

# TOWN OF FAIRFAX STAFF REPORT

## Department of Planning & Building Services

**TO:** Planning Commission

**DATE:** February 17, 2011

**FROM:** Jim Moore, Director of Planning and Building Services  
Linda Neal, Senior Planner

**SUBJECT:** Consideration of Resolution No. 11-02 proposing to the Town Council amendments to the Fairfax Municipal Code to include a chapter regulating Medical Marijuana Dispensaries; changes are subject to adoption by the Fairfax Town Council.

**CEQA:** The proposed Code amendments do not constitute a project subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(3).

### **BACKGROUND**

At the request of the Planning Commission, at the January 12, 2011 Town Council meeting, the Mayor and Council members received a staff report and public comment - and then discussed and considered possible guidelines for the siting and/or number of Medical Marijuana Dispensaries (Please see **Exhibit A**: 1/12/11 Town Council Staff Report and all Attachments as an integral part of this staff report).

As a result, staff was directed to create draft Ordinance (Number to be assigned before final adoptions by Council) (**Exhibit B**) incorporating the staff and Town Council recommendations for Planning Commission review and/or recommendations; and to bring the draft ordinance with Planning Commission comments and/or recommendations back to Town Council for further review and/or revisions – and for the first reading toward final adoption if appropriate.

The Town Code requires that the Planning Commission endorse Code changes via resolution. Therefore, please find attached draft Resolution No. 11-02 (**Exhibit C**).

### **DISCUSSION**

At the request of Council, staff has expanded the zoning districts that would allow dispensaries to operate to include Light Commercial (CL) and the Recreation Commercial (CR) and certain Central Commercial (CC) zoned parcels abutting residentially zoned parcels in order to increase the number of available commercial parcel and/or sites for possible dispensary use - conditionally permitted.

It should be noted that during the public comment period on this matter at the January 12, 2011 Council meeting, a member of the public had concerns as to whether the Town's adoption of siting criteria for commercial dispensaries would interfere with a residents right to run a non-profit medical marijuana cooperative in non-commercial areas of town. It is the opinion of staff that nothing in the proposed ordinance would limit the operation of legitimate non-profit medical marijuana cooperative in non-commercial zones.

### **RECOMMENDATION**

1. Open the public hearing and take testimony.
2. Close the public hearing.
3. Move to approve adoption of Resolution No. 11-02 and direct staff to take the draft ordinance with Planning Commission recommendations back to Town Council for review and/or revisions – and for first reading toward final adoption.

### **ATTACHMENTS**

- Exhibit A – 1/12/2011 Town Council Staff Report and attachments
- Exhibit B – Draft Ordinance and attorney comments
- Exhibit C – Draft Resolution No. 11-02

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JMS

**TOWN OF FAIRFAX  
STAFF REPORT**

**To: Mayor, Members of the Town Council**  
**From: Michael Rock, Town Manager** *(MRO)*  
**Jim Moore, Director of Planning and Building Services**  
**Date: January 12, 2011**  
**Subject: Discussion/Consideration of possible guidelines for Medical Marijuana Dispensaries**

**RECOMMENDATION**

- (1) Review, discuss and/or amend the staff recommended guidelines for siting medical marijuana dispensaries.
- (2) Instruct staff to create a draft Ordinance incorporating the staff recommendations and/or Town Council revisions for Planning Commission review and/or recommendations.
- (3) Bring the draft ordinance with Planning Commission recommendations back to Town Council for review, revisions and/or first reading.

**BACKGROUND**

Currently, the Town Code does not limit the location or the number of medical marijuana dispensaries, stores or co-ops, through its zoning code.

On October 6, 2010, the Town Council enacted Ordinance No. 753, an interim moratorium for forty-five days on additional medical marijuana dispensaries, stores, and co-ops in the Town in order to review the zoning code and propose reasonable limitations on the location and operations of dispensaries in the Town.

On November 17, 2010 Town Council enacted Ordinance No. 758 extending the forty five (45) day Interim Ordinance No. 753 (Moratorium on the Establishment of Marijuana Dispensaries) for an additional six (6) months. Ordinance No. 758 went into effect on December 17, 2010 and will expire on May 17, 2011. To date, staff has:

- Reviewed issues that have arisen with the current dispensary;
- Considered the application process for dispensaries in other jurisdictions (Please see Exhibit A);
- Surveyed code provisions that regulate dispensaries in other jurisdictions (Please see Exhibit B); and
- Analyzed the applicability of state law, particularly AB 2650, which took effect on

January 1, 2011 (Please see Exhibit C).

## **DISCUSSION**

### ***Distance to Schools - AB 2650***

On January 1, 2011 AB 2650 went into effect. This bill provides that no dispensary can be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12. As a result of this law, the number of "qualifying" parcels or sites within the Town's Central Commercial (CC) or Highway Commercial (CH) districts (the only two zoning areas that staff recommends be considered for siting dispensaries) is significantly reduced (please see Exhibit D).

Please note: the existing dispensary at School Street Plaza, which is within a 600-foot radius of Saint Rita School would be permitted to remain as a "legal non-conforming" use that existed prior to AB 2650.

### ***Distance to Residences***

Staff recommends that dispensaries only be located on parcels within the Central Commercial (CC) or Highway Commercial (CH) zoning districts not "directly" abutting a residentially zoned area; which would limit the available parcels to only the Fair-Anselm properties (approximately six parcels comprising 6.38 acres).

### ***Number of, and Distance between Dispensaries***

Staff recommends that no more than two dispensaries be located within the Town.

However, when and if the existing dispensary ceased to exist at its current site, the Town would/will be faced with the issue of allowing more than one dispensary at the Fair-Anselm properties. In order to plan for this occurrence, staff recommends that the minimum distance between dispensaries be at least 150-feet door to door.

### ***Summary***

Staff recommends drafting an ordinance for siting dispensaries that provides:

- (1) A use permit shall be required for any dispensary in Town.
- (2) Dispensaries are allowed only within either the CC or CH zoning districts [on parcels] not within 600-feet of a public or private school (per AB 2650) - and not directly abutting residentially zoned districts.
- (3) No more than two dispensaries shall be allowed to operate within the Town at any given time; and
- (4) Each proposed dispensary must be at least 150-feet [door to door] from any existing dispensary.

## **ATTACHMENTS**

**Exhibit A: CannBe (Matrix), California (Updated October 18<sup>th</sup>, 2010)**

**Exhibit B: Sample Codes; Santa Cruz, Sebastopol, Napa, Rancho Cordova**

**Exhibit C: AB 2650, Buchanan. Medical marijuana**

**Exhibit D: 600-foot Radius Maps; Saint Rita School, Montessori and Little Arrows Preschool**

# EXHIBIT A

CannBe (Matrix), California  
(Updated October 18, 2010)



# CALIFORNIA

(Updated October 18th, 2010)

CITY / COUNTY	MCDs Operating	Max # of MCDs	Permit Type	New Application Approval	Zoning Restrictions	Sensitive Use Substances	Public Hearing	Comprehensive Process	Background Check of Applicant	MCD Ongoing Review	Medicine Quantity Limit	Records Oversight	Misc
Albany	0	1	Conditional Use	Planning Commission	Distance from residential zones	1000 ft	Yes	No	Yes	Site Inspections	Yes	Police Department	
Berkeley	3	3	Conditional Use	Peer Review	MCD Overlay	1000 ft	No	No	No	Peer Review	No	Peer Review Committee	
Citrus Heights	1	1	Dispensary	City Manager & Police Chief	Not in residential zones	1000 ft	No	No	Yes	Records Inspections	Yes	City Manager	
Contra Costa	1	1	Dispensary	City Manager	Commercial	500 ft	Yes	No	Yes	Annual report	Yes	Director of Public Health	1000 patient limit
County of Los Angeles	Unknown	None	Conditional Use	Planning Commission	Residential Buffer only	1000 ft	Yes	No	Yes	Site Inspections	No	None	
County of San Diego	Unknown	None	Compliance Certificate (Sheriff)	Sheriff / Planning Department	Manufacturing (~20 sites)	1000ft	No	No	Yes	Sheriff	No	Sheriff	
County of San Luis Obispo	0	None	Minor Use Permit	Director of Planning and Building	CR and CS zones	1000ft	Yes	No	Yes	None	No	None	Employees 23+
County of Sonoma	6	None	Use permit	Zoning Board	Commercial	1000 ft or waiver	No	No	No	Revocation	Yes	None	2 levels of dispensaries
Diamond Bar	1	1	Business	Community Development	None	1000 ft	No	No	Yes	None	No	None	
Long Beach	Unknown	None	Medical Marijuana Collective Permit	Director of Physical Management	Not in residential zones	1500ft High schools, 1000ft others	Yes	No	Yes	Site Inspections	No	None	Lobby process
Martinez	0	None	Conditional Use	Planning Com or Council	Commercial	1000 ft	Yes	No	Yes	Site Inspections	Yes	Police	
Napa	0	1	Medical Marijuana Dispensary Permit	Director / City Council	Commercial / Medical Offices	1000 ft	Yes	Yes	Yes	Director	No	None	
Oakland	3	8	Special Use	City Manager	Commercial & Industrial	1000 ft or waiver	Yes	Yes	Yes	Records Inspections	Yes	City Manager	
Palm Springs	2	3	Regulatory	City Manager	Not where primary use is commercial retail	500 ft (including residential zones)	Yes	Yes	Yes	Site & records inspections	No	City Manager	

