

SCC NO. _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SACRAMENTO RELATING TO THE REGULATION OF MEDICAL MARIJUANA DISPENSARIES ADDING CHAPTER 4.70, "MEDICAL MARIJUANA REGULATIONS," TO THE SACRAMENTO COUNTY CODE

The Board of Supervisors of the County Of Sacramento ordains as follows:

SECTION 1. Chapter 4.70, "Medical Marijuana Regulations," is hereby added to

Title 4 of the Sacramento County Code to read as follows:

4.70.010 Findings.

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996").

B. The intent of Proposition 215 was to enable persons who are in need of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances; and

C. The State enacted Article 2.5 of Chapter 6, Division 10, of the Health and Safety Code to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with that Article; and

D. The Board of Supervisors has determined that, based upon the experiences of other communities in California, the operation of medical marijuana dispensaries in other can result in negative secondary effects such as increased criminal activity and decreased property and business values; and

E. To protect the public health, safety, and welfare, it is the desire of the Board of Supervisors to modify the County Code consistent with Article 2.5 regarding the location and operation of Medical Marijuana Dispensaries; and

F. It is the Board of Supervisors' intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 841, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and

G. It is the Board of Supervisors' intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of marijuana for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal.

4.70.020 Purpose and Intent.

It is the purpose and intent of this chapter to regulate availability and the distribution of medical marijuana, consistent with State Law, within the unincorporated County. It is further the intent of this ordinance to limit the number of medical marijuana dispensaries in the unincorporated County so as to limit the impact of marijuana dispensaries on Sacramento County law enforcement and code enforcement resources,

and it is the intent of this ordinance to ensure that medical marijuana dispensaries are operated in a manner that provides medical marijuana to qualified individuals in a safe and discrete environment.

4.70.030 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 Dispensary" means any facility or location where a primary caregiver makes available, transmits, gives, delivers or otherwise provides medical marijuana to six or more qualified patients, in strict accordance with Health and Safety Code section 11362.5 *et seq.*, including, but not limited to, Health & Safety Code sections 11362.7 (d) (2) and (3). The terms "primary caregiver" and "qualified patient" shall be as defined in Health and Safety Code section 11362.5 *et seq.*

1. The terms "primary caregiver," "qualified patient," and "person with an identification card" shall be as defined in Health and Safety Code section 11362.5 *et seq.*

2. A "Medical Marijuana Dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law:

a. a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code;

b. a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code;

c. a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code;

d. a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code; and/or

e. a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code section 11362.5 *et seq.*

B. "Director" means the County of Sacramento Director of the Department of Finance acting through the Tax and License Collector.

4.70.040 Enforcement of Chapter.

The Director shall have the responsibility and duty of enforcement of this Chapter.

4.70.050 Medical Marijuana Dispensary General Business License.

A. Prior to initiating operations, and as a continuing prerequisite to conducting legally valid operations, any person or entity wishing to operate a Medical Marijuana Dispensary shall apply for and receive from the Director a Medical Marijuana Dispensary general business license, on the terms and conditions set forth herein.

B. The applicant for a Medical Marijuana Dispensary general business license shall submit to the Director an application on a form and containing such information as is prescribed by the Director, including the following:

1. A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;
2. The address of the location from which the enterprise for which application is made will be operated;
3. The name and address of the person who owns the enterprise for which application is made. A P.O. Box shall not be acceptable as an address;
4. Such information as is necessary to permit the determinations prescribed by this section or section 4.70.060.
5. Such other and further information as is deemed necessary to administer this division.

C. Based on the information set forth therein, the Director may impose reasonable terms and conditions on the proposed operations, consistent with Health & Safety Code section 11362.5 *et seq.* and with public health, safety, and welfare. Such terms and conditions may include, but not be limited to, requirements as to parking, hours of operation, and trash collection and disposal. Such terms and conditions may be imposed at the time a Dispensary general business license is issued, upon renewal of the license, or at any time during the term of the license. The Director shall provide to the Applicant or operator a written determination of the reasons for any of the conditions which are imposed.

D. A Medical Marijuana Dispensary general business license shall be valid for three years, and may be renewed upon successful application for renewal.

