature in the landscape (such as a creek or a highway) provides an impenetrable barrier to pedestrian access between the uses, so that the separation of the uses is functionally equivalent to the requirements of this Section.

E. City Council as the Authority to Issue Medical Marijuana Dispensary Use Permits

Notwithstanding Section 17.60.020 of this Title, the City Council shall approve, conditionally approve, or deny any application for a Medical Marijuana Dispensary Use

Permit pursuant to this Section, based on an advisory recommendation from the Planning Commission.

F. Maximum Number of Medical Marijuana Dispensaries

For each competitive application process for a use permit under this Section, the City Council shall issue no more than one Medical Marijuana Dispensary use permit. Following the date of issuance of the first use permit under this Section, the City shall not commence the competitive application process for a second Medical Marijuana Dispensary use permit for 365 days. Notwithstanding the limitations of this Subsection (F), upon the revocation of a permit (pursuant to Subsection 17.52.275(P), the Director is authorized to issue a notice to commence a competitive application process for a replacement permit (pursuant to Subsection 17.52.275(I)).

Following the issuance of the first use permit under this Section, the City shall not commence the competitive application process for any subsequent Medical Marijuana Dispensary use permit unless the City Council finds, by resolution, that the issuance of a Medical Marijuana Dispensary use permit to a subsequent permittee is necessary to adequately serve the needs of the residents of the City of Napa.

At no time shall there be more than two validly-permitted Medical Marijuana Dispensaries within the City of Napa. Nothing in the foregoing shall obligate the approval of any application by the City.

G. Aggregated Cultivation Facilities Accessory to a Medical Marijuana Dispensary

Each permittee of a permitted Medical Marijuana Dispensary may establish and operate an Aggregated Cultivation Facility, subject to the requirements of this Section. The Aggregated Cultivation Facility shall be subject to the following additional requirements.

1. Application for an Aggregated Cultivation Facility, if sought, shall be made concurrently with, and accessory to, the application for a Medical Marijuana Dispensary Use permit, or as a subsequent amendment to an approved Medical Marijuana Dispensary Use permit. The applicant for an Aggregated Cultivation Facility shall be the same entity as the permittee for the Medical Marijuana Dispensary Use permit. The application for the Aggregated Cultivation Facility shall include all information required for the primary use subject to the Medical Marijuana Dispensary Use permit (See Subsections 17.52.275 (J) through (L)).

2. An Aggregated Cultivation Facility may be permitted as a conditional use on properties within the industrial zones so indicated in Section 17.14.020 of this Title.

3. The Aggregated Cultivation Facility shall be subject to all requirements of this Section, including those related to physical security, maintenance of records, employee training, mitigating adverse impacts on neighbors, and the responsibility of the operator for nuisance (See Subsection 17.52.275 (O)). All cultivation activities of an

Aggregated Cultivation Facility shall be conducted indoors. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the facility, except to the extent that signage is authorized pursuant to the use permit. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

4. The Aggregated Cultivation Facility shall be operated for the sole purpose of providing Medical Marijuana to the primary use subject to the Medical Marijuana Dispensary Use Permit. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited. No commercial activity shall occur at the Aggregated Cultivation Facility.

H. Membership Limits for Medical Marijuana Dispensaries

No Medical Marijuana Dispensary use, as permitted in accordance with this Section, shall have a membership of cooperative members exceeding ten percent (10%) of the population of the City of Napa as established by the most recent final United States census. Provided, however, as a part of the annual review of a Medical Marijuana Dispensary Use Permit (pursuant to Subsection 17.52.275(O)(16), the City Council, by resolution, may increase in the maximum membership limitation of this paragraph if it finds that the increase is necessary to adequately serve the needs of the residents of the City of Napa.

I. Notice of Commencing Competitive Application Process

Any person who desires to be considered as an applicant for a Medical Marijuana Dispensary use permit under this Section may submit contact information to the Director. The Director shall maintain the contact information of each such person, on a list of potential applicants, for two years thereafter.

For each competitive application process authorized pursuant to Subsection (F), above, the Director shall provide at least sixty days prior notice for the submittal of applications. The notice shall be provided to the general public and to each individual on the maintained list of potential applicants. The notice shall identify the deadline date on which applications are required to be submitted to the Director, and the location where potential applicants may obtain additional information regarding the selection criteria and process.

J. Screening Application for Competitive Selection of Preferred Applicant

1. Any person seeking a Medical Marijuana Dispensary use permit under this Section shall submit a screening application to the Director no later than the deadline set forth in the notice of commencing competitive application process (issued pursuant

to Subsection (I), above). In the event that the Director determines that a screening application is incomplete or fails to provide the information and documentation required by this Section, the Director shall notify the applicant in writing, and the applicant shall have an additional 30 days (or longer as authorized by the Director) in which to submit needed supplemental information or documentation as specified by the Director. If an application is incomplete after the Director provides an opportunity to submit needed supplemental information or documentation, the Director is authorized to reject the application as incomplete.

2. Each applicant shall submit the following information (for the primary Medical Marijuana Dispensary, and any requested accessory Aggregated Cultivation Facility) in the screening application, in a form acceptable to the Director:

a. The name, address, telephone number and chief executive of the applicant (the cooperative or collective organization to which the permit is to be issued).

b. The name, address and telephone number of the authorized agent for the applicant.

c. Documentation of the legal entity and organizational structure of the applicant organization, demonstrating that it is a collective or cooperative operating in conformance with the requirements of the Medical Marijuana Laws.

d. Documentation of the experience and background of principals and management staff of the applicant, subject to verification by background check to be conducted by the Director. Such documentation shall include: licensing records for any collective or cooperative for which the person is or has been a principal or manager in any other location.

(1) No applicant shall be selected nor shall an application be approved if a principal or manager shall have been convicted of:

- Any offense related to possession, manufacture, sales, or distribution of controlled substance, with the exception of marijuana related offenses; or
- Any offense involving the use of force or violence upon the person of another.

(2) The Director may also consider (as indications of the qualifications of the applicant) but shall not necessarily be obligated to deny an application if a principal or manager shall have been convicted of any other criminal offense, including but not limited to:

- Any offence involving theft, fraud, dishonesty or deceit; and,
- Any offense related to possession, manufacture, sales, or distribution of marijuana related offenses.

(3) For the purpose of this Subsection (J)(2)(d), a conviction includes a plea or verdict of guilty or a conviction following a plea of *nolo contendre*.

e. Proposed plan of operation for the prospective Medical Marijuana Dispensary to demonstrate compliance with the requirements of the Medical Marijuana Laws and this Section. This shall include, but not be limited to an indication of: (1) the manner of maintaining an adequate (and not surplus) of supply, including any intent to operate an Aggregated Cultivation Facility, methods of documenting source of supply,

and methods of precluding supply from illegal "grow houses" in residential zones; (2) limitations that will be imposed on off-site deliveries of Medical Marijuana; (3) methods of focusing the services to residents of Napa; (4) methods of mitigating adverse impacts on neighbors; (5) methods of ensuring compliance with the security plan; and (6) methods of ensuring adequate record-keeping systems and providing regular reports to the City.

f. Demonstration of a record-keeping system for operational records which will include continuing maintenance of membership records to document collective or cooperative organizational structure (including the ability to sort members into those who cultivate medical marijuana, those who are persons with an Identification Card, those who are qualified patients and those who are primary caregivers), and include documentation that the organization will operate on a not for profit basis.

g. Demonstration of a record-keeping system for medical records which will allow for continuing maintenance of such records, including procedures to protect patient privacy, document physician recommendations, and primary caregiver and qualified patient status.

h. Demonstration of screening and training procedures for employees and volunteers, including maintenance of records, demonstrating the means of confirming identification, qualifications, and conducting criminal background checks for employees and volunteers.

i. A security plan proposal, indicating the methods and measures which would be taken to protect the premises, employees, clients, immediate neighbors, the medical marijuana product, and records files. The security plan shall include the methods and measures for handling and banking cash.

j. A statement of any intention to provide consumable products other than raw harvested Medical Marijuana, including edibles, lozenges, other such product preparations, and a demonstration of the means of achieving appropriate health and safety approvals. A statement of the system for providing for necessary consumer safety packaging and labeling for consumable products as well as the raw harvested Medical Marijuana.

k. Acknowledgment by signature that the chief executive and authorized agent have read all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

l. Certification of the accuracy of the information submitted, and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the conditions of the use permit.

m. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

n. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable

and shall cease upon lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

o. Such other information as the Director deems reasonably necessary to administer this Section may be required.

3. Selection Process.

a. The Director is authorized to determine which applicant is the "preferred applicant" based on the demonstrated experience, training, capability, and plan to best fulfill the purposes and requirements of this Section. The Director is authorized to establish conditions of approval for the determination of the preferred applicant, and the applicant is required to comply with the conditions of approval as a part of the application for the Medical Marijuana Dispensary use permit.

b. All timely and complete applications shall be evaluated by the Director and a team of application reviewers (City staff and consultants selected by the City Manager). The Director and the application reviewers may interview one or more of the applicants, to the extent the Director determines it would assist in the evaluation process.

c. After consideration of input from the application reviewers, the Director shall make a preliminary determination of which applicant is the preferred applicant, and the Director shall provide written notice of the preliminary determination to each applicant.

d. Within ten working days of the Director's issuance of the notice of preliminary determination, any applicant shall have an opportunity to provide written comments to the Director regarding any bases upon which an applicant asserts that the preliminary determination should not be finalized by the Director.

e. After considering any written comments provided by applicants, the Director shall make a final determination of the preferred applicant. If the Director determines that no applicant has demonstrated the experience, training, capability, and plan to fulfill the objectives and requirements of this Section, the Director may reject all applications, and commence a new competitive application process.

f. The preferred applicant, as determined by the Director, shall be the only entity authorized to submit an application for a Medical Marijuana Dispensary use permit. Notwithstanding the appeal provisions set forth in Subsection 17.52.275(P) and Chapter 17.70, the Director's determination regarding the selection of the preferred applicant shall be final and not subject to appeal.

K. Application for Medical Marijuana Dispensary Use Permit

The Preferred Applicant, as determined by the Director, may submit an application for a Medical Marijuana Dispensary Use Permit, which shall include all information necessary

to evaluate compliance with this Section for the proposed Medical Marijuana Dispensary and any proposed Aggregated Cultivation Facility. Each application for a Medical Marijuana Dispensary Use Permit shall be made on a form provided by the Director, and shall include the following:

1. Diagrams, plans, tenant improvement plans and photographs of the intended premises sufficient to demonstrate location and intended improvements.

2. Documentation establishing that the premises meet all local building and safety code requirements.

3. A diagram of the premises showing and indicating the number and location of designated on-site parking spaces.

4. All documents required by Chapter 17.60 of this title.

5. All information previously submitted for the screening application, supplemented and updated for the purposes of issuing the use permit for the specified locations of the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, including compliance with any conditions of approval of the preferred applicant determination. This shall specifically include documentation of adequate physical security, including: a well defined separate entrance for the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, limited number of building entrances which are easily securable, main entrances that are visible from a public street, a lobby area that is physically separated from any medical marijuana supply, mitigation of any adverse impacts of potential hidings places on the site, no pay phones within the immediate vicinity of the site, use of security guards to enforce permit compliance for activities on site and in the immediate vicinity of the site, and use of surveillance cameras (and other forms of technology). For the Medical Marijuana Dispensary, the reception area shall be located at the main entrance with a view of visitor parking areas.

6. A 300 foot notification mailing label submittal as provided for in Subsection 17.68.070 (A)(3) of this Title for both the site of the proposed Medical Marijuana Dispensary and its associated aggregated cultivation facility, if any.

7. Acknowledgment by signature that the property owner, the permittee's chief executive officer, and the permittee's authorized agent have read, and will comply with, all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

8. Certification of the accuracy of the information submitted, and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the

conditions of the permit.

9. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

10. Acknowledgement and agreement that claims, requests, objections and arguments not timely raised in the Medical Marijuana Dispensary use permit application are and shall be deemed waived.

11. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable and shall cease upon any lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

12. Such other information as the Director deems reasonably necessary to administer this Section.

L. Fees

Medical Marijuana Dispensary Use Permits shall be subject to the payment of the fees established by Council resolution based on the estimated reasonable costs incurred by the City for processing the application materials consistent with Sections 1.16.050 and 3.04.040 of this Code, as well as the estimated reasonable costs of implementing a regulatory program related to inspecting and monitoring the impacts of the permit. These shall include:

1. A competitive application processing fee, as established by Council resolution, payable by each applicant at the time of application to cover the cost of reviewing applications through the process of screening and identifying the preferred applicant.

2. A use permit processing fee, as established by Council resolution, payable by each preferred applicant at the time of application for each use permit. The processing fee may also include a fee to process applications for an expanded Medical Marijuana cultivation space, pursuant to Subsection 17.52.275(C)(2)(k).

3. A premises inspection and regulatory review fee, as established by Council resolution, payable annually by each permittee. This fee shall include the City's costs of administration of the program, including the costs of preparation of necessary ordinances and resolutions.

M. Findings

The City Council may approve, or conditionally approve, a Medical Marijuana Dispensary Use Permit (including any accessory Aggregated Cultivation Facility) only if

the City Council first makes all findings (based on substantial evidence) set forth in Section 17.60.070 of this Code as well as all of the following:

1. That the location of the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility, if applicable, complies with the zoning and use separation standards of this Section;

2. That the premises for the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility meet all of the physical requirements of this section; and,

3. That the operator of the Medical Marijuana Dispensary has demonstrated its ability and commitment to operate the facility(ies), and provide adequate security in compliance with the standards of this Section.

4. That the operator of the Medical Marijuana Dispensary has demonstrated its full compliance with the requirements of this Section, and the ability and commitment to adequately mitigate impacts that are potentially detrimental to the public health, safety, or welfare.

N. Conditions of Approval and Term of Permit

As a part of the approval of a Medical Marijuana Dispensary Use permit (including any accessory Aggregated Cultivation Facility), the City Council may impose such conditions in connection with the permit as it deems necessary in order to fulfill the purposes of this Section, and may require such guarantees and evidence that it deems necessary and appropriate to ensure such conditions will be complied with.

O. Permits subject to ongoing restrictions

All Medical Marijuana Dispensary Permits (and any accessory Aggregated Cultivation Facility) shall be subject to the following requirements and restrictions, in addition to all other applicable provisions of this Code.

1. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be the primary uses of their respective premises, and shall not be established or maintained in conjunction with other uses within the same demised tenant space and address;

2. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall have direct access to a public space and shall not take access via any other business or tenancy.

3. Commercial signs pertaining to the Medical Marijuana Dispensary shall be regulated in accordance with the provisions related to professional offices, at NMC Section 15.56.080 (table headed, "The following regulations shall apply in the: MO,

MEDICAL OFFICE, CO, COMMERCIAL OFFICE & RP-12, -25, RESIDENTIAL PROFESSIONAL"). Any Aggregated Cultivation Facility shall have only such signs necessary for tenant identification or address purposes.

4. The operator of a Medical Marijuana Dispensary shall post in a conspicuous place near its entry, the following notices, each in a form subject to review and approval by the Director.

a. A notice that a complete copy of the Medical Marijuana Dispensary Use Permit is available for inspection on the premises;

b. A notice indicating the uncertain status of Federal and State Law pertaining to Medical Marijuana transactions;

c. A notice identifying the scope and limitations of any inspections and certifications (related to consumer product safety) of the products available on the premises;

d. A notice indicating that consumption of Medical Marijuana on the premises of the Medical Marijuana Dispensary is prohibited; and,

e. Any other notice required by the permit, including any annual extension thereof.

5. The hours of operation for Medical Marijuana Dispensaries shall commence no earlier than 7:00AM, nor shall they end later than 7:00PM.

6. Consumption of Medical Marijuana on the premises of a Medical Marijuana Dispensary or any associated Aggregated Cultivation Facility shall be prohibited.

7. A Medical Marijuana Dispensary shall provide a secured storage area on site. All Medical Marijuana products shall be stored in this area during non-business hours. The design features and maintenance of the storage area shall be subject to the review and approval of the Director.

8. The operator of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be responsible for the training of employees in the provisions of these regulations and the conditions and obligations of the Medical Marijuana Dispensary Use Permit.

9. Separate from any permit which may authorize cultivation at an Aggregated Cultivation Facility, Medical Marijuana Dispensaries may conduct limited on site cultivation of Medical Marijuana juveniles as starter plants for residential cultivation as set forth in Subsection 17.52.275 (C)(2), above, subject to the following limitations:

a. Each plant shall be boxed, in flats or individual nursery containers measuring no more than three inches by three inches (3" X 3")

b. Cultivation must take place indoors, within the premises of the Medical Marijuana Dispensary, within a floor area not exceeding one hundred square feet.

10. Medical Marijuana Dispensaries are prohibited from selling, renting or providing group smoking apparatus, including but not limited to hookah pipes, but may sell items designed for the smoking or ingestion of Medical Marijuana products by an individual, including such items as pipes.

11. The issuance of physician recommendations for Medical Marijuana is prohibited on the premises of a Medical Marijuana Dispensary or an Aggregated Cultivation Facility.

12. The permittee of a Medical Marijuana Dispensary Use Permit is responsible for the actions of its employees, members, volunteers in violation of any term of this section or any other applicable provision of this Code.

13. The Medical Marijuana Dispensary shall be operated in full compliance with all requirements of State law. The issuance of a permit pursuant to this Section is not intended to, and does not, authorize the violation of State or Federal law.

14. A Medical Marijuana Dispensary may only provide Medical Marijuana consistent with the Medical Marijuana Laws. This Section is not intended to, and does not, authorize the cultivation, sale, or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) from a Medical Marijuana Dispensary or an Aggregated Cultivation Facility for any non-medical purposes.

15. Based on the personal nature of the obligations and responsibilities of each permittee (as set forth in this Section and in each permit), each Medical Marijuana Dispensary Use Permit shall be personal to the permittee, and shall be non-transferable. Any attempt to transfer the permit to an entity other than the permittee, or any lapse of use of the permit by the permittee for six months in any twelve month period, shall be sufficient grounds for termination or revocation of the permit. Notwithstanding this limitation, the Director is authorized to approve a modification to the organizational or operational structure of the permittee only if the Director determines in writing that the modification is minor and does not adversely impact the ability of the permittee to comply with all requirements of the permit and this Section. If a permittee seeks approval of any such modification, the permittee must submit the request to the Director in writing, and obtain the Director's written approval prior to implementing the modification.

16. Each Medical Marijuana Dispensary Use Permit shall be issued subject to annual review and extension. Each permittee shall submit an annual report to the Director, in a form satisfactory to the Director, to document compliance with all requirements of the permit and this Section. The Director shall review all application records and inspect the premises, and may review all records as listed in the permit application requirements, to assure that the Medical Marijuana Dispensary (and any accessory Aggregated Cultivation Facility) is compliant with this Section, with other

applicable provisions of this Code and with the permit conditions. As a part of the annual review of the permit, the Director is authorized to impose supplemental conditions on the permit to the extent that the Director determines that the supplemental conditions are necessary in order to, either: (a) achieve compliance with the requirements of the permit or this Section; or (b) mitigate adverse impacts on neighboring properties.

P. Enforcement and Appeal

1. The cost of the ongoing administration of Medical Marijuana Dispensary permits shall be borne by the Medical Marijuana Dispensary permittees according to fees established by resolution of the City Council.

2. The Director may conduct an investigation whenever there is reason to believe that any person has failed to comply with the provisions of a Medical Marijuana Dispensary Use Permit or of this Section. The investigation may include an inspection of the premises. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Director is authorized to take any enforcement action as set forth in Chapter 1.24 of this Code. The written notice shall be served on the permittee or authorized agent and shall specify the facts which, in the opinion of the Director, constitute substantial evidence to establish grounds for imposition of the enforcement action. Administrative fines, in accordance with Subsection 1.16.050 of this Code, may be assessed to the permittee as a result of violations of either the Permit or this Section. A permittee, or the recipient of the notice of violation, may request an administrative hearing to contest any administrative citation issued by the Director in accordance with the procedures set forth in Sections 1.24.070 through 1.24.090 of this Code.

3. The Director is authorized to initiate proceedings to revoke, or modify the conditions attached to, a Medical Marijuana Dispensary Use Permit if at any time he or she determines in his or her discretion that: (a) a Medical Marijuana Dispensary use is detrimental to the public health, safety, or welfare; (b) the permittee has provided materially false or misleading information in the application for the permit; or, (c) the permittee has failed to comply with any requirements of the permit or of this Section. Any such proceedings shall be conducted in accordance with the general procedures set forth in Chapter 17.72 of this Title.

4. Except as otherwise provided in Subsection J(3) (authorizing the Director to make final decisions to select the preferred applicant) and Subsection P(3) (for appeals subject to Chapter 17.72 of this Title), any person aggrieved by a determination of the Director pursuant to this Section may appeal by filing a written appeal with the City Clerk. Any such appeal must be received by the City Clerk within ten (10) calendar days of written determination by the Director. Each appeal shall be subject to the following:

a. Any such appeal shall state all factual and legal grounds which the appellant wishes the City to consider. Such grounds to be identified by the appellant shall include, without limitation, any and all constitutional or statutory claims.

b. The appeal shall be decided by an administrative hearing which shall be set and conducted pursuant to the procedural provisions of Sections 1.24.080, 1.24.090, and 1.24.100.

- For purposes of this Subsection P(4), as used in Chapters 1.16 and 1.24 of this Code: (1) the "responsible person" shall be the "appellant"; (2) the "administrative citation" shall be the determination under this Section that is the subject of the appeal.
- Any written reports submitted by the Director to the Hearing Officer shall be served on the appellant at least five days before the hearing.
- At the hearing, the appellant shall be given the opportunity to testify and present evidence, and the appellant shall raise any and all legal and factual issues and claims, concerning the determination under this Section that is the subject of the appeal.
- The decision of the Hearing Officer shall be final.
- If the hearing officer finds, as a part of the hearing officer's written decision, that the City is the prevailing party, the City is entitled to its reasonable costs of defending the appeal.

c. Failure to timely request an administrative hearing, and/or to fully state all factual and legal grounds for the appeal, in the manner required by this Subsection P(4) shall constitute a waiver of the hearing and a failure to exhaust administrative remedies, and shall preclude any and all relief and claims arising in connection with the determination by the Director.

SECTION 6: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR: _____

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA
COUNTY OF NAPA } SS:
CITY OF NAPA

I, Dorothy R. Roadman, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 1st day of June, 2010, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 6th day of July, 2010, by the following vote:

AYES: van Gorder, Mott, Inman, Krider, Techel

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: _____
CITY CLERK OF THE CITY OF NAPA

Approved as to Form:

_____
Michael W. Barrett
City Attorney

BILL NO. 835-C.S.
ORDINANCE NO. ____-C.S.

AN ORDINANCE OF THE CITY OF EUREKA AMENDING TITLE 15 CHAPTER 158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.
Title 15, Chapter 158, Section, is hereby amended to read as follows:

CHAPTER 158: MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Section

General Provisions

158.001 Findings and purpose
158.002 Interpretation and applicability
158.003 Release of liability and hold harmless
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Personal Use - Requirements & Regulations

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158.012 Distributing

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158.024 Delivery Services
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Permits

158.030 Fees and taxes
158.031 Enforcement

Non-medical Marijuana Use – Requirements & Regulations

158.040 Personal Use Cultivation, Processing, and Distributing

GENERAL PROVISIONS

§ 158.001 FINDINGS AND PURPOSE.

(A) The City Council of the City of Eureka, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation, processing and distribution of medical cannabis in the City of Eureka has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(B) The City Council of the City of Eureka also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(C) The purpose and intent of this chapter is to regulate the cultivation, processing and distribution of medical cannabis in a manner that protects the public health, safety and welfare of the community and mitigates for the costs to the community of the oversight of these activities.

§ 158.002 INTERPRETATION AND APPLICABILITY.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and distribution of medical cannabis in the City of Eureka is controlled by the provisions of this chapter of the Eureka Municipal Code. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this chapter.

(B) Nothing in this ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.

(C) Nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter, regardless if the cultivation, processing or distribution existed or occurred prior to adoption of this chapter.

§ 158.003 RELEASE OF LIABILITY AND HOLD HARMLESS.

As a condition of approval of any conditional use permit approved for a medical cannabis cultivation, processing, and/or distribution facility, the owner or permittee of each medical cannabis collective, cooperative, cultivation, processing or distribution facility shall indemnify and hold harmless the City of Eureka and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the collective, cooperative, cultivation, processing or distribution facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the cultivation, processing or distribution of medical cannabis.

§ 158.004 DEFINITIONS.

DWELLING UNIT. A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

FACILITIES.

MEDICAL CANNABIS CULTIVATION FACILITY. A facility at which medical cannabis is grown and harvested for supply to a ***MEDICAL CANNABIS PROCESSING FACILITY*** and/or a ***MEDICAL CANNABIS DISTRIBUTION FACILITY***.

MEDICAL CANNABIS DISTRIBUTION FACILITY. Any facility or location where medical cannabis is distributed as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).

MEDICAL CANNABIS PROCESSING FACILITY. A facility at which medical cannabis is processed for supply to a ***MEDICAL CANNABIS DISTRIBUTION FACILITY***.

MEDICAL CANNABIS. (also known as *medical marijuana*) Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, processing or distribution of medical cannabis.

MEDICAL CANNABIS CULTIVATION AREA. The maximum dimensions used for the cultivation of medical cannabis. For the purpose of this chapter, the allowable cultivation area shall be the cumulative gross area used for cultivation of medical cannabis and shall be measured using either (a) the outward edge of the trays, pots or other containers used for cultivation or (b) the vegetative canopy, whichever is greater.

MEDICAL CANNABIS DISTRIBUTION. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.

MEDICAL CANNABIS PROCESSING. Medical cannabis processing includes, but is not limited to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling.

MEDICAL CANNABIS PROCESSING AREA. The maximum dimensions used for the processing of medical cannabis. For the purpose of this chapter, the allowable processing area shall be the cumulative gross floor area used for processing medical cannabis. Where the processing area occupies the majority of a room or rooms, the processing area shall be calculated as the total gross floor area of the room or rooms used for processing medical cannabis.

PRIMARY CAREGIVER. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

QUALIFIED PATIENT. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time.

RESIDENCE. A legal dwelling unit.

§ 158.005 SEVERABILITY

If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining parts of this ordinance.

PERSONAL USE - REQUIREMENTS & REGULATIONS

§ 158.010 CULTIVATION.

(A) A qualified patient shall be allowed to cultivate medical cannabis for their own personal use. The medical cannabis cultivation area shall not cumulatively exceed 50 square feet per residence. Cultivation of medical cannabis for personal use shall be in conformance with the following standards:

(1) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property;

(2) The qualified patient shall reside in the residence where the medical cannabis cultivation occurs;

(3) Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient. Cultivation of medical cannabis for personal use shall not displace required off-street parking;

(4) The medical cannabis cultivation area shall not exceed 50 square feet and shall not exceed 10 feet in height per residence, regardless if cultivated within the residence or in an accessory building unless an exception request is obtained per section 158.010(B);

(5) If required by Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8" Type X moisture resistant drywall;

(6) The medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) Medical cannabis cultivation lighting shall not cumulatively exceed 1200 watts unless an exception request is obtained per section 158.010(B);

(9) All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation of medical cannabis is prohibited;

(10) Any electrical wiring/rewiring shall first require an electrical permit from the Building Department;

(11) The use of gas products (e.g., CO_2, butane, etc.) for medical cannabis cultivation is prohibited unless an exception request is obtained per section 158.010(B); and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

(B) The medical cannabis cultivation area may exceed the 50 square foot maximum per residence, up to a total of 100 square feet of cultivation area, or the standards in section 158.010(A)(4)(8) or (11) above may be modified, upon approval of an Exception Request issued by the Director of Community Development. An Exception Request shall not allow more than a total of 100 square feet per residence regardless if cultivated within the residence or an accessory building.

(1) An application for an Exception Request shall include the following information

(a) Written permission from the property owner;

(b) An application fee set by resolution of the City Council;

(c) Adequate information and documentation, such as a physician's recommendation, or verification of more than one qualified patient living in the residence, to demonstrate why the cultivation area should be allowed to exceed 50 square feet;

(d) The specified location and size of the requested cannabis cultivation area not to exceed 100 square feet and not to exceed 10 feet in height;

(e) A materials storage, handling and disposal plan; and

(f) If the Exception Request includes a request to modify the standards prescribed in section 158.010(A)(4)(8) or (11), documentation and information shall be provided identifying which standards are proposed to be modified and why such modification would not detrimentally affect the use of the dwelling unit for its intended residential occupancy.

(2) If required by Building or Fire Code, the applicant shall make specified improvements to the residence with a Building Permit, if one is needed. Such improvements may include, but are not limited to, electrical system upgrades.

(3) The Director of Community Development in consultation with the Chief Building Official and Fire Marshal shall review the submitted application and determine if the specific circumstances warrant granting an Exception Request.

(4) The Exception Request shall become void, and the cannabis cultivation area in excess of 50 square feet shall be removed one year following the date on which the Exception Request was issued unless the Exception Request is renewed prior to expiration.

(C) Medical cannabis cultivation is prohibited as a Home Occupation. Medical cannabis cultivation shall not be considered a residential accessory use. No distribution of medical cannabis cultivated for personal use shall be allowed.

§ 158.011 PROCESSING.

(A) A qualified patient shall be allowed to process medical cannabis cultivated within his/her private residence. The medical cannabis processing area shall not cumulatively exceed 20 square feet per residence. Processing of medical cannabis cultivated at the residence shall be in conformance with the following standards:

(1) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(2) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis processing shall remain at all times secondary to the residential use of the property;

(3) The medical cannabis processing shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(4) The use of gas products (e.g., CO_2, butane, etc.) for medical cannabis processing is prohibited; and

(5) The processing of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

(B) Medical cannabis processing is prohibited as a Home Occupation. Medical cannabis processing shall not be considered a residential accessory use. No sale or distributing of medical cannabis processed for personal use shall be allowed.

§ 158.012 DISTRIBUTING.

Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not be distributed to any person, cooperative or collective unless specifically allowed under this chapter.