## Significant Medical Cannabis Dispensary Regulations



**CALIFORNIA**  
(Updated October 18th, 2010)

*my work*

CITY / COUNTY	MCDs Operating	Max # of MCDs	Permit Type	How Application Approved	Zoning Restrictions	Sensitive Use Subareas	Public Hearing	Competitive Process	Background Check of Applicant	MCD Ongoing Review	Medicative Quantity Limit	Records Oversight	Misc
Richmond	None Permitted	3	Medical Marijuana Collective Permit	Chief of Police	Commercial (C-3 Only)	1500R High schools; 1000R others	Yes	Yes	Yes	Site Inspections	Yes	City Officials	
San Francisco	23	None	Dispensary	Health Dept	Commercial	1000 R	Yes	No	Yes	Dir Inspections	Yes	None	
San Mateo	0	None	Dispensary License	License Commission	Manufacturing & Commercial	500 R	No	No	No	Site Inspections	Yes	None	No sales allowed
Santa Barbara	2	3	Dispensary	Hearing officer	Commercial	500 R	No	No	Yes	Revocation	No	City Official	
Santa Cruz	2	None	Special Use	Zoning Board	Commercial & Industrial	600 R or washer	Yes	No	No	Revocation	No	None	
Santa Rosa	2	2	Dispensary	City Manager	Commercial & Industrial	500 R or washer	No	No	Yes	Annual report	Yes	City Official	500 patients limit
Sausalito	2	2	Major Use	Planning Commission	Commercial & Industrial	500 R or washer	Yes	Yes	Yes	Annual report	Yes	Any City Official	
Stockton	0	3	Commission Use Permit	Planning Commission / City Council	Commercial & Industrial	600, 500, 300R	Yes	Yes	Yes	Site Inspections (Police, Fire, Community Development)	No	None	
Vanilla	0	None	HHJ Business	City Planner	Commercial & Agricultural	1000 R	No	No	Yes	Records Inspections	Yes	City Planner	
West Hollywood	4	4	None	Public Works Dir	Commercial	500 R	No	No	Yes	Police mtgs	No	None	
Whittier	0	None	Conditional Use	Planning Commission	Manufacturing	1000 R	Yes	No	Yes	Records Inspections	No	Police Department	

# EXHIBIT B

## Sample Codes

Santa Cruz, Sebastopol,  
Napa and Rancho Cordova

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**PART 14: MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES**

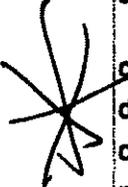
**24.12.1300 SPECIAL USE PERMIT REQUIREMENT FOR MEDICAL MARIJUANA PROVIDER ASSOCIATION DISPENSARIES.**

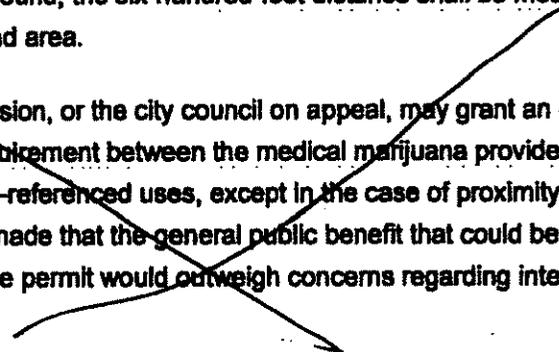
1. Special Use Permit Required. Medical marijuana provider association dispensaries, as defined by Section 24.22.539, may be allowed in C-C (Community Commercial), C-T (Thoroughfare Commercial) and I-G (General Industrial) Districts; provided, that they meet the siting criteria and performance standards 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 ensure 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 eighteen 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 three thousand square feet of ADA-compliant 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 a.m. to 7:00 p.m., Monday through Friday, if located within fifty feet of a residential use, and shall be limited to no more than 7:00 a.m. to 7:00 p.m., seven days per week, if located at a distance greater than fifty feet from a residential use.
- f. *Pharmacy parking* 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 ensure 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 ensure 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 association's 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 Chapter 6.90.

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 eighteen;

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 this section.

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. 2010-15 § 1 (part), 2010; Ord. 2010-08 § 1 (part), 2010; Ord. 2000-12 § 6, 2000).

**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. 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.**

**Chapter 17.140**

**MEDICAL CANNABIS DISPENSARIES USE PERMIT CRITERIA AND PROCEDURES**

**17.140.010 Findings**

The City Council adopts the ordinance codified in this chapter based upon the following findings:

(A) The 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" (Act).

(B) The intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

(C) The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Cannabis Program, (Program), 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 consistent with the Program.

(D) To protect the public health, safety, and welfare, it is the desire of the City Council to modify the City Code consistent with the Program, regarding the location and operation of medical cannabis dispensaries and the cultivation of medical Cannabis.

(E) Cannabis plants, as they begin to flower and for a period of two (2) months or more during the growing season produce an extremely strong odor, offensive to many people.

(F) The strong smell of Cannabis can create an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery and armed robbery.

(G) There have been a number of Cannabis dispensing- and cultivation-related incidents in California, some including acts of violence committed by persons without a legitimate medical need or use.

(H) The right of qualified patients and their primary caregivers under State law to cultivate marijuana plants for medical purposes does not confer upon them the right to create or maintain a public nuisance. By appropriate land use regulations and procedures, the City anticipates a significant reduction in the complaints of odor and the risks of crime described herein than what would otherwise occur.

(I) The City finds that medical Cannabis dispensing and cultivation which exceeds the limitations set forth in these regulations will likely result in an unreasonable risk of crime and will likely create offensive odors to persons living nearby.

(J) The City further finds that the indoor cultivation exceeding the limits of these regulations may require excessive use of electricity which may create an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation. In addition, the City finds

that the indoor cultivation exceeding the limits of these regulations creates a substantial risk of burglary, robbery and armed robbery.

(K) It is the City Council's intention that nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, to otherwise permit any activity that is lawfully and constitutionally prohibited under that Act.

(L) It is the City Council's intention that nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

(M) Pursuant to California Health and Safety Code Section 11362.71 et seq., the State Department of Health through the state's counties, is to be responsible for establishing and maintaining a voluntary medical cannabis identification card program for qualified patients and primary caregivers.

(N) California Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matters set forth in Section 11362.71 et seq.

(O) This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the Council finds and determines that there is nothing in this chapter or its implementation that could foreseeably have any significant effect on the environment.

(P) That this chapter is compatible with the general objectives of the general plan and any applicable specific plan, in that a medical cannabis dispensary use would be conditionally permitted in commercial and industrial districts, being similar to other permitted and conditionally permitted uses, such as pharmacies and medical clinics, and in that the use will be subject to strict review and conditions.

(Q) That this chapter is compatible with the public convenience, general welfare and good land use practice, in that medical marijuana dispensaries and medical cannabis cultivation address a medical need in the community, and in that the uses will be subject to rigorous review and conditions.

(R) That this chapter will not be detrimental to the public health, safety and general welfare, in that uses will be subject to careful review, that because of the small area and population of Sebastopol, lack of experience with this use, and potential for adverse effects, dispensaries would be limited in number, cultivation would be appropriately controlled, and such uses would be subject to strict operating requirements, limiting potential negative effects.

(S) That this chapter will not adversely affect the orderly development of property, in that there would be appropriate controls on medical Cannabis cultivation, there would be absolute limits on the number of dispensaries, dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

#### **17.140.020 Purpose and Intent.**

It is the purpose and intent of this chapter to regulate medical cannabis cultivation and dispensaries in order to promote the health, safety, morals, and general welfare of residents and

businesses within the City. It is neither the intent nor the effect of this chapter to condone or legitimize the use of cannabis.

**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 Sebastopol is controlled by the provisions of this chapter of the Sebastopol 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) Provided compliance is maintained with this ordinance, nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from allowing, limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants as may otherwise be 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 in 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.

**17.140.030 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 Municipal Code Section 17.08.030.

(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) "City" means the City of Sebastopol.

(D) "City Manager" means the City Manager of the City of Sebastopol or the authorized representative thereof.

(E) "Drug paraphernalia" shall have the same definition as California Health and Safety Code Section 11362.5, and as may be amended.

(E) "Identification card" shall have the same definition as California Health and Safety Code Section 11362.5 et seq., and as may be amended.