E. The Director may allow up to two Medical Marijuana Dispensaries to exist at any one time in the unincorporated County.

F. A Dispensary shall have no employees unless such employees are primary caregivers meeting all terms and conditions of applicable law, including the Sacramento County Code, and for whom the Sheriff determines the background to be acceptable pursuant to section 4.70.080.

G. At least thirty (30) days prior to the approval of the dispensary general business license, the applicant must provide proof to the Director that all property owners within 1,000 feet of the proposed location of the dispensary have been notified in writing by U.S. Mail of the applicant's intent to open a dispensary.

4.70.060 Special Business License.

A. Any operator of a Dispensary must also obtain a special business license. The applicant for a Medical Marijuana Dispensary special business license shall submit to the Director an application on a form and containing such information as is prescribed by the Director, including the following, to enable the Director, Sheriff, or designees thereof, to perform the background check specified herein:

1. The name, address, phone number, and fingerprints of the applicant. A P.O. Box shall not be acceptable as an address.
2. A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.
3. Such other information as may be required by the Director, the Sheriff, or designees thereof consistent with the purposes of this Chapter, the County Code, and applicable law.

B. Upon receipt of the information referenced above, the Sheriff shall conduct an investigation and shall determine the background of the applicant to be acceptable for the purposes of the Dispensary license, unless the Sheriff makes a written finding as to any of the following:

1. The applicant failed to provide the information required herein;
2. The applicant failed to submit or otherwise refuses to submit to fingerprinting;
3. The applicant provided false, inaccurate, or otherwise misleading information; or
4. The applicant has been found to have committed a criminal or other act which demonstrates that the applicant's operation of a Medical Marijuana Dispensary would not be in the interests of the public health, safety or welfare. Notwithstanding the above, an applicant shall not be denied solely on the basis that the applicant has been convicted of a felony if the applicant has obtained a certificate of rehabilitation under California law or that the applicant has been convicted of a misdemeanor if the applicant has met all applicable requirements of rehabilitation pursuant to California law.

4.70.070 Contents and Posting of the General Business License.

A. The Medical Marijuana Dispensary general business license shall contain, but not be limited to, the following:

1. A complete description of the Dispensary authorized by the license;
2. The name and address of the Dispensary so licensed;
3. The name and address of the owner of the Dispensary; and
4. Any conditions upon which the license is issued.

B. The license shall be conspicuously posted at the location of the Dispensary in full public view.

4.70.080 Employee Permits.

A. It shall be unlawful for a person to work or volunteer in the operation of a Medical Marijuana Dispensary as a manager, employee or independent agent, and unlawful for the holder of a Medical Marijuana Dispensary license to allow the person to perform such duties or functions unless the person has first applied for and obtained an employee permit.

B. Applications for an employee permit shall be filed in the office of the Director. The Director shall receive any fee required for the application; ensure that the application is complete; and refer the application to the Sheriff for processing, investigation, review and action.

C. The application for an employee permit shall be on a form and containing such information as is prescribed by the Director, including the following:

1. The name, current residential address, and phone number of the applicant;
2. The name and address of the Dispensary which has retained the services of the applicant for which the permit is required; and
3. A statement certifying that the applicant is a primary caregiver meeting all terms and conditions under applicable law.

D. The Sheriff shall conduct such investigation of the background of the applicant for an employee permit as is necessary in order to determine whether the

minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

E. The Sheriff shall issue the employee permit within thirty (30) days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the permit under regulations prescribed by Section 4.70.060 of this chapter. If the Sheriff's investigation has not been completed by the date issuance of the permit is required, but that portion of the investigation which has been completed has disclosed no basis for denial of the license, the Sheriff shall issue a temporary employee permit, the term of which shall extend no longer than one hundred twenty (120) days from the date of issuance. A temporary employee permit shall expire upon either the date of expiration of its term, the date of issuance of an employee permit, or the date of service of notice that an employee permit has been denied. While in force and effect, a temporary employee permit shall otherwise be accorded the same status as an employee license.

F. An employee permit shall not be transferable or assignable from one person to another.

G. The employee permit shall contain such information as the Sheriff requires, including the following:

1. The permit holder's name and address;
2. The name and address of the Medical Marijuana Dispensary retaining his or her services for which the permit is issued;
3. The expiration date of the permit;
4. A description of the duties or functions which the permit authorizes to be performed; and
5. A physical description of the permittee.