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.020 OFFICES AND LABS

(A) *Offices*. Offices for a cooperative or collective at which no cultivation, processing, storage, handling or distributing of cannabis, in any form, occurs shall be allowed in any zoning district in which offices are allowed. Such offices shall be subject to all regulations and standards applicable to offices as prescribed in the Zoning Regulations of the Eureka Municipal Code.

(B) *Medical Research Labs and Testing Facilities*. Medical cannabis research labs or medical cannabis testing facilities at which no cultivation, processing, or distribution of medical cannabis occurs shall be allowed in any zoning district in which laboratories or medical laboratories are permitted. Such facilities shall be subject to all regulations and standards applicable to labs or medical labs as prescribed in the Zoning Regulations of the Eureka Municipal Code.

§ 158.021 NUMBER OF FACILITIES.

(A) There shall be a maximum of four (4) cultivation/processing facilities permitted within city limits. Each of the cultivation/processing facilities shall be allowed one distribution facility located within city limits which may be located separate from or at the same site where the cultivation and processing occurs.

(B) A maximum of two distribution facilities not associated with any of the four permitted cultivation/processing facilities shall be allowed within city limits.

(C) Only those Collectives or Cooperatives invited by the City Council may submit an application for a conditional use permit. The City Council shall establish the process for the selection of the Collectives or Cooperatives to be invited to submit an application for a conditional use permit. The City Council may elect to invite fewer than the number described in section 158.021(A) and (B).

§ 158.022 CULTIVATION OR PROCESSING.

(A) A cultivation or processing facility which is (a) located on Broadway, 4th or 5th Streets and (b) is not on the same site as its associated medical cannabis distribution facility shall be inconspicuous and shall not draw attention to the use of the building as a medical cannabis cultivation or processing facility. A cultivation or processing facility located on the same site as its associated distribution facility shall comply with the requirements contained in section 158.023(B).

(B) Cultivation or processing facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a cultivation or processing facility for distribution.

(C) Research, testing, or other similar facilities that cultivate medical cannabis for distribution to patients or primary caregivers shall be considered, for the purpose of this chapter, a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

(D) In addition to the conditional use permit required under section 158.022(B), a cultivation or processing facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a cultivation or processing facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the medical cannabis cultivation or processing facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The equipment and methods employed in the cultivation or processing of the medical cannabis;

(4) How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients or primary caregivers;

(5) The hours and days of the week the medical cannabis cultivation or processing facility will be open;

(6) The number of persons, per shift, who will be working at the cultivation or processing facility;

(7) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(8) The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis;

(9) The chemicals stored or used at the premises;

(10) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(11) The name, location and operator of the distribution facility(ies) for which the medical cannabis is being cultivated or processed; and

(12) Any other information required by the Director of Community Development relevant to the ordinance.

(F) Cultivation or processing facilities shall be subject to the following specific regulations:

(1) The cultivation area shall occur only within a self-contained structure that is in compliance with California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(2) The cultivation or processing facility shall comply with stormwater, wastewater, and other applicable requirements of the City;

(3) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(4) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant;

(5) There shall be no off-site signage advertising the medical cannabis facility;

(6) Signs shall not be larger than 6 square feet;

(7) Signs shall not be internally illuminated;

(8) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;

(9) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the cultivation or processing facility;

(10) Cultivation or processing facilities shall maintain all necessary permits, and pay all appropriate taxes;

(11) Cultivation or processing facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(12) A cultivation or processing facility located off-site from its associated medical cannabis distribution facility shall not distribute medical cannabis from the cultivation or processing site unless permitted in the conditional use permit;

(13) The cultivation or processing of medical cannabis shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(14) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit;

(15) The processing of medical cannabis into foodstuffs and other edibles by cooking, baking, infusing, grinding, etc., shall comply with the provisions of all relevant local and State laws for the commercial preparation of food.

(16) The packaging of edibles and other similar products shall be nondescript and shall not mimic, resemble or be representational of candy, cookies or other food products that might attract or entice children; and

(17) Medical cannabis cultivation or processing facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) The conditional use permit granted for a cultivation or processing facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a cultivation or processing facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a cultivation or processing facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified cultivation or processing facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.023 DISTRIBUTING.

(A) Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.

(B) A medical cannabis distribution facility located on Broadway, 4th or 5th Streets shall not have a storefront or the patient entrance facing Broadway, 4th or 5th Streets.

(C) Medical cannabis distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a conditional use permit to operate a medical cannabis distribution facility.

(D) In addition to the conditional use permit required under section 158.023(C), a distribution facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in of the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a distribution facility shall include the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) Text and graphic materials showing the site and floor plan for the distribution facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The hours and days of the week the distribution facility will be open;

(4) The number of persons, per shift, who will be working at the distribution facility;

(5) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(6) The chemicals stored or used at the premises;

(7) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(8) The name, location and operator of the cultivation or processing facility(ies)supplying the medical cannabis to the distribution facility;

(9) A detailed Operations Manual containing, at a minimum,

(a) The staff screening process including appropriate background checks;

(b) The process for tracking medical cannabis quantities and inventory controls;

(c) A description of the screening, registration and validation process for qualified patients;

(d) A description of qualified patient records acquisition and retention procedures; and

(e) The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources;

(10) A detailed Cannabis Safety Program, which includes at a minimum, the following,

(a) The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient;

(b) The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products effective January 1, 2011, (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants); and

(c) The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis effective January 1, 2011 (e.g., cannabinoids THC, CBD and CBN).

(11) Any other information required by the Director of Community Development that is relevant to the ordinance.

(F) Distribution facilities shall be subject to the following specific regulations:

(1) Distribution facilities associated with cultivation or processing facilities pursuant to §158.021 (A) shall only dispense cannabis cultivated and processed at the associated cultivation or processing facility. Any exceptions shall be confined to emergencies and start-up processes detailed in the conditional use permit for the facility.

(2) No distribution facility shall be located within 1000 feet of any existing park, playground, day care facility, school, or similar facility that primarily serves children under 18 years of age, either inside or outside the city limits;

(3) The distribution facility shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical cannabis;

(4) The distribution facility shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the distribution facility;

(5) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical cannabis on the premises or in the vicinity of the distribution facility is prohibited unless specifically authorized under the conditional use permit;

(6) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient and/or they are under the supervision of their parent or legal guardian;

(7) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid, verified physician's recommendation, or the patient's primary caregiver. The distribution facility shall verify that the physician's recommendation is current and valid;

(8) The distribution facility shall not distribute medical cannabis to a qualified patient or primary caregiver more than twice a day;

(9) The distribution facility shall only permit the distribution of live plants, starts and clones as allowed by the approved conditional use permit. Such distribution shall be limited to qualified patients or primary caregivers;

(10) The on-site display of cannabis plants visible from the outside shall be prohibited, including live plants or graphic representations of the cannabis plant;

(11) There shall be no off-site signage advertising the medical cannabis facility;

(12) Signs shall not be larger than 6 square feet;

(13) Signs shall not be internally illuminated;

(14) There shall be no signage on the frontage of buildings facing Broadway, 4th or 5th Streets, or in front of buildings facing Broadway, 4th or 5th Streets;

(15) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(16) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(17) Distribution facilities shall maintain all necessary permits, and pay all appropriate taxes;

(18) Distribution facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(19) The distribution of medical cannabis shall not adversely affect the health or safety of the employees or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(20) Each and every package or unit of medical cannabis, or medical cannabis product, distributed shall have a label or labels that state the following:

(a) The name of the patient;

(b) The name and contact information of the distributor;

(c) An identification and tracking number for the specific package or unit of medical cannabis, or medical cannabis product;

(d) The species or strain of the medical cannabis;

(e) Identification of the strength and dosage of the medical cannabis;

(f) A statement that the medical cannabis or medical cannabis product has been tested for safety and quality assurance and that the testing results, and chain of custody information is available by contacting the distributor;

(21) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(22) Distribution facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) In addition to the findings specified for a conditional use permit, the Planning Commission shall consider the following when deciding to approve a conditional use permit for a distribution facility:

(1) If the proposed distribution facility is within 300 feet of a residential zoning district either inside or outside the city limits, the potential impacts of the distribution facility on the residents and infrastructure of that district; and

(2) If the proposed distribution facility is within 1000 feet of any other distribution facility, either inside or outside the city limits, the cumulative impacts of the proposed distribution facility on the residents, businesses and infrastructure in the vicinity of the proposed distribution facility.

(H) The conditional use permit granted for a distribution facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of

this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(I) The rights of an approved conditional use permit for a distribution facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a distribution facility shall not be transferred to another permittee or to another location.

(J) The conditional use permit shall remain in effect as long as the specified distribution facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.024 DELIVERY SERVICES

(A) A medical cannabis delivery or transportation service that is associated with a permitted distribution facility located within city limits and for which delivery originates from the distribution facility shall only be allowed when the delivery service is described and included in the conditional use permit for the distribution facility.

(B) Delivery or transportation services originating from outside city limits and delivering medical cannabis within city limits shall only be allowed upon the granting of a Mobile Business License.

(C) Delivery or transportation services originating from within city limits, but not from a permitted distribution facility are prohibited.

§ 158.025 INSPECTION AND MONITORING

(A) The Community Development Department shall inspect each medical cannabis facility on or before January 31st of each calendar year to assure compliance with the approved conditional use permit. The Community Development Department inspector shall be granted access to all parts of the facility. All records kept pursuant to the approved conditional use permit shall be open for visual inspection.

(B) The permittee shall submit to the City on or before January 31st of each calendar year an annual inspection fee set by resolution of the City Council.

(C) If the permittee fails to submit the inspection fee, refuses inspection, or if the inspection finds that the facility is not being operated in compliance with the approved conditional use permit, the conditional use permit shall be subject to revocation pursuant to the provisions of section 155.294.

PERMITS

§ 158.030 FEES AND TAXES

The costs to the City arising from the processing and oversight of Exception Requests under section 158.010, subdivision (B) and permits for Cooperatives and Collectives and Distribution Facilities under sections 158.022 and 158.023, and the costs of monitoring and

ensuring compliance with this Ordinance, will be offset through application fees and annual renewal fees, to be adopted by the City Council by Resolution and updated as necessary from time-to-time. In the administration of the permitting requirements under this Ordinance, the City Manager, or his designee, may require as a condition to granting and renewal of the permits any information reasonably necessary to implement the intent of this Ordinance, to ensure that the cannabis handled under the permit is grown, processed or distributed in a manner not in conflict with this Ordinance, and to ensure that any and all related sales taxes are being properly reported and paid.

§ 158.031 ENFORCEMENT

Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, as set out in Eureka Municipal Code section 10.99, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies.

This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

NON-MEDICAL USE – REQUIREMENTS & REGUATLIONS

§ 158.040 PERSONAL USE CULTIVATION, PROCESSING, AND DISTRIBUTING

The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Use Requirements and Regulations prescribed in section 158.010 (CULTIVATION), section 158.011 (PROCESSING), and section 158.012 (DISTRIBUTING) contained in this chapter.

ORDINANCE NO. 1417

ORDINANCE OF THE CITY OF SAN CARLOS ADDING CHAPTER 8.09 TO THE MUNICIPAL CODE: REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA AND REQUIRING LICENSING OF MEDICAL MARIJUANA COLLECTIVES WITHIN THE CITY OF SAN CARLOS.

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

Section 1: RECITALS

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, "the Compassionate Use Act", which was intended to permit cultivation and possession of medical marijuana by single patient, or the patient's caregiver, for the patient's personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana; and,

WHEREAS, in 2004, the State Legislature enacted Senate Bill 420, "the Medical Marijuana Program Act", to clarify the scope of the Compassionate Use Act and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to the crimes of possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage or distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance; and,

WHEREAS, the Medical Marijuana Program Act defines a "primary caregiver" as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person; and,

WHEREAS, the Medical Marijuana Program Act allows cities and counties to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, in August 2008, the California Attorney General issued guidelines that clarify the state's laws governing medical marijuana, and provided guidelines for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets; and

WHEREAS, this chapter is enacted, pursuant to the Compassionate Use Act, and the Medical Marijuana Program Act, the Guidelines issued by the California Attorney General, and the City's constitutional police power to protect the health, safety

and welfare of the residents of the City of San Carlos; and

WHEREAS, since the sale of medical marijuana is unlawful, it is necessary to place restrictions on the exterior appearance of medical marijuana collectives in order to prevent the misunderstanding that collectives are places where marijuana may be purchased;

SECTION 2: Chapter 8.09 - REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA is added to the Municipal Code as follows:

Chapter 8.09

REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA

8.09.010 Purpose and Intent
8.09.020 Definitions
8.09.030 Enforcement of Chapter
8.09.040 Registration
8.09.050 Operating Restrictions
8.09.060 Permit Requirements
8.09.070 Revocation
8.09.080 Marijuana Produced for On-Site Consumption
8.09.090 Violation and Penalties
8.09.100 Marijuana produced for individual residential on-site Consumption
8.09.110 Appeals
8.09.120 Severability

8.09.010 Purpose and Intent.

It is the purpose and intent of this chapter to:

A. Regulate the collective cultivation and distribution of medical marijuana within the City limits; and,

B. Provide that Medical Marijuana Collectives be appropriately located to provide for the health, safety and welfare of the public; and

C. Regulate Medical Marijuana Collectives consistent with the Compassionate Use Act, and the Medical Marijuana Program Act, the Guidelines issued by the California Attorney General, and the County's constitutional police power to protect the health, safety and welfare of the residents of the City of San Carlos; and

D. Provide lawful restrictions on the exterior appearance of Medical Marijuana Collectives in order to prevent the misunderstanding that such collectives are places where marijuana may be purchased; and

E. Provide for the adoption and enforcement of rules consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines issued by the California Attorney General, which will provide for the health, safety and welfare of the public by regulating the collective cultivation and possession of medical marijuana within the City of San Carlos, consistent with state law; and

F. This chapter is not intended to and does not criminalize activity which is otherwise permitted under state law, and it is not intended to and does not authorize conduct that is otherwise prohibited by state law, or to prohibit conduct that is authorized by state law.

G. The ordinance codified in this chapter, in compliance with California Health and Safety Code Section 11362, does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to state law.

8.09.020 Definitions.

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

A. Medical Marijuana Collective or Collective means a location where marijuana is cultivated collectively by more than one qualified patient, person with valid identification card or designated primary caregiver of a person with a valid identification card, within the City of San Carlos in order collectively or cooperatively to cultivate and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775.

B. Person with a valid identification card means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to California Health and Safety Code Section 11362.7. The identification card must be obtained via written recommendation from the individual's attending licensed physician, after an examination.

C. An Attending Physician is defined as a duly licensed medical doctor who has the patient's medical records. Those patients who seek medical services from clinics are required to obtain identification cards from said clinics.

D. Police Chief means the City's chief of police or the chief's designee.

E. Primary Caregiver means a primary caregiver as that term is defined in Health and Safety Code Section 11362.7, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, *et seq*. A primary caregiver shall be at least eighteen years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient, and the parent of such minor child is also a minor.

F. Qualified Patient means a person who is entitled to the protections of California Health and Safety Code Section 11362.7, but who does not have a valid identification card issued pursuant to California Health and Safety Code Section 11362. A qualified patient is someone who could possess a valid identification card pursuant to California Health and Safety Code Section 11362.7, but has either failed to apply for such a card, or not yet received such a card. The patient is deemed as qualified, if a licensed physician would have recommended the patient use marijuana for medical relief.

G. Residential district means any of the following zoning districts in the City's zoning ordinance: R1-LD (Ch. 18.24), R-1 (Ch. 18.28), multifamily residential (Ch. 18.30), P-r (Ch. 18.44), and P-C with residential use (18.104).

8.09.030 Enforcement of Chapter.

A. The Police Chief and City Attorney shall have the authority to enforce any violations of this chapter, and to report and enforce against any violations of the conditions of approval attached to use permits obtained under the authority of the Zoning Ordinance. The Police Chief shall provide a report of all violations of these provisions to the City Attorney and Planning Director for possible enforcement.

B. The Planning Director shall have the duty and responsibility of processing and referring to the Planning Commission all use permit applications, which shall include as conditions the registration restrictions in Section 8.09.040 and the operating restrictions in 8.09.050.

8.09.040 Registration

(a) Primary caregivers, qualified patients and persons with valid identification cards cultivating medical marijuana at such collectives shall register the collective with the Police Chief, providing the name of a responsible party, a telephone number, the place of operation of the medical marijuana collective and shall be subject to the following restrictions:

1. Only qualified patients, persons with valid identification cards and primary

caregivers may cultivate medical marijuana collectively or associate for the purpose of doing so;

2. No collective shall consist of more than ten (10) qualified patients or persons with valid identification cards and no qualified patients or persons with valid identification cards shall be members of more than one collective in the City of San Carlos.

3. Absolutely no advertising of marijuana is allowed at any time;

4. Exterior signage is limited to site addressing only;

5. The collective site will be monitored at all times by web-based closed circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution, as to allow the ready identification of any individual committing a crime anywhere on the site;

6. A centrally monitored alarm system is required;

7. Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty (40) feet;

8. Windows and roof hatches will be secured with bars on the windows so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency;

9. Absolutely no cultivated marijuana or dried marijuana product may be displayed or visible from the building exterior;

10. The activities that may be conducted at a registered and permitted collective are limited to cultivation and storage of marijuana for personal use and preparation of cultivated marijuana for personal use, such as drying and processing. No further refinement of marijuana, or the preparation of marijuana products, such as but not limited to hashish, hash oil or marijuana butter is allowed;

11. No cooking, sale, preparation, or manufacturing of marijuana enhanced or edible or drinkable products, including but not limited to cookies, candy, drinks, or brownies is allowed;

12. No display or sales of cultivated marijuana are allowed on site;

13. No persons under the age of eighteen (18) are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian;

14. The quantity of marijuana located at the facility where medical marijuana is collectively cultivated may not exceed the maximum quantity per patient of medical marijuana authorized by California Health and Safety Code Section 11362.77, multiplied by the number of participants who are served by the collective, consistent with the regulations set forth in this chapter and State law;

15. The Chief of Police may inspect the Collective at any reasonable time to ensure that the amounts of medical marijuana on site conform to California Health and Safety Code Section 11362.77. The City reserves the right to require additional security and safety conditions, if necessary, upon receipt of detailed/revised building plans

16. No individual or group may cultivate or distribute marijuana for profit;

17. No money or any other thing of value shall be exchanged for medical marijuana. A primary caregiver, as defined herein, who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under this chapter;

18. Marijuana cultivated in a licensed collective must be secured from public access, and not be visible to the public domain. All cultivated marijuana must be secured in structures consisting of at least four (4) walls and a roof, and conform to specified Security Standards, as to locks, deadbolts and additional security measures;

19. This chapter does not authorize the consumption, use, or smoking of marijuana in the parking areas of a collective, or in vehicles located at or near or under said collective, or under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by state law;

20. The medical marijuana collective shall comply with the all applicable building, zoning, and environmental requirements set forth in the Municipal Code or state law;

21. The medical marijuana collective may not be operated or located in or within one thousand (1000) feet of the grounds of a school, park, recreation center, youth center or playground.

22. The medical marijuana collective may not employ any persons who are felons or who are currently on probation.

23. No designated Primary Caregiver shall be responsible for more than ten (10) qualified patients or persons with valid identification cards. The limit of ten

(10) qualified patients or persons with valid identification cards in a collective shall not be increased by this provision.

24. The California State Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use dated August 2008, and as amended, shall be complied with.

(b) The Chief of Police and City may make additional security and safety conditions, upon receipt of detailed/revised building plans.

8.09.050 Operating Restrictions

In addition to the Registration requirements, as a condition to receipt of a Registration Permit under this chapter, the Collective shall provide the following:

1. A warning that operators, employees, and members of facilities where medical marijuana is collectively cultivated may be subject to prosecution under federal laws.

2. The applicant's waiver and release of the City from any and all legal liability related to or arising from the Registration or the Business License, the registration process, or the enforcement of the conditions of the City's Ordinances, and/or the operation of any facility at which where medical marijuana is collectively cultivated.

3. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, et seq.

4. The Primary Caregiver shall keep a list of his or her assigned ten (10) qualified patients or persons with a valid identification card; such a list must minimally contain those persons' contact information, such that it may be immediately provided to the chief of police upon request, for the purposes of determining the proper legal amounts of cultivated and/or dried marijuana that may be possessed at the collective.

5. Only these three classifications of person may possess or cultivate medical marijuana individually or collectively, in accordance with California Health and Safety Code Section 11362.7.

8.09.060 Permit Requirements.

A. Medical marijuana collectives are required to obtain a use permit to operate within the city limits under Title 18 of the Municipal Code.

8.09.070 Revocation.

A. The Registration Permit may be revoked by the Chief of Police for any violation of state law or this chapter, or for failure to comply with the conditions listed on said registration permit or use permit.

B. Upon the revocation of any Registration Permit issued under this chapter, the Chief of Police shall make his findings and reasons for revocation and transmit them to the registrant whose registration permit has been revoked, and a copy thereof to the City Clerk. Revocation of a Registration permit automatically revokes the business license to which the registration permit applies.

8.09.080 Marijuana Produced for On-Site Consumption.

A. Nothing in this chapter shall be deemed to make it unlawful for an individual to grow marijuana at his or her residence for his or her own consumption at such residence, or for consumption by another person regularly residing at such residence, if such consumption is permitted under Health and Safety Code Sections 11362.5 through 11362.77.

B. Marijuana cultivated pursuant to these sections must be secured from public access, and not be visible from the public domain. All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and be held secure to the satisfaction of the police chief.

C. Medical marijuana cultivated at registered collectives may not be consumed on-site, in the parking areas, inside vehicles, or in those areas already restricted by the California Health and Safety Code Section 11362.79.

8.09.090 Violation and Penalties

Any violation of this chapter shall be deemed a misdemeanor, unless the circumstances that create the violation are subject to prosecution as a felony under state or federal law. Any violation of this chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the City for abatement of public nuisances.

8.09.100 Marijuana produced for individual residential on-site consumption

This chapter does not apply to individual cultivation of marijuana for consumption or use of an individual at his or her residence, or for consumption by another individual or individuals regularly residing at said residence, if such consumption is otherwise permitted by state law.

8.09.110 Appeals

The Chief of Police shall make findings and reasons for disapproval or revocation and transmit the same to the City Clerk, who shall notify the applicant that the application is disapproved or registration permit revoked. Upon the disapproval or revocation, any person aggrieved by the action of the Chief of Police, and the denial of the application for a registration permit or revocation of a registration permit, shall have the right of appeal to the City Council, after paying the required fee. Such appeal shall be taken by filing with the City Council, within ten days after notice of the action complained of has been mailed to the applicant's last known address (or to the applicant's address as appearing on his application or registration permit), a written statement setting forth fully the grounds of appeal. The City Council shall set a time and place for a hearing of such appeal, and notice shall be given to the appellant by mail, postage prepaid, to his address as aforesaid, at least five days prior to the date set for a hearing. The disposition and order of the Council shall be final and conclusive.

8.09.120 Severability

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this ordinance and adopted this Chapter and each section, sentence, clause or phrase thereof, even if one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. The City Clerk is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute.

Section 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

Introduced on the 8th day of February, 2010.

Passed and adopted on the 22nd day of February, 2010 by the following vote:

AYES: COUNCILMEMBERS:_____

NOES: COUNCILMEMBERS:_____

ABSENT: COUNCILMEMBERS:_____

_____

Mayor

ATTEST:

_____

City Clerk

ORDINANCE NO. 05-1998

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE AMENDING TITLE 5 ADDING CHAPTER 5.96 OF THE TULARE MUNICIPAL CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

SECTION 1. Title 5 of the Tulare Municipal Code is hereby amended by the addition thereto of Chapter 5.96, which shall read as follows:

Chapter 5.96

MEDICAL MARIJUANA DISPENSARIES

5.96.010 Purpose and Intent
5.96.020 Definitions
5.96.030 Enforcement of Chapter
5.96.040 Medical Marijuana Business Permit Required
5.96.050 Applications
5.96.060 Term, Renewals and Fees
5.96.070 Notification
5.96.080 Investigation and Action on Application
5.96.090 Grounds for Denial of Permit
5.96.100 Appeal from Denial
5.96.110 Suspension or Revocation of Permit
5.96.120 Judicial Review
5.96.130 Effect of Denial or Revocation
5.96.140 Operating Requirements
5.96.150 Zoning and Development Standards
5.96.160 Minors
5.96.170 Display of Permit
5.96.180 Transfer of Permits
5.96.190 Violations of Chapter: Enforcement
5.96.200 Severability
5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit

Section 5.96.010 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents and businesses within the city by regulating medical marijuana dispensaries. It is not the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purpose as intended by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of this ordinance to condone or legitimize the use of marijuana.

Section 5.96.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 *et seq.*, as may be amended, including but not limited to the terms "attending physician", "person with an identification card", "serious medical conditions", shall apply under this Ordinance in addition to the definitions set for as follows:

"Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee or agent of a Medical Marijuana Business.

"City Planner" means the Planning and Building Director holding office in the City of Tulare or his or her designee.

"Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Medical Marijuana Dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.* Unless otherwise regulated by this Code or applicable law, a "medical marijuana dispensary" shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Medical Marijuana Businesses" means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

"Cultivation of Medical Marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Collective or Cooperative Cultivation" means the association with California of qualified patients, per sons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

"Processing of Medical Marijuana" means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.

"Permittee" means the person to whom a Medical Marijuana Business permit is issued.

"Written Recommendation" shall have the same definition as California Health and Safety Code section *11362.7 et seq.*, and as may be amended.

Section 5.96.030 Enforcement of Chapter.

The City Planner of the City of Tulare shall have the responsibility and duty of enforcement of this Chapter.

Section 5.96.040 Medical Marijuana Business Permit Required.

A. It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Tulare the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Tulare as herein required.

B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Tulare business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

Section 5.96.050 Applications.

A. The applicant for a Medical Marijuana Business permit shall submit to the City Planner or designee an application for a permit. The application shall be made under penalty of perjury and shall include the following information:

1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application is to be mailed;
3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over the age of eighteen (18) years of age.
5. Applicant's height, weight, color of eyes and hair;
6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
9. The name or names of the person or persons having the management or supervision of applicant's business;
10. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business;
12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;
13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;
14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;
15. Authorization for the City of Tulare, its agents and employees to seek verification of the information contained within the application;
16. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct; and

B. If the applicant has completed the application improperly, or if the application is incomplete, the City Planner or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.

C. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Medical Marijuana Business permit.

Section 5.96.060 Term, Renewals and Fees.

A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).

B. Every application for a permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing or 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.

Section 5.96.070 Notification of Community.

A. Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Planner or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant's intent to open such a business and filing of such application.

B. After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Planner or designee shall determine whether to issue the Medical Marijuana Business permit. The City Planner or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Planner or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

Section 5.96.090 Grounds for Denial of Permit.

The grounds for denial of a permit shall be one or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule or regulation.

B. The applicant has violated any local or state law, statute, rule or regulation relating to medical marijuana business.

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

F. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.

G. An applicant is under eighteen (18) years of age.

H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Tulare Municipal Code or the development standards set forth in this Chapter.

I. The required application or renewal fees have not been paid.

Section 5.96.100 Appeal from Denial.

A. An applicant aggrieved by the decision of the City Planner or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Planner's decision shall be final.

B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.

C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.

D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it

may deny the issuance of the permit for any of the grounds specified in this Chapter. The decision of the City Council shall be final.

Section 5.96.110 Suspension or Revocation of Permit.

A. The City Planner or designee may suspend or revoke a permit when the permittee or the permitte's agent or employee has committed any one or more of the following acts:

1. Any act which would be considered a ground for denial of the permit in the first instance.
2. Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity.
3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permitee.
4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
5. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business

6. Violates or fails to comply with the terms and conditions or the permit.

B. Prior to suspension or revocation, the City Planner or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee or by certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.

C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Planner or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.

D. Any permittee aggrieved by the decision of the City Planner or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Chapter, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Planner or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Chapter. The City Council's decision shall be final

Section 5.96.120 Judicial Review.

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

Section 5.96.130 Effect of Denial or Revocation.

When the City Planner or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Planner or desingee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.

Section 5.96.140 Operating requirements.

A Medical Marijuana Business, once permitted by the City Planner or Designee, shall meet the following operating standards for the duration of the use:

A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.

B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.

C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be "registered" patrons of the Business. The Business's register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 *et seq.*, so as to a protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.

E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may increase the amount of dried marijuana per the doctor's recommendation, the dispensary may not posses an amount of marijuana in excess of the registered patient's needs.

F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a Medical Marijuana Business shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the Business is prohibited.

G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether mature or immature.

H. No Medical Marijuana Business shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the Business.

I. No Medical Marijuana Business shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and conditions consistent with this Chapter and the Compassionate Use Act of 1996, and any amendments thereto.

J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.

L A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.

M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 *et seq.*

N. Each Medical Marijuana Business shall allow the City Planner or designee to have access to the Business's books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Planner's written request(s).

O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Planner or designee to ensure that operations of the Business is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

P. The building in which the Medical Marijuana Business is located shall comply with all applicable local, state and federal rules, regulations and laws including, but not limited to, building codes and the Americans with Disability Act, as certified by the Building Official of the City.

Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: "Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer."

R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.

S. A Medical Marijuana Business shall provide to the City Planner or designee, upon request, written evidence to the City Planner or designee's reasonable satisfaction, that the Business is not engaged in interstate commerce.

T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, *e t seq.*, or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

Section 5.96.150 Zoning and Development Standards.

The provisions of Chapter 10.168.09 of Title 10 ("Zoning") of the Municipal Code are applicable to Medical Marijuana Dispensaries and compliance with those provisions shall be considered additional requirements for a permit required by this Chapter.

Section 5.96.160 Minors.

A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not a least eighteen (18) years of age.

B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.

Section 5.96.170 Display of permit.

Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

Section 5.96.180 Transfer of permits.

A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other that the address of the Medical Marijuana Business stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Planner or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Planner or designee in accordance with this Chapter and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manger determines that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the City Planner or designee has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

Section 5.96.190 Violations of Chapter: Enforcement.

A. Any person that violates any provision of this Chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

B. Any use of condition caused or permitted to exist in violation of any of the provisions of this Chapter shall be and is hereby declared a public nuisance and may be summarily abated by the City pursuant to the City of Tulare Municipal Code.

C. Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.