(F) "Medical cannabis cultivation area," means the maximum dimensions allowed for the growing of medical cannabis. For purposes of this chapter, the allowable cultivation area shall apply to the outward edge of the vegetative canopy.

(G) "Medical cannabis dispensing collective," hereinafter "dispensary," 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. "Dispensary" means 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.

(H) "Medical cannabis patient collective," hereinafter patient collective, shall be defined the same as "dispensary," but does not operate in a "retail" capacity. As such, "patient collectives" are subject to all provisions relating to dispensaries except where specifically indicated.

(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) or (d), or (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 they 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 11362.5 et seq., and as may be amended.

(N) "Qualified patient" shall have the same definition as set forth California Health and Safety Code Section 11362.5 et seq., and as they may be amended from time to time.

(O) "School" means an institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including Santa Rosa Junior College and any other college or university.

(P) "Youth-oriented facility" means elementary school, middle school, high school, public park, and any establishment that advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors, or, the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. This shall not include a daycare or preschool facility that provides supervision of eight or fewer minor children, or children less than 10 years of age, and shall not include open space areas of the Laguna Wetlands Preserve, or the Town Plaza.

#### **17.140.040 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 City 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 City as required in this chapter.

#### **17.140.050 Term of Permits and Renewals Required.**

(A) Use Permits issued under this chapter shall expire two years following the date of their issuance.

(B) Use Permits 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 the nonrefundable application fee referenced herein. Applications for renewal shall be acted on as provided herein for action upon 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 City at any time, as provided in this chapter and City Code.

#### **17.140.060 General Tax Liability.**

An operator of a dispensary shall also be required to apply for and obtain a Business License and a general City tax certificate or exemption as a prerequisite to obtaining a permit

pursuant to the terms hereof, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with State law.

**17.140.070 Imposition of Fees.**

Every application for a permit or renewal shall be accompanied by an application fee, as established by resolution of the City Council from time to time. This application or renewal fee shall not include fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time.

**17.140.080 Limitations on Number and Size of Dispensaries.**

(A) During the initial 12 months from the effective date of the ordinance codified in this chapter, the Planning Commission may not grant or cause to be granted more than one permit for medical cannabis dispensaries, in compliance with the provisions of this chapter.

(B) After 12 months have lapsed from the effective date of said ordinance, the Planning Commission may consider additional applications for dispensaries and grant up to one additional permit in compliance with all provisions of this chapter.

(C) Permits for up to two non-retail patient collectives may be granted in compliance with all provisions of this chapter.

**17.140.090 Limitation on Location of Dispensary.**

(A) A dispensary may only be located within commercial and industrial designated areas, i.e., those so designated in the General Plan and Zoning map. A non-retail patient collective may only be located in an industrial designated area.

(B) A dispensary shall be in a visible location that provides good views of the dispensary entrance, windows and premises from the public street.

(C) A dispensary shall not be allowed in the following areas at the time of its permitted establishment:

(1) Within 500 feet of a youth-oriented facility, a school, a park except for the Laguna Wetlands Preserve and the Town Plaza, a smoke-shop which sells paraphernalia for consuming drug or tobacco products, or another dispensary; or

(2) Within any residential zoned parcel or primary land use, or any property with an underlying residential or mobile homes general plan land use designation.

(3) On a parcel having a residential unit, or on a parcel directly abutting a residentially-zoned property, unless there are intervening non-residential uses between the dispensary and the residential unit or the residentially-zoned property that the Planning Commission determines sufficient to provide an appropriate separation.

(D) The distance between a dispensary and 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, in which the above listed use occurs or is located.

(E) A waiver of the provisions in subsection (C) of this section may be granted if the applicant demonstrates on plans and materials presented for review 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.

#### **17.140.100 Operating Requirements.**

Dispensary operations shall be established and managed only in compliance with the following standards:

(A) **Criminal History.** Any applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall not 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 nolo contendere.

(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 or a primary caregiver, and they are in the presence of their parent or guardian for the first visit.

(3) The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that person under the age of 18 are precluded from entering the premises unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian for the first visit.

(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) Sunday through Thursday: 7:00 a.m. to 9:00 p.m.

(2) Friday and Saturday: 9:00 a.m. to 9:00 p.m.

(3) Christmas Day, New Years Day, Memorial Day, Labor Day, 3<sup>rd</sup> and 4<sup>th</sup> of July and Apple Blossom parade day: closed.

(D) **Dispensary Size and Access.**

(1) The dispensary size shall not exceed 1,000 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 reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on City services.

(2) A dispensary shall not be increased in size (i.e., floor area or number of patients) without a prior approval amending the existing dispensary permit.

(3) 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 is highly encouraged. A viewer shall be installed in the door that allows maximum angle of view of the exterior entrance.

(4) Dispensary personnel shall monitor site activity, control loitering and site access.

(5) Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted at a dispensary.

(6) 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.

(7) Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area with dispensary personnel. All other authorized visitors shall remain in the designated waiting area in the front entrance/lobby.

(8) Restrooms shall remain locked and under the control of management.

(E) **Dispensary Supply.** A dispensary may possess no more than eight ounces 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.

(F) **Dispensing Operations.**

(1) A dispensary shall dispense medical cannabis to meet monthly medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall strongly discourage and avoid daily or weekly visits by patients as a routine practice.

(2) A dispensary shall only dispense to qualified patients or caregivers with:

(a) a currently valid physician's approval or recommendation in compliance with the criteria in California Health and Safety Code Section 11362.5 et seq. and valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card, or

(b) a currently valid California Medical Marijuana Identification Card or a Patient ID Center Identification Card.

(3) For qualified patients or caregivers without a California Medical Marijuana Identification Card or a Patient ID Center Identification Card, prior to dispensing medical cannabis, the dispensary shall obtain verbal, online, or signed verification from the recommending physician's office personnel that the individual requesting medical cannabis is a qualified patient.

(4) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(5) 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 California Medical Marijuana Identification Card or a Patient ID Center Identification Card.

(6) Information on prior year's operations shall be provided annually, as required in this chapter. The operator shall adjust the operations as necessary to address issues.

(G) Consumption Restrictions.

(1) 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. Dispensary employees and registered volunteers who are qualified patients may consume cannabis within the enclosed building area of the premises, provided such consumption occurs via oral consumption or vaporization, not smoking.

(2) Dispensary operations shall not result in illegal redistribution of medical cannabis obtained from the dispensary, or use in any manner that violates local, State or City Codes.

(H) Retail Sales and Cultivation.

(1) Except for immature nursery stock cannabis plants, not more than 750 square feet of the interior area of the dispensary shall be used for medical cannabis cultivation, or as otherwise in compliance with Health and Safety Code Section 11362.5 et seq. With approval of a Use Permit, greater on- or off-site cultivation square footage may be permitted. Each permitted dispensary may operate no more than one off-site cultivation facility. Non-retail patient collectives shall not be permitted to have off-site cultivation facilities. Cultivation shall be limited to interior areas of buildings. Any off-site facility shall comply with all provisions of Municipal Code Chapter 17.140, except that retail dispensing shall not be permitted at off-site dispensary cultivation facilities, and any off-site cultivation facilities may only be located in the M Industrial District.

(a) Except for immature nursery stock cannabis plants, cannabis plants grown by the dispensary shall only be utilized for production of processed cannabis to dispense to members of the collective.

(b) If cannabis plants other than immature nursery stock plants are to be grown at the dispensary, a security plan for the growing area shall be submitted to the Sebastopol Police Chief for review and approval. Such plan shall include: security alarms and surveillance systems; physical measures to prevent access to the area by anyone other than dispensary staff; and physical measures to prevent vehicle penetration of the growing area.

(c) If required by the Building Official, the cultivation area shall include a one-hour firewall assembly, shall be ventilated with odor control, and shall not create excessive humidity or mold conditions. The medical Cannabis cultivation area shall be in compliance with the current, adopted edition of the California Building Code as regards Natural Ventilation or Mechanical Ventilation

(d) Cultivation facilities are strongly encouraged to utilize the most water-efficient and environmentally-responsible cultivation practices available. The City reserves the right to require annual reports on cultivation facility practices, including but not limited to cultivation mediums and water use methods.

(e) The cultivation use shall comply with applicable stormwater, wastewater, and Building Code requirements.

(f) Plants in the permitted medical cannabis cultivation area shall not exceed 10 feet in height.

(2) With the approval of the Planning Commission a dispensary may conduct or engage in the commercial sale of specific products, goods or services in addition to the provision of medical cannabis and other items permitted by these regulations on terms and conditions consistent with this chapter and applicable law. Non-retail patient collectives shall not engage in the commercial sale of products.

(3) Up to 150 square feet may be utilized for display and sales of devices necessary for administering medical cannabis, 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. Non-retail patient collectives shall not engage in the display and sales allowances referenced herein.