H. The holder of an employee permit shall carry the permit on his or her person at all times while performing services for the Dispensary and shall display the permit for inspection upon request by any peace officer.

I. Applications for renewal shall be filed, processed and permits issued in the manner and pursuant to the standards and procedures prescribed by paragraphs B through E of this section.

J. An employee permit shall become void upon termination of employment, contract or provision of volunteer services.

4.70.090 Operating Restrictions.

A Medical Marijuana Dispensary, once licensed by the Director, shall meet the following operating standards for the duration of the use:

A. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Dispensary, except that no more than two (2) persons at any one time may consume marijuana if in a designated and properly and separately filtered and ventilated area within the dispensary. The operator shall provide appropriate supervision for patient safety and welfare. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.

B. Persons under the age of eighteen (18) shall not be allowed on the Dispensary's premises unless they are a qualified patient.

C. No Dispensary shall be permitted at a location where a license is pending or in effect from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. No alcoholic beverages shall be provided, stored, kept, located, dispensed or used on the premises.

D. No marijuana may be cultivated on the premises, except that no more than twelve (12) immature plants ("clones") of a height of eighteen (18) inches or less may be kept on the premises for each individual receiving medical marijuana from the dispensary, and no more than ninety-nine (99) such plants may be kept on the premises at any one time.

E. No Dispensary 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 Code and applicable law.

F. The Dispensary shall provide adequate security on the premises so as to insure the safety of persons and to protect the premises from theft. Prior to being issued a Dispensary license, the dispensary operator shall file a safety and security plan with the Sheriff. The Sheriff may impose reasonable terms and conditions on the proposed operations, consistent with Health & Safety Code section 11362.5 *et seq.* and with public health, safety, and welfare. Such terms and conditions may include, but not be limited to, requirements as to landscaping and lighting, facility security, lighting, and operations security procedures acceptable to the Sheriff. All safety and security plans shall provide for a hardwired, monitored alarm system. Such terms and conditions may be imposed at the time a Dispensary special business license is issued, upon renewal of the special business license, or at any time during the term of the special business license. The Sheriff shall provide to the applicant or operator a written determination of the reasons for any of the conditions which are imposed.

G. The Dispensary shall provide at least one full-time, state certified and registered, security guard on the premises during hours of operation. Security personnel shall not participate in any manner in the handling, processing, sale or distribution of marijuana. Security personnel need not obtain an employee permit pursuant to Section 4.70.080 prior to working at the Dispensary. Security personnel shall not be required to be primary caregivers.

H. The Dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Director to insure that the operations of the Dispensary 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.

I. A Dispensary which provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate license(s) from the Environmental Management Department for providing food or other comestibles.

K. A Dispensary may receive compensation for actual expenses, including reasonable compensation incurred for services provided, or for payment for out-of-pocket expenses incurred in providing those services. However, any such Dispensary must pay applicable sales tax on such services and obtain and maintain the applicable seller's permit or similar permit from the Franchise Tax Board or other regulatory agency.

- L. A Dispensary may not operate between the hours of 7:00 p.m. and 7:00 a.m.
- M. A Dispensary shall maintain records identifying:
1. the names and addresses of qualified patients, or state tracking numbers for persons with identification cards who obtain medical marijuana from the Dispensary;
 2. for each qualified patient or person with an identification card, the name and address of their recommending doctor; and
 3. A Post Office Box shall not be an acceptable address;
 4. for each qualified patient or person with an Identification card, a copy of the written recommendation or a statement signed by the Dispensary operator that a verbal recommendation was communicated confirmed to the Dispensary operator by the recommending doctor.
- N. Each Dispensary shall allow the Director to have access to the Dispensary's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with this County Code and applicable law. Books, records, accounts, and any and all relevant data will be produced within three (3) business days after receipt of the Director's written request(s).

4.70.100 Fees.

The Director may impose such reasonable fees on both the application for, and the issuance of licenses for, a Dispensary to recoup the County's cost in administering and implementing the provisions relating thereto.