D. The violation of any provisions of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

E. In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this Chapter may be subject to administrative remedies as set forth by City ordinance.

Section 5.96.200 Severability.

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

Section 5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit.

The continued operation of a Medical Marijuana Business in existence before the effective date of this Chapter without having applied for a permit obtained pursuant to the provisions of this Chapter for more than ninety (90) days after the effective date of this Chapter shall constitute a violation of this Chapter.

Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of it passage to print.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 2006.

_____
President of the Council and Ex-Officio Mayor of the City of Tulare

ATTEST:

_____
Chief Deputy City Clerk and Clerk of the Council of the City of Tulare

ORDINANCE NO. 759

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX REGULATING MEDICAL MARIJUANA DISPENSARIES, TOWN CODE CHAPTER 17.100

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1: TOWN CODE AMENDED

The following is added as a new Chapter 17.110 of the Town Code:

17.110.010 Purpose and intent.

It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

Interpretation and Applicability.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800, *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

17.110.020 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.

(B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(C) "Town" means the Town of Fairfax.

(D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.

(F) "Medical cannabis dispensing collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

(G) "Medical cannabis patient collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

(H) "Dispensary" means any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5, *et seq*. A dispensary shall **not** include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, *et seq*., or a qualified patient's or caregiver's place of residence.

(I) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(J) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(K) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5, *et seq.*, and as it may be amended from time to time.

(L) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(M) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as it may be amended from time to time.

(N) "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, *et seq.*, and as it may be amended from time to time.

(O) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

17.110.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

17.110.040 Term of Permits and Renewals Required.

(A) A Use Permit issued under this chapter shall expire two years following the date of its issuance.

(B) A Use Permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in section 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

17.110.050 General Tax Liability.

As a prerequisite to obtaining a permit pursuant to the terms of Chapter 17.110, an operator of a dispensary shall also be required to apply for and obtain a Business

License as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law.

17.110.060 Imposition of Fees.

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

17.110.070 Limitations on Number of Dispensaries.

The Planning Commission may not grant or cause to be granted more than three (3) permits for medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

17.110.080 Limitation on Location of Dispensary.

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or

(3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) Criminal History. No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this paragraph.

(B) Minors.

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his/her parent or guardian.

(C) Operating Hours. Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4th of July: closed.

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and Town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with California Health & Safety Code Section 11362.7 ("Identification Card"); or

(b) A current, written physician's recommendation that is confirmed by telephone. The permittee shall maintain a written record of the telephone verification, including the name of the employee who made the telephone call and the name and contact information of the person who verified the physician's recommendation.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed, and at least annually verified with the qualifying patient's medical doctor or doctor of osteopathy unless the patient has provided an Identification Card. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the Town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in 17.110.80.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. All required records shall be subject to inspection by the Chief of Police, or his designee, during the time the dispensary is open for business.

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5, *et seq.*

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

(N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

(O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one Dispensary with the Town.

17.110.100 Criteria for Review.

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.

(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a Town-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(P) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant, has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the

meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

(Q) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

17.110.110 Investigation and Action on Application.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other Town departments as necessary to complete the review of the application.

(B) Following the provision of complete application materials and inter-departmental review, the Planning Department shall schedule the Use Permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission's decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

17.110.120 Appeal from Planning Commission Determination.

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code.

17.110.130 Effect of Denial.

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

17.110.140 Suspension and Revocation.

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear

to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. Mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

17.110.150 Transfer of Permits.

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

17.110.160 Violations.

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

17.110.170 Remedies Cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

17.110.180 Separate Offense for Each Day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

17.110.190 Hold Harmless.

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

17.110.200 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the Town.

17.110.210 Severability.

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

17.110.220 Judicial Review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

SECTION II. EFFECTIVE DATE

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

a. Bulletin Board, Fairfax Town Offices, Town Hall;
b. Bulletin Board, Fairfax Post Office; and
c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

SECTION III: VOTE

The foregoing Ordinance No. 759, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held on April 6, 2011, and was duly passed and adopted at a regular meeting held on May 6, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR LARRY BRAGMAN

ATTEST:

_____
Town Clerk, Judy Anderson

ORDINANCE NO. 759

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF FAIRFAX REGULATING MEDICAL MARIJUANA DISPENSARIES, TOWN CODE CHAPTER 17.100

The Town Council of the Town of Fairfax does hereby ordain as follows:

SECTION 1: TOWN CODE AMENDED

The following is added as a new Chapter 17.110 of the Town Code:

17.110.010 Purpose and Intent.

It is the purpose and intent of this chapter to regulate medical marijuana (cannabis) dispensaries in order to promote the health, safety, morals, and general welfare of residents and businesses within the Town.

Interpretation and Applicability.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 800, *et seq.*, or to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The distribution of medical cannabis in the Town of Fairfax is controlled by the provisions of this chapter of the Fairfax Town Code.

(B) Nothing in this ordinance is intended, nor shall it be construed, to limit the provisions of Chapter 9.6 of the Fairfax Town Code, or to limit the right to use or possess marijuana for medical purposes, or to limit any defense to criminal prosecution otherwise afforded by California law.

(C) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting cannabis cultivation, smoking or other related activities by tenants otherwise permitted by law.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing is this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All sale and distribution of medical cannabis within Town limits shall be subject to the provisions of this chapter, regardless if the processing or distribution existed or occurred prior to adoption of this chapter.

17.110.020 Definitions.

For the purpose of this chapter, the following words and phrases shall mean:

(A) "Accessory building" shall have the same meaning as set forth in Town Code Section 17.08.020.

(B) "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

(C) "Town" means the Town of Fairfax.

(D) "Town Manager" means the Town Manager of the Town of Fairfax or the authorized representative thereof.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended.

(F) "Medical cannabis dispensing collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, retail distribution of medical cannabis.

(G) "Medical cannabis patient collective," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple qualified patients and/or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, but not retail, distribution of medical cannabis.

(H) "Dispensary" means any medical cannabis dispensing collective, any medical cannabis patient collective, or any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5, *et seq.* A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5, *et seq.*, or a qualified patient's or caregiver's place of residence.

(I) "Permittee" means the person (1) to whom a dispensary permit is issued and (2) who is identified in California Health and Safety Code Section 11362.7, subdivision (c), (d), (e) or (f).

(J) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

(K) "Person with an identification card" shall have the same definition as set forth in California Health and Safety Code Section 11362.5, *et seq.*, and as it may be amended from time to time.

(L) "Physician" shall include licensed medical doctors (M.D.) and doctors of osteopathic medicine (D.O.) as defined in the California Business and Professions Code.

(M) "Primary caregiver" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, and as it may be amended from time to time.

(N) "Qualified patient" shall have the same definition as set forth in California Health and Safety Code Section 11362.7, *et seq.*, and as it may be amended from time to time.

(O) "School" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

17.110.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the Town the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a dispensary Use Permit from the Town as required in this chapter.

17.110.040 Term of Permits and Renewals Required.

(A) A Use Permit issued under this chapter shall expire two years following the date of its issuance.

(B) A Use Permit may be renewed by the Director of Planning for additional two-year periods upon application by the permittee, unless the permit is suspended or revoked in accordance with the provisions of this chapter.

(C) Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by a nonrefundable application fee as specified in section 17.110.060. Applications for renewal shall be acted upon in the same manner provided herein for applications for permits.

(D) Applications for renewal made less than 45 days before the expiration date shall not stay the expiration date of the permit.

(E) Permits may be revoked or suspended by the Town, as provided in this chapter and Town Code.

17.110.050 General Tax Liability.

As a prerequisite to obtaining a permit pursuant to the terms of Chapter 17.110, an operator of a dispensary shall also be required to apply for and obtain a Business

License as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with California law.

17.110.060 Imposition of Fees.

Every application for a permit or renewal shall be accompanied by an application fee, the amount of such fee to be established and revised from time to time by resolution of the Town Council. This application or renewal fee shall not include the cost of fingerprinting, photographing, and background checks, which shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

17.110.070 Limitations on Number of Dispensaries.

The Planning Commission may not grant or cause to be granted more than three (3) permits for medical cannabis dispensaries in the Town, in compliance with the provisions of this chapter, and/or prior to adoption of the provisions of this chapter.

17.110.080 Limitation on Location of Dispensary.

(A) A dispensary shall be located only within a Central Commercial CC, Highway Commercial CH, and Light Commercial CL area, as designated in the General Plan and Zoning map.

(B) The primary entrance shall be located and maintained free of barriers, landscaping and similar obstructions so that it is visible from public streets, sidewalks or driveways.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 600 feet of a school; or

(2) Within any residentially-zoned parcel or within any parcel with a primarily residential land use; or

(3) On a parcel directly abutting a residentially-zoned property, unless there is a fence or an intervening natural landform between the commercial property and the residential property such as a creek or significant undeveloped parcel of land.

(D) The distance between a dispensary and areas of the above listed uses shall be made in a straight line from the boundary line of the property on which the dispensary is located to the boundary of the property on which the facility, building or structure, or portion of the building or structure of the above listed use is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if, on plans and materials presented for review, the applicant demonstrates and the Planning Commission determines that a physical barrier or similar condition exists which achieves the same purpose and intent as the distance separation requirements established herein.

17.110.090 Operating Requirements.

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) Criminal History. No applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall have been convicted of a felony, or of a misdemeanor involving moral turpitude, or is on probation for a drug offense, or engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of no contest. The Police Chief, in his or her discretion, may require a dispensary to conduct annual criminal background checks for all employees to ensure compliance with this paragraph.

(B) Minors.

(1) It is unlawful for any permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age.

(2) Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient, and they are in the presence of their parent or guardian.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that any person under the age of 18 is precluded from entering the premises unless such person is a qualified patient and is in the presence of his/her parent or guardian.

(C) Operating Hours. Unless the reviewing authority imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated within the following days and hours:

(1) 9:00 a.m. to 9:00 p.m.

(2) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, and 4th of July: closed.

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 1,500 square feet exclusive of restroom facilities, unless specifically authorized by the approving authority. Dispensary size shall be limited, as deemed appropriate and necessary, to best serve patient needs within the intent of this chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and Town services.

(2) A dispensary shall not be increased in size without a prior approval amending the existing dispensary permit.

(3) Dispensary personnel shall monitor site activity, control loitering and site access.

(4) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(5) Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

(6) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain outside, or in a designated waiting area in the front entrance/lobby.

(E) That adequate parking will be provided in accordance with Town Code section 17.052.030(F) for retail and personal service stores at a rate of three (3) spaces for the first 500 square of gross floor area and one (1) space for each additional 500 square feet thereafter.

(F) Dispensary Supply. A dispensary may possess no more than one ounce of dried cannabis per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a physician's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

(G) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) A currently valid California Medical Marijuana Identification Card issued by the State of California, a county or a county-designated entity in accordance with California Health & Safety Code Section 11362.7 ("Identification Card"); or

(b) ~~Prior to obtaining a Identification Card, patients may be given a 30-day trial membership. A~~ current, written physician's recommendation that is confirmed by telephone, ~~shall be required for a 30-day trial membership. During this trial membership, patients should carry permittee-issued temporary Identification Cards issued by the dispensary.~~ The permittee shall maintain a written record of the telephone verification, including the name of the employee who made the telephone call and the name and contact information of the person who verified the physician's recommendation, ~~for the 30-day period. At the conclusion of the 30-day trial period, the permittee shall verify that the patient has obtained a Identification Card.~~

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(H) Record Keeping.

(1) Patient Records. Patient records shall be maintained and verified as needed, and at least annually verified with the qualifying patient's medical doctor or doctor of osteopathy unless the patient has provided ~~a Valid Patient ID~~an Identification Card. The dispensary shall comply fully with HIPAA and any other federal or state law protecting the privacy of medical records and information on patient health conditions.

(2) Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently

working at or employed by the dispensary, and shall disclose such registration for inspection by any Town officer or official for purposes of determining compliance with the requirements of this section. In addition, all employees shall have a valid form of identification issued by the State of California while present at the dispensary.

(3) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary that is no longer affixed to any living marijuana plant at the close of each business day. In addition, the permittee shall record the total numbers of cloned live marijuana plants being stored or offered for sale.

(4) Receipts. The permittee, or his or her employee, shall record upon an individual receipt the membership number of the person obtaining the marijuana, the amount of marijuana purchased, the amount paid for the marijuana, and the time and date the marijuana was dispensed.

(5) Financial Records.

(a) Permittee shall maintain financial records identifying information for all savings accounts, checking accounts, investment accounts and trusts associated with the operation of the dispensary. Permittee shall maintain ledgers documenting all credits and debits affecting said accounts. Permittee shall maintain records documenting all parties involved in, amounts of and purposes, for all cash transactions.

(b) Permittee shall maintain records of all transactions related to the operation of the dispensary, including but not limited to rent, utilities, inventory, insurance and payroll.

(6) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site within the Town limits where medicinal marijuana is cultivated, grown and/or harvested on behalf of the dispensary. The cultivation site(s) identified pursuant to this section shall not be in areas zoned as residential, as more specifically outlined in 17.110.80.

(7) Storage of Records. Permittee shall maintain all of the required records at the dispensary site or in secured, accessible storage at all times. All required records shall be subject to inspection by the Chief of Police, or his designee, during the time the dispensary is open for business.

(8) Audit. As an alternative to police inspection, the Town may request that an audit of receipts be conducted by a Certified Public Accountant (CPA) chosen by the Town and paid for by the permittee. The permittee shall provide a summary of the report to the Town.

(I) Consumption Restrictions. Cannabis shall not be consumed by patients on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other surroundings within 200 feet of the dispensary's entrance.

(J) Retail Sales

(1) Only immature, non-flowering, cloned, live marijuana plants measuring less than 12 inches in height may be stored and sold on site.

(2) Except for the immature nursery stock cannabis plants described above, the dispensary shall not cultivate, store, or sell live cannabis plants.

(3) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services ancillary to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law.

(4) If food products are sold the site must be inspected and approved for food sales by the Marin County Health Department.

(5) Display and sales of devices necessary for administering medical cannabis, shall be limited to including but not limited to rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such devices may only be provided to qualified patients or primary caregivers and only in accordance with California Health and Safety Code Section 11364.5.

(6) A dispensary shall not distribute or sell medical cannabis for a profit.

(7) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(8) A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5, *et seq.*

(K) Operating Plans.

(1) Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

(2) Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

(3) Minimum Staffing Levels. The premises shall be staffed with at least one person during hours of operation that shall not be responsible for dispensing medical cannabis.

(4) Odors Control. A dispensary shall have an air treatment system that ensures off-site odors shall not result.

(5) Security Plans. A dispensary shall provide adequate security on the premises, and be reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Any dispensary shall be equipped with an operable alarm system that at a minimum will protect the perimeter of the dispensary and the location within the structure where medicinal marijuana is stored, packaged or dispensed.

(7) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(8) Emergency Contact. A dispensary shall provide the Chief of Police, Town Manager and the Director of Planning and Building Services with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage neighborhood residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Town.

(L) Signage and Notices.

(1) A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

(2) Signs on the premises shall not obstruct the entrance or windows.

(3) Address identification shall comply with Fire Department illuminated address signs requirements.

(4) Business identification signage shall contain the business name only, be limited to that information needed for identification only, and shall consist of a single window sign or wall sign that shall not exceed six square feet in area. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services or products offered.

(M) Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and security personnel shall be properly trained.

(N) Compliance with Other Requirements. The operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

(O) Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(P) No person shall operate, or own a financial interest in, more than one Dispensary with the Town.

17.110.100 Criteria for Review.

The Planning Commission shall consider the following criteria in determining whether to grant or deny a dispensary permit, and renewals:

(A) That the dispensary permit is consistent with the intent of Proposition 215 and related California law, the provisions of this chapter and the Town Code, including the application submittal and operating requirements herein.

(B) That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

(C) That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.

(D) That an applicant or employee is not under 18 years of age.

(E) That all required application materials have been provided and/or the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.

(F) That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

(G) That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of permits allowed by this chapter.

(H) That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation and no significant nuisance issues or problems have resulted or are anticipated.

(I) That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

(J) That no dispensary use, owner, permittee, agent, or employee has violated any provision of this chapter including grounds for suspension, modification or revocation of a permit.

(K) That all reasonable measures have been incorporated into the plan and/or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

(L) That the dispensary would not adversely affect the health, peace or safety of persons living or working in the surrounding area, overly burden a specific neighborhood with special needs or high impact uses, or contribute to a public nuisance; or that the dispensary has resulted in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passers-by, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours; lewd conduct, or police detentions or arrests.

(M) That any provision of the Town Code or condition imposed by a Town-issued permit, or any provision of any other local or state law, regulation, or order, or any

condition imposed by permits issued in compliance with those laws has not been violated.

(N) That the applicant has not violated any local or state law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(O) That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

(P) That the applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant, has not been convicted of a felony, or of a misdemeanor involving moral turpitude, or has engaged in misconduct related to the qualifications, functions or duties of a permittee. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

(Q) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

17.110.110 Investigation and Action on Application.

After the making and filing of a complete application for the dispensary permit and the payment of the fees, the Police Department shall conduct a background check of the applicant and all employees and conduct an investigation of the application, and take action as follows:

(A) The Planning Department shall refer the application to any other Town departments as necessary to complete the review of the application.

(B) Following the provision of complete application materials and inter-departmental review, the Planning Department shall schedule the Use Permit for Planning Commission review. The Commission shall either grant or deny the application in accordance with the provisions of this chapter.

(C) In approving a dispensary permit, the Planning Commission may impose conditions, restrictions or require revisions to the proposal to comply with the purpose and intent of this chapter.

(D) The Planning Department shall cause a written notice of the Commission's decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

17.110.120 Appeal from Planning Commission Determination.

(A) An applicant may appeal any determination of staff to the Planning Commission.

(B) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the Town Council by filing an appeal pursuant to Chapter 17.320 of the Town Code.

17.110.130 Effect of Denial.

When the Planning Commission shall have denied or revoked any permit provided for in this chapter and the time for appeal to the Council shall have elapsed or, if after appeal to the Council, the decision of the Planning Commission has been affirmed by the Council, no new application for a permit shall be accepted from the applicant and no such permit shall be issued to such person or to any corporation in which he shall have any beneficial interest for a period of three years after the action denying or revoking the permit.

17.110.140 Suspension and Revocation.

(A) Consistent with Chapter 17.250, any permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter or the dispensary is operated in a manner that violates the provisions of this chapter, including the criteria for review and operating requirements sections, or conflicts with California law.

(B) Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this section until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least five days prior to the date set for such review. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the person to be notified, or by depositing it in the U.S. Mail in a sealed envelope, postage prepaid, return receipt requested, addressed to the person to be notified at his/her address as it appears in his/her application for a permit.

(C) If any person holding a permit or acting under the authority of such permit under this chapter is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the Town Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

17.110.150 Transfer of Permits.

(A) A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit.

(B) A permittee shall not transfer ownership or control of a dispensary or transfer a dispensary permit to another person unless and until the transferee obtains a Use Permit.

(C) No permit may be transferred when the Planning Director has notified the permittee that the permit has been or may be suspended or revoked.

(D) Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

17.110.160 Violations.

(A) It is unlawful for any person, individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character to violate any provision or fail to comply with any of the requirements of this chapter.

(B) A violation of this chapter shall be subject to the criminal, civil, or administrative penalties specified in Town Code Chapter 1.10.

17.110.170 Remedies Cumulative.

All remedies prescribed under this chapter shall be cumulative and the use of one or more remedies by the Town shall not bar the use of any other remedy for the purpose of enforcing the provisions hereof.

17.110.180 Separate Offense for Each Day.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

17.110.190 Hold Harmless.

As a condition of approval of any permit for medical cannabis cultivation, processing or distribution, the permittee shall indemnify, defend and hold harmless the Town of Fairfax and its agents, officers, elected officials and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to permitted uses or operations, and in the case of dispensaries, for any claims brought by any of the permittee's clients or employees for problems, injuries, damages, or liabilities of any kind that may arise out of the permitted activities.

17.110.200 Public Nuisance.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is declared a public nuisance and may be summarily abated by the Town.

17.110.210 Severability.

The provisions of this chapter are declared to be severable. If any provision, clause, word, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this chapter.

17.110.220 Judicial Review.

Judicial review of a decision made under this chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provisions of the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within 90 days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6 which shall be applicable for such actions.

SECTION II. EFFECTIVE DATE

Copies of the foregoing ordinance shall, within fifteen (15) days after its final passage and adoption, be posted in three public places in the Town of Fairfax, to wit:

a. Bulletin Board, Fairfax Town Offices, Town Hall;
b. Bulletin Board, Fairfax Post Office; and
c. Bulletin Board, Fairfax Women's Club Building,

which said places are hereby designated for that purpose, and shall be in full force and effect thirty (30) days from after its final passage and adoption.

SECTION III: VOTE

The foregoing Ordinance No. 759, amending the Fairfax Town Code, was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held on April 6, 2011, and was duly passed and adopted at a regular meeting held on May 6, 2011, by the following vote to wit:

AYES:

NOES:

ABSENT:

_____
MAYOR BRAGMAN

ATTEST:

_____
Town Clerk, Judy Anderson

ORDINANCE NO. 2010-08

AN ORDINANCE OF THE CITY OF SANTA CRUZ
AMENDING TITLE 24 OF THE SANTA CRUZ MUNICIPAL CODE
MODIFYING STANDARDS FOR MEDICAL MARIJUANA DISPENSARIES

BE IT ORDAINED by the City Council of the City of Santa Cruz as follows:

Section 1. Title 24 of the Santa Cruz Municipal Code is hereby amended as follows:

IG Zone District

24.10.1510 USE PERMIT REQUIREMENT.

1. The following uses require an administrative use permit and are subject to other applicable requirements of the Municipal Code. (Numerical references at the end of these categories reflect the general use classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

a. Agriculture (000);

b. Auto services and repairs, including trucks, heavy equipment and auto towing, subject to performance standards in Section 24.12.900 (350);

c. Boat repairs (340D);

d. Churches (500);

e. Communication and information services (550);

f. Community organizations, associations, clubs and meeting halls (570);

g. Eating and drinking establishments, subject to live entertainment and alcohol regulations of Chapter 24.12 (280);

h. Educational facilities (public/private) (510);

i. Fabricated metal products (150);

j. Food and beverage stores (except liquor and convenience stores) (240);

k. Forestry services (010);

l. Government and public agencies (530);

m. Leather tanning (110);

n. Off-site public/private parking facilities, five or more spaces (930);

o. Other manufacturing and processing industries (except bulk petroleum, scrap and waste materials) (155);

p. Parks (700);

q. Stone, clay, glass products (140);

r. Temporary structures;

s. Transportation facilities (560);

t. Utilities and resources (540);

u. Wireless telecommunications facilities, subject to the regulations in Part 15 of Chapter 24.12.

2. The following uses require a special use permit and are subject to other applicable requirements of the Municipal Code. All industrial classifications from 125 to 145 shall comply with all performance standards listed in Part 2 of the Environmental Resource Management provisions. (Numerical references at the end of these categories reflect the general use

classifications listed in the city's land use codes. Subcategories of uses within these use categories can be found in the land use codes, but they are not intended to be an exhaustive list of potential uses.)

a. Building material/garden supply stores (220) with 40,000 square feet or more including indoor floor area and outdoor storage, display, or sales areas. For building materials/garden supply stores of which 50% or more of the square footage will occupy an existing building, this threshold will be 75,000 square feet including indoor floor area and outdoor storage, display, or sales areas so long as vacant, available space in existing buildings in the IG zone exceeds 400,000 square feet. When the vacant, available square footage is less than 400,000 square feet, the 40,000 square foot threshold will apply;

b. Chemicals and allied products, subject to performance standards (130);

c. Large family daycare;

d. Group quarters (850);

e. Multiple dwellings or condominiums subject to R-M district regulations (830, 840);

f. Nightclubs/music halls, subject to live entertainment and alcohol regulations of Chapter 24.12 (630);

g. Paper and allied products subject to performance standards (125);

h. Parks and recreation facilities, subject to alcohol regulations in Part 12 of Chapter 24.12 (720);

i. Primary metals and material subject to performance standards (145);

j. Rubber, plastic, miscellaneous materials and products subject to performance standards (135);

k. Medical marijuana provider association dispensaries, as defined in Section 24.22.539 and subject to the siting criteria and performance standards in Section 24.12.1300;

l. Single-room occupancy (SRO) housing (860) under the following conditions:

(1) The site is located within one-quarter mile, (1,320 feet), of a grocery store.

(2) The lot size is less than 6,000 square feet.

(3) The SRO is part of a mixed use project, sharing the site and/or building with a use that is allowed under Section 24.10.1505, Principal Permitted Uses, is in conformance with Section 24.10.1540.2, and complies with the following requirements:

(a) The SRO development and the mixed use business are under one ownership.

(b) The amount of building space occupied by the non-residential use is either at a minimum equal to the SRO or residential use or the non-residential use occupies the entire ground floor of the development.

(4) Ambient interior noise levels can be mitigated below 45 decibels.

(5) Air quality on and around the site, including odors resulting from adjacent land uses, is not considered a potential health hazard and/or objectionable to residential use.

(Ord. 2005-30 § 12, 2005: Ord. 2005-15 § 14, 2005: Ord. 2004-27 § 12, 2004: Ord. 2004-24 § 1 (part), 2004: Ord. 2002-02 § 1 (part), 2002: Ord. 2000-12 § 4, 2000: Ord. 96-39 § 23, 1996: Ord. 95-04 § 8, 1995: Ord. 93-21 § 10, 1993; Ord. 89-37 § 2, 1989; Ord. 88-26 § 14, 1988; Ord. 87-22 § 8, 1987: Ord. 85-05 § 1 (part), 1985).

24.10.1830 USE PERMIT REQUIREMENT.

1. The following uses are subject to approval administrative use permit and a design permit:
   a. Daycare and foster homes for children;
   b. Eating and drinking establishments;
   c. Foster family homes;
   d. Guest ranches;
   e. Off-street parking facilities accessory and incidental to an adjacent commercial use;
   f. Temporary structures;
   g. Veterinary hospitals and clinics;
   h. Accessory buildings containing plumbing fixtures subject to the provisions of Section 24.12.140.
2. The following uses are subject to approval of a special use permit and a design permit:
   a. Agricultural processing plant;
   b. Group care homes;
   c. Helipads;
   d. Institutions for children or the aged;
   e. Kennels and riding stables;
   f. Off-street parking facilities serving commercial districts within three hundred (300) feet of the site;
   g. Outdoor theaters, golf driving ranges, and other similar open-air commercial recreation facilities;
   h. Public and private noncommercial recreation areas, buildings and facilities such as parks, country clubs, golf courses, and riding, swimming and tennis clubs;
   i. Public and quasi-public buildings and uses including administrative, recreational, educational, religious, cultural, public utility or public service uses; but not including corporation yards, storage or repair yards, and warehouses;
   j. Quarters, accommodation, or areas for transient labor, such as labor cabins or labor supply camps;

(Ord. 2000-12 § 5, 2000: Ord. 88-60 § 29, 1988; Ord. 88-26 § 15, 1988: Ord. 85-05 § 1 (part), 1985).

24.22.539 MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

A nonresidential occupancy that is limited to the cultivation, production, acquisition and dispensing of medical marijuana and further by the siting criteria, performance standards and conditions of approval imposed on each establishment by the zoning board and zoning administrator, pursuant to Sections 24.08.040 and 24.12.1300 of this code. In addition, this use shall not be permitted as an accessory use to any other principal, special, or conditional use nor may it be permitted as a home business within any district of the city.
(Ord. 2000-12 § 7, 2000).

24.12.1300 SPECIAL USE PERMIT REQUIREMENT FOR MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.

1. Special Use Permit Required. Medical marijuana provider association dispensaries, as defined by Section 24.22.539, may be allowed in C-C (Community Commercial), C-T (Thoroughfare Commercial) and I-G (General Industrial) districts, provided that they meet the siting criteria and performance standards described below and are so authorized pursuant to the procedures described in Section 24.08.040 for a special use permit. Special use permits shall be limited to no more than two dispensaries operating within the City of Santa Cruz and shall include the following conditions and operating procedures, in addition to the other requirements set forth in Sections 24.10.700 through 24.10.750 (for C-C Districts), 24.10.900 through 24.10.950 (for C-T Districts), and 24.10.1500 through 24.10.1540 (for I.G. Districts).

2. Siting Criteria. Applicants for a special use permit for a medical marijuana provider association dispensary must meet the following siting criteria prior to city consideration of a special use permit application:

a. The proposed location shall lie within a Community Commercial (C-C), Thoroughfare Commercial (C-T), or General Industrial (I-G) District.

b. If the proposed location is located within fifty feet of any legal dwelling unit or other residential use, the applicant shall be required to demonstrate to the zoning board that the use would not create an intensity of use that is incompatible with the nearby residential use and that the association would employ security measures that would insure that the use would not adversely affect the security and safety of the residential uses.

c. The proposed location shall not be located within six hundred feet of any residential zone district, any other medical marijuana provider association dispensary establishment, any public or private educational establishment serving persons under the age of 18 years, a public park with a children's playground, an alcohol or other drug abuse recovery or treatment facility, or any community care residential facility providing mental health/social rehabilitation services. For the purpose of this subsection, the six-hundred-foot distance requirement shall be measured from the periphery of the property boundary of such establishments. With respect to a public park with children's playground, the six-hundred-foot distance shall be measured from the periphery of the playground area.

d. The planning commission or the city council on appeal, may grant an exception to the six-hundred-foot distance requirement between the medical marijuana provider association dispensary and the above-referenced uses, except in the case of proximity to public educational uses, only if findings are made that the general public benefit that could be served by the issuance of the special use permit would outweigh concerns regarding intensity of use, land use compatibility and public health and safety. The burden of proof is on the Applicant to demonstrate that the overall effect would be positive.