(4) A dispensary shall not cultivate, distribute or sell medical cannabis for a profit.

(5) A dispensary shall not pay any supplier(s) of medical cannabis more than the costs incurred for cultivation and preparation.

(6) 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.

(7) The provision of locally-grown and organic cannabis is encouraged.

(1) 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 who 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, as approved by the Chief of Police and reviewed by the Planning Commission, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(6) Security Cameras. Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage loitering, crime, illegal or nuisance activities.

(7) Security Video Retention. Security video shall be maintained for 72 hours.

(8) Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition.

(9) Emergency Contact. A dispensary shall provide the Chief of Police 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 City.

(J) 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 be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less. Signs shall comply with all ordinances and not contain any logos or information that identifies, advertises or lists the services offered.

(K) 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 City officer or official for purposes of determining compliance with the requirements of this section.

(L) Patient Records. A dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation from a physician or doctor of osteopathy stating the need for medical cannabis. Such records may be maintained on or off-site, and shall be made available for inspection by any City officer or official for purposes of determining compliance with the requirements of this section.

(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 properly trained or professionally-hired security personnel.

(N) Site Management.

(1) The operator of the establishment shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours if directly related to the patrons of the subject dispensary.

(a) "Reasonable steps" shall include calling the police in a timely manner; and requesting those engaging in objectionable activities 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 cannabis or alcohol, excessive pedestrian or vehicular traffic, illegal drug activity, 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 and arrests.

(2) The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

(3) The operator shall ensure that the hours of operation shall not be a detriment to the surrounding area.

(4) The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible cannabis etiquette.

(O) Trash, Litter, Graffiti.

(1) The operator shall clear the sidewalks adjoining the premises plus 10 feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

(2) The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application.

(P) 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.

(Q) Confidentiality. The information provided for purposes of this section shall be maintained by the City as confidential information, and shall not be disclosed as public records unless pursuant to subpoena issued by a court of competent jurisdiction.

(R) Display of Permit. Every dispensary shall display at all times during business hours the permit 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.

(S) Reporting and Payment of Fees. Each permittee shall file an annual statement with the Planning Department indicating the number of patients served by the dispensary within the previous calendar year, and pay all annual permit fees.

(T) 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.

(U) Dispensaries shall be considered medical office uses relative to parking requirements.

#### **17.140.110 Application Preparation and Filing.**

(A) **Application Filing.** A complete Major Use Permit application submittal packet shall be submitted including all necessary fees and all other information and materials required by the City and this chapter. All applications for permits shall be filed with the Planning Department, using forms provided by the City, and accompanied by the applicable filing fee. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

(B) **Eligibility for Filing.** Applications may only be filed by the owner of the subject property, or person with a lease signed by the owner or duly authorized agent allowing them to occupy the property for the intended use.

(C) **Filing Date.** The filing date of any application shall be the date when the City receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

(D) **Effect of Incomplete Filing.** Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within 30 days. If the application remains incomplete in excess of 30 days the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request. The time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

(E) **Effect of Other Permits or Licenses.** 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 dispensary permit.

(F) **Submittal Requirements.** Any application for a Use Permit shall include the following information.

(1) **Applicant(s) Name.** The full name (including any current or prior aliases, or other legal names the applicant is or has been known by, including maiden names), present address, and telephone number of the applicant;

(2) **Applicant(s) Mailing Address.** The address to which notice of action on the application is to be mailed;

(3) **Previous Addresses.** Previous addresses for the past five years immediately prior to the present address of the applicant;

(4) **Verification of Age.** Written proof that the applicant is over the age of 18 years of age;

(5) **Physical Description.** Applicant's height, weight, color of eyes and hair;

(6) **Photographs.** Passport quality photographs for identification purposes;

(7) **Employment History.** All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;

(8) **Tax History.** The dispensary business tax history of the applicant, including whether such person, in previously operating in this or another city, county or state under license has had a business license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;

(9) **Management Information.** The name or names and addresses of the person or persons having the management or supervision of applicant's business;

(10) **Criminal Background.** A background investigation verifying whether the person or person having the management or supervision of applicant's business has been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;

(11) **Employee Information.** Number of employees, volunteers, and other persons who will work at the dispensary;

(12) **Statement of Dispensary Need.** A statement and/or information to establish the need for the additional dispensary to serve qualified patients in the area;

(13) **Plan of Operations.** A plan of operations describing how the dispensary will operate consistent with the intent of State law and the provisions of this chapter, including but not limited to:

(a) Ensuring cannabis is not purchased or sold by the dispensary in a manner that would generate a profit.

(b) Controls that will assure medical cannabis will be dispensed to qualifying patients or caregivers only.

(c) Controls that will ensure limitations on numbers of patients is adhered to.

(d) Controls that will ensure access to dispensary premises is adequately monitored and restricted to pre-approved qualified patients and caregivers.

(14) **Written Project Description.** A written description summarizing the proposed dispensary use size, number of patients, characteristics and intent;

(15) **Written Response to Dispensary Standards.** The applicant shall provide a comprehensive written response identifying how the dispensary plan complies with the each of the standards for review in this chapter, specifically the limitation on number and size, limitation on location, and operating requirements sections;

(16) **Written Response to Criteria for Review Section.** The applicant shall provide a written response indicating how each of the criteria for review has been satisfied;

(17) **Security Plan.** A detailed security plan outlining the proposed security arrangements for insuring the safety of persons and to protect the premises from theft. The plan shall include installation of security cameras, a robbery alarm system monitored by a licensed operator, and a security assessment of the site conducted by a qualified professional;

(18) **Floor Plan.** A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The sketch or diagram need not be professionally prepared, but 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 inches;

(19) **Site Plan.** 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 need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions to an accuracy of plus or minus six inches;

(20) **Accessibility Evaluation.** A written evaluation of accessibility to and within the building, and identification of any planned accessibility improvements.

(21) **Neighborhood Context Map.** An accurate straight-line drawing depicting the building and the portion thereof to be occupied by the dispensary, all properties and uses

within 500 feet of the boundaries of the property on which the dispensary permit is requested, and: (a) the property line of any dispensary within 500 feet of the primary entrance of the dispensary for which a permit is requested, (b) the property line of any "smoke shop" within 500 feet of the primary entrance of the dispensary, and (c) the property lines of any school, park, or residential zone or use within 500 feet of the primary entrance of the dispensary;

(22) **Lighting Plan.** A lighting plan showing existing and proposed exterior premises and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use and comply with all City standards regarding lighting design and installation;

(23) **City Authorization.** Written authorization for the City, its agents and employees to seek verification of the information contained within the application;

(24) **Statement of Owners Consent.** A statement in writing by the applicant that he or she certifies under penalty of perjury that the applicant has the consent of the property owner and landlord to operate a dispensary at the location;

(25) **Applicant's Certification.** 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;

(26) **Other Information.** Such other identification and information as deemed necessary by the City Manager to demonstrate compliance with this chapter and City Codes, including operating requirements established in this chapter.

(G) **Renewal.** Applications for two-year renewal shall be accompanied by the following minimum information:

(1) The operator shall report the number of patients served and pay applicable fees, as required by this chapter.

(2) The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in dispensary operations to address issues, or comply with laws.

(3) The operator shall identify any problems encountered during operations and how they have been addressed.

(4) The operator shall identify how the dispensary has managed its operations to comply with the operating requirements of this chapter and with State law.

#### **17.140.120 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 State law, the provisions of this chapter and the City 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 patients and/or permits allowed by this chapter.
- (H) That issuance of a dispensary permit for the size requested is justified to meet needs of residents.
- (I) That issuance of the dispensary permit would serve needs of residents at this location.
- (J) 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 are anticipated or resulted.
- (K) That 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 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.
- (L) 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.
- (M) 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.
- (N) 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 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.
- (O) That any provision of the City Code or condition imposed by a City 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.

(P) That the applicant has not violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(Q) 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.

(R) 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.

(S) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(T) That adequate parking will be provided.

#### **17.140.130 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 City departments as necessary to complete the review of the application.

(B) Following 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 decision to issue or deny a permit to be mailed to the applicant by U.S. mail.

#### **17.140.140 Appeal from Planning Commission Determination.**

(A) An applicant aggrieved by the Planning Commission's decision to issue or deny a permit may appeal such decision to the City Council by filing an appeal pursuant to Chapter 17.320 of the Municipal Code.

#### **17.140.150 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.

**17.140.160 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 State law. The Planning Director shall place the matter of Use Permit suspension or revocation on the Commission agenda at the direction of the City Attorney.

(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 City Manager may revoke such permit forthwith without any further action thereof, other than giving notice of revocation to the permittee.

