



COMMUNITY PREVENTION INITIATIVE — 2010

MEDICAL MARIJUANA DISPENSARIES: AN OVERVIEW OF REGULATORY APPROACHES FOR LOCALITIES



This document presents local land use approaches for the regulation of medical marijuana dispensaries in California.

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This document was conceived for the sole purpose of assisting California localities in understanding the issues associated with the real and potential proliferation of Medical Marijuana Dispensaries. We come to this work as members of the public health community, interested in how the constitutionally protected powers of land use can be applied to this new type of retail outlet.

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The Center for Community Action and Training (CCAT) offers quality training, technical assistance and coaching to help build and strengthen prevention capacity at the local level that supports healthy and safe communities.

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EXECUTIVE SUMMARY

In 1996, California voters approved an initiative that exempted certain medical patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana.¹ Since that time, many California localities have authorized medical marijuana dispensaries, usually through the issuing of a business license or zoning permit. This increased availability is associated with a range of problems related to the product being sold in a retail environment, problems that enhanced regulatory attention can directly address (Please refer to Section II of this document for more information regarding the identified problems).



While 14 states have now passed medical marijuana laws, recreational use still violates state and federal law. The federal Food and Drug Administration has classified marijuana as a Schedule I drug, considering there to be “no currently acceptable medical use for the drug”. This status prohibits a licensed medical doctor from *prescribing* the drug.² This Schedule I drug status has limited local government authorization of dispensaries and means government regulated pharmacies cannot dispense medical marijuana. Adding to this, the original Initiative passed by voters did not fully address the “supply” side of the equation, leaving cities to venture into unchartered territories when determining local policy. As a result, municipalities across California have approached the dispensary issue differently; many banned them outright, some set moratoriums, while others allowed dispensaries with few regulations. Recently the city of Los Angeles took a more controlled approach to regulating dispensaries. In response to a growing proliferation, the city enacted an ordinance regulating many of the land use features of this class of business. More than a decade later, the use of dispensaries as a method of delivering legalized medical marijuana in California is well entrenched.

As medical marijuana becomes more accepted and less stigmatized, its permissive authorization has increased. With many lessons learned by those early adopters, advocates and public officials are now seeking greater oversight and regulation of dispensaries through land use policy. This document is based on an analysis of existing California ordinances and explores the various regulatory approaches used to address issues both common and unique to localities and regions. The regulatory categories covered are: safety, nuisance, health, community norms, use of police resources, and unregulated availability of marijuana. As municipalities continue to grapple with these issues, many have found effective regulatory approaches to address the variety of problems that caused many cities to limit or restrict dispensaries initially. For those seeking to allow dispensaries or for those looking for more targeted regulatory options, this document provides an overview of approaches, specific regulations tailored to identified problems, as well as a sample ordinance.

¹ Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use, Edmund G. Brown, Jr., Attorney General August 2008 *Department of Justice, State of California*

² Schedule I drugs are classified as having a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. <http://www.justice.gov/dea/concern/marijuana.html>

KEY FINDINGS

The authors conducted research and analysis of numerous municipalities in California.³ The following are key findings:

- *Municipalities that first chose to ban or set moratoriums may be reconsidering options in light of new federal notices and an easing of prosecutorial pressure.* The first generation of local ordinance development focused almost exclusively on bans and moratoriums of dispensaries. Some of these approaches were driven by the conflicting differences between California law and federal drug policy. While these difference have not been resolved, medical marijuana and its dispensaries have been officially declared a reduced drug enforcement priority in the Obama administration and for the Attorney General, Eric Holder.⁴
- *Municipalities commonly experience or have concerns related to public safety, crime and neighborhood vitality. Many of these issues can be addressed by stronger, more targeted regulation and enforcement.* The analysis of existing dispensaries reveal a number of issues where having an enforced regulation in place can ameliorate the identified problem.
- *A sample land use ordinance will help standardize a more comprehensive regulatory approach.* While there are numerous examples of “ban” or “moratorium” ordinances, there are few examples of conditional use permit ordinances.⁵ The sample ordinance included in this document is a synthesis of the research on legal findings in current ordinances, coupled with the development of common-sense requirements, intended to address the various legal findings that localities must develop to establish a legal nexus between anticipated (or existing) problems and land use conditions.
- *Flexibility is still needed for municipalities considering dispensaries.* Cities and counties have a unique constellation of potential issues that are important to them when it comes to authorizing dispensaries to operate, and in the regulation of these businesses. The Sample Ordinance can be used as a foundation. Interested municipalities can choose conditions that are suited to their own unique circumstances and concerns.