3. Performance Standards. Medical marijuana provider association dispensaries, once permitted, shall meet the following operating procedures and performance standards for the duration of the use:

a. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana as may be required of the Santa Cruz city council and police department, including security concerns, and/or the county health department or their designee.

b. The association shall meet all the operating criteria for the cultivation, production, acquisition and dispensing of medical marijuana as required by the city council's administrative guidelines for the operation of medical marijuana dispensaries and gardens adopted pursuant to Ordinance 2000-06. (See Chapter 6.90, Personal Medical Marijuana Use.)

c. Dispensaries may possess no more dried marijuana or plants per qualified member patient or caregiver than permitted in strict accordance with State Law. The area within the dispensary used for cultivation of marijuana shall be limited to no more than 3,000 square feet of ADA complaint floor area.

d. No product shall be smoked, ingested or otherwise consumed on the premises.

e. The hours of operation shall be limited to no more than 7:00 AM to 7:00 PM, Monday through Friday if located within fifty feet of a residential use, and shall be limited to no more than 7:00 AM to 7:00 PM Monday through Saturday if located at a distance greater than fifty feet from a residential use.

f. Parking shall be provided according to the standard for retail pharmacy use as set forth in Section 24.12.240(aa). In addition to that requirement, whenever feasible, a passenger drop-off and pick-up parking zone shall be provided on the premises or immediately adjacent to the site. In no case shall double-parking by clients, caretakers, visitors or delivery vehicles be permitted.

g. The association shall prohibit loitering by persons outside the establishment, either on the premises or within fifty feet of the premises.

h. The association shall provide litter removal services each day of operation on and in front of the premises and, if necessary, on public sidewalks within fifty feet of the premises.

i. The association shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

j. Exterior lighting of the parking area shall be kept at a sufficient intensity so as to provide adequate lighting for patrons, while not disturbing surrounding residential or commercial areas.

k. Signage for the establishment shall be limited to one wall sign not to exceed twenty square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated.

l. The association shall provide the zoning administrator, the chief of police and all neighbors located within fifty feet of the establishment with the name, phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The association shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police department or the zoning administrator.

m. The association shall post a copy of the conditions of approval for the special use permit on the premises in a place where it may be readily viewed by any member of the general public.

n. The association shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the zoning board or zoning administrator at the time of issuance of the special use permit in order to insure that the association will be a good neighbor.

o. In addition to the required application materials, the association shall submit an operations manual to describe the operation of the facility in conformance with these performance standards and Chapter 6.90, Personal Medical Marijuana Use.

p. To offset power consumption, the association shall install solar panels to provide as much power as possible for the indoor cultivation of medical marijuana.

q. No association shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by members towards the associations actual expenses for the growth, cultivation, and provision of medical marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented and a report of such shall be submitted to the City in accordance with Section 6.90 of the Municipal Code.

4. Findings. In approving a special use permit, it shall be determined by the hearing body that all of the following apply:

a. The proposed use complies with all of the mandatory requirements of this section and other applicable sections of this code and applicable policies of the General Plan;

b. The proposed use will not adversely affect the health, safety or welfare of area residents or businesses, or uses, or will not result in an undue concentration in any one neighborhood or district and will not be located within proximity of an incompatible use, such as a children's school, day care facility or children's' play area;

c. The operational characteristics of the proposed use, such as hours of operation, noise, odor, amount and location of parking, signage, loitering and litter, will not have a negative impact upon the surrounding area;

d. The proposed use is compatible with the sizes and types of other neighboring uses in the surrounding area, particularly those used primarily by persons under the age of 18;

e. The proposed use is not located in what has been determined by the Santa Cruz police department to be a high-crime area, where a disproportionate number of police service calls occur, or where there is currently parking congestion; and

f. The proposed use, as a nonresidential occupancy, shall meet all the building code requirements for such occupancy and, if proposing to locate in a legal dwelling unit, shall comply with all local standards, requirements and provisions for converting dwelling units to nonresidential use.

5. Conditions. The planning commission, or city council on appeal, may deny any application which is inconsistent with the above-noted findings, or may impose any additional conditions on the applicant or proposed location reasonably related thereto, or to the health, safety or welfare of the community, in addition to the specific requirements set forth in Section 24.12.1300.

6. Violations and Abatement. The zoning administrator may issue a cease and desist order or "stop order" for all activities subject to this special use permit for any establishment deemed by the zoning administrator to be in violation of any condition of approval of the special use permit or to otherwise constitute a public nuisance. The stop order shall be in effect immediately, pursuant to the procedures of Section 24.04.221. Upon issuance of the stop order, the zoning administrator shall schedule a public hearing to consider the revocation of the special use permit pursuant to Section 24.04.225.

(Ord. 2000-12 § 6, 2000).

ORDINANCE NO. 2010-08

Section 2. This Ordinance shall take effect and be in force thirty (30) days after final adoption.

PASSED FOR PUBLICATION this 9th day of March, 2010, by the following vote:

AYES: Councilmembers Lane, Mathews, Beiers, Madrigal, Robinson; Mayor Rotkin.

NOES: None.

ABSENT: Vice Mayor Coonerty.

DISQUALIFIED: None.

APPROVED: ss/Mike Rotkin, Mayor

ATTEST: ss/Lorrie Brewer, City Clerk

PASSED FOR FINAL ADOPTION this ___ day of _____, 2010, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

APPROVED: _____
Mayor

ATTEST: _____
City Clerk

This is to certify that the above and foregoing document is the original of Ordinance No. 2010-08 and that it has been published or posted in accordance with the Charter of the City of Santa Cruz.

_____
City Clerk

Martin Reeder

From: cynara@communityengagementresources.com on behalf of Cynara Velazquez <cynara@yourcer.com>
Sent: Wednesday, December 02, 2015 3:26 PM
To: Martin Reeder; Ray Pe
Subject: Follow Up To City Council Meeting

Dear Martin,

Regarding last night's city council meeting, there were a number things for which I would like to provide clarification.

Firstly, the City Attorney made a statement to the effect that a city and state issued permit would be needed in order to for a patient to pursue personal use cultivation. This is not the case. Providing that a jurisdiction has not banned or further restricted personal use cultivation, the state allows a person to cultivate up to 100 sq feet in their residence (as you correctly stated) without a state or local permit or license.

If you are planning on addressing personal use cultivation in an ordinance proposal, we would recommend explicitly allowing cultivation for personal use at one's residence, in respect of state limits (100 sq feet per person) , reserving the right of landlords to limit or ban such activities on the premise, and reserving the right of the city to use nuisance abatement to eliminate personal use cultivation from a residence if a smell or other nuisance is proven to be present as a result of the cultivation.

Secondly, regarding the direction from the planning commission. The planning commission did state that they would like the a cultivation ordinance to be based on San Diego City's ordinance. However, it was never clarified to the planning commission that the San Diego zoning ordinance does not actually cover commercial or personal cultivation. There is an exemption in the ordinance, saying that the ordinance itself does not cover personal use cultivation. But at the City Council hearing, the City Attorney appeared to imply that the planning commission wished to see an regulatory option for personal cultivation *only*, since this was the only cultivation mentioned in the San Diego City Ordinance. In reality, the San Diego City ordinance only *exempts* personal use cultivation, it makes not attempt to regulate it.

Moreover, the public comments made by the commissioners Ditas Yamane, Roberto Garcia and Marcus Bush indicated a strong desire to see city revenue generated from cultivation. Since personal cultivation would not lead to city revenue, we can therefore imply that the commissioners were asking for regulation of commercial cultivation, as well as personal use cultivation.

We ask that the City either seek clarification from the planning commissioners as to whether they wished to see commercial cultivation language included in an ordinance proposal, or include it in the ordinance proposal, since the comments made by the commissioners implied a desire to see such language.

As to Mayor Morrison's comments that it would be difficult and bureaucratically burdensome, to enact a local tax to generate cost recovery and city revenue from commercial cultivation activity. Most jurisdictions have used fees, not excise taxes, to collect revenue from dispensaries. The City of San Diego charges cost recovery fees fees adding up to approximately $18,000 per applicant for the processing of conditional use permits for medical marijuana collectives and charges a $1,097.73 annual fee thereafter.

National City can also set fees for cultivation and has the discretion to make such fees much higher.

Such fees could also be used to cover enforcement actions against non-compliant dispensaries operating in illegal zones, an issue that the police department and the mayor both highlighted. Far from being a drain on city resources, medical marijuana cultivation could provide a positive source of city revenue.

Regarding commercial cultivation, the city manager made a comment to the effect that it would be hard to create zoning for such activity due to the prevalence of schools and the necessity to keep such facilities away from schools. State law has already addressed this issue - no marijuana activity can occur within 600 feet of a school. Therefore regardless of the zoning that National City creates, the state regulated buffer of 600 feet from the property line of any school will always apply.

As I stated in prior emails, a comprehensive ordinance addressing commercial cultivation need not be difficult to craft. In order to comprehensively regulate cultivation activity, you would need to specify the following:

- State Licensing Classes Allowed - The state licensing classes allowed would automatically define the associated plant count, canopy size and whether to allow indoor or outdoor cultivation
- Associated Zones Permitted – Defines in which zones cultivation will be permitted to occur, under the conditions outlined per the state licensing class.
- Associated Fees and Taxes – Defines, per state tax code, additional local sales taxes are not permitted, however, additional municipal fees and/or excise taxes are permitted, and can be set by the municipality.
- Additionally Safety Regulations – Defines regulations related to limiting public access and visibility, background checks for employees, signage, security personnel, alarms, and enhanced building security features.

I am happy to provide suggestions related to these areas of regulations.

Regards,
Cynara Velazquez
619-208-0567

Martin Reeder

From: cynara@communityengagementresources.com on behalf of Cynara Velazquez <cynara@yourcer.com>
Sent: Wednesday, December 02, 2015 3:26 PM
To: Martin Reeder; Ray Pe
Subject: Follow Up To City Council Meeting

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If you are planning on addressing personal use cultivation in an ordinance proposal, we would recommend explicitly allowing cultivation for personal use at one's residence, in respect of state limits (100 sq feet per person) , reserving the right of landlords to limit or ban such activities on the premise, and reserving the right of the city to use nuisance abatement to eliminate personal use cultivation from a residence if a smell or other nuisance is proven to be present as a result of the cultivation.

Secondly, regarding the direction from the planning commission. The planning commission did state that they would like the a cultivation ordinance to be based on San Diego City's ordinance. However, it was never clarified to the planning commission that the San Diego zoning ordinance does not actually cover commercial or personal cultivation. There is an exemption in the ordinance, saying that the ordinance itself does not cover personal use cultivation. But at the City Council hearing, the City Attorney appeared to imply that the planning commission wished to see an regulatory option for personal cultivation *only*, since this was the only cultivation mentioned in the San Diego City Ordinance. In reality, the San Diego City ordinance only *exempts* personal use cultivation, it makes not attempt to regulate it.

Moreover, the public comments made by the commissioners Ditas Yamane, Roberto Garcia and Marcus Bush indicated a strong desire to see city revenue generated from cultivation. Since personal cultivation would not lead to city revenue, we can therefore imply that the commissioners were asking for regulation of commercial cultivation, as well as personal use cultivation.

We ask that the City either seek clarification from the planning commissioners as to whether they wished to see commercial cultivation language included in an ordinance proposal, or include it in the ordinance proposal, since the comments made by the commissioners implied a desire to see such language.

As to Mayor Morrison's comments that it would be difficult and bureaucratically burdensome, to enact a local tax to generate cost recovery and city revenue from commercial cultivation activity. Most jurisdictions have used fees, not excise taxes, to collect revenue from dispensaries. The City of San Diego charges cost recovery fees fees adding up to approximately $18,000 per applicant for the processing of conditional use permits for medical marijuana collectives and charges a $1,097.73 annual fee thereafter.

National City can also set fees for cultivation and has the discretion to make such fees much higher.

Such fees could also be used to cover enforcement actions against non-compliant dispensaries operating in illegal zones, an issue that the police department and the mayor both highlighted. Far from being a drain on city resources, medical marijuana cultivation could provide a positive source of city revenue.

Regarding commercial cultivation, the city manager made a comment to the effect that it would be hard to create zoning for such activity due to the prevalence of schools and the necessity to keep such facilities away from schools. State law has already addressed this issue - no marijuana activity can occur within 600 feet of a school. Therefore regardless of the zoning that National City creates, the state regulated buffer of 600 feet from the property line of any school will always apply.

As I stated in prior emails, a comprehensive ordinance addressing commercial cultivation need not be difficult to craft. In order to comprehensively regulate cultivation activity, you would need to specify the following:

- State Licensing Classes Allowed - The state licensing classes allowed would automatically define the associated plant count, canopy size and whether to allow indoor or outdoor cultivation
- Associated Zones Permitted – Defines in which zones cultivation will be permitted to occur, under the conditions outlined per the state licensing class.
- Associated Fees and Taxes – Defines, per state tax code, additional local sales taxes are not permitted, however, additional municipal fees and/or excise taxes are permitted, and can be set by the municipality.
- Additionally Safety Regulations – Defines regulations related to limiting public access and visibility, background checks for employees, signage, security personnel, alarms, and enhanced building security features.

I am happy to provide suggestions related to these areas of regulations.

Regards,
Cynara Velazquez
619-208-0567

Martin Reeder

From:	David Blair <dr.d.blair@gmail.com>
Sent:	Tuesday, December 08, 2015 3:13 PM
To:	Martin Reeder
Subject:	Fwd: A momentous year for cannabis in California, big changes ahead...
Follow Up Flag:	Flag for follow up
Flag Status:	Flagged

Good afternoon, Martin.

Please forward this email to City Council members as well as members of the Planning Commission.

Hiring has begun for the chief of the new Bureau of Medical Marijuana Regulations but on the legislative front, most of the work has shifted to the local level, with local governments seeking to implement cultivation and other bans on commercial activities before *a much-publicized March 1, 2016 "deadline" in MMRSA which the bill authors have already pledged to rescind.*

Should the MMRSA rescind the March 1, 2016 deadline, National City will have more time to create a workable and agreeable commercial ordinance that can create tens of millions of dollars into the City for any purposes the Council chooses to use the proceeds.

Best wishes,

Best wishes,

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777

---------- Forwarded message ----------
From: **Sean Donahoe, Operative Campaigns LLC** <sean@operativecampaigns.com>
Date: Tue, Dec 8, 2015 at 2:41 PM
Subject: A momentous year for cannabis in California, big changes ahead...
To: David Blair <dr.d.blair@gmail.com>

Good afternoon David,,

Public news is trickling out that the consultants and funders (Sean Parker, Justin Hartfield) behind the "Adult Use of Marijuana Act" have added amendments to their 2016 ballot measure language, with new language appearing regarding:
- enhanced labor provisions,
- entrenchment of local control by ordinance,
- restrictions on advertising to minors,
- guidelines on packaging and labeling,
- a 5 year delay for large cultivation licenses,
- incentives for minority-owned businesses,
- very limited restrictions on cross-ownership.

From an industry perspective, the new amendments, when considered side-by-side with MMRSA, contain significant changes on the distribution layer and a shift from 11/1/2015 to 9/1/2016 to be considered for prioritization for adult use licensing.

While these additions may be enough to satisfy a greater section of support from cannabis advocates and other stakeholders, a new poll out last week lays out little voter enthusiasm for legalization in California. It will certainly be an interesting next 336 days as legalization unfolds here in California and many other places - as usual check out my Culture column for long-term political analysis of the industry.

The Bureau unfolds!

Hiring has begun for the chief of the new Bureau of Medical Marijuana Regulations but on the legislative front, most of the work has shifted to the local level, with local governments seeking to implement cultivation and other bans on commercial activities before a much-publicized March 1, 2016 "deadline" in MMRSA which the bill authors have already pledged to rescind. Not a day goes by that you can't read of another jurisdiction holding cursory hearings, moving to enact bans without fully considering the positive ramifications of, and opportunities enabled by, the historic new law.

While it is sad to see so many jurisdictions being misled/misinformed by the League of California Cities, contract attorneys, and law enforcement it's great to see more a deliberative process unfolding in many communities. Today alone, we should see positive local government action in Sacramento, Long Beach, Humboldt, and Santa Cruz, which will result in new cultivation and other licenses being granted by local jurisdictions, in accordance with MMRSA. Oakland, Watsonville, Salinas, and other forward-thinking cities should soon follow suit.

Sean's travels on a map!

I've been (very) busily traveling through California and elsewhere, connecting with local industry groups as well as catering for specific needs to my clients. I also was honored to share the stage with Assemblymember Bonta, Kimberly Cargille, Sean Luse, and Hezekiah Allen at the welcoming panel of the Medical Marijuana Business Conference in Las Vegas. I then spoke a few days later at the Humboldt Hempfest, followed up with a speaking role on a legalization panel and moderated a regulatory implementation panel at the New West Summit in San Francisco. All of these were great events, followed up by the launch last

weekend of the Gateway cannabis incubatorin Oakland. Founded by Carter Laren and Ben Larson and with backing by MJIC, I look forward to serving as a mentor for the first cohort of startups early next year.

Gateway's new home in Oakland!

Have you joined the California Growers Association yet?

Lastly, the California Growers Association's growth and influence has continued to impress. Although Hezekiah and I go back several years, it has been awesome to more recently witness the collective efforts of regional councils, an engaged Board, leaders with clear roles, and an informed and empowered membership. I am excited every day to help build out this organization as their Policy Advisor on Local Politics and Electoral Affairs.

Hundreds of dispensaries from north to south, indoor and sungrown growers, infused product manufacturers, testing labs and delivery services have all come together to build out a values-driven association prepared for the maturation and mainstreaming of our industry.

Educational efforts since September have seen thousands attend workshops and panels organized by or featuring Cal Growers leaders. The future of the cannabis industry in California has come, and I strongly encourage that your cannabis business join the California Growers Association as a Founding Member.

Two great opportunities to attend a California Growers Association Founders' brunch:

Dec 13 Santa Rosa

Dec 19 Marina Del Ray

The California Growers Association would like to invite our members and community to a celebration of progress and unity for the new year, as we will:
- Address and review progress made in 2015
- Outline threats and opportunities for our community in 2016.
- Welcome our founding board members
- Begin strategic planning for our 2016 policy work
- Introduce the leadership of California Growers Association
- Provide comments from advisors, guests, and VIP's

Other events coming up:

LA Women Grow Dec 8

CGA Sierra Foothills Policy Summit Dec 9

@420 Pitch by Weedclub in SF Dec 9

Emerald Cup in Santa Rosa Dec 12-13

Cal Growers Strategic Planning Retreat in Sacramento Jan 2-3

City Council and County Supervisors meetings statewide Today - ?

Thanks for reading my email, thanks for being great at what you do, and thanks for being a part of something great,

Sean

Sean Donahoe, Operative Campaigns LLC
http://www.operativecampaigns.com/
-=-=-

Operative Campaigns · Oakland, CA 94607, United States
This email was sent to [illegible]. To stop receiving emails, click here.
You can also keep up with Sean Donahoe, Operative Campaigns LLC on Twitter or Facebook.

-=-=-

Created with NationBuilder, software for leaders.

Martin Reeder

From: Denise Davis
Sent: Wednesday, December 09, 2015 1:41 PM
To: Martin Reeder
Subject: FW: Response to Staff Cultivation Ordinance Proposal and Model Cultivation Ordinance Proposal
Attachments: MMJZoningCultivationOrdinance_NC.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Did you get this one?

From: cynara@communityengagementresources.com [mailto:cynara@communityengagementresources.com] **On Behalf Of** Cynara Velazquez
Sent: Monday, December 07, 2015 6:46 PM
To: Denise Davis <ddavis@nationalcityca.gov>
Subject: Fwd: Response to Staff Cultivation Ordinance Proposal and Model Cultivation Ordinance Proposal

For the record:

---------- Forwarded message ----------
From: **Cynara Velazquez** <cynara@yourcer.com>
Date: Sun, Dec 6, 2015 at 2:19 PM
Subject: Response to Staff Cultivation Ordinance Proposal and Model Cultivation Ordinance Proposal
To: robert.garcia.ozua@gmail.com, Marcus Bush <mbush619@yahoo.com>, dolores.m.flores@sbcglobal.net, rosalie alvarado <alvaradorosalie@gmail.com>, gbaca1962@yahoo.com, ditas@ncpublicsafetyfoundation.org, ditas@nationalcitybears.com

Dear Planning Commission,

We were very happy to see that city staff has finally produced a ordinance for cultivation regulation for your review. That said, we were disappointed to see that it only addressed personal use cultivation, not commercial cultivation, which will not allow for fees to cover the cost recovery, funds for enforcement actions against illegal dispensaries and city revenue that the planning commission had requested.

We respectfully disagree with city staff that writing an ordinance that includes commercial cultivation would be difficult to craft. **We have attached a simple model ordinance that we have crafted for National City, based on the assumption that National City would probably wish to pursue the lowest intensity of commercial cultivation activity licensed under the state code, in industrial zones in appropriate structures with ample security, with fees for cost recovery to the city.**

The **components needed to craft a comprehensive ordinance are listed below,** for the city's reference in creating cultivation regulations:

- **State Licensing Classes Allowed** - A comprehensive ordinance would define which type of state cultivation licenses to allow in National City. The state license classes regulate and define the cultivation use and intensity including plant count, canopy size and whether to allow indoor or outdoor cultivation. *A list of the state licensing classes established for medical marijuana cultivation are also*

shown below this email. For our model ordinance, --e have assumed National City would pursue only the lowest intensity cultivation licenses - Indoor specialty cultivation and nursery cultivation.

- **Associated Zones Permitted** – Defines in which zones cultivation will be permitted to occur, under the conditions outlined per the state licensing class. *For our model ordinance, we have assumed commercial cultivation activity will be limited to industrial zones.*
- **Associated Fees and Taxes** – Defines, per state tax code. Additional local sales taxes are not permitted, however, additional municipal fees and/or excise taxes are permitted, and can be set by the municipality. *For our model ordinance, we have assumed there will be annual fees, set by the planning department.*
- **Additionally Safety Regulations** – Defines regulations related to , public access, background checks, signage, security personnel, alarms, and enhanced building security features.

Below are descriptions of the **state license categories for cultivation:**

- **Type 1**, or "***specialty outdoor***," for outdoor cultivation using no artificial lighting of less than 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on non-contiguous plots.
- **Type 1A**, or "***specialty indoor***," for indoor cultivation using exclusively artificial lighting of less than 5,000 square feet of total canopy size on one premises.
- **Type 1B**, or "***specialty mixed-light***," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than 5,000 square feet of total canopy size on one premises.
- **Type 2,** or "***small outdoor***," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet of total canopy size on one premises.
- **Type 2A**, or "***small indoor,***" for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet of total canopy size on one premises.
- **Type 2B**, or "***small mixed-light***," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet of total canopy size on one premises.
- **Type 3**, or "***outdoor***," for outdoor cultivation using no artificial lighting between 10,001 and 44,000 square feet of total canopy on one premises.
- **Type 3A**, or "***indoor***," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet of total canopy size on one premises.
- **Type 4**, or "***nursery***," license for cultivation of medical cannabis solely as a nursery. A Type 4 Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis. No canopy limits are set forth for a Type 4 – Nursery License. Type 4 licensees may transport live plants.'

We hope that this information has been informative and will be utilized at your meeting on December 7th.

Thank You,

Cynara Velazquez
Association of Cannabis Professionals
619-208-0567
cynara@cannabisprofessionals.org

MEDICAL MARIJUANA CULTIVATION ORDINANCE

WHEREAS, in 1996 the people of the State of California passed Proposition 215, the Compassionate Use Act, that allows the use of marijuana for medical purposes when recommended by a physician and excludes from criminal prosecution the patient and the primary caregiver, as defined; and

WHEREAS, in 2003, the State of California enacted Senate Bill 420, the Medical Marijuana Program Act (MMPA), which established requirements for the issuance of voluntary identification cards; provided a defense to criminal charges related to the cultivation, possession, sale, or storage of medical marijuana; prohibited the distribution of marijuana for profit; exempted from prosecution qualified patients and designated primary caregivers who associate to collectively or cooperatively cultivate marijuana for medical purposes; required the Attorney General to issue guidelines for the security and non-diversion of medical marijuana; and allowed cities to adopt and enforce laws consistent with the MMPA; and

WHEREAS, in 2015, the State of California enacted Senate Bill 643, Assembly Bill 266, and Assembly Bill 243, establishing a comprehensive regulatory framework for the production, transportation, and sale of medical marijuana.

WHEREAS, under federal law, the possession, transfer, or sale of marijuana remains a criminal act; and

WHEREAS, all powers not delegated by the United States Constitution to the United States nor prohibited by it to the states are reserved to the states or the people, pursuant to the Tenth Amendment of the United States Constitution; and

WHEREAS, in the State of California, zoning is a local matter exercised by the cities pursuant to the police powers set forth in Article XI, Section 7 of the California Constitution; and

WHEREAS, the City Council now desires to exercise its police powers solely to provide for the zoning of medical marijuana enterprises in such a manner as to limit the impact on the City generally and residential neighborhoods in particular; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of National City as follows:

Section 1. Definitions

"Qualified Patient" as defined in the California Health and Safety Code, Section 11362.7.

"Premise" is defined to mean the legal parcel(s) of land and the improvements on it, including building(s), store(s), shop(s), apartment(s), or other designated structure.

"Dispensary" is defined to mean a physical retail establishment where medical cannabis, medical cannabis products, and devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, to Qualified Patients and their Primary Caregivers. This includes an establishment that delivers medical cannabis and medical cannabis products as part of its retail operations.

"*Cultivation*" is defined to mean any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"*Cultivation Site*" is defined to mean the physical location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed for later distribution for commercial use.

"*Cultivator*" is defined to mean the organization holding the Conditional Use Permit for *cultivation* activity at a location authorized by the City.

"*Plant Canopy*" is defined to mean the amount of cannabis that can be grown which is the aggregate area of vegetative growth of live marijuana plants.

"*Small Specialty Indoor Cultivation*" is defined to mean cultivation in compliance with the regulations for a Cultivation License Type 1A (Specialty Indoor License), defined in California Business and Professions Code section 19332, subdivision (g)(2), and subject to all applicable sections of Senate Bill 643, Assembly Bill 266, and Assembly Bill 243.

"*Nursery Cultivation*" is defined to mean cultivation in compliance with the regulations for a State Cultivation License Type 4 (Nursery License), defined in California Business and Professions Code section 19332, subdivision (g)(10), and subject to all applicable sections of Senate Bill 643, Assembly Bill 266, and

Assembly Bill 243.

Section 2. Personal Use *Cultivation*

In accordance with California Health and Safety Code section 1362.777, subdivision (g), a *qualified patient* may cultivate medical marijuana for their own personal use, at their place of residence, in an indoor area that does not exceed 100 square feet. A *qualified patient* may only cultivate marijuana for his or her personal medical use and may not sell, distribute, donate, or provide marijuana to any other person or entity. Landlords and building owners may limit or prohibit personal *cultivation* on the *premise*.

In accordance with California Health and Safety Code section 1362.777, subdivision (g), a *primary caregiver* may cultivate medical marijuana exclusively for the personal medical use of no more than five qualified patients for whom he or she is the primary caregiver within the meaning of Health and Safety Code section 11362.7, at the place of the primary caregiver's residence in an indoor area that does not exceed 500 square feet. A *primary caregiver* may only cultivate marijuana for the personal medical use of his or her qualified patients, and may not sell, distribute, donate, or provide medical marijuana to any other person or entity.

In accordance with California Health and Safety section 11362.777, subdivision (g), landlords and building owners may limit or prohibit personal use *cultivation* on the *premise*.

Section 3. Commercial *Cultivation*

Cultivation Sites are prohibited in residential, commercial, mixed-use and agricultural zones. *Cultivation Sites* may be permitted with a Conditional Use Permit, as set forth in Section 18.12.110 of the Municipal Code of the City of National City, and located only in Industrial Zones IH (Industrial Heavy) and IM (Industrial Medium), as defined and listed in Chapter 18.25 of the Municipal Code of the City of National City, subject to the following

regulations:

a) All *cultivation* must occur on the interior of a building using exclusively artificial lighting.

b) A Conditional Use Permit may be issued for *Small Specialty Indoor Cultivation* or *Nursery Cultivation*. All other commercial cultivation of medical marijuana is strictly prohibited. A Conditional Use Permit applicant must specify whether the applicant will be cultivating *Small Specialty Indoor Cultivation* or *Nursery Cultivation* on site. Only one cultivation type will be permitted per location. Any cultivation must conform to the *plant canopy* and other limits set forth by the applicable California State License Category for the *cultivation site*.

c) Plants may only be cultivated in response to a pre-existing supply or purchase agreement with a licensed *dispensary*. For each plant, the *cultivator* must be able to show an active purchase order requiring this plant from a licensed *dispensary*. The *dispensary* with which a *cultivator* has a supply or purchase agreement must be licensed by a municipal or county jurisdiction within the state of California.

d) A unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant. This unique identifier shall identify the *dispensary* for which the plant is being grown, as well as a unique identifier assigned to the individual plant. Records of plants, as identified by their unique identifiers, and their associated *dispensary* must be kept by the *cultivator,* and must be made available to City auditors upon request. .

e) Security shall be provided at the commercial *cultivation site* which shall include operable cameras, alarms, and a security guard. The security guard shall be licensed by the State of California and be present on the *premise*.

f) From a public right of way, there shall be no visual evidence of *cultivation* either within or outside the facility. Adverse impacts of *cultivation* shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse

impacts of dust, glare, heat, noise, noxious gases, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

g) No external signage shall be allowed.

h) No public access or sales shall be allowed on the *premise*, only employees and contractors authorized by the *cultivator* may be present on the *premise*.

i) All employees of the organization to which the Conditional Use Permit is issued shall be subject to a background check. Any person who has been convicted of a felony may not be employed by *commercial cultivator* or operate, manage, control, or own a *commercial cultivator* entity.

j) The City encourages *cultivators* to operate in an environmentally sustainable manner. Preference will be given to applicant for Conditional Use Permits who show their commitment to environmentally sustainable practices including building LEED certification and adoption of EPA WaterSense identified water saving technologies.

k) To discourage theft and vandalism, the City will not publish, or provide to the general public, the exact addresses of *commercial cultivation sites*. Other aggregate information regarding conditional use permits for commercial *cultivation* including, but not limited to, number of permits issued, districts where said permits were issued, and the organizations to whom such permits were issued shall be available upon request.

l) Applicants for Conditional Use Permit for *commercial cultivation* must provide written proof that the building owner and management condone *cultivation* activity on the *premise*.

m) A Conditional Use Permit for *commercial cultivation site* may be revoked or suspended due to legitimate smell complaints, noise complaints, upon City confirmation of the validity of the smell or noise nuisance, or non-compliance with the regulations set forth in this ordinance.

n) The City has may establish a set application fee for a Conditional Use Permit for a *cultivation site* and, as well as set annual fee for maintaining the

cultivation site Conditional Use Permit. Such fees shall be established by the City planning department.

o) The applicant must meet any additional standard criteria and fulfill any additional standard requirements associated with obtaining a Conditional Use Permit in the City of National City.