**17.140.170 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.

**17.140.180 Time Limit for Filing Applications Upon Annexation.**

Any dispensary that was legally established in the County and which is subsequently annexed into the City must apply for and obtain a dispensary permit in compliance with the provisions of this chapter within 90 days from date of annexation. Continued operation of a dispensary without a permit more than 90 days after annexation shall constitute a violation of this chapter, unless an extension of the 90 day period is approved by the Director of Planning upon the applicant's demonstration of reasonable grounds to do so.

**17.140.190 Cultivation and Processing of Cannabis for Personal Use.**

- (A) It is declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any premises within any incorporated area of the City to cause or allow such premises to be used for the outdoor or indoor cultivation of Cannabis plants for medicinal purposes, or processing thereof as described herein or to process, cultivate or allow the cultivation of Cannabis plants for medicinal purposes in excess of the limitations imposed in these regulations.
- (B) Nothing in this Section shall be construed as a limitation on the City's authority to abate any nuisance which may exist from the planting, growing, harvesting, drying, processing or storage of Cannabis plants or any part thereof from any location, indoor or outdoor, including from within a fully enclosed and secure building.
- (C) Cultivation or Processing Exceeding the Limits of these Regulations is Declared a Public Nuisance. Cannabis cultivation or processing exceeding the limitations of these regulations, either indoors or outdoors, regardless of whether the person growing or processing the Cannabis is a "qualified patient" or "primary caregiver" is a public nuisance.
- (D) **Medical Cannabis for Personal Use.** An individual qualified patient shall be allowed to cultivate and process medical Cannabis within his/her private residence. A primary caregiver shall cultivate or process medical Cannabis only at the residence of a qualified patient for whom he/she is the primary caregiver, or at the primary caregiver's residence. Medical Cannabis cultivation and processing for personal use shall be in conformance with the following standards:
- (1) The medical Cannabis cultivation area shall not exceed 100 square feet per residence;
  - (2) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;
  - (3) Any Medical Cannabis cultivation lighting shall not exceed 1200 watts unless specifically approved by the Building Official;
  - (4) All electrical equipment used in the cultivation or processing 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 or processing of medical cannabis is prohibited;
  - (5) The use of gas products (CO<sub>2</sub>, butane, etc.) for medical Cannabis cultivation or processing is prohibited;
  - (6) Medical Cannabis cultivation, processing and sale is hereby prohibited as a Home Occupation under Chapter 17.210. Per Section 17.08.030 C. Accessory Use Types, medical Cannabis cultivation, processing and sales shall not be considered an

- accessory use. No sale or dispensing of medical Cannabis for personal use is allowed;
- (7) Cultivation or processing of medical Cannabis for personal use is limited to:
    - a. the interior of residential dwellings or to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed; or
    - b. exterior areas which are enclosed by a secure, opaque, solid fence or wall at least six feet in height. The fence or wall shall include a lockable gate or gates that are locked at all times when a qualified patient or caregiver is not in the immediate area. Said fence or wall shall not violate any other ordinance regarding height and location restrictions, and shall not be constructed or covered with plastic or cloth.
  - (8) Cannabis plants must be screened from exterior view. If located in a garage, the cultivation or processing use shall not result in a reduction of required off-street parking for the residence.
  - (9) From a public right of way, there shall be no exterior evidence, including but not limited to odor, view, or other indication of medical Cannabis—cultivation or processing on the property;
  - (10) The qualified patient or primary caregiver shall reside in the residence where the medical Cannabis cultivation occurs;
  - (11) The qualified patient shall not participate in medical Cannabis cultivation in any other residential location within the City of Sebastopol except as may be permitted under Section E. below;
  - (12) If cultivation or processing is to be conducted by a primary caregiver, documentation of the legally-required relationship shall be maintained at the cultivation premises;
  - (13) A copy of documentation of qualified patient status consistent with Municipal Code Section 17.140.100 F. (1) through (2) shall be maintained on site;
  - (14) For the convenience of the qualified patient or primary caregiver, to promote building safety, to assist in the enforcement of this Chapter, and to avoid unnecessary confiscation and destruction of medical cannabis plants and unnecessary law enforcement investigations, the qualified patient or primary caretaker growing medical cannabis pursuant to this Chapter may notify the City of Sebastopol regarding the cultivation site. The names and addresses of persons providing such notice, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act;

- (15) The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical Cannabis cultivation or processing;
- (16) The medical Cannabis cultivation and processing area shall be in compliance with the current, adopted edition of the California Building Code as regards Mechanical Ventilation;
- (17) The medical Cannabis cultivation and processing area shall not adversely affect the health or safety of the nearby residents in any manner, including but not limited to 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; and
- (18) The medical cannabis cultivation or processing shall not adversely affect the health or safety of the occupants of the residence or users of the accessory building in which it is cultivated or processed, or occupants or users of nearby properties in any manner, including but not limited to creation of mold or mildew;

E. Any proposed medical Cannabis cultivation by an individual qualified patient or primary caregiver that does not meet the cultivation square footage area or height standard, shall require approval of a Medical Cannabis Administrative Exception. Documentation, such as a physician's recommendation, information regarding space limitations, or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area, height or locational standard is not feasible. The Planning Director shall review the submitted information and act on the Exception application in accordance with this Chapter. The Director's action on the application shall be subject to appeal pursuant to Municipal Code Chapter 17.320. The names and addresses of persons making such application, or of cultivation sites permitted under these regulations shall not be considered a public record under the California Public Records Act. A Medical Cannabis Administrative Exception permit shall conform to the following standards:

- (1) The approval shall be in compliance with Section D. (1) through (17) above, except as modified in the Exception approval;
- (2) For an increase in cultivation area, the following provisions shall apply:
  - (a) The medical Cannabis cultivation area shall not exceed an additional 100 square feet, for a total of 200 square feet per residence;
  - (b) At a minimum, any interior medical Cannabis cultivation area shall be constructed with a 1-hour firewall assembly if required by the Building Official.
  - (c) For interior cultivation, 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 and code-compliant electrical systems.

**17.140.190 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 enforcement and penalties specified in Municipal Code Chapter 17.340.

**17.140.200 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.

**17.140.210 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.

**17.140.220 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 City of Sebastopol 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.

**17.140.230 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 City.

**17.140.240 Criminal penalties.**

Any person who violates, causes, or permits another person to violate any provision of this chapter shall be subject to the penalties set forth in Municipal Code Chapter 17.340.

**17.140.250 Civil injunction.**

The violation of any provision of this chapter shall be and is declared to be contrary to the public interest and shall, at the discretion of City Manager, create a cause of action for injunctive relief.

**17.140.260 Administrative remedies.**

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 the Sebastopol Municipal Code.

**17.140.270 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.

**17.140.280 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.

**17.140.290 Effective Date.**

This ordinance shall take effect thirty days after its adoption.

*Rancho Cordova***Chapter 6.90  
MARIJUANA CULTIVATION****Sections:**

- 6.90.010 Purpose.
- 6.90.020 Definitions.
- 6.90.030 Outdoor cultivation of marijuana.
- 6.90.040 Indoor cultivation of marijuana.
- 6.90.050 Public nuisance.
- 6.90.060 Enforcement.
- 6.90.070 Penalty for violation.

**6.90.010 Purpose.**

The purpose and intent of this chapter is to regulate the cultivation of marijuana that is grown in accordance with state law in order to promote the health, safety, morals, and general welfare of the residents and businesses within the city. It is not the intent of this chapter to create conflict or inconsistency between this chapter and (A) the Constitutions of the United States or the State of California; (B) the Federal Controlled Substances Act; or (C) California law. [Ord. 17-2010 § 2].

**6.90.020 Definitions.**

For purposes of this chapter, the following definitions shall apply, unless the context clearly indicates otherwise:

**"Abatement"** means the removal of marijuana plants and improvements that support marijuana cultivation which occupy an area or cubic feet in excess of the area and cubic feet that is allowed under this chapter.

**"Cultivated area"** means:

1. For indoor cultivation, the greater of either (a) the total area of a property that is densely or primarily occupied by marijuana cultivation; or (b) one square foot per juvenile or mature marijuana plant indoors on the property; and
2. For outdoor cultivation, the greater of either (a) the total area of the property that is densely or primarily occupied by marijuana cultivation; or (b) 12.5 square feet per juvenile or mature plant outdoors on the property.

**"Cultivation"** or **"marijuana cultivation"** means the planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof.

**"Fully enclosed and secure structure"** means a space within a building, greenhouse or other structure which has a complete roof enclosure supported by connecting walls extending from the ground to the roof, which is secure against unauthorized entry, provides complete visual screening, and which is accessible only through one or more lockable doors and inaccessible to minors.

"Indoors" means within a fully enclosed and secure structure.

"Marijuana" means the plant *Cannabis sativa* L. and any of its derivatives that is six inches in height or taller, grown in accordance with state law.

"Outdoors" means any location within the city of Rancho Cordova that is not within a fully enclosed and secure structure.