Municipalities have the obligation and the power to protect citizens and to utilize the tools of government to ensure the safety and welfare of citizens. Cities and counties currently use their regulatory powers to manage alcohol outlets, restaurants and bars. These same tools can be used in the management of businesses that sell marijuana under California’s Medical Marijuana law.

This document includes the following sections:

- Section I:** A legal overview of federal, state and local regulatory approaches to medical marijuana dispensaries (Pages 5-10)
- Section II:** An overview and matrix of current conditional use permit regulations (Pages 11-16)
- Section III:** A sample municipal land use ordinance for dispensaries (Pages 17-24)

³ Substantial background research and analysis exploring the legal nexus between dispensary-related land use problems and applicable land use remedies was undertaken to develop the sample use permit. A review of non-peer reviewed literature was conducted, documenting the various public health, safety and land use issues to which medicinal marijuana dispensaries have been linked. Source materials included newspaper articles, position papers from various law enforcement organizations and organizations supporting legalization of marijuana, staff reports from various city/county personnel, and other sources generally available on the internet.

⁴ Attorney General Holder stated that the Justice Department’s enforcement policy would now be restricted to traffickers who falsely masqueraded as medical dispensaries and “use medical marijuana as a shield” New York Times, March 18, 2009. <http://www.nytimes.com/2009/03/19/us/19holder.html>

⁵ The conditional use permit (CUP) is a specific kind of land use ordinance that provides communities and local governments control over where certain land uses (e.g., bars, liquor stores, non-residential storage buildings, and duplexes) may be located and how they operate, e.g., hours of operation, parking, staff training.

SECTION I

OVERVIEW OF LEGAL AND POLICY CONTEXT

SECTION I: OVERVIEW OF LEGAL AND POLICY CONTEXT

A. CALIFORNIA: REVIEW OF POLICY UNDERPINNINGS

(1) *Via Initiative*

In 1996, California voters approved Proposition 215, the Compassionate Use Act (CUA), a landmark initiative that gave those with specified illness the legal right, under California law, to obtain and use marijuana for relief of medical symptoms.

To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

It should be noted that California includes a broad definition of illnesses and symptoms when compared to other states. While the language of the CUA directly addressed the rights of the user and their primary caregiver, there were no guidelines for how one attains medical marijuana. This was left to be decided, with the following recommendation included in the law:

To encourage the federal and state governments to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

The law also did not address specific issues of enforcement — such as how law enforcement officers would identify qualified patients and their caregivers, and how patients and caregivers would obtain marijuana without growing it themselves or buying it on the illicit market.

(2) *Subsequent State Law*

Senate Bill (SB) 420, establishing the Medical Marijuana Program (MMP), was passed by the California legislature in 2003 to clarify vagaries in the CUA. Four major provisions of this bill included:

- people acting in accordance with the MMP shall not be subject, on that sole basis, to criminal liability for transporting, selling, administering, or giving away marijuana;
- the establishment of a voluntary state medical marijuana identification card (MMIC) issued by each county,
- maximum penalties for abuse of the MMIC system, and
- explicit allowance for qualified patients and their designated caregivers to collectively or cooperatively cultivate marijuana and receive reasonable compensation for this service.



As a result, SB 420 (as codified in the Health and Safety Code section 11362.775) offers state legal protection for those bona fide “collectives and cooperatives.”

(3) *Attorney General Guidelines*

In August, 2008, the Office of the California Attorney General (AG) developed guidelines for many aspects of medical marijuana, including dispensaries.⁶ The key criteria include:

⁶ See pp. 8-11. http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf

- dispensaries must operate as a “cooperative” as defined by state statutes or operate as a “collective” (a more loosely defined group than “cooperatives”)⁷; and
- dispensaries must be both licensed (state and local, if applicable) and pay taxes on its sales as well as provide security for the facility.

The AG’s document goes on to list other relevant guidelines for the lawful operation of dispensaries, including acquisition, possession and distribution of medical marijuana.



The notion that collectives and cooperatives require greater definitional specificity was raised in recent California case law. Advocates on both sides of the issue have divergent views on the implications of a 2009 California Supreme Court decision