Section 6. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 7. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

Martin Reeder

From: Denise Davis
Sent: Monday, December 14, 2015 2:26 PM
To: Martin Reeder; Claudia Silva
Subject: FW: Materials for distribution to Council and Planning Commission
Attachments: South Bay Compass.pdf; ATT00001.htm; CUP resolution.pdf; ATT00002.htm; CUP 1298258.pdf; ATT00003.htm; Medical Marijuana Regulation and Safety Act.pdf; ATT00004.htm; Seller's Permit.pdf; ATT00005.htm; Fwd: SDPD Review + Economic Impact Statement - Cultivation; Fwd: Dr. Mark L. Rabe recommendation + Science of MMJ

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Marin and Claudia,

Please advise how you would like the email below and attachments to be distributed to the Planning Commissioners. There are three emails total, which the other two are attached. I have advised Leah not to forward them as requested as they will be handled on this end.

Thank,
Denise

From: Jacqueline Reynoso [mailto:reynoso@nationalcitychamber.org]
Sent: Monday, December 14, 2015 2:18 PM
To: Denise Davis <ddavis@nationalcityca.gov>; Leah Munoz <leahm@nationalcityca.gov>
Cc: Martha Bolanos <bolanos@nationalcitychamber.org>
Subject: Fwd: Materials for distribution to Council and Planning Commission

Hello Denise and Leah,

May you please forward to Mayor and Council and the PLanning Commission. Thank you,
JR

Sent from my iPad

Begin forwarded message:

> **From:** "David Blair" <dr.d.blair@gmail.com>
> **To:** "Jacqueline Reynoso" <reynoso@nationalcitychamber.org>
> **Subject: Fwd: Materials for distribution to Council and Planning Commission**

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777CONFIDENTIALITY NOTICE:

The contents of this email message and any attachments are intended solely for the addressee(s) and may contain confidential and/or privileged information and may be legally protected from disclosure. If you are not the intended recipient of this message or their agent, or if this message has been addressed to you in error, please immediately alert the sender by reply email and then delete this message and any attachments. If you are not the intended recipient, you are hereby notified that any use, dissemination, copying, or storage of this message or its attachments is strictly prohibited.

---------- Forwarded message ----------
From: **David Blair** <dr.d.blair@gmail.com>
Date: Sat, Dec 12, 2015 at 4:18 PM
Subject: Materials for distribution to Council and Planning Commission
To: reynosso@nationalcitychamber.org

Greetings Jacqueline.

Thank you again for everything you are doing to help National City. We look forward to joining the Chamber. I have attached documents for the City Council members and Planning Commission members for their review.

The language needed to create a regulation can be found in our CUP and the City of San Diego Planning Commission report. The documents are comprehensive. An attorney could use the attached documents to write an ordinance in less than one day.

We are working on the Financial Impact Statement and will get it to you shortly.

All the best,

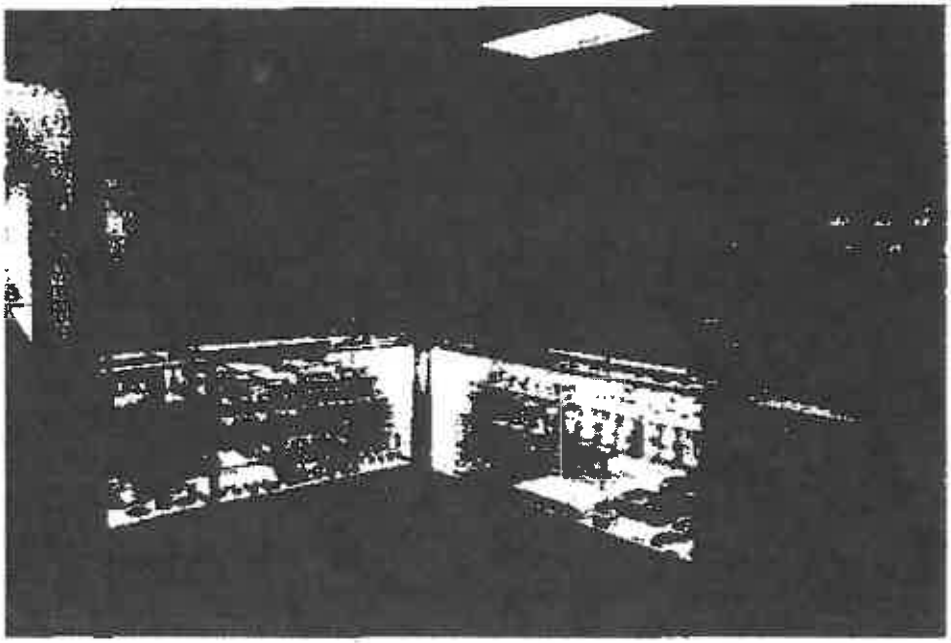
David

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777

South Bay Compass
An on-line newspaper for the South Bay, San Diego

A Green Alternative

on June 7, 2015



An Interview With CEO, Dr. David Blair

Eye On The Locals: I'm a curious person and when I see something historic happening in my community, I feel an urgent need to document and ask questions. When A Green Alternative opened in Otay Mesa on March 20, 2015 – only two blocks from a major U.S.-Mexico port of entry – I couldn't help but find out more.

A Green Alternative is the first medicinal marijuana dispensary that has legally opened in the City and County of San Diego. It's a historic moment, highly controversial and located in my neck of the wood–the South Bay. So I walked right up to the storefront security guard and asked for an interview.

As the CEO, Dr. David Blair, later told me, he asks his staff *not* to treat people the way they would like to be treated, but to treat people the way they would treat their mother. Sure enough, the security guard was friendly and the staff gave me Dr. Blair's card so I could contact him. Within the week, I sat down for a long conversation with Blair after a tour of the dispensary.

Soft spoken and wearing a shirt with his company's logo on it, Dr. David Blair says he is probably the only owner of a medical marijuana dispensary willing to speak to the press. Why?

For two reasons. The first, because he has done everything the City has asked in order to open a legitimate non-profit business. He is proud of this and wants to be transparent. Second, he considers his business to be Number One and other medial marijuana dispensaries will have to follow the standards that he and his two co-owners, Zach Lazarus and Doug Criclolo, have created.

Tight Security Is A Priority

A Green Alternative is similar to a bank when it comes to security. Because money is exchanged and medications are dispensed, Blair's establishment needs strict security measures. The entryway to the establishment is bullet resistant and an armed guard (contracted from *Omni Security*) is at the front not only during opening hours, but twenty-four hours a day, seven days per week.

Blair says a female customer once noted that the dispensary looks like a Nordstrom's. It is clean, well lighted with shiny hardwood floors. It looks upscale, largely thanks to Blair's talent for interior design. His establishment also has a large security safe in the back. Blair explains that it can accommodate a dozen people who can theoretically have four hours of protection in there, if ever needed. There is also a panic button inside and police have promised they will be at the facility in less than two minutes.

"Our merchandise is last. Our patients, our staff and my life are worth more than any money," Blair says. He also notes, "As a result of the high standards we established, the City adopted them and now everyone who follows has to follow our lead."

A Non Profit Corporation

"My Master's degree is in non-profit management from the University of San Diego. I ran a non-profit named *Positively Speaking and Healthy Youth Advocacy Program*. That was a true non-profit. This model is called a non-profit, but it's almost like a hybrid between the two. The differential is fuzzy because with a non-profit organization, all profits go back into the business. As a non-profit, you can make a profit, but it gets rolled back into the non-profit. That's the model we're running it under. We're all collecting salaries because we're as successful as we are."

In two years, Blair explains, the laws will allow his company to become for profit.

Since its establishment has opened, it's been smooth sailing. The company has already earned $615,000 in fourteen weeks. Blair notes that his seventeen employees are paid a decent wage: $12.50 an hour and his managers get $13.50. His company has also already paid $48,000 to the State of California and the City of San Diego in sales taxes.

"With our license we're permitted to do three things. We're permitted to grow, we're permitted to dispense and we're permitted to deliver. Those three things are legal."

Currently, Blair doesn't grow the medicinal marijuana, but that may change in the future as they continue to expand their wholesale business and possibly open new dispensaries. For now, he has a sub-licensee growing for them. They buy from their general sources that go through the same background checks he and his employees have to go through. Some of his growers are further out in SD County, the rest come from Humboldt. Blair explains that all growers must come from California because you cannot cross a border in possession of marijuana. That's a federal crime. "You cannot go to Arizona and use a recommendation from California. The only State that has reciprocity is Nevada.

Why isn't it sold in pharmacies?

"You should be able to, but it's because the federal law trumps state, state trumps city or county and medical marijuana use is illegal according to federal law," Blair says. No doctor is allowed to prescribe marijuana because "prescribe" rises to the level of federal authority. A recommendation is what Blair's patients bring and a recommendation is a state run program.

The problem, according to Blair, is that marijuana is incorrectly scheduled. It's scheduled in the same category as heroin. However, more and more states are making it legal and he wants to see marijuana rescheduled to 2 or 3.

Blair is optimistic that the majority of Americans want to see marijuana legalized. He explains that both the House and Senate have passed bills to de-fund the DEA from going into States with regulations in place on medical marijuana.

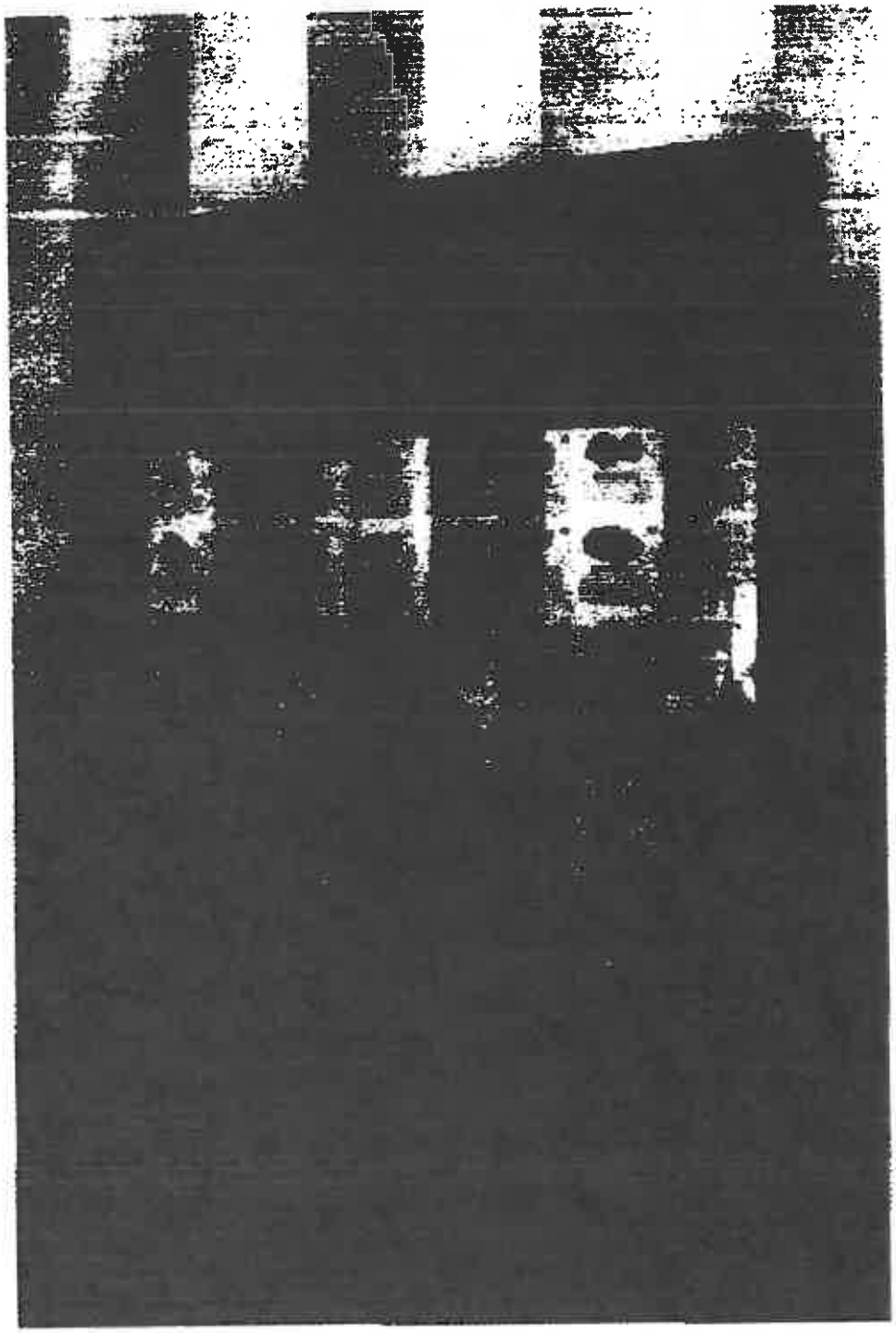
"I think what's going to happen is that the President is going to reschedule it before he leaves office. Congress is already working on it."

When asked if he would like to see not just marijuana decriminalized, he says: "I'm a libertarian when it comes to this issue. I think all drugs should be legal and instead of arresting and throwing them in jail, they should grab 'em and put them in help them psychiatrically. Sociologically. They need help. They don't need barriers, they need help."

Who is eligible for the Recommendations?

"People who are over 18. However, we have a further restriction. If they are in high school, they will not get their medication from us. They'll have to go somewhere else. Their parents can come in as a caregiver because they can get a caregiver certificate and they're welcome, but we're not selling to children in high school because the likelihood of distribution is too high. Secondary distribution."

However, parents can get a caregiver certificate and pick the medication up themselves. Blair explains, "When you see toddlers having seizures and



they can take a tincture of Charlotte's Web and they have one [tincture] a month, instead of 30-40 a day. That to me is as close to a miracle as we're ever going to see."

Blair explains, "We have tincture, we have pills. We are heavy in CBD line, purposefully. Because we're not here to get you stoned, we're here to get you medicated, and there's a big difference."

Dr. David Blair's Story

Born in Inglewood, Blair's parents divorced when he was 6 months old and they moved back to Chicago, where they were from. In 1976 he graduated from Northwestern University with a degree in Communication Studies, Theater Tech and Interior Design. He immediately began working as an interior designer for several high end stores in the Chicago area.

Blair always had an affinity for California and he didn't want to grow old in Chicago, so at the age of twenty-six, he moved out to Newport Beach. His mother joined him and they decided to go into the business of manufacturing and distributing freshly squeezed juice.

In January 1982, they established *A Fresh Connection*. Within two years, he had developed a trade license agreement with *Sunkist Growers* to supply the *Universal Studio Tours* and, at the time, what was called *The Fabulous Forum*. He sold them 8-ounce containers of orange juice as well as his own recipe of natural sweetened lemonade. Business boomed, he landed numerous prestigious contracts–and then Blair burned out working endless hours.

In 1984 he sold the business, doubled his money, and went back into interior design. He did a stint in Pasadena, worked for a few furniture places and then bought an ocean view home in Laguna Niguel with his partner. After 5 1/2 years, they broke up and Blair moved to the Hillcrest area of San Diego. Two years later, he bought a house in Kensington, met his life partner, Doug Cristofo and opened a retail store in Hillcrest called Blair House, which sold decorative accessories.

During those same years, he received his Master's from USD in non-profit management, in 2002 he was the first student ever to go from the Masters Program into the Doctoral Program. In the Doctoral program, he focused on general management and leadership.

Once he received his doctorate, he began teaching at National University in Educational Administration. By 2008 he was teaching at San Diego State University and during his tenure there, he taught 41 sections of Ethical Decision Making in Business.

His Partners

Blair's life and business partner, Doug Cristofo, worked for 21 years as a Manager of Convention Services and Event Planning for Hatsei's Party Rentals. He also helped run Blair House. However, when the economy tanked, Blair House closed. Thereafter, Blair and Cristofo opened a medical evaluation clinic in a doctor's office of Kearny Mesa. People would come in to get their written recommendations for medical marijuana. Blair would do the patient's vitals, get their medical records, scan it to the physician so he could review it and determine whether or not the individual was a candidate for medical marijuana. He had a doctor on Skype who was California licensed in good standing and lived in Arizona. Cristofo did the deliveries.

"We had over 300 patients and he [Cristofo] was out on the road the first year practically 10-11 hours per day delivering."

At that same time, Zach Lazarus was a sales manager at Perry Ford of National City. Blair and Cristofo bought six cars from him, and in this way they came to know one another and eventually created *A Green Alternative* together. They are now the three board members of the corporation.

The Permit Process

It took Blair and his co-owners a full year to get the permit and somewhere in the ballpark of $2,000,000. The permit itself cost $5,000, but in order to get the permit, he needed to have a signed lease agreement with a landlord, or else they would need to own the building. Blair leased the space and had to pay rent while waiting for all the appropriate permits and permissions, a process which took an entire year.

"I'll tell you how it happened. Our attorney, Lance Rogers, had a group of six of us applicants. He said, 'We don't know how this is going to work because the City doesn't either yet. This was in the beginning. They were writing on the fly. In fact, they re-created form number 199 several times and that backed up people who had already completed their 199 form and it was approved. Suddenly, they had to re-do it.

"But we were so far along in the process, we didn't have any of the Draconian measures that have been put into place since. We had a keeper sitting in line, I think we were number 3 or 4 in line, the morning of the application process commencing... So, we got there at five in the morning, as did the others of our group with Lance Rogers. We took the place of our place keepers. They were sent home. They cost us each 1,500 bucks. And then they said, the line in order doesn't matter, and we're going to be bringing people, not in line, but to developmental services across the street and down a parking garage. So it became a mad rush to get to that DSD door first and one of the applicants was probably #20, he was way up in front. My partner heard his name and when the police came my partner spoke up: 'This guy doesn't belong here. He's out of line and he's creating a problem for all of us.'"

Blair makes a "whoosshing" sound to tell me that guy was gone from the line after that.

"Then we raced up the elevator and raced up to turn in our check for $8,900 and change, that's the application fee."

Compare that to the $35 Blair says it cost him for a license to open Blair House in Hillcrest.

The permit process took 9 months, but then it was also appealed, so it took about a year. All through the process, he needed to pay city officials for their work as well as attorney fees that all added up to around $2,000,000.

His Dispensary Is Number One

"I'll explain why we are number one. While others may have fought the city all the way through, we didn't. We didn't. The city would say, 'You need X.' We would return a document that would say 'X times two.' 'X times two. O times two is what we're suggesting.' They were like, 'No one else is like this.'"

He worked diligently with the San Diego Development Services Department (DSD) and on his third submission, the documents came back with a congratulations. There were no comments or changes required. They were ready to move forward.

"Why? Because I befriended these people. They are not my enemy, they are my friends and I don't want to do something that would trip them up. So before we take an action that might be questionable, like advertising, I want to know what we can advertise in and what we can't. So rather than doing it and getting my hand slapped--as my mother would have said to do it a hundred years ago-- but this is too important. Oh no," Blair said. "We don't touch those things until we hear back from the city. Why ruin a reputation when we're stellar right now?"

As a consequence of waiting, paying and complying, Blair says that *A Green Alternative* has established new baselines for the city. The City has adopted their standards, so for example, now everyone who follows them has to have the same bullet proofing. The City wanted a guard while they

were open. Blair said, "That's not good enough. Someone can climb over that roof and just drill through. Uh-uh. We're gonna have a guard 24/7. And then we raised it one level more. We're going to have an armed guard 24/7."

Another reason Blair says his company is number one: not only is he a doctor, "having taught 41 ethics classes, saying I know the difference between right and wrong and we will not cut ethical corners to make a sale." But Blair explains that "when you have an armed guard present, the entire neighborhood is safer. Because that guard is not just there for us, even though we're paying for it. If he sees there's a crime going on in another place, he's gonna step in, whether he calls 911 and pulls a pistol, I don't know. But they're all safer because of us."

It's Personal

"The whole idea is to give back to the community. Why did I become a professor? To serve others."

Blair explains that he started giving back already in 1998 when he created the non-profit organization *Positively Speaking*. He trained about 150 HIV infected or affected speakers and then had an MOU with the school districts throughout the County to speak to youth about AIDS. "We reached more than 50,000 youth while I was at the helm of the business."

He put his heart and soul in that organization for six years. In fact, for Blair medicinal marijuana is personal. In 1985, during the height of the AIDS epidemic, Blair decided to take the newly invented test to see if he was positive. He was scared to death. He thought, "It can't happen to me. A nice Jewish boy? It did happen to me."

During those days, Blair explained, "I was a lead singer in the LA Gay Men's Chorus. First tenor. I always had music. They performed probably six years later in the Performing Arts Center in Orange County. I brought my partner at the time. He was listening to the music. I was counting the names in the *In Memoriam* list. During the intermission, I had counted 128 names of guys that I knew who had died. Then, living in Orange County, I had two friends die on the same day."

By 1996, upon the recommendation of his physician, Blair started to use medicinal marijuana. However, there were no places in Orange County, so he had to trek up to Los Angeles. Blair says medicinal marijuana shows the progression of HIV.

Why Open In The South Bay?

"Doug, my partner, and Zach all live in the South Bay and we felt the South Bay was being neglected. We figure we're going to get people South of the 8, or at least South of the 54 or the 94. They don't have to go North anymore. They can stay South in a very nice safe clean place."

Once the new Port of Entry in Otay Mesa East opens in 2017, Blair believes that ill patients in Tijuana will also benefit from *A Green Alternative*'s dispensary. They will need to have a valid ID that shows their residency in California and they'll need to get their recommendation within California. The laws, however, will still mean that those who live in Tijuana can bring their medicinal marijuana into Mexico, but they cannot bring it across into the United States.

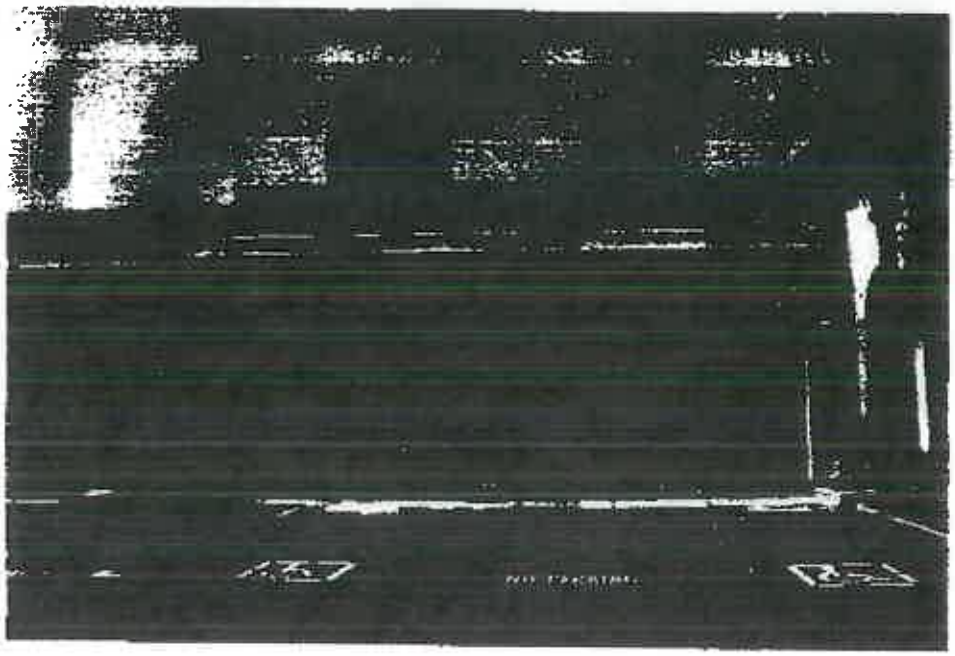
Addressing the problem of illegal marijuana coming from Mexico into the United States, Blair explained, "What is happening, because there is such a growth market in this industry, the Mexican cartels are getting out of marijuana. It was crap anyway. Full of stem seeds and everything else you wouldn't want. It was just crap. So instead, they're growing poppies. They're changing with the demands."

A Strain Named For SD City Official

As business continues to boom, Blair is the partner who gives the interviews. Media coverage has been heavy and *Playboy* plans to interview him as well.

Blair believes in his product and believes history is on his side. He credits his currently success mostly on his ability to develop good relationships with people. He developed many relationships with City officials along the way and even named a strain of marijuana after one of the most helpful SD city officials. Blair said she was happy to have the strain named after her.

You can find them at: http://www.agreenalternative.org/



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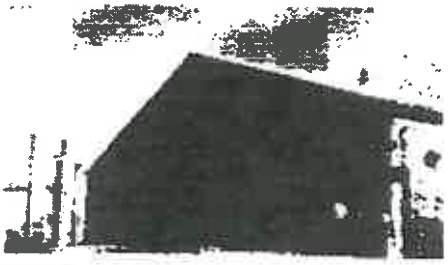
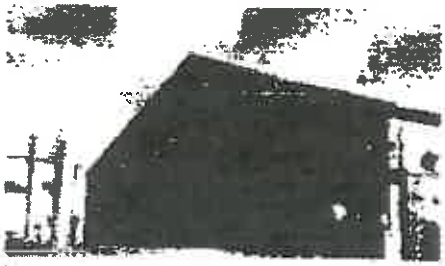
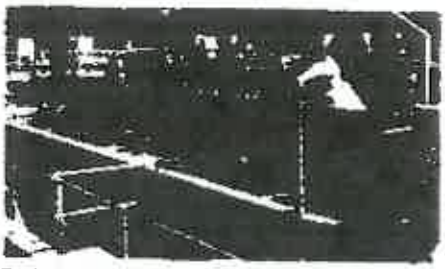


Otay Water District General Manager



Otay Water District



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Viridis
Law Group

Medical Marijuana Regulation and Safety Act

Approved by the California State Legislature: September 11, 2015
Governor Jerry Brown must sign by October 11, 2015.

WHO'S IN CHARGE?

- The Bureau of Medical Marijuana Regulation, within the Department of Consumer Affairs
- The Chief, appointed by the Governor to be approved by 2/3 vote from the Senate.

STATE AGENCIES ADMINISTERING LICENSES:

The Bureau of Medical Marijuana Regulation shall determine the general rules and regulations related to issuing licenses. The following State Agencies will issue licenses:

- **Department of Consumer Affairs**: Dispensaries, Delivery, Storage, Distribution & Sale.
- **Department of Public Health**: Manufacturing & Testing
- **Department of Food & Agriculture**: Cultivation

Other agencies involved in issuing regulations & enforcement:

- California's Environmental Protection Agency; California Natural Resources Agency; State Water Resources Control Board; Dept. of Fish & Wildlife; and Dept. of Pesticide Regulation

OPERATION REQUIREMENTS:

(1) Local permit, or license, or other authorization from local City or County; &

(2) State license from designated licensing authority

KEY PROVISIONS:

- 12 license types with safeguards *against* vertical integration.
- For-profit entities allowed. Upon the issuance of state licenses, state law relating to collectives & cooperatives (S.B.420) and will be repealed one year after issuance of licenses.
- Patients will *not* be allowed to sell, distribute, donate or provide medical cannabis. Patients may cultivate up to 100 sq. ft. & Caregivers up to 500 sq. ft. (for 5 patients). However, local cultivation bans *will* apply to patients & caregivers.
- New regulations for pesticides, water, electricity, & land use regulations.
- Track & Trace program to be implemented to track seed to sale to transactions.
- New packaging and warning requirements.
- New regulations for Doctors recommending medical cannabis.
- Counties may tax medical marijuana activities.

20320 S.W. Birch Street Second Floor Newport Beach CA 92660 Office 949-221-1000

- Unless specifically provided for under the law, a person or entity holding a state license is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

Convictions:

The licensing authority may deny an applicant based on conviction if:

- The offense is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made.

- The following will be considered in determining what is "substantially related":

  (1) A felony conviction for illegal sale, possession for sale, manufacture, transportation, or cultivation of a controlled substance.

  (2) A violent felony conviction.

  (3) A serious felony conviction.

  (4) A felony conviction involving fraud, deceit, or embezzlement.

- Review of the nature of the crime, the conviction, circumstances, and evidence of rehabilitation will be considered.

- An applicant will *not be denied solely* based on the above convictions if the applicant provides either:

  (1) A certificate of rehabilitation; *or*

  (2) Evidence that the conviction was dismissed.

EXEMPTIONS & PROVISIONAL LICENSING:

The following sections provide special regulations for businesses in current compliance:

(1) **Prior to July 1, 2015:** If a local jurisdiction adopted an ordinance allowing businesses to cultivate, manufacture, and dispense medical cannabis, then applicants operating in such jurisdiction shall not be subject to the cap of two (2) license types if it meets all of the following conditions:

(1) All commercial cannabis activity was being conducted by a single qualified business;

(2) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products *on July 1, 2015*, and has *continuously* done so since that date;

(3) The business has been in full compliance with all applicable local ordinances; and

(4) The business is registered with the State Board of Equalization.[4]

NOTE: All cultivation or manufacturing is not required to occur within the bounds of a local jurisdiction, but this activity must have commenced prior to July 1, 2015, and must be done in full compliance with local ordinances in which the activities are engaged.[5]

[4] AB 266 - § 19328 (c)(1)
[5] AB 266 - § 19328 (c)(2)

(II) **On or before January 1, 2018:** A facility or entity *operating in compliance with local zoning ordinances, as well as state and local requirements* may continue operations until its state license application is approved or denied.

(1) State agencies will prioritize those who can "demonstrate to the ***authority's satisfaction*** that it was in *operation and in good standing* with the local jurisdiction by **January 1, 2016.**"[6]

LOCAL CULTIVATION ORDINANCES:

If a city or county does not expressly, or under permissive zoning, or chooses not to administer a conditional use permit program for the cultivation of medical cannabis, then commencing on March 1, 2016, the State Dept. of Agriculture will be the sole licensing authority for medical cannabis cultivation applicants in that city, county or city and county.[7]

PACKAGING & LABELING OF EDIBLE MEDICAL CANNABIS:

- Labeled in tamper-evident package.
- Packaging must not be attractive to children.
- Only generic food names may be used to describe edible medical cannabis products.
- The following information, prominently displayed and in clear and legible font:
  1) Manufacture date & source.
  2) The statement: "SCHEDULE I CONTROLLED SUBSTANCE."
  3) The statement: "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.
  4) The statement: "FOR MEDICAL USE ONLY."
  5) The statement: "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."
  6) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."
  7) For packages containing only dried cannabis, the net weight of medical cannabis in the package.
  8) A warning if nuts or other known allergens are used.
  9) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.
  10) Clear indication, in bold type, that the product contains medical cannabis.
  11) Identification of the source and date of cultivation and manufacture.
  12) Information associated with the unique identifier issued by the Department of Food and Agriculture.