"Parcel" means property assigned a separate parcel number by the Sacramento County assessor. [Ord. 17-2010 § 2].

#### **6.90.030 Outdoor cultivation of marijuana.**

A. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel within any zoning district in the city of Rancho Cordova to cause or allow such parcel to be used for the outdoor cultivation of more than 25 square feet of marijuana.

B. Outdoor Cultivation Standards. All outdoor cultivation of marijuana of 25 square feet or less, within the city of Rancho Cordova, shall conform to the following standards:

1. Cultivation of outdoor marijuana shall be set back from all fences by 10 feet.
2. All marijuana plants cultivated outside must be secured in a full perimeter fence to prevent access by minors.
3. Marijuana cultivation for sale is prohibited.
4. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
5. Individuals that are tenants shall obtain the written permission of the property owner prior to cultivating marijuana.
6. The outdoor marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, smoke, traffic, vibration or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.
7. The cannabis cultivator shall pay any applicable city taxes relating to marijuana. [Ord. 17-2010 § 2].

#### **6.90.040 Indoor cultivation of marijuana.**

A. It is hereby declared to be unlawful and a public nuisance for any person owning, leasing, occupying, or having charge or possession of any parcel in the city of Rancho Cordova to cause or allow such parcel to be used for the cultivation of marijuana plants within a fully enclosed and secure structure on the parcel, except as provided in subsections (B) and (C) of this section.

B. Indoor Cultivation Standards. Marijuana cultivated indoors, within the city of Rancho Cordova, shall be in conformance with the following standards:

1. Indoor cultivation of marijuana is permitted only on parcels with residential units.
2. Marijuana cultivation is permitted only within fully enclosed and secure structures inaccessible to minors.
3. Indoor cultivation of marijuana shall not exceed 25 square feet per residence, except as provided in subsection (C) of this section.
4. Marijuana cultivation shall not occur on any carpeted area.
5. Marijuana cultivation lighting shall not exceed 1,200 watts.
6. The use of gas products (CO<sub>2</sub>, butane, etc.) for marijuana cultivation or processing is prohibited.
7. Marijuana cultivation for sale is prohibited.
8. From a public right-of-way, there shall be no exterior evidence of marijuana cultivation.
9. The residence shall be occupied and is required to maintain a functioning kitchen and bathroom(s), and the use of primary bedrooms are for their intended purpose. These rooms shall not be used for marijuana cultivation.
10. Any marijuana cultivation area located within a residence shall not create a humidity or mold problem in violation of Rancho Cordova building codes.
11. Individuals that are tenants shall obtain the written permission of the property owner prior to cultivating marijuana.
12. The marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, smoke, traffic, vibration, or other impacts, and shall not be hazardous due to use or storage of materials, processes, products or wastes.
13. The cultivation of marijuana within a residential unit in a multifamily structure shall comply with the requirements of subsections (B)(1) through (11) of this section, and shall require administrative review by the planning director and shall meet specific criteria, as set forth in subsections (B)(13)(a) through (c) of this section:
  - a. Inspection of the cultivation area by a building inspector or code enforcement officer to confirm that no health or safety concerns are present; and
  - b. Written permission from the property owner; and
  - c. 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.
14. The cannabis grower shall pay any applicable city taxes relating to marijuana.

**C. Indoor Marijuana Cultivation in Excess of 25 Square Feet.** Any proposed marijuana cultivation by an individual that may exceed the cultivation area standard maximum of 25 square feet per residence shall require administrative review by the planning director, and shall meet the criteria set forth above, as well as the additional criteria set forth in subsections (C)(1) through (4) of this section:

1. Marijuana cultivated in excess of 25 square feet shall only be indoors;
2. Documentation of medical need, such as a physician's recommendation; and
3. Inspection of the cultivation area by a building inspector or code enforcement officer to confirm that no health or safety concerns are present; and
4. 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. [Ord. 17-2010 § 2].

**6.90.050 Public nuisance.**

It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any parcel within the city of Rancho Cordova to create a public nuisance in the course of cultivating marijuana plants or any part thereof. A public nuisance may be deemed to exist if such activity produces:

- A. Odors which are disturbing to people of normal sensitivity residing or present on adjacent or nearby property or areas open to the public;
- B. Repeated responses (more than three times in a one-year time period) to the parcel from law enforcement officers;
- C. Repeated disruption (more than three times in a one-year time period) to the free passage of persons or vehicles in the neighborhood;
- D. Excessive noise in violation of applicable city noise standards in the general plan or municipal code;
- E. Any other impacts on the neighborhood which are disruptive of normal activity in the area. [Ord. 17-2010 § 2].

**6.90.060 Enforcement.**

A. The violation of this chapter is hereby declared to be a public nuisance. Any person violating any provision of this chapter shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by a fine not to exceed the amount provided in Penal Code Section 19, as may be amended from time to time, by imprisonment in the county jail not to exceed six months, or by both a fine and imprisonment.

B. A violation of this chapter may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the abatement procedure set forth in Chapter 16.18 RCMC.

C. Abatement Procedure. The code enforcement officer and/or the chief of police, or his

or her designee (hereafter the "enforcement official"), are hereby authorized to order the abatement of any violation of this chapter by following the abatement procedure as defined in Chapter 16.18 RCMC. In addition, the enforcement official may require the property owner or tenant to personally abate/remove all medical marijuana plants and improvements to the property that exceed the limits set by this chapter. [Ord. 17-2010 § 2].

**6.90.070 Penalty for violation.**

A. Cultivation of marijuana on parcels within the city that does not comply with this chapter is subject to the penalties and enforcement as provided in Chapters 6.60 and 16.18 RCMC.

B. The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this chapter or to abate a public nuisance. [Ord. 17-2010 § 2].

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**This page of the Rancho Cordova Municipal Code is current through Ordinance 21-2010, passed October 4, 2010.**

**Disclaimer: The City Clerk's Office has the official version of the Rancho Cordova Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.**

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<http://www.cityofranhocordova.org>  
City Telephone: (916) 851-8723  
Code Publishing Company

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**Chapter 6.87**  
**PUBLIC CONSUMPTION OF MARIJUANA**

**Sections:**

- 6.87.010** Title.
- 6.87.020** Findings and purposes.
- 6.87.030** Prohibition.
- 6.87.040** Penalty.

**6.87.010 Title.**

This chapter shall be known as the public consumption of marijuana ordinance. [Ord. 21-2003 §§ 2, 4; Ord. 20-2003 §§ 2, 4; SCC 1106 § 1, 1998].

**6.87.020 Findings and purposes.**

On November 5, 1996, the voters of the state of California approved Proposition 215, enacting Section 11362.5 of the Health and Safety Code. That section permits, for purposes of state law, the limited use, cultivation and possession of marijuana for specified medical purposes.

However, the use, cultivation and possession of marijuana for other purposes remains illegal within this state and is presently illegal under federal laws. Additionally, the use of marijuana by minors has been demonstrated to be a gateway to the use of other illicit substances.

While recognizing the enactment of Section 11362.5 of the Health and Safety Code, the city council believes that the open and public use of marijuana, which might otherwise be permitted by that section, (A) is injurious to public health in many of the same ways that tobacco consumption is injurious to the public health and (B) provides to a public, including minors, not privy to reasons for such use, a deleterious example regarding the consumption of otherwise illicit, controlled substances.

Therefore, the city council believes it necessary to balance the uses of marijuana permitted by Section 11362.5 of the Health and Safety Code, public health and the need to recognize that possession and use of marijuana for other purposes remains illegal. [Ord. 21-2003 §§ 2, 4; Ord. 20-2003 §§ 2, 4; SCC 1106 § 1, 1998].

**6.87.030 Prohibition.**

The consumption of marijuana otherwise permitted by Section 11362.5 of the California Health and Safety Code is hereby prohibited on any public property or in any facility or space to which members of the public have access. [Ord. 21-2003 §§ 2, 4; Ord. 20-2003 §§ 2, 4; SCC 1106 § 1, 1998].

**6.87.040 Penalty.**

Violations of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, imprisonment for a term not exceeding six months, or by both such fine and imprisonment. [Ord. 21-2003 §§ 2, 4; Ord. 20-2003 §§ 2, 4; SCC 1106 § 1, 1998].