4.70.110 Violations.

Violations of the terms and conditions of the Dispensary's general or special business license, of this Code, or of applicable local, state, and federal rules, regulations, and laws shall be grounds for revocation of the both the general and special business license or for nonrenewal.

4.70.120 Appeals.

All actions taken by County officials under this Chapter to condition, deny, disapprove, fail to renew or revoke any license or permit required by this Chapter shall be subject to appeal pursuant to the appeal procedures of Chapter 4.06 and 4.10 of this Code.

4.70.130 Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this Chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, that decision shall not affect the validity or effectiveness of the remaining portions of this Chapter or any part thereof. The Board of Supervisors hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 2. Chapter 4.10.005 of Chapter 4.10, Title 4, of the Sacramento

County Code is amended to read as follows:

4.10.005 License Required.

No person shall, unless under and by authority of a valid unexpired and unrevoked Special Business License, conduct or operate within the unincorporated area of the County, whether singularly or in connection with another type of enterprise, the following:

- a. Any enterprise or activity for which a Special Business License is required by Chapter 4.14 through 4.50, inclusive, and Chapter 4.70;
- b. Antique Dealers--in firearms, jewelry, art objects, furniture or other valuables;
- c. Automobile Dismantlers--and marketers of used parts for automobiles;
- d. Automobile Repairs--when the person or firm makes calls at the home or business of the customer to make repairs;
- e. Circuses and Carnivals--including the maintenance of animals for display to, riding by or petting by children;
- f. Sales of Concealable Firearms--including gunpowder;
- g. Home Repair Services--consisting of services related to the repair or maintenance of single family residential dwellings, mobilehomes, or gardens by persons who are not licensed to perform such services by the State of California, including hauling businesses, lot cleaners, rubbish haulers, and other similar businesses engaged in rubbish and waste disposal not otherwise regulated under Sacramento County Code Chapter 6.20, or the Sacramento Regional County Solid Waste Authority; and businesses offering energy-saving appliances, equipment, or services, whether in connection with solar, wind or other power;
- h. Purchase or Sale of Metals--including precious and scrap metals;
- i. Auto Towing--consisting of persons who engage in the business of towing automobiles which require repair, are abandoned on public rights of way, or are parked illegally;
- j. Repossession or Storage of Automobiles--or any other thing of value;
- k. The Operator of Each Booth--in a bazaar, flea market or other similar type of auction established for the purpose of selling merchandise, including food, for private gain;
- l. Private Security Companies;
- m. Tree Trimmers;
- n. Motorcycle Sales--including the sale of new and used parts;
- o. Wrecking Yards--including automobile dismantling and the buying and selling of automobiles of scrap metal or parts;
- p. Hauling Businesses--including commercial lot cleaners, rubbish haulers, and other similar businesses engaged in rubbish or waste disposal, not otherwise regulated under Sacramento County Chapter 6.20, the Sacramento Regional County Solid Waste Authority, licensed by the Contractors' State License Board, or under subsection (g).

A person shall be deemed to operate or conduct an enterprise or activity and violate this Section and corresponding prohibitions in Chapters 4.14 through 4.50,

inclusive, and Chapter 4.70, if the person, without an applicable Special Business License in effect, supervises, inspects, directs, organizes, manages or controls or is in any way responsible for or in charge of the enterprise or activity for which the License is required.

SECTION 3. This ordinance was introduced and the title thereof read at the regular meeting of the Board of Supervisors on _____ and on _____ further reading was waived by the unanimous vote of the Supervisors present.

This ordinance shall take effect and be in full force on and after thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days from the date of its passage it shall be published once with the names of the members of the Board of Supervisors voting for and against the same, said publication to be made in a newspaper of general circulation published in the County of Sacramento.

On a motion by Supervisor _____, seconded by Supervisor _____, the foregoing ordinance was passed and adopted by the Board of Supervisors of the County of Sacramento, State of California, this ____ day of _____ 2005, by the following vote:

AYES: Supervisors,

NOES: Supervisors,

ABSENT: Supervisors,

Chairperson of the Board of Supervisors
of Sacramento County, California

(SEAL)

ATTEST: _____

Clerk of the
Board of Supervisors

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