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[6] AB 266 - § 19321 (c)
[7] AB 243-§ 11362.77 (c)(4)

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004634

CONDITONAL USE PERMIT NO. 1298258
A GREEN ALTERNATIVE MMCC PROJECT NO. 368304
PLANNING COMMISSION

This Conditional Use Permit No. 1298258 is granted by the Planning Commission of the City of San Diego to ROLL DRIVE LIMITED PARNERSHIP, Owner and DAVID R. BLAIR, DOUGLAS CRISTOFO AND ZACH LAZARUS Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 2.47-acre site is located at 2335 Roll Drive, Suite 4 in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area. The project site is legally described as: Lots 12 and 15 of Otay International Center Lot No. 5, Map No. 11897, filed in the Office of the County Recorder of San Diego County, September 17, 1987.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 29, 2015, on file in the Development Services Department.

The project shall include:

a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story commercial building on a 2.47 acre property;

b. Existing landscaping (planting, irrigation and landscape related improvements);

c. Existing off-street parking;

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8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" conditions(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

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required to be posted on the outside of the MMCC and shall only contain the name of the business.

24. The MMCC shall comply with all conditions and requirements of Otay Mesa Development Permit No. 91-0145.

POLICE DEPARTMENT RECOMMENDATION:

25. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code-section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on January 29, 2015 and Resolution No. PC-4651.

ORIGINAL

DOUGLAS CRISTOFO
Permittee

By _____
Douglas Cristofo
Permittee

ZACH LAZARUS
Permittee

By _____
Zach Lazarus
Permittee

NOTE: Notary acknowledgments must be attached per Civil Code section 1189 et seq.

ORIGINAL

PLANNING COMMISSION
RESOLUTION NO. PC-4651
CONDITONAL USE PERMIT NO. 1298258
A GREEN ALTERNATIVE MMCC PROJECT NO. 368304

WHEREAS, ROLL DRIVE LIMITED PARNERSHIP, Owner and DAVID R. BLAIR, DOUGLAS CRISTOFO AND ZACH LAZARUS Permittees, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story commercial building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1298258), on portions of a 2.47-acre site;

WHEREAS, the project site is located at 2335 Roll Drive, Suite 4 in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area;

WHEREAS, the project site is legally described as Lots 12 and 15 of Otay International Center Lot No. 5, Map No. 11897, filed in the Office of the County Recorder of San Diego County, September 17, 1987;

WHEREAS, on January 29, 2015, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 1298258 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on August 14, 2014, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures); and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated January 29, 2015.

FINDINGS:

Conditional Use Permit Approval – Section §126.0305

1. The proposed development will not adversely affect the applicable land use Plan.

The proposed project is a request for a Conditional Use Permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story, commercial building. The 2.47-acre site is located at 2335 Roll Drive in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area. The site is within a retail shopping center, 0.2 miles north of the International Port of Entry with Mexico. The shopping center includes a variety of general and specialty shops and a 4,000 square foot restaurant.

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years, however may be revoked if the use violates the terms, conditions, lawful requirements, or provisions of the permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area and therefore, the proposed MMCC will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed 1,406 square foot Medical Marijuana Consumer Cooperative (MMCC) located at 2335 Roll Drive is within an existing 14,090 square foot retail commercial shopping center that includes a variety of general and specialty shops and a 4,000 square foot restaurant on 2.47-acre site. The existing shopping center is in the IL-3-1 Zone and was developed per Otay Mesa Development Permit No. 91-0145 and approved Building Permit No. B-002336-91. The 1,406 square foot tenant space for the MMCC is currently vacant. The project proposes interior improvements to include a check-in counter, waiting room, dispensary area, employee lounge and restroom. No public improvements are required and no deviations are proposed.

MMCC's are allowed in the IL-3-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCC's to comply with SDMC, section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCC's prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, operable cameras and a metal detector to the satisfaction of the San Diego Police Department, alarms, and an armed security guard (the arming of the guard is subject to the satisfaction of the Development Services Department, the San Diego Police Department, and the Office of the City Attorney). The security guard shall be licensed by the State of California and be on the premises 24 hours a day, seven days a week. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The existing commercial shopping center developed per Otay Mesa Development Permit No. 91-0145 and approved Building Permit No. B-002336-91 is in compliance with development regulations and building conditions. The proposed MMCC is consistent with the land use designation of Heavy Commercial. The proposed MMCC meets all development regulations, no deviations are requested, and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code. The proposed MMCC therefore complies with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The proposed 1,406 square foot Medical Marijuana Consumer Cooperative (MMCC) located at 2335 Roll Drive is within an existing 14,090 square foot retail commercial shopping center that includes a variety of general and specialty shops and a 4,000 square foot restaurant. The 2.47-acre site is in the IL-

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.

personally appeared Michael A. Vogt

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1943432
Notary Public - California
San Diego County
My Comm. Expires July 9, 2015

Signature M. Gutierrez

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of C.U.P. No 1298258 A Green Alternative

containing 4 pages, and dated

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) _____ Title(s)
- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: _____ Name(s) of Person(s) or Entity(ies) Signed For

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

- ✓ form(s) of identification
- credible witness(es)

Notarial event is recorded in notary journal on:

Page # 43 Entry # 4

Notary contact: M. Gutierrez

Other

- Additional Signer(s)
- Signer(s) Thumbprint(s)

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.

(Here insert name and title of the officer)

personally appeared David Robert Blair

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1943432
Notary Public - California
San Diego County
My Comm. Expires July 9, 2015

Signature M. Gutierrez

(Seal)

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- ☐ Guardian/Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other

representing:

(Name(s) of person(s) or entity(ies) signer is representing)

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

☑ Form(s) of identification ☐ Credible witness(es)

Notarial event is detailed in notary journal on:

Page # 43 Entry # 5

Notary contact M. Gutierrez

Other

Additional signer(s) ☐ Signer(s) thumbprint(s)

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.

personally appeared Lachary Theodore Lazarus

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1943432
Notary Public - California
San Diego County
My Comm. Expires July 9, 2015

Signature M. Gutierrez

(Seal)

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containing 4 pages, and dated

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- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s)
- ☐ Guardian/Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other

representing:

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence: ☑ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on Page # 45 Entry # 2

Notary contact:

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.
(Here insert name and title of the officer)

personally appeared Douglas Cristofo

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1943432
Notary Public - California
San Diego County
My Comm. Expires July 9, 2015

Signature M. Gutierrez

(Seal)

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Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document

titled/for the purpose of C.U.P. NO. 1298258
A Green Alternative

containing ___ pages, and dated ___

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s) ___
  (Title)
- ☐ Guardian/Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other: ___

representing: ___
(Name of Person(s) or Entity(ies) Signer(s) Represents)

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
- ☑ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:
Page # 45 Entry # 1

Notary contact M. Gutierrez

Other

Additional Signer(s) ☐ Signer(s) Thumbprint(s)

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.
(here insert name and title of the officer)

personally appeared Douglas Cristofo

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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M. GUTIERREZ
COMM. #1943432
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San Diego County
My Comm. Expires July 9, 2015

Signature M. Gutierrez

(Seal)

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Description of Attached Document

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containing _____ pages, and dated _____

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- ☐ Individual(s)
- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s) _____ Title(s)
- ☐ Guardian/Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other: _____

representing: _____ Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

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Page # 45 Entry # 1

Notary contact: M. Gutierrez

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐ _____

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RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES
PERMIT INTAKE, MAIL STATION 501

PROJECT MANAGEMENT
PERMIT CLERK
MAIL STATION 501

SPACE ABOVE THIS LINE FOR RECORDER'S USE

INTERNAL ORDER NUMBER: 24004634

CONDITIONAL USE PERMIT NO. 1298258
A GREEN ALTERNATIVE MMCC PROJECT NO. 368304
PLANNING COMMISSION

This Conditional Use Permit No. 1298258 is granted by the Planning Commission of the City of San Diego to ROLL DRIVE LIMITED PARNERSHIP, Owner and DAVID R. BLAIR, DOUGLAS CRISTOFO AND ZACH LAZARUS Permittees, pursuant to San Diego Municipal Code [SDMC] section 126.0305. The 2.47-acre site is located at 2335 Roll Drive, Suite 4 in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area. The project site is legally described as: Lots 12 and 15 of Otay International Center Lot No. 5, Map No. 11897, filed in the Office of the County Recorder of San Diego County, September 17, 1987.

Subject to the terms and conditions set forth in this Permit, permission is granted to Owner/Permittee to operate a Medical Marijuana Consumer Cooperative (MMCC) and subject to the City's land use regulations, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated January 29, 2015, on file in the Development Services Department.

The project shall include:

a. Operation of a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story commercial building on a 2.47 acre property;

b. Existing landscaping (planting, irrigation and landscape related improvements);

c. Existing off-street parking;

ORIGINAL

8. Issuance of this Permit by the City of San Diego does not authorize the Owner/Permittee for this Permit to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).

9. The Owner/Permittee shall secure all necessary building permits. The Owner/Permittee is informed that to secure these permits, substantial building modifications and site improvements may be required to comply with applicable building, fire, mechanical, and plumbing codes, and State and Federal disability access laws.

10. Construction plans shall be in substantial conformity to Exhibit "A." Changes, modifications, or alterations to the construction plans are prohibited unless appropriate application(s) or amendment(s) to this Permit have been granted.

11. All of the conditions contained in this Permit have been considered and were determined necessary to make the findings required for approval of this Permit. The Permit holder is required to comply with each and every condition in order to maintain the entitlements that are granted by this Permit.

If any condition of this Permit, on a legal challenge by the Owner/Permittee of this Permit, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Permit shall be void. However, in such an event, the Owner/Permittee shall have the right, by paying applicable processing fees, to bring a request for a new permit without the "invalid" condition(s) back to the discretionary body which approved the Permit for a determination by that body as to whether all of the findings necessary for the issuance of the proposed permit can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo, and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed permit and the condition(s) contained therein.

12. The Owner/Permittee shall defend, indemnify, and hold harmless the City, its agents, officers, and employees from any and all claims, actions, proceedings, damages, judgments, or costs, including attorney's fees, against the City or its agents, officers, or employees, relating to the issuance of this permit including, but not limited to, any action to attack, set aside, void, challenge, or annul this development approval and any environmental document or decision. The City will promptly notify Owner/Permittee of any claim, action, or proceeding and, if the City should fail to cooperate fully in the defense, the Owner/Permittee shall not thereafter be responsible to defend, indemnify, and hold harmless the City or its agents, officers, and employees. The City may elect to conduct its own defense, participate in its own defense, or obtain independent legal counsel in defense of any claim related to this indemnification. In the event of such election, Owner/Permittee shall pay all of the costs related thereto, including without limitation reasonable attorney's fees and costs. In the event of a disagreement between the City and Owner/Permittee regarding litigation issues, the City shall have the authority to control the litigation and make litigation related decisions, including, but not limited to, settlement or other disposition of the matter. However, the Owner/Permittee shall not be required to pay or perform any settlement unless such settlement is approved by Owner/Permittee.

ORIGINAL

required to be posted on the outside of the MMCC and shall only contain the name of the business.

24. The MMCC shall comply with all conditions and requirements of Otay Mesa Development Permit No. 91-0145.

POLICE DEPARTMENT RECOMMENDATION:

25. The San Diego Police Department recommends that a Crime Prevention Through Environmental Design (CPTED) review be requested by their department and implemented for the MMCC.

INFORMATION ONLY:

- The issuance of this discretionary use permit alone does not allow the immediate commencement or continued operation of the proposed use on site. The operation allowed by this discretionary use permit may only begin or recommence after all conditions listed on this permit are fully completed and all required ministerial permits have been issued and received final inspection.

- Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Permit, may protest the imposition within ninety days of the approval of this development permit by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

- This development may be subject to impact fees at the time of construction permit issuance.

APPROVED by the Planning Commission of the City of San Diego on January 29, 2015 and Resolution No. PC-4651

ORIGINAL

DOUGLAS CRISTOFO
Permittee

By _____
Douglas Cristofo
Permittee

ZACH LAZARUS
Permittee

By _____
Zach Lazarus
Permittee

NOTE: Notary acknowledgments must be attached per Civil Code section 1189 et seq.

ORIGINAL

PLANNING COMMISSION
RESOLUTION NO. PC-4651
CONDITONAL USE PERMIT NO. 1298258
A GREEN ALTERNATIVE MMCC PROJECT NO. 368364

WHEREAS, ROLL DRIVE LIMITED PARNERSHIP, Owner and DAVID R. BLAIR, DOUGLAS CRISTOFO AND ZACH LAZARUS Permittees, filed an application with the City of San Diego for a permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story commercial building (as described in and by reference to the approved Exhibits "A" and corresponding conditions of approval for the associated Permit No. 1298258), on portions of a 2.47-acre site;

WHEREAS, the project site is located at 2335 Roll Drive, Suite 4 in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area;

WHEREAS, the project site is legally described as Lots 12 and 15 of Otay International Center Lot No. 5, Map No. 11897, filed in the Office of the County Recorder of San Diego County, September 17, 1987;

WHEREAS, on January 29, 2015, the Planning Commission of the City of San Diego considered Conditional Use Permit No. 1298258 pursuant to the Land Development Code of the City of San Diego;

WHEREAS, on August 14, 2014, the City of San Diego, as Lead Agency, through the Development Services Department, made and issued an Environmental Determination that the project is exempt from the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et. seq.) under CEQA Guidelines Section 15303 (New Construction or Conversion of Small Structures), and there was no appeal of the Environmental Determination filed within the time period provided by San Diego Municipal Code Section 112.0520;

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of San Diego as follows:

That the Planning Commission adopts the following written Findings, dated January 29, 2015.

FINDINGS:

Conditional Use Permit Approval – Section §126.0305

1. **The proposed development will not adversely affect the applicable land use Plan.**

The proposed project is a request for a Conditional Use Permit to operate a Medical Marijuana Consumer Cooperative (MMCC) in a 1,406 square foot tenant space within an existing 14,090 square foot, one-story, commercial building. The 2.47-acre site is located at 2335 Roll Drive in the IL-3-1 Zone and Airport Influence Area (Brown Field) within the Otay Mesa Community Plan Area. The site is within a retail shopping center, 0.2 miles north of the International Port of Entry with Mexico. The shopping center includes a variety of general and specialty shops and a 4,000 square foot restaurant.

ORIGINAL

years, however may be revoked if the use violates the terms, conditions, lawful requirements, or provisions of the permit.

The referenced regulations and conditions have been determined as necessary to avoid adverse impact upon the health, safety and general welfare of persons patronizing, residing or working within the surrounding area and therefore, the proposed MMCC will not be detrimental to the public health, safety and welfare.

3. The proposed development will comply with the regulations of the Land Development Code including any allowable deviations pursuant to the Land Development Code.

The proposed 1,406 square foot Medical Marijuana Consumer Cooperative (MMCC) located at 2335 Roll Drive is within an existing 14,090 square foot retail commercial shopping center that includes a variety of general and specialty shops and a 4,000 square foot restaurant on 2.47-acre site. The existing shopping center is in the IL-3-1 Zone and was developed per Otay Mesa Development Permit No. 91-0145 and approved Building Permit No. B-002336-91. The 1,406 square foot tenant space for the MMCC is currently vacant. The project proposes interior improvements to include a check-in counter, waiting room, dispensary area, employee lounge and restroom. No public improvements are required and no deviations are proposed.

MMCC's are allowed in the IL-3-1 Zone with a Conditional Use Permit (CUP). The CUP requires MMCC's to comply with SDMC, section 141.0614 which requires a 1,000 foot separation, measured between property lines, from; public parks, churches, child care centers, playgrounds, libraries, minor-oriented facilities, other medical marijuana consumer cooperatives, residential care facilities, and schools. There is also a minimum distance requirement of 100 feet from a residential zone. In addition to minimum distance requirements, MMCC's prohibit consultations by medical professionals on site and do not allow certain types of vending machines. Security requirements include interior and exterior lighting, operable cameras and a metal detector to the satisfaction of the San Diego Police Department, alarms, and an armed security guard (the arming of the guard is subject to the satisfaction of the Development Services Department, the San Diego Police Department, and the Office of the City Attorney). The security guard shall be licensed by the State of California and be on the premises 24 hours a day, seven days a week. Hours of operation are limited from 7:00 a.m. to 9:00 p.m. seven days a week. MMCC's must also comply with Chapter 4, Article 2, Division 15 which provides guidelines for lawful operation.

The existing commercial shopping center developed per Otay Mesa Development Permit No. 91-0145 and approved Building Permit No. B-002336-91 is in compliance with development regulations and building conditions. The proposed MMCC is consistent with the land use designation of Heavy Commercial. The proposed MMCC meets all development regulations, no deviations are requested, and the permit as conditioned assures compliance with all the development regulations of the San Diego Municipal Code. The proposed MMCC therefore complies with the regulations of the Land Development Code.

4. The proposed use is appropriate at the proposed location.

The proposed 1,406 square foot Medical Marijuana Consumer Cooperative (MMCC) located at 2335 Roll Drive is within an existing 14,090 square foot retail commercial shopping center that includes a variety of general and specialty shops and a 4,000 square foot restaurant. The 2.47-acre site is in the IL-

ORIGINAL

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.

personally appeared Michael A. Vust

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1954452
Notary Public - California
San Diego County
My Comm. Expires July 5, 2015

Signature M. Gutierrez

(Seal)

OPTIONAL INFORMATION

Description of Attached Document

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containing 4 pages, and dated

The signer(s) capacity or authority is/are as:

- Individual(s)
- Corporate Officer(s)
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Other

representing:

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

Notary event detailed in notary journal on:

Page # 113 Entry # 4

Notary contact: M. Gutierrez

Other

Signer(s) Other than Named Above

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.
(Here insert name and title of the officer)

personally appeared David Robert Blair

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1943942
Notary Public - California
San Diego County
My Comm. Expires Jan 1, 2018

Signature M. Gutierrez

(Seal)

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representing: _____
(Name of Person(s) or Entity(ies) Signer is Representing)

Additional Information

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Notary contact: M. Gutierrez

Other:

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.

(Here insert name and title of the officer)

personally appeared Zachary Theodore Lazarus

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1985452
Notary Public - California
San Diego County
My Comm. Expires July 1, 2015

Signature M. Gutierrez

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of C.U.P. NO. 1398058 A Green Alternative

containing 4 pages, and dated

The signer(s) capacity or authority is/are as:

☑ Individual(s)

☐ Attorney-in-Fact

☐ Corporate Officer(s)

(Title)

☐ Guardian/Conservator

☐ Partner - Limited/General

☐ Trustee(s)

☐ Other:

representing:

(Name of person(s) or entity(ies))

(Signature(s))

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:

☑ Form(s) of identification ☐ Credible witness(es)

Notarial Event detailed in notary journal on:

Page # 45 Entry # 2

Notary Log #

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me, Minerva Gutierrez, N.P.
(Insert name and title of the officer)

personally appeared Douglas Cristofo

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

M. GUTIERREZ
COMM. #1948482
Notary Public - California
San Diego County
My Comm. Expires Jan 6, 2018

Signature M. Gutierrez

(Seal)

OPTIONAL INFORMATION

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of C.U.P. NO 1998258 A Green Alternative

containing ____ pages, and dated ____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s) ____
  (Title)
- ☐ Guardian or Conservator
- ☐ Partner - Limited/General
- ☐ Trustee(s)
- ☐ Other: ____

representing: ____
(Name of Person(s) or Entity(ies) Signer is Representing)

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
✓ Form(s) of identification ☐ Credible witness(es)

Notarial Event is described in notary journal as:
Page # 45 Entry # 1

Notary contact: M. Gutierrez

Other:

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐

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CALIFORNIA ALL-PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

State of California)

County of San Diego)

On February 3, 2015 before me Minerva Gutierrez N.P.
(Here insert name and title of the officer)

personally appeared Douglas Cristofo

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

M. GUTIERREZ
COMM. #1943832
Notary Public - California
San Diego County
My Comm. Expires Jan 3, 2016

Signature M. Gutierrez

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of C.U.P NO. 129 8258 A Green Alternative

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
- ☐ Attorney-in-Fact
- ☐ Corporate Officer(s) _____
  Title(s)
- ☐ Guardian or Conservator
- ☐ Partner - Limited General
- ☐ Trustee(s)
- ☐ Other _____

Representing: _____
Name(s) of Person(s) or Entity(ies) Signer(s) Represents

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on
Page # 45 Entry # 1

Notary contact: M. Gutierrez

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

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DISPLAY CONSPICUOUSLY AT PLACE OF BUSINESS FOR WHICH ISSUED

CALIFORNIA STATE BOARD OF EQUALIZATION

SELLER'S PERMIT

ACCOUNT NUMBER

04/09/2014 SR FH 102-654957

A GREEN ALTERNATIVE COOPERATIVE, INC.
2335 ROLL DR STE 4
SAN DIEGO, CA 92154-7274

NOTICE TO PERMITTEE: You are required to obey all Federal and State laws that regulate or control your business. This permit does not allow you to do otherwise.

IS HEREBY AUTHORIZED PURSUANT TO SALES AND USE TAX LAW TO ENGAGE IN THE BUSINESS OF SELLING TANGIBLE PERSONAL PROPERTY AT THE ABOVE LOCATION. THIS PERMIT IS VALID ONLY AT THE ABOVE ADDRESS.

THIS PERMIT IS VALID UNTIL REVOKED OR CANCELED AND IS NOT TRANSFERABLE. IF YOU SELL YOUR BUSINESS OR DROP OUT OF A PARTNERSHIP, NOTIFY US OR YOU COULD BE RESPONSIBLE FOR SALES AND USE TAXES OWED BY THE NEW OPERATOR OF THE BUSINESS.

Not valid at any other address

For general tax questions, please call our Information Center at 800-400-7115.
For information on your rights, contact the Taxpayers' Rights Advocate Office at 888-324-2798 or 916-324-2798.

RCE-440-R REV. 15 (2-08)

A MESSAGE TO OUR NEW PERMIT HOLDER

As a seller, you have rights and responsibilities under the Sales and Use Tax Law. In order to assist you in your endeavor and to better understand the law, we offer the following sources of help:

- Visiting our website at www.boe.ca.gov
- Visiting a district office
- Attending a Basic Sales and Use Tax Law class offered at one of our district offices
- Sending your questions in writing to any one of our offices
- Calling our toll-free Information Center at 800-400-7115

As a seller, you have the right to issue resale certificates for merchandise that you intend to resell. Conversely, you have the responsibility of not misusing resale certificates. While the sales tax is imposed upon the retailer,

- You have the right to seek reimbursement of the tax from your customer
- You are responsible for filing and paying your sales and use tax returns timely
- You have the right to be treated in a fair and equitable manner by the employees of the Board
- You are responsible for following the regulations set forth by the Board

As a seller, you are expected to maintain the normal books and records of a prudent businessperson. You are required to maintain these books and records for no less than four years, and make them available for inspection by a Board representative when requested. You are also expected to notify us if you are buying, selling, adding a location, or discontinuing your business, adding or dropping a partner, officer, or member, or when you are moving any or all of your business locations. If it becomes necessary to surrender this permit, you should only do so by mailing it to a Board office, or giving it to a Board representative.

If you would like to know more about your rights as a taxpayer, or if you are unable to resolve an issue with the Board, please contact the Taxpayers' Rights Advocate Office for help by calling toll-free, 888-324-2798 or 916-324-2798. Their fax number is 916-323-3319.

Please post this permit at the address for which it was issued and at a location visible to your customers.

STATE BOARD OF EQUALIZATION
Sales and Use Tax Department

Martin Reeder

From:	Chamber, National City President/CEO
Sent:	Monday, December 14, 2015 2:19 PM
To:	Leah Munoz; Denise Davis
Cc:	Martha Bolanos
Subject:	Fwd: SDPD Review + Economic Impact Statement - Cultivation
Attachments:	CPTED Green Alternative MMCC-2.pages; ATT00001.htm; NC_Economic Impact Statement_Cultivation .pages; ATT00002.htm

Not able to open 12/16/15. MR.

Please forward to City Council and Planning Commission. Thank you,

Sent from my iPad

Begin forwarded message:

From: "David Blair" <dr.d.blair@gmail.com>
To: "Jacqueline Reynoso" <reynoso@nationalcitychamber.org>
Subject: Fwd: SDPD Review + Economic Impact Statement - Cultivation

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154ank
619.980.0777

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---------- Forwarded message ----------
From: **David Blair** <dr.d.blair@gmail.com>
Date: Sat, Dec 12, 2015 at 7:53 PM
Subject: SDPD Review + Economic Impact Statement - Cultivation
To: reynosso@nationalcitychamber.org

Hi Jacqueline:

Attached is the SDPD findings and recommendations from 2015. The NCPD familiarity is limited to illegal operations. I also have provided the requested Economic Impact Statement. Thank you again.

See you soon.

David

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777

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Martin Reeder

From:	Chamber, National City President/CEO
Sent:	Monday, December 14, 2015 2:20 PM
To:	Leah Munoz; Denise Davis
Subject:	Fwd: Dr. Mark L. Rabe recommendation + Science of MMJ
Attachments:	Dr. Mark Rabe_Letter of Recommendation + Science.pdf; ATT00001.htm

Last one. Thank you for forwarding to CITY Council and Planning Commission.

Sent from my iPad

Begin forwarded message:

From: David Blair <dr.d.blair@gmail.com>
Date: December 14, 2015 at 1:11:41 PM PST
To: Jacqueline Reynoso <reynoso@nationalcitychamber.org>
Subject: Fwd: Dr. Mark L. Rabe recommendation + Science of MMJ

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777

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---------- Forwarded message ----------
From: **David Blair** <dr.d.blair@gmail.com>
Date: Sat, Dec 12, 2015 at 8:54 PM
Subject: Dr. Mark L. Rabe recommendation + Science of MMJ
To: reynosso@nationalcitychamber.org

Jacqueline:

One last document. The Council members seemed impressed that we work with a true professional. Here's his letter providing the science of medical cannabis, and at the same time shares his experience about us. We are truly dedicated to providing our patients with outstanding service and up-to-date and relevant science to promote their health choices.

David

Dr. David R. Blair
dr.d.blair@gmail.com
Founding CEO/Board chair
A Green Alternative MMCC, Inc.
2335 Roll Drive, Suite 4
San Diego, CA 92154
619.980.0777

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Centric Wellness™
Holistic. Health. Care.

January 18, 2015

Dear San Diego Planning Commission,

In your consideration of the issuance of Conditional Use Permits, I would like to endorse Dr. David Blair and Mr. Douglas Cristofo, owners of *Blossom San Diego Delivery Services*, and I respectfully request that their application to establish *A Green Alternative* dispensary be given due consideration and approval.

As an integrative medicine physician and cannabinoid medicine specialist with three decades of practice experience, I have many patients who use medical cannabis to effectively treat a variety of medical conditions. According to the FDA, approx. 120,000 Americans die each year due to FDA-approved prescription drugs, and another 600,000 have other serious adverse outcomes from their use. It is no surprise that many patients seek out safer, more natural treatment options that have fewer side effects.

The cannabinoid components of the marijuana plant such as THC and CBD have been well-documented in the medical literature to possess broad anti-inflammatory, anti-oxidant, neuro-protective, and anti-cancerous properties. Accordingly, medical cannabis works very effectively to treat a variety of medical conditions, including chronic pain, anxiety, depression, insomnia, cancer, diabetes complications, and others. However, in order to obtain these benefits, patients need safe and reliable facilities, run by qualified individuals, where they can obtain quality medicine, and receive patient education. The same need puts nationwide drug store chain locations specifically into densely populated areas.

Through patients I have known David and Doug for over three years. Their business, *Blossom San Diego Delivery Services*, is a shining example of an organization that is trying to do things right. They offer patients a variety of tested products, including an emphasis on smoke-free and products high in CBD, a non-psychoactive cannabinoid, that has many unique benefits. They, and their staff, are also very caring and compassionate individuals.

As an example, I have a patient who is completely blind. He has been my patient for over five years now. When he first started seeing me, he would need to take the bus to my office, and this was very difficult for him. Since he found Blossom San Diego a couple years ago, they now pick him up and bring him to my office. Patients who are new to medical cannabis often comment about how impressed they were by the education that they received from *Blossom San Diego*.

In conclusion, I believe that the owners of *Blossom San Diego Delivery Services/ A Green Alternative* have a proven track record of business ability, integrity, and compassion. I feel that their presence through the establishment of a physical facility will be a benefit to both patients and to the community.

Sincerely,

Mark L. Rabe, MD, ABIHM

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CITY OF NATIONAL CITY
Office of the City Clerk
1243 National City Blvd., National City, California 91950
619-336-4228 phone / 619-336-4229 fax

Michael R. Dalla, CMC - City Clerk

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the City Council of the City of National City will hold a Public Hearing after the hour of 6:00 p.m., **Tuesday, January 5, 2016**, in the City Council Chambers, Civic Center, 1243 National City Blvd., National City, CA., to consider:

CITY COUNCIL CONSIDERATION OF THE RECOMMENDATION BY THE CITY OF NATIONAL CITY PLANNING COMMISSION THAT THE CITY COUNCIL ADOPT AN ORDINANCE TO AMEND TITLE 18 (ZONING) ADDING SECTION 18.30.345 TO REGULATE THE CULTIVATION OF MEDICAL MARIJUANA AND TO NOT ADOPT AN ORDINANCE TO AMEND TITLE 18 (ZONING) ADDING SECTION 18.30.345 TO PROHIBIT THE CULTIVATION OF MEDICAL MARIJUANA; CITY COUNCIL MAY APPROVE, MODIFY OR DISAPPROVE THE RECOMMENDATION OF THE PLANNING COMMISSION; BOTH ORDINANCES PREVIOUSLY BEFORE THE PLANNING COMMISSION (REGULATION AND PROHIBITION) MAY BE CONSIDERED BY THE CITY COUNCIL AT THIS PUBLIC HEARING.