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# EXHIBIT C

## AB 2650, Buchanan

### Medical Marijuana

[Legislate](#) > [State Bills](#) > [AB 2650](#)

## AB 2650

In bill text the following has special meaning  
underline denotes added text  
~~struck out text denotes deleted text~~

BILL NUMBER: AB 2650 CHAPTERED

BILL TEXT

CHAPTER 603

FILED WITH SECRETARY OF STATE SEPTEMBER 30, 2010

APPROVED BY GOVERNOR SEPTEMBER 30, 2010

PASSED THE SENATE AUGUST 11, 2010

PASSED THE ASSEMBLY AUGUST 16, 2010

AMENDED IN SENATE JULY 15, 2010

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

INTRODUCED BY Assembly Member Buchanan

(Coauthors: Assembly Members Carter, Portantino, Torres, and Torrico)

FEBRUARY 19, 2010

An act to add Section 11362.768 to the Health and Safety Code, relating to medical marijuana.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. The bill also would provide that local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of

these medical marijuana establishments would not be preempted by its provisions; and that nothing in the bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. The bill would express a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties, including charter cities and charter counties, shall be subject to the provisions of the bill. By creating a new crime, this bill would impose a state-mandated local program.

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 no reimbursement is required by this act for a specified reason.

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

**SECTION 1.** Section 11362.768 is added to the Health and Safety Code, to read:

**11362.768. (a)** This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

**(b)** No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

**(c)** The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

**(d)** This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

**(e)** This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

**(f)** Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

**(g)** Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

**(h)** For the purposes of this section, "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.

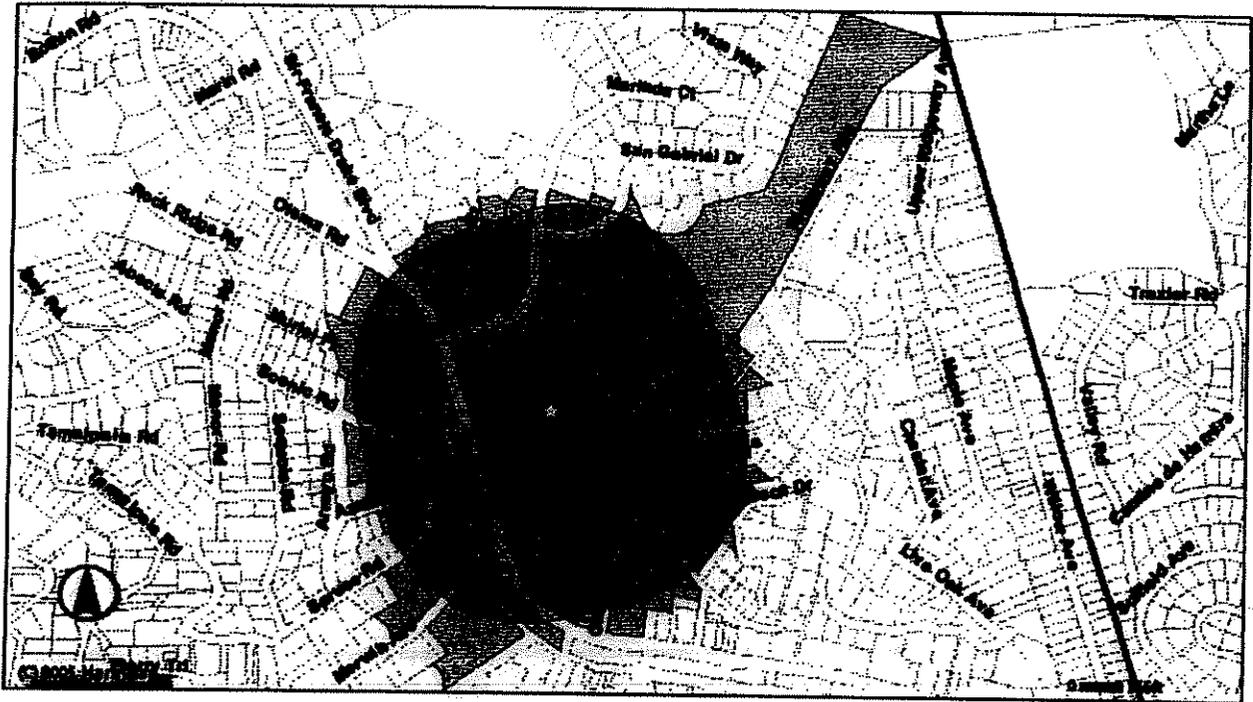
**SEC. 2.** The Legislature finds and declares that establishing a uniform standard regulating the proximity of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers to schools is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because 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.

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# EXHIBIT D

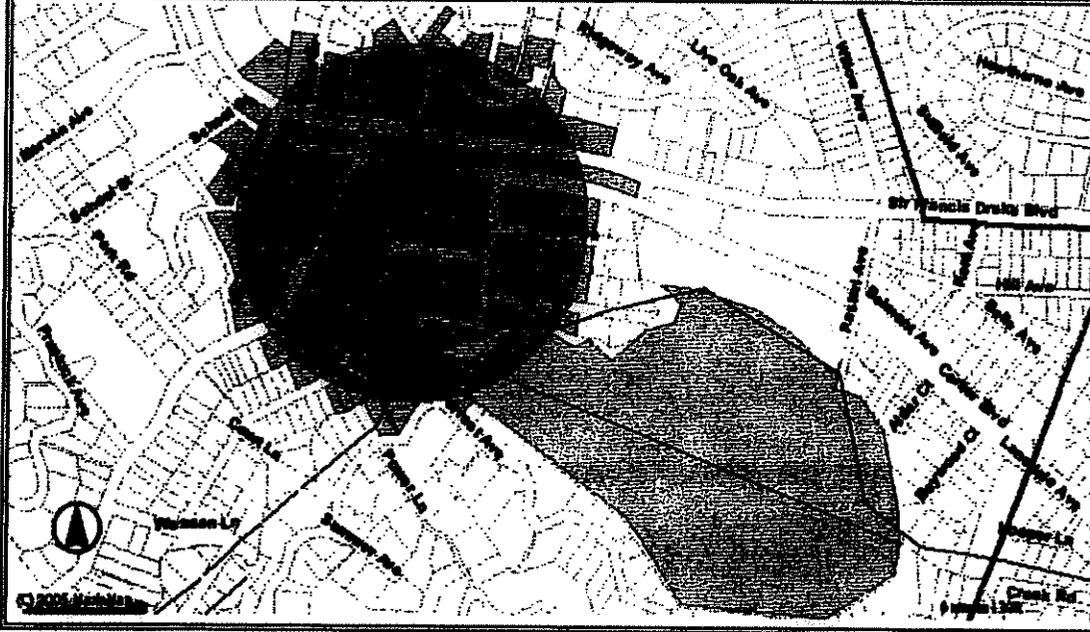
**600-Foot Radius Maps  
Saint Rita School, Montessori  
and Little Arrows Preschool**



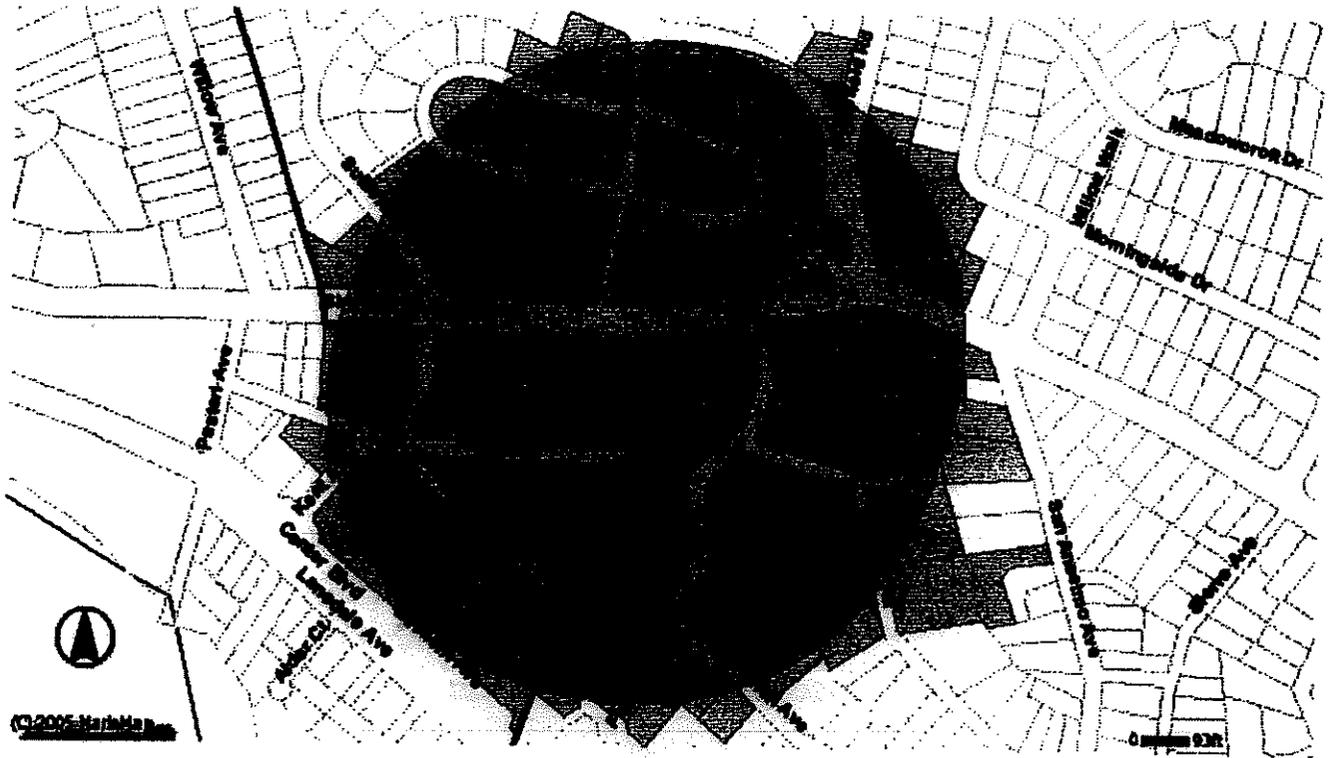
**SAINT RITA SCHOOL**

**102 MARINDA DRIVE**

### Parcel Map 002-122-04



- Streets
- Parcel
- Cities
- Communities
- Streams
- Shoreline
- County





**ORDINANCE NO.**

**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 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., 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 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 in 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," hereinafter "dispensary," 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. "Dispensary" means 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.

(H) "Medical cannabis patient collective," hereinafter patient collective, shall be defined the same as "dispensary," but does not operate in a "retail" capacity. As such, "patient collectives" are subject to all provisions relating to dispensaries.

(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) or (d), or (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 they 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 may be amended.

(N) "Qualified patient" shall have the same definition as set forth California Health and Safety Code Section 11362.7 et seq., and as they 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) Use Permits issued under this chapter shall expire two years following the date of their issuance.

(B) Use Permits 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 set periodically by Resolution of the Fairfax Town Council. Applications for renewal shall be acted on as provided herein for action upon 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.**

An operator of a dispensary shall also be required to apply for and obtain a Business License as a prerequisite to obtaining a permit pursuant to the terms hereof, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax consistent with State law.

**17.110.060 Imposition of Fees.**

Every application for a permit or renewal shall be accompanied by an application fee, as established by resolution of the Town Council from time to time. 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.

Comment [A1]: Perhaps same as CUP fee?

**17.110.070 Limitations on Number of Dispensaries.**

The Planning Commission may not grant or cause to be granted more than two permits for a 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 or non-retail patient collective shall be located only within a Central Commercial CC, Highway Commercial CH, Light Commercial CL, or Recreation Commercial CR area, as designated in the General Plan and Zoning map.

(B) A dispensary shall be in a location that provides views of the dispensary entrance, windows and premises from the public street.

(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.

(3) On a parcel directly abutting a residentially-zoned property, unless there are intervening natural landforms between the commercial property and the residential property such as a creek or significant undeveloped parcel of land (See "E" below for further exceptions).

(D) The distance between a dispensary and 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, in which the above listed use occurs or is located.

(E) A waiver of the provisions in subsection (C)(2) or (C)(3) of this section may be granted if the applicant demonstrates on plans and materials presented for review 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. Any applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority of a dispensary on behalf of the applicant shall not 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.

(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 person under the age of 18 are precluded from entering the premises unless they are a qualified patient, and they are in the presence of their 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) Sunday through Thursday: 7:00 a.m. to 9:00 p.m.
- (2) Friday and Saturday: 9:00 a.m. to 9:00 p.m.
- (3) Christmas Day, Thanksgiving Day, New Years Day, Memorial Day, Labor Day, 3<sup>rd</sup> and 4<sup>th</sup> of July: closed.

Comment [A2]: Maybe a later start time on Saturday and Sunday?

(D) Dispensary Size and Access.

(1) The dispensary size shall not exceed 2,500 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 reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses and demands on Town services.

(2) A dispensary shall not be increased in size (i.e., floor area or number of patients) 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) Dispensary Supply. A dispensary may possess no more than eight ounces 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.

Comment [A3]: We limited 6 School St. Plaza to one ounce per patient per week.

(F) Dispensing Operations.

(1) A dispensary shall only dispense to qualified patients or caregivers with:

(a) a currently valid California Medical Marijuana Identification Card or a Patient ID Center Identification Card; or

(b) Prior to obtaining an ID card, patients may given a 30-day trial membership. A current, written physician's recommendations that is confirmed by telephone shall be required for a 30-day trial membership. During this trial

membership, patients should carry permittee-issued ID cards. 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 State ID card.

(2) A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation for medical cannabis.

(G) 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 California Medical Marijuana Identification Card or a Patient ID Center Identification Card.

(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.

(2) Stock. The permittee will record the total gross weight of all marijuana possessed at the dispensary which 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.

(3) 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.

(4) 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.

(5) Cultivation sites. Permittee shall maintain the records regarding the actual address, including Assessor's Parcel Number, of each site that 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.

(6) 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.

(7) **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.

(H) **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.

(I) **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.

(J) **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.

**Comment [A4]:** Are we going to require a waiting area?

(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.

(K) 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 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.

Comment [A5]: Is this consistent with our requirements for other businesses?

(L) 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.

(M) 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.

(N) 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.

**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 State 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 patients and/or permits allowed by this chapter.

(H) That issuance of a dispensary permit for the size requested is justified to meet needs of residents.

(I) That issuance of the dispensary permit would serve needs of residents at this location.

(J) 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 are anticipated or resulted.

(K) That 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 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.

(L) 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.

(M) 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.

(N) 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 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.

(O) 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.

(P) That the applicant has not violated any local or State law, statute, rule or regulation respecting the distribution, possession, or consumption of cannabis.

(Q) 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.

(R) 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.

(S) That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

(T) 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.

#### 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 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 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.

**Comment [A6]:** I deleted the reference to parking above, which stated that dispensaries would be treated like a medical office for parking purposes, as this section contradicts that.

**Comment [A7]:** Is this how it's usually done in Fairfax? I think we had an issue come up with this before and applicants were required to get their own background check.

**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 State 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. \_\_\_\_\_ amending the Fairfax Town Code was duly and regularly introduced at a regular meeting of the Town Council of the Town of Fairfax held in said Town on March 2, 2011 and was duly passed and adopted at a regular meeting held on April 6, 2011 by the following vote to wit:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
Town Clerk

RESOLUTION NO. 11-02

A RESOLUTION OF THE FAIRFAX PLANNING COMMISSION RECOMMENDING THAT THE TOWN COUNCIL ADOPT AN ORDINANCE ADDING TOWN CODE CHAPTER 17.110, REGULATING THE LOCATION AND OPERATION OF MEDICINAL MARIJUANA DISPENSARIES

**WHEREAS**, The 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" (Act).

**WHEREAS**, The intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

**WHEREAS**, The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Cannabis Program, (Program), to clarify the scope of the Compassionate Use Act of 1996 and to allow Towns and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

**WHEREAS**, To protect the public health, safety, and welfare, it is the desire of the Town Council to modify the Town Code consistent with the Program, regarding the location and operation of medical cannabis dispensaries.

**WHEREAS**, It is the Town Council's intention that nothing in this chapter shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, to otherwise permit any activity that is lawfully and constitutionally prohibited under that Act.

**WHEREAS**, It is the Town Council's intention that nothing in this chapter shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance; (2) allow the use of cannabis for non-medical purposes; or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

**WHEREAS**, This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the Council finds and determines that there is nothing in this chapter or its implementation that could foreseeably have any significant effect on the environment.

**WHEREAS**, This chapter is compatible with the general objectives of the Zoning Ordinance in that a medical cannabis dispensary use would be conditionally permitted in certain commercial districts, being similar to other permitted and conditionally permitted uses, such as pharmacies and medical clinics, and in that the use will be subject to public review and conditions.

**WHEREAS**, This chapter is compatible with the public convenience, general welfare and good land use practice, in that medical marijuana dispensaries address a medical need in the community, and in that the uses will be subject to review and conditions.

**WHEREAS**, This chapter will not be detrimental to the public health, safety and general welfare, in that uses will be subject to careful review, that because of the small area and population of the Town of Fairfax and potential for adverse effects, dispensaries would be limited in number and such uses would be subject to strict operating requirements, limiting potential negative effects.

**WHEREAS**, This chapter will not adversely affect the orderly development of property, in that there would be appropriate controls on medical marijuana dispensaries, there would be absolute limits on the number of dispensaries, dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

**WHEREAS**, the Planning held a duly noticed public hearing on this matter on February 17, 2011;

**NOW, THEREFORE BE IT RESOLVED** that the Planning Commission recommends that the Fairfax Town Council adopt the proposed revisions to the Fairfax Municipal Code, Chapter 8.36, regulating tree removal.

AYES:  
NOES:  
ABSTAIN:

\_\_\_\_\_  
Brannon Ketcham, Chairperson

ATTEST:

\_\_\_\_\_  
Jim Moore  
Director of Planning and Building Services