The Planning Commission conducted a public hearing at their meeting of December 7, 2015 and voted 4-3 to recommend adoption of an Ordinance providing for the cultivation of marijuana for qualified patients and primary caregivers.

Anyone interested in this matter may appear at the above time and place and be heard.

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the Public Hearing described in this notice, or in written correspondence delivered to the undersigned, or to the City Council of the City of National City at, or prior to, the Public Hearing.

December 16, 2015

Michael R. Dalla, CMC
City Clerk

The following page(s) contain the backup material for Agenda Item: An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to prohibit cultivation of marijuana. (Applicant: City-Initiated) (Case File 2015-25 A) (Planning)

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: January 5, 2016 **AGENDA ITEM NO.**

ITEM TITLE:

An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to prohibit cultivation of marijuana. (Applicant City-Initiated) (Case File 2015-25 A)

PREPARED BY: Martin Reeder, AICP **DEPARTMENT:** Planning

PHONE: 619-336-4313 **APPROVED BY:**

EXPLANATION:

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect on March 1, 2016. If the City Council wishes to prohibit the cultivation of marijuana, the attached Ordinance should be introduced.

The City Council held a public hearing on January 5, 2016, at which time they considered a recommendation by the City of National City Planning Commission that the City Council adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to regulate the cultivation of medical marijuana and to not adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to prohibit the cultivation of medical marijuana. If the City Council wishes to instead prohibit marijuana cultivation, introduction of the attached Ordinance will fulfill that action.

If the City Council wishes to regulate marijuana cultivation, this Ordinance should not be introduced. An Ordinance for regulation is included for introduction on this same agenda.

FINANCIAL STATEMENT: **APPROVED:** _____ Finance

ACCOUNT NO. N/A **APPROVED:** _____ MIS

ENVIRONMENTAL REVIEW:

Not a project per CEQA

ORDINANCE: **INTRODUCTION:** [X] **FINAL ADOPTION:** [ ]

STAFF RECOMMENDATION:

Introduce a prohibitory Ordinance

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

Ordinance prohibiting marijuana cultivation

ORDINANCE NO. 2016 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE TO PROHIBIT CULTIVATION OF MARIJUANA

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment; and

WHEREAS, the Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

<u>18.30.345 Medical Marijuana Cultivation</u>.

A. Prohibition

1. Cultivation of marijuana for medicinal purposes is prohibited.

2. Cultivation of marijuana is prohibited regardless of purpose.

B. Definitions. For the purpose of this Section the following definitions shall apply:

1. Cultivation of marijuana shall mean the planting, growing, cultivating, harvesting, drying, or processing of marijuana.

2. For purposes of this section, "marijuana" shall have the same meaning as the definition of that word in Section 11018 of the California Health and Safety Code.

Section 2. The proposed amendment is exempt from the California Environmental Quality Act ("CEQA") under section 15061(b)(3) – general rule; the project is not considered a project under CEQA as there is no possibility that the activity in question may have a significant

impact on the environment; cultivation is currently not a permitted use and this Code Amendment affirms that marijuana cultivation is prohibited.

Section 3. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section

PASSED and ADOPTED this _____ day of _____, 2016.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

ORDINANCE NO. 2016 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE
TO PROVIDE FOR THE CULTIVATION OF MARIJUANA
FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment; and

WHEREAS, the Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

<u>18.30.345 Medical Marijuana Cultivation</u>.

A. Purpose and Intent.

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law. Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions. For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana. A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation.

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2.

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana.

E. Conditional Use Permit. A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty.

1. To the extent not preempted by state law, any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall constitute a separate violation.

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

[Signature Page to Follow]

PASSED and ADOPTED this _____ day of _____, 2016.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

The following page(s) contain the backup material for Agenda Item: An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to regulate the cultivation of marijuana for qualified patients and primary caregivers. (Applicant: City-Initiated) (Case File 2015-

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: January 5, 2016 **AGENDA ITEM NO.**

ITEM TITLE:

An Ordinance of the City Council of the City of National City adding Section 18.30.345 of the National City Municipal Code to regulate the cultivation of marijuana for qualified patients and primary caregivers. (Applicant City-Initiated) (Case File 2015-25 A)

PREPARED BY: Martin Reeder, AICP **DEPARTMENT:** Planning

PHONE: 619-336-4313 **APPROVED BY:**

EXPLANATION:

The City is seeking an amendment to the Municipal Code in order to address the cultivation of marijuana. The amendment is needed in order to respond to recent changes in state law scheduled to take effect on March 1, 2016. If the City Council wishes to regulate the cultivation of marijuana, the attached Ordinance should be introduced.

The City Council held a public hearing on January 5, 2016, at which time they considered a recommendation by the City of National City Planning Commission that the City Council adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to regulate the cultivation of medical marijuana and to not adopt an Ordinance to amend Title 18 (Zoning) adding section 18.30.345 to prohibit the cultivation of medical marijuana. If the City Council wishes to regulate marijuana cultivation, introduction of the attached Ordinance will fulfill that action.

If the City Council wishes to instead prohibit marijuana cultivation, this Ordinance should not be introduced. An Ordinance for prohibition is included for introduction on this same agenda.

FINANCIAL STATEMENT: **APPROVED:** _____ **Finance**

ACCOUNT NO. N/A **APPROVED:** _____ **MIS**

ENVIRONMENTAL REVIEW:

Not a project per CEQA

ORDINANCE: **INTRODUCTION:** [X] **FINAL ADOPTION:** [ ]

STAFF RECOMMENDATION:

Introduce a prohibitory Ordinance

BOARD / COMMISSION RECOMMENDATION:

N/A

ATTACHMENTS:

Ordinance regulating marijuana cultivation

ORDINANCE NO. 2016 –

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NATIONAL CITY
ADDING SECTION 18.30.345 OF THE NATIONAL CITY MUNICIPAL CODE
TO PROVIDE FOR THE CULTIVATION OF MARIJUANA
FOR QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

WHEREAS, in 1996, California voters adopted Proposition 215, which is known as the Compassionate Use Act ("CUA") and which is codified as Health & Safety Code Section 11362.5 to allow for the use of medical marijuana for medicinal purposes; and

WHEREAS, the CUA exempts qualified patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana for personal medical use; and

WHEREAS, a qualified patient is an individual who has received a physician's recommendation for the use of marijuana for a medical purpose, and the primary caregiver is someone who has consistently assumed responsibility for the housing, health, or safety of a patient; and

WHEREAS, in 2003, the Legislature adopted the Medical Marijuana Program ("MMP") in Health & Safety Code Section 11362.7 *et seq.* to clarify lawful medical marijuana practices such as who may possess marijuana and how much of the plant can be cultivated, and to establish a voluntary identification card program; and

WHEREAS, the MMP provides that local agencies may regulate the location, operation, or establishment of a medical marijuana cooperative or collective; and

WHEREAS, the MMP provides that a qualified patient or primary caregiver may grow or keep no more than 6 mature or 12 immature marijuana plants, or 8 ounces of dried marijuana (per qualified patient), and that local agencies may set higher limits for the amount of plants or dried marijuana that a qualified patient or primary caregiver may grow or keep; and

WHEREAS, in 2012, the City Council adopted Ordinance 2012-2372 to prohibit medical marijuana dispensaries in the City as codified in National City Municipal Code Section 18.30.340; and

WHEREAS, on October 9, 2015, Governor Brown approved the Medical Marijuana Regulation and Safety Act ("The Act"), which establishes comprehensive, statewide licensure and regulations for commercial medical marijuana activity that respect local control, protect patients, promote public safety, and preserve the environment; and

WHEREAS, the Act is comprised of three separate bills: Senate Bill 643 (McGuire), Assembly Bill 266 (Bonta, Cooley, Lackey and Jones-Sawyer), and Assembly Bill 243 (Wood). Only AB 243 and AB 266 affect local regulations. In general, AB 243 relates to medical marijuana cultivation; and, AB 266 relates to deliveries and mobile dispensaries; and

WHEREAS, AB 243 provides that no person or entity may cultivate medical marijuana without first obtaining a state license, which is a program to be developed under the new law, and a license, permit or other entitlement from the local jurisdiction in which the cultivation would occur; and

WHEREAS, under AB 243, a local agency may issue or deny permits for the cultivation of medical marijuana provided any conditional use permit is at least as stringent as the State's licensing requirements, which are yet to be developed, and the local agency must have land use regulations or ordinances in place no later than March 1, 2016, or the State becomes the sole licensing authority for medical marijuana in that local jurisdiction; and

WHEREAS, pursuant to AB 243, cultivation of marijuana for personal medical use by a qualified patient of less than 100 square feet and cultivation of marijuana by a primary caregiver of less than 500 square feet for no more than 5 qualified patients without remuneration except for the allowed compensation under the MMP are exempt activities from the licensing requirements of The Act; provided, however, that local agencies may regulate or ban the cultivation, storage, manufacture, transport, provision or other related activities of exempt medical marijuana activities; and

WHEREAS, the City's Land Use Code does not specifically regulate or prohibit the cultivation of medical marijuana; however, the City's Land Use Code is a "permissive zoning" code. This means that uses not expressly permitted are prohibited. Accordingly, cultivation is not currently allowed in National City as it is not specifically permitted by the Land Use Code; and

WHEREAS, in order to ensure clarity in the light of recent enactment of The Act, and to affirmatively retain local land use control on this issue, the Land Use Code should be updated to be specific as to the prohibition or regulation of cultivation; and

WHEREAS, the City does not cede its authority to regulate or prohibit the cultivation of medical marijuana to the State.

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

Section 1. Section 18.30.345 of the National City Municipal Code is hereby added to read as follows:

<u>18.30.345 Medical Marijuana Cultivation</u>.

A. Purpose and Intent.

1. It is the intent of the Council to adopt regulations consistent with the Compassionate Use Act (Health & Safety Code Section 11362.5), the Medical Marijuana Program (Health & Safety Code Sections 11362.7 *et seq.*), and the Medical Marijuana Regulation and Safety Act (Health & Safety Code Section 11362.77), and to protect the public health, safety, and welfare.

2. Nothing in this Section is intended to override a peace officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances, or to interfere with a peace officer's sworn duty to enforce applicable law.

3. Nothing in this Section is intended to reduce the rights of a qualified patient or primary caregiver otherwise authorized by California Health and Safety Code section 11362.5(d).

4. This Section shall be interpreted in a manner consistent with state law. Nothing in this Section is intended to authorize the sale, distribution, possession of marijuana, or any other transaction in violation of state law.

5. For purposes of this Section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises.

B. Definitions. For the purpose of this Section the following definitions shall apply:

1. "Marijuana" has the same meaning as in California Health & Safety Code Section 11018.

2. "Primary caregiver" means the individual designated by the qualified patient who has consistently assumed responsibility for the housing, health, or safety of the qualified patient, in accordance with state law, including California Health & Safety Code Section 11362.5. As explained in *People v. Mentch*, 45 Cal. 4th 274 (2008), a primary caregiver is a person who consistently provides caregiving to a qualified patient, independent of any assistance in taking medical marijuana, at or before the time he or she assumed responsibility for assisting with medical marijuana.

3. "Processed marijuana" means harvested marijuana that is in a form other than a live plant.

4. "Qualified patient" means a California resident having the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief in accordance with state law, including California Health & Safety Code Section 11362.5.

5. "State identification card" means the card issued to a patient or caregiver in accordance with California Health & Safety Code Sections 11362.71-11362.76.

C. State Identification Card Holders: Permissible Amounts of Marijuana. A person in possession of a current and valid state identification card and who is within the jurisdictional limits of the City, is not subject to arrest for possession of marijuana, or detention by law enforcement longer than necessary to verify his or her status, or seizure by law enforcement of marijuana in his or her possession, if the amount of marijuana possessed is within the following limits:

1. Processed Marijuana - Qualified Patients. An individual who is a qualified patient may possess the total amount of processed marijuana, regardless of growing method, recommended by his or her physician for the length of time recommended by the physician, not to exceed one pound, or an amount consistent with the physician's recommendation, whichever is less.

2. Processed Marijuana - Primary Caregivers. An individual who is a primary caregiver may possess processed marijuana not to exceed one pound for each qualified patient for whom the individual serves as a verified primary caregiver, or an amount consistent with the recommendation of the physician or physicians, whichever is less, except that such amount shall not exceed a total of two pounds.

3. Indoor Plants - Qualified Patients. A qualified patient may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet, or an amount consistent with the physician's recommendation, whichever is less.

4. Indoor Plants - Primary Caregivers. A primary caregiver may possess a maximum of twenty-four unharvested marijuana plants growing in an area of no more than 64 square feet for each qualified patient for whom the individual serves as a primary caregiver, not to exceed a total of ninety-nine plants, or an amount consistent with the recommendation of the physician or physicians, whichever is less.

5. Outdoor/Greenhouse Plants. No unsupervised outdoor marijuana cultivation shall be permitted. Growing marijuana shall only be permitted in a fully enclosed yard with a minimum six-foot fence perimeter and in a greenhouse or structure that must be locked and contained. The amount of marijuana grown in the enclosed yard with a minimum six-foot fence perimeter and greenhouses or structures that are locked and contained shall not exceed the permissible amounts for indoor plants according to this Section.

D. Locations for Cultivation.

1. A qualified patient may cultivate medical marijuana in the amounts allowed under subsection C herein only in a legal residential unit in any residential or mixed use zone.

2. A primary caregiver may cultivate medical marijuana in the amounts allowed under subsection C herein in a legal residential unit in any residential or mixed use zone and in the Light Industrial ("IL") zone.

3. A qualified patient or primary caregiver may cultivate medical marijuana outdoors pursuant to subsection (C)(5) only in zones RS-1 and RS-2.

4. From the public right-of-way, there shall be no visual evidence of cultivation of the marijuana.

E. Conditional Use Permit. A primary caregiver may exceed the permissible medical marijuana activity allowed under subsections (C)(2) and (C)(4) in the IL zone only, but prior to doing so must obtain annually a conditional use permit from the City pursuant to National City Municipal Code Section 18.12.110, which permit conditions shall not be less stringent than the California Department of Food and Agriculture's licensing requirements for the cultivation of medical marijuana established pursuant to Health & Safety Code Section 11362.777. It is unlawful for any cultivation under CUP to be outdoors, and it is unlawful for any discharge from the cultivation to enter the City's storm drain system.

F. Violation – Penalty.

1. To the extent not preempted by state law, any person who violates any provision of this Section or fails to comply with any requirement thereof shall be guilty of a misdemeanor and shall be punished, cited, or penalized as provided in Title 1 of the National City Municipal Code.

2. Each day or portion thereof that a violation of this Section exists shall constitute a separate violation.

3. Each violation of this Section shall constitute a public nuisance.

Section 2. The City Council finds that this Ordinance is exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15061(b)(3) because there is no possibility that the activity in question may have a significant effect on the environment.

Section 3. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Chapter, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this Chapter, or its application to any other person or circumstance. The City Council declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 3. EFFECTIVE DATE. This Ordinance shall be effective thirty (30) days after its adoption. Within fifteen (15) days after its adoption, the City Clerk of the City of National City shall cause this Ordinance to be published pursuant to the provisions of Government Code Section 36933.

[Signature Page to Follow]

PASSED and ADOPTED this _____ day of _____, 2016.

_____
Ron Morrison, Mayor

ATTEST:

_____
Michael R. Dalla, City Clerk

APPROVED AS TO FORM:

_____
Claudia G. Silva
City Attorney

The following page(s) contain the backup material for Agenda Item: Notice of Decision – Planning Commission approval of a Conditional Use Permit for an indoor recreation use to be located at 2602 Transportation Avenue. (Applicant: Jason Richard) (Case File 2015-27 CUP) (Planning)

CITY OF NATIONAL CITY, CALIFORNIA
COUNCIL AGENDA STATEMENT

MEETING DATE: January 5, 2016 **AGENDA ITEM NO.**

ITEM TITLE:

Notice of Decision – Planning Commission approval of a Conditional Use Permit for an indoor recreation use to be located at 2602 Transportation Avenue. (Applicant: Jason Richard) (Case File 2015-27 CUP)

PREPARED BY: Martin Reeder, AICP **DEPARTMENT:** Planning

PHONE: 336-4313 **APPROVED BY:**

EXPLANATION:

The applicant has applied for a Conditional Use Permit (CUP) to operate a team building business that focuses on group activities such as puzzle and problem solving scenarios in a group setting. The proposed activity is classed as indoor recreation, which requires a CUP in the IL (Light Industrial) zone. The project site is a six-acre business/industrial park comprised of six buildings and 247 parking spaces. The suite in which the business is proposed is 1,200 square feet in size.

Planning Commission conducted a public hearing on December 7, 2015. Commissioners asked questions regarding business operations, findings, and conditions of approval. The Commission voted to approve the Conditional Use Permit based on attached findings and subject to Conditions of Approval.

The attached Planning Commission staff report describes the proposal in detail.

FINANCIAL STATEMENT: **APPROVED:** Finance

ACCOUNT NO. **APPROVED:** MIS

ENVIRONMENTAL REVIEW:

Categorically Exempt pursuant to Class 1 Section 15301 (Existing Facilities)

ORDINANCE: **INTRODUCTION:** ☐ **FINAL ADOPTION:** ☐

STAFF RECOMMENDATION:

Staff concurs with the decision of the Planning Commission and recommends that the Notice of Decision be filed.

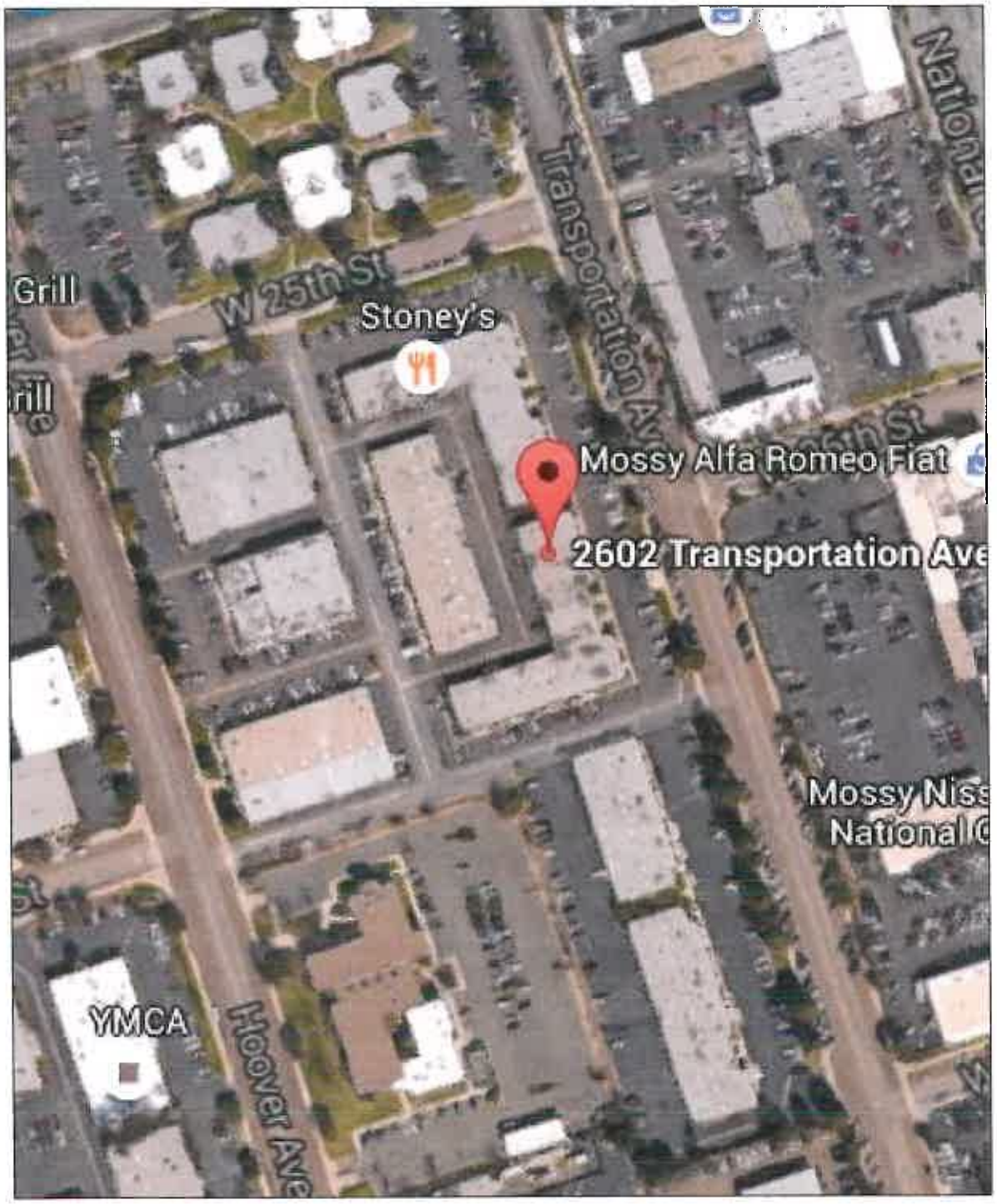
BOARD / COMMISSION RECOMMENDATION:

The Planning Commission approved the Conditional Use Permit.
Ayes: Alvarado, Baca, Bush, DeLaPaz, Flores, Garcia, Yamane

ATTACHMENTS:

1. Overhead
2. Planning Commission Staff Report
3. Resolution No. 2015-26
4. Reduced Plans

2015-27 CUP – Steal & Escape – Overhead



Item no. 7
December 7, 2015

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

PLANNING COMMISSION STAFF REPORT

Title:	PUBLIC HEARING – CONDITIONAL USE PERMIT FOR AN INDOOR RECREATION USE TO BE LOCATED AT 2602 TRANSPORTATION AVENUE
Case File No.:	2015-27 CUP
Location:	National City Business Park
Assessor's Parcel No.:	562-340-39
Staff report by:	Martin Reeder, AICP – Principal Planner
Applicant:	Jason Richard
Zoning designation:	IL (Light Industrial)
Adjacent land use/zoning:	
North:	Southport Office Park / MXC-2 (Major Mixed-Use Corridor)
East:	Commercial Automotive uses across Transportation Ave / CA
South:	Industrial park across West 26th Street / IL
West:	Southport Commercial Center across Hoover Ave / IL
Environmental review:	Categorically Exempt pursuant to Class 1 Section 15301 (Existing Facilities)
Staff recommendation:	Approve

BACKGROUND

The applicant has applied for a Conditional Use Permit (CUP) to operate a team building business that focuses on group activities such as puzzle and problem solving scenarios in a group setting. The proposed activity is classed as indoor recreation, which requires a CUP in the IL (Light Industrial) zone.

Site Characteristics

The project site is an approximately six-acre business/industrial park comprised of six buildings and 247 parking spaces. The overall footprint of the buildings is 86,141 square feet. The suite in which the business is proposed is 1,200 square feet in size. The property is located in the IL zone.

Proposed Use

The applicant proposes to operate a team-building business that implements challenges and exercises to foster cooperation in a group setting. Activities would involve 5-10 people (likely around 5) in the reception and meeting room area (see attached floor plan) who would have one hour to perform the activities assigned to them. A detailed description of the business is attached for your review. The business would operate from 5 p.m. to 11 p.m. Monday through Thursday, and from 10 a.m. to 11 p.m. Friday through Sunday. A subsequent phase of the business will focus on the research and development of system design for this type of business. However, this phase would be an allowed use in the IL zone.

Analysis

Because the business involves groups of people involved in a quasi-recreational use, staff has classified it as commercial recreation, indoor; a conditionally-allowed use in the IL zone. The same use is allowed by right in the mixed-use zones and is prohibited in industrial zones other than IL. Concerns with indoor recreational uses usually focus around traffic, a demand for parking that is concentrated at particular times for extended periods of time, and the potential for noise impacting neighboring uses. Due to the specialized nature of this type of business, and due to the small size of the suite in which it is proposed (1,200 square feet), the use was not considered as a public assembly use.

Traffic and parking

The existing road network is more than capable of handling the additional traffic generated by the use. This determination is based on SANDAG data that estimates a 1,200 square-foot multi-purpose recreation use (closest comparison) would generate less than 10 average daily trips (ADT), which is minimal. Based on the maximum number of people (5-10 people), the maximum number of daily trips would likely be

anywhere from 10 to 15 (assuming an average exercise to be an hour in duration). Access to the property is provided by Hoover Avenue, a collector street and Mile of Cars Way, an arterial street. Both streets are more than capable of handling the nominal increase in traffic as they have a Level of Service (LOS) of A, the best rating available.

The industrial park has sufficient parking to support both the proposed use and the existing industrial uses in the industrial park. No expansion of the building is proposed, and the center was designed to accommodate similar uses. 247 parking spaces exist on the site, which exceeds the 215 parking spaces required by the Land Use Code for a research and development use of this size. In addition, the hours of operation are during times when there would be little demand for parking on the property.

Noise

Group activities sometimes are noisy and incompatible with neighboring uses, depending on the type of use and method of operation. In this case, noise is not a concern since neighboring uses are manufacturing uses in an industrial zone where moderately noisy uses are expected. In addition, all activities would occur within the building and the doors would be closed. Furthermore, team building exercises typically require coordinated effort and communication, rather than loud and scattered activity such as a gym or other similar indoor recreation use. A Condition of Approval will be added requiring all aspects of the use be conducted within the building at all times to help reduce noise impacts on neighboring uses. In addition to the low expected impact of the use, the hours of operation are completely outside of normal business hours, which would offset any potential noise concerns for neighboring uses.

Required findings

The Municipal Code contains required findings for Conditional Use Permits. There are six required findings:

1. The proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code.

The use is allowable within the Light Industrial zone pursuant to a Conditional Use Permit, and no expansion of the premises is proposed. There are no required design guidelines in the Land Use Code related to such businesses.

2. The proposed use is consistent with the General Plan and any applicable specific plan.

General Plan Goal LU-2 encourages a mix of land uses including residential, commercial, employment, service, agricultural, open space, and recreational uses that accommodate the needs of persons from all income groups and age levels. The proposed business is consistent with the recreational component of this goal. In addition, the proposed facility is a conditionally-permitted use in the IL zone.

3. The design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity.

No expansion of the building is proposed and all activities would occur within the existing building. Activities subject to the CUP would utilize areas typically found in any building of this kind (reception area, meeting room, etc.). Therefore, no impacts on existing or future uses would occur.

4. The site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints.

All activities would occur within the existing building, which was designed and constructed for similar type uses. The existing street network and parking facilities are able to deal with any traffic associated with the use. Given the small scope of the CUP-related activities, any impacts would be negligible at best.

5. Granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located.

The proposed facility will not have an impact outside of the building, as all activities would occur inside the building. The use is allowed by right in other zones throughout the City; therefore, impacts are considered minimal.

6. The proposed project has been reviewed in compliance with the California Environmental Quality Act.

Staff has determined that the proposed use is categorically exempt from environmental review pursuant to Class 1 Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit. The reason for the exemption is that no expansion of the building is proposed and uses would basically be the same as non-conditionally allowed uses (groups of people engaged in non-recreational activities in the same space).

Department Comments

The Building Department is requiring general code compliance, as is the Fire Department. The applicant has been working closely with the Fire Department to classify the use. The team-building portion of the business is being considered similarly to a haunted house or similar amusement use, which would not require fire sprinklers or other expensive improvements associated with more intensive public assembly uses, such as churches, gymnasiums, or banquet facilities. Conditions of Approval have been included to address Department comments.

Summary

The proposed team building business is permitted in the IL zone with the approval of a Conditional Use Permit. Conditions of Approval will help ensure that the business operates in harmony with existing uses in the area. Furthermore, the potential impacts on neighboring uses are minimal since the road network is capable of handling any minor increase in traffic, adequate parking is provided on the site, and noise will have little effect on neighboring manufacturing uses due to off-peak times of operation.

OPTIONS

1. Approve 2015-27 CUP subject to the attached conditions, and based on attached findings or other findings as determined by the Planning Commission; or

2. Deny 2015-27 CUP based on findings as determined by the Planning Commission; or

3. Continue the item for additional information

ATTACHMENTS

1. Recommended Findings
2. Recommended Conditions
3. Overhead
4. Project Description
5. Public Hearing Notice (Sent to 129 property owners)
6. Notice of Exemption
7. Applicant's Plans (Exhibit A, Case File No. 2015-27 CUP, dated 11/10/2015)

MARTIN REEDER, AICP
Principal Planner

BRAD RAULSTON
Executive Director

RECOMMENDED FINDINGS FOR APPROVAL
2015-27 CUP – 2602 Transportation Avenue

1. That the proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code, because the use is allowable within the Light Industrial zone pursuant to a Conditional Use Permit, and no expansion of the premises is proposed; there are no required design guidelines in the Land Use Code related to such businesses.

2. That the proposed use is consistent with the General Plan and any applicable specific plans, because Goal LU-2 of the General Plan encourages a mix of land uses including residential, commercial, employment, service, agricultural, open space, and recreational uses that accommodate the needs of persons from all income groups and age levels. The proposed is consistent with the recreational component of this goal, and because no Specific Plans exist in this area.

3. That the design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity, because no expansion of the building is proposed and all activities would occur within the existing building; activities subject to the CUP would utilize areas typically found in any building of this kind (reception area, meeting room, etc.).

4. That the site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints, because all activities would occur within the existing building, which was designed and constructed for similar type uses.; the existing street network and parking facilities are able to deal with any traffic associated with the use – given the small scope of the CUP-related activities, any impacts would be negligible at best.

5. That granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located, because the proposed facility will not have an impact outside of the building, as all activities would occur inside the building; the use is allowed by right in other zones throughout the City; therefore, impacts are considered minimal.

6. That the proposed project has been reviewed in compliance with the California Environmental Quality Act, because staff has determined the proposed use to be categorically exempt from environmental review pursuant to Class 1 Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit. The reason for the exemption is that no expansion of the building is proposed and uses would basically be the same as non-conditionally allowed uses (groups of people engaged in non-recreational activities in the same space).

RECOMMENDED CONDITIONS OF APPROVAL

2015-27 CUP – 2602 Transportation Avenue

General

1. This *Conditional Use Permit* authorizes an indoor recreation business (team building) at 2602 Transportation Avenue. Except as required by conditions of approval, all plans submitted for permits associated with the project shall conform with Exhibit A, Case File No. 2015-27 CUP, dated 11/10/2015).

2. Before this *Conditional Use Permit* shall become effective, the applicant and the property owner both shall sign and have notarized an Acceptance Form, provided by the Planning Department, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the *Conditional Use Permit*. The applicant shall also submit evidence to the satisfaction of the Planning Department that a Notice of Restriction on Real Property is recorded with the County Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the *Conditional Use Permit* are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Executive Director prior to recordation.

3. *Within four (4) days of approval*, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. Checks shall be made payable to the *County Clerk* and submitted to the National City Planning Department.

4. This permit shall become null and void if not exercised within one year after adoption of the resolution of approval unless extended according to procedures specified in Section 18.12.040 of the Municipal Code.

Fire

5. Plans submitted for improvements must comply with the current editions of the California Fire Code (CFC) and National Fire Protection Association (NFPA).

6. The project shall strictly follow **Appendix K** of the California Fire Code designed for "*Temporary Haunted Houses, Ghost Walks and Similar Amusements Uses*".

Planning

7. All activities shall comply with the limitations contained in Table III of NCMC §12.06.040.

8. All activities shall be conducted indoors. Doors shall remain closed during CUP-related activities.

Steal and Escape Project Description

Our two stage business plan

Our business here at Steal and Escape can be broken down into two functional areas, the first being the research and team building phase, and the second being the system design and production phase. Upon start up, our team will focus on the set up and optimization of phase one, then move on to set up and operate phase two. We plan to develop area one as soon as possible and project starting on phase two approximately three to six months after successful operation of phase one.

Phase one

Through the research and team building phase, each customer experience will be different but the will follow the same basic flow. After sign in and review of rules and instructions teams will progress in sequence through three office rooms. Each office holds its own set of team building challenges and exercises that increase in difficulty and complexity over time as teams' progress. Teams are on their own with no help from the outside and must rely on each to meet challenges or fail together. Our goal for teams during this stage will be improving teamwork, increasing our "outside of the box" thinking, and stress management.

Our target audience can be divided into four categories: Families, couples, friends and corporations. Although the general flow is the same for audiences, the pre and post activity sessions for corporations will differ from the rest, in that they will be evaluated throughout the scenario and their footage will be reviewed as a group to further build upon predetermined team goals.

Phase two

After successful operation in phase one we will move into the system design and production phase. Steal and Escape is unique in the hardware and techniques we use behind the scenes. We have heavily incorporated computers and micro-controllers to operate the room and its puzzles. Many of these devices and systems are, and will continue to be, developed in house as original designs. Similar businesses still rely primarily on traditional locks and archaic devices in combination with manual manipulation to create the illusion of automated puzzle systems. As the escape room and team building trend continues to grow we see a largely undeserved market for these products which we aim to develop. We plan to design, test and produce these original puzzles for sale to this exciting new market.

We are requesting a conditional use permit because we have been zoned as Indoor Commercial Recreation and a permit is required to operate in a light industrial area. We will have no employees to start and do not anticipate hiring anyone for a few months. We will serve drinks and snacks, but no alcohol. Our building is 1,200 square feet with 600 square feet being devoted to the offices.

Our hours of operation will be: Monday through Thursday 5:00PM to 11:00PM
Friday through Sunday 10:00AM to 11:00PM

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF PUBLIC HEARING

CONDITIONAL USE PERMIT FOR AN
INDOOR RECREATION USE TO BE LOCATED
AT 2602 TRANSPORTATION AVENUE.
CASE FILE NO.: 2015-27 CUP
APN: 562-340-39

The National City Planning Commission will hold a public hearing after the hour of 6:00 p.m. **Monday, December 7, 2015**, in the City Council Chambers, Civic Center, 1243 National City Boulevard, National City, California, on the proposed request. (Applicant: Jason Richard)

The applicant wishes to operate a team building business that focuses on group activities such as puzzle and problem solving scenarios. The activities are classed as indoor recreation, which requires a Conditional Use Permit.

Information is available for review at the City's Planning Department, Civic Center. Members of the public are invited to comment. Written comments should be received by the Planning Department on or before 12:00 p.m., **December 7, 2015**, who can be contacted at 619-336-4310 or planning@nationalcityca.gov

If you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the Planning Commission at, or prior to, the public hearing.

NATIONAL CITY PLANNING DEPARTMENT

BRAD RAULSTON
Executive Director

CITY OF NATIONAL CITY - PLANNING DEPARTMENT
1243 NATIONAL CITY BLVD., NATIONAL CITY, CA 91950

NOTICE OF EXEMPTION

TO: County Clerk
County of San Diego
P.O. Box 1750
1600 Pacific Highway, Room 260
San Diego, CA 92112

Project Title: 2015-27 CUP

Project Location: 2602 Transportation Avenue, National City, CA, APN: 562-340-39

Contact Person: Martin Reeder **Telephone Number:** (619) 336-4313

Description of Nature, Purpose and Beneficiaries of Project:
Conditional Use Permit for an indoor recreation use (team building exercises) within an existing commercial/industrial suite.

Applicant:
Jason Richard
1456 Princess Manor Ct
Chula Vista, CA 91911

Telephone Number:
(619) 347-6787

Exempt Status:

☒ **Categorical Exemption. Class 1 Section 15301 (Existing Facilities)**

Reasons why project is exempt:
There is no possibility that the proposed use will have a significant impact on the environment since the business will be conducted within an existing 1,200 square-foot commercial space in an existing commercial building that is part of a developed industrial business park. The use will not affect use of the other suites in the building or other uses on the same property.

Date:

MARTIN REEDER, AICP
Principal Planner

RESOLUTION NO. 2015-26

A RESOLUTION OF THE PLANNING COMMISSION
OF THE CITY OF NATIONAL CITY, CALIFORNIA,
APPROVING A CONDITIONAL USE PERMIT FOR AN
INDOOR RECREATION USE TO BE LOCATED AT
2602 TRANSPORTATION AVENUE.
CASE FILE NO. 2015-27 CUP
APN: 562-340-39

WHEREAS, the Planning Commission of the City of National City considered a Conditional Use Permit for an indoor recreation use to be located at 2602 Transportation Avenue at a duly advertised public hearings held on December 7, 2015, at which time oral and documentary evidence was presented; and,

WHEREAS, at said public hearings the Planning Commission considered the staff report contained in Case File No. 2015-27 CUP maintained by the City and incorporated herein by reference along with evidence and testimony at said hearing; and,

WHEREAS, this action is taken pursuant to all applicable procedures required by State law and City law; and,

WHEREAS, the action recited herein is found to be essential for the preservation of public health, safety, and general welfare.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of National City, California, that the testimony and evidence presented to the Planning Commission at the public hearing held on December 7, 2015, support the following findings:

1. That the proposed use is allowable within the applicable zoning district pursuant to a Conditional Use Permit and complies with all other applicable provisions of the Land Use Code, because the use is allowable within the Light Industrial zone pursuant to a Conditional Use Permit, and no expansion of the premises is proposed; there are no required design guidelines in the Land Use Code related to such businesses.
2. That the proposed use is consistent with the General Plan and any applicable specific plans, because Goal LU-2 of the General Plan encourages a mix of land uses including residential, commercial, employment, service, agricultural, open space, and recreational uses that accommodate the needs of persons from all income groups and age levels. The proposed is consistent with the recreational component of this goal, and because no Specific Plans exist in this area.

3. That the design, location, size, and operating characteristics of the proposed activity would be compatible with the existing and future land uses in the vicinity, because no expansion of the building is proposed and all activities would occur within the existing building; activities subject to the CUP would utilize areas typically found in any building of this kind (reception area, meeting room, etc.).
4. That the site is physically suitable for the type, density, and intensity of use being proposed, including access, utilities, and the absence of physical constraints, because all activities would occur within the existing building, which was designed and constructed for similar type uses.; the existing street network and parking facilities are able to deal with any traffic associated with the use – given the small scope of the CUP-related activities, any impacts would be negligible at best.
5. That granting the permit would not constitute a nuisance or be injurious or detrimental to the public interest, health, safety, convenience, or welfare, or materially injurious to persons, property, or improvements in the vicinity and zone in which the property is located, because the proposed facility will not have an impact outside of the building, as all activities would occur inside the building; the use is allowed by right in other zones throughout the City; therefore, impacts are considered minimal.
6. That the proposed project has been reviewed in compliance with the California Environmental Quality Act, because staff has determined the proposed use to be categorically exempt from environmental review pursuant to Class 1 Section 15301 (Existing Facilities) for which a Notice of Exemption will be filed subsequent to approval of this Conditional Use Permit. The reason for the exemption is that no expansion of the building is proposed and uses would basically be the same as non-conditionally allowed uses (groups of people engaged in non-recreational activities in the same space).

BE IT FURTHER RESOLVED that the application for Conditional Use Permit is approved subject to the following conditions:

General

1. This *Conditional Use Permit* authorizes an indoor recreation business (team building) at 2602 Transportation Avenue. Except as required by conditions of approval, all plans submitted for permits associated with the project shall conform with Exhibit A, Case File No. 2015-27 CUP, dated 11/10/2015).
2. Before this *Conditional Use Permit* shall become effective, the applicant and the property owner both shall sign and have notarized an Acceptance Form, provided by the Planning Department, acknowledging and accepting all conditions imposed upon the approval of this permit. Failure to return the signed and notarized Acceptance Form within 30 days of its receipt shall automatically terminate the *Conditional Use Permit*. The applicant shall also submit evidence to the satisfaction of the Planning Department that a Notice of Restriction on Real Property is recorded with the County

Recorder. The applicant shall pay necessary recording fees to the County. The Notice of Restriction shall provide information that conditions imposed by approval of the *Conditional Use Permit* are binding on all present or future interest holders or estate holders of the property. The Notice of Restriction shall be approved as to form by the City Attorney and signed by the Executive Director prior to recordation.

3. *Within four (4) days of approval*, pursuant to Fish and Game Code 711.4 and the California Code of Regulations, Title 14, Section 753.5, the applicant shall pay all necessary environmental filing fees for the San Diego County Clerk. Checks shall be made payable to the *County Clerk* and submitted to the National City Planning Department.
4. This permit shall become null and void if not exercised within one year after adoption of the resolution of approval unless extended according to procedures specified in Section 18.12.040 of the Municipal Code.

Fire

5. Plans submitted for improvements must comply with the current editions of the California Fire Code (CFC) and National Fire Protection Association (NFPA).
6. The project shall strictly follow **Appendix K** of the California Fire Code designed for "*Temporary Haunted Houses, Ghost Walks and Similar Amusements Uses*".

Planning

7. All activities shall comply with the limitations contained in Table III of NCMC §12.06.040.
8. All activities shall be conducted indoors. Doors shall remain closed during CUP-related activities.

BE IT FURTHER RESOLVED that copies of this Resolution be transmitted forthwith to the applicant and to the City Council.

BE IT FINALLY RESOLVED that this Resolution shall become effective and final on the day following the City Council meeting where the Planning Commission resolution is set for review, unless an appeal in writing is filed with the City Clerk prior to 5:00 p.m. on the day of that City Council meeting. The City Council may, at that meeting, appeal the decision of the Planning Commission and set the matter for public hearing.

CERTIFICATION:

This certifies that the Resolution was adopted by the Planning Commission at their meeting of December 7, 2015, by the following vote:

AYES: Garcia, Yamane, Baca, Bush, Alvarado, Flores, Dela Paz

NAYS: None

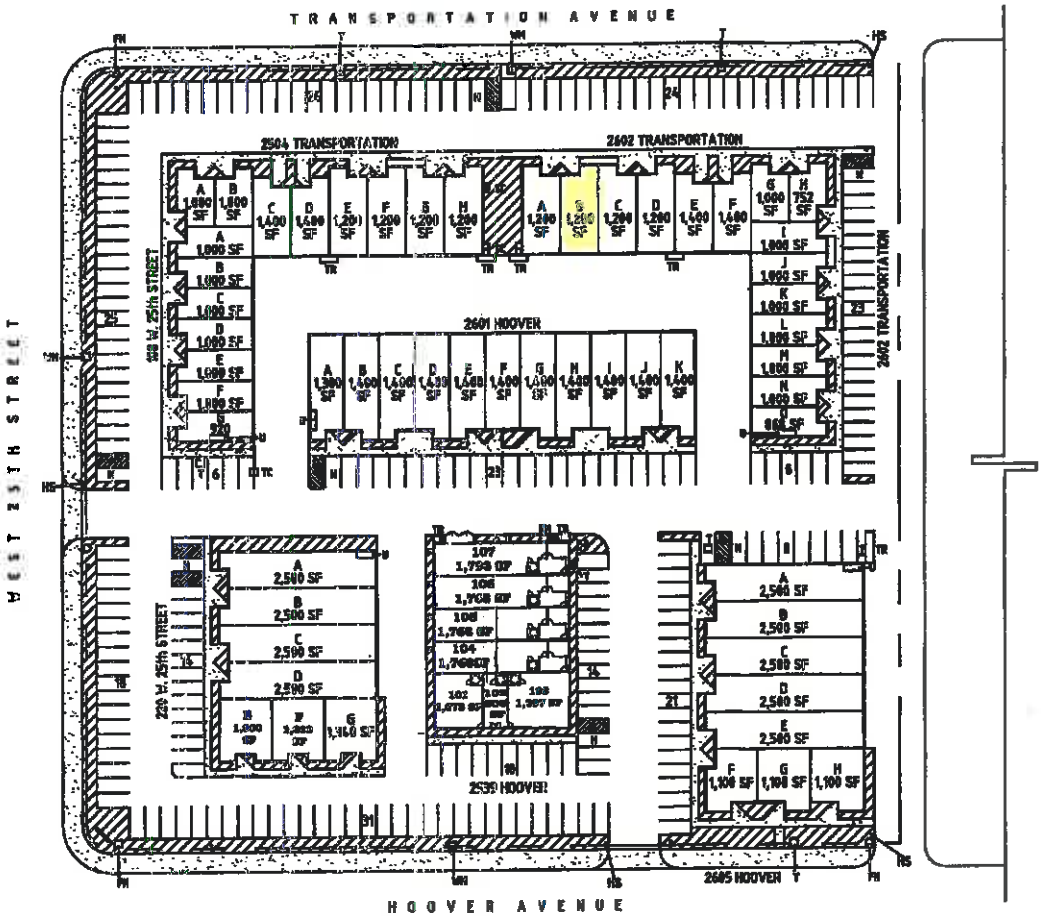
ABSENT: None

ABSTAIN: NONE

CHAIRPERSON

INVESTCAL REALTY CORPORATION
2333 CAMINO DEL RIO SOUTH, SUITE 210
SAN DIEGO, CA 92108 PHONE (619) 683-9455
FAX: (619) 683-9462 WWW.INVESTCALREALTY.COM

LEGAL DESCRIPTION
BLOCK 37,38,39,90,91 AND 92 MAP 348 AND 1015
FILED IN THE OFFICE OF THE COUNTY.
RECORDED AT THE COUNTY OF SAN DIEGO.



VICINITY MAP

EXHIBIT: A
CASE FILE NO.: 2015-27 CUP
DATE: 11/10/15

LEGEND

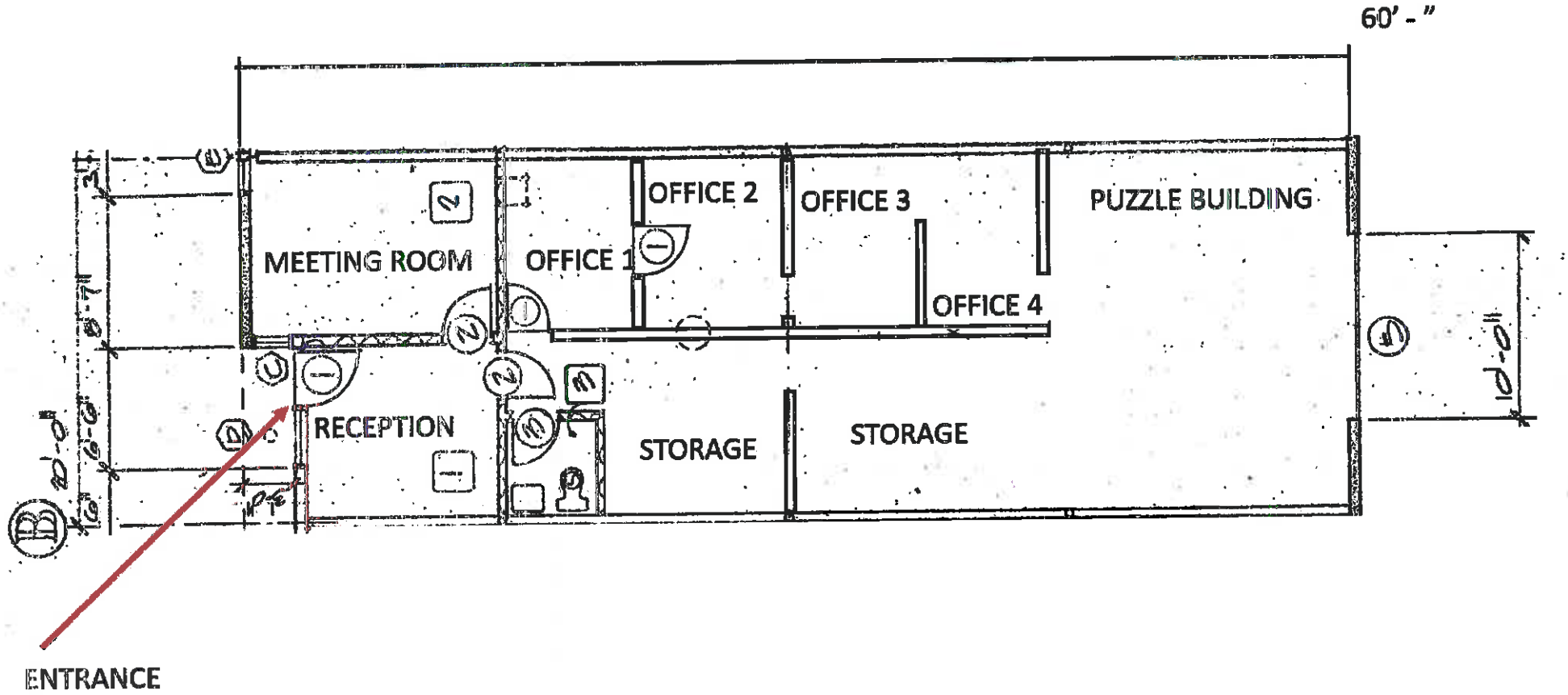
GM	GAS METER
P	PAY PHONE
LC	LIGHT CLOCK
L	LOADING ZONE
T	ELECTRICAL TRANSFORMER
TC	TELEPHONE CABINET
EM	ELECTRIC METER
TR	TRASH
SC	SPRINKLER CLOCK
WM	WATER METER
SCV	SPRINKLER CONTROL VALVE
RL	ROOF LADDER
FH	FIRE HYDRANT
U	UTILITY ROOM
WSM	WATER SUB-METER
	HANDICAP PARKING
SF	SQUARE FEET
	SIGN
	LIGHT STANDARD
	TRASH RECEPTACLE
	PROPERTY LINE
	CURB
	EDGE OF ASPHALT PAVING
	CONCRETE
	LANDSCAPED AREA
HS	HANDICAP SIGNAGE

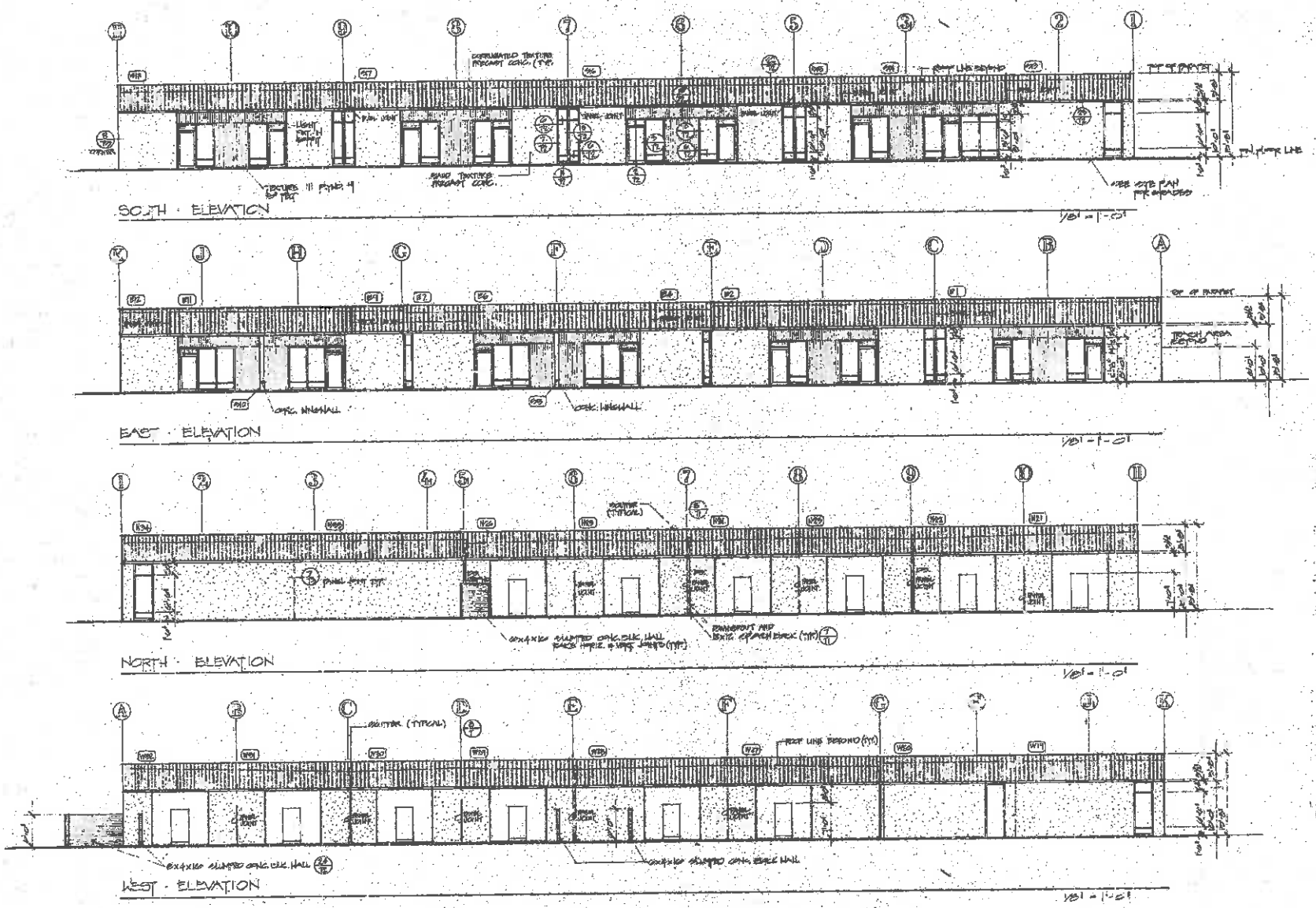
NATIONAL CITY BUSINESS PARK

108 W. 25TH STREET, NATIONAL CITY, CA 91950
2605 HOOVER AVENUE, NATIONAL CITY, CA 91950
2504-2602 TRANSPORTATION AVENUE, NATIONAL CITY, CA 91950

LAND: 258,310 SF / 5.93 ACRES; BLDG: 86,141 SF
PARKING SPACES: 247 INCLUDING 7 HANDICAPPED

LAST MODIFIED DATE: 9/06 8/13 IRC


60' - "
MEETING ROOM
OFFICE 1
OFFICE 2
OFFICE 3
OFFICE 4
PUZZLE BUILDING
RECEPTION
STORAGE
STORAGE
10'-0"
ENTRANCE



Dale Naegle
Architecture & Planning, Inc.
831 Orange Avenue
Costa Mesa, California 92626
714-645-1091

Dale Naegle
Architecture & Planning, Inc.
2210 Avenida de la Playa
La Jolla, California 92037
714-459-2306

INTERNATIONAL BUSINESS PARK BUILDING A

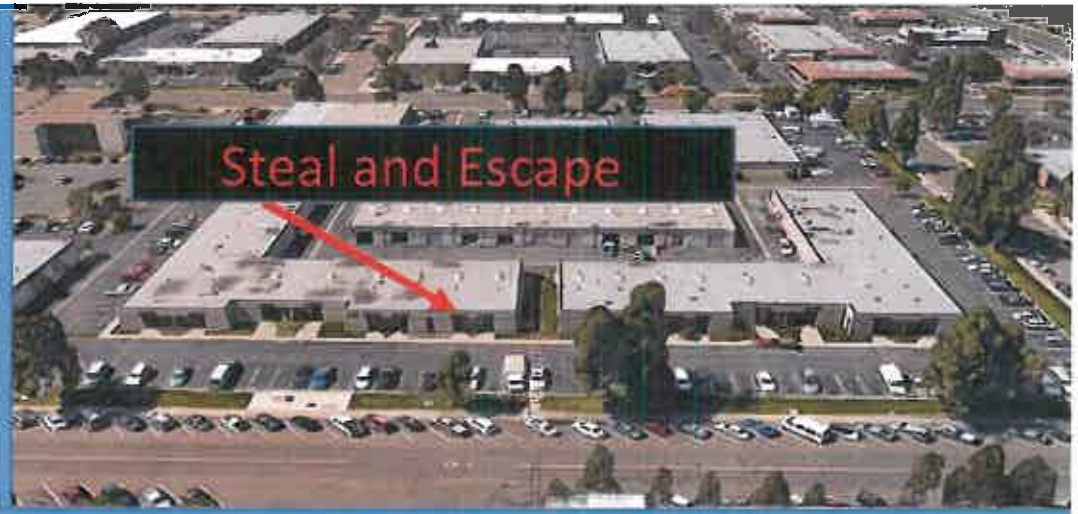
10-12
PER
9/12

CPBS

FOR PERMITS

7-18-73 8-23-74 REVISIONS

Steal and Escape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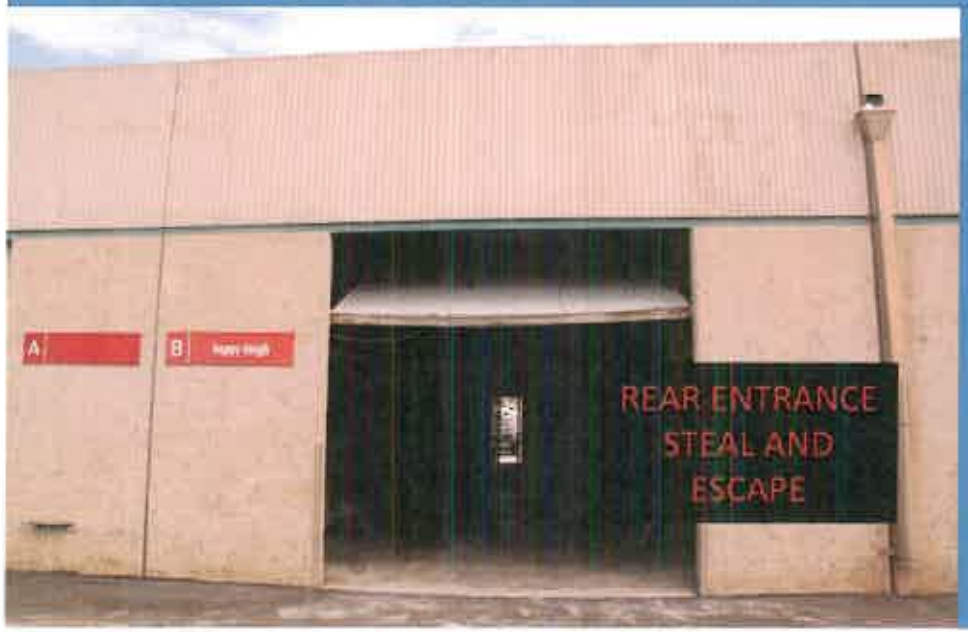
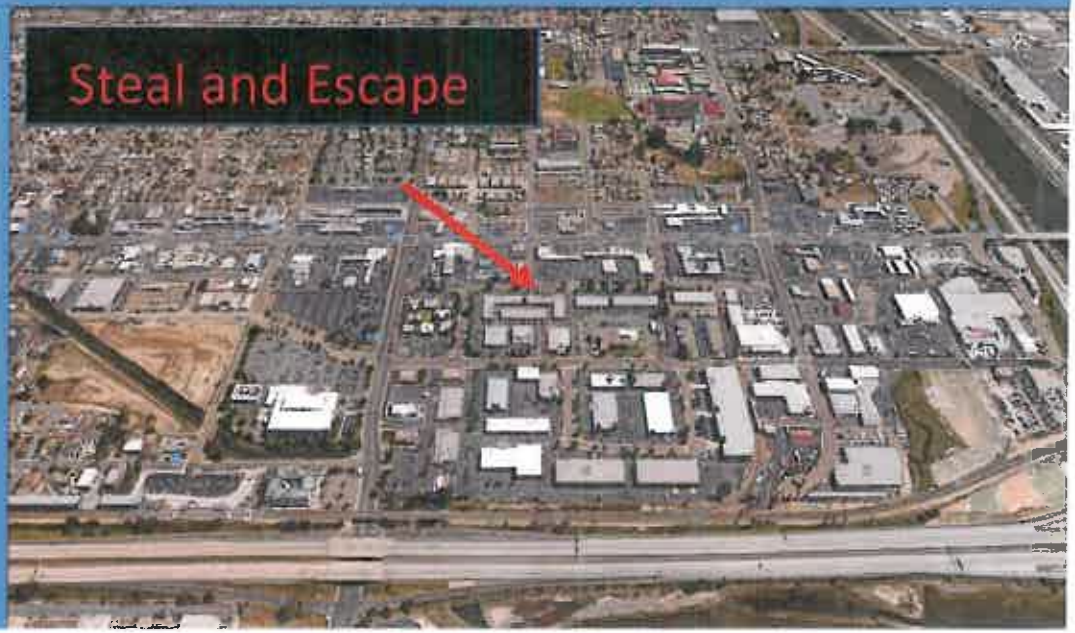

A
B
REAR ENTRANCE
STEAL AND
ESCAPE


Steal and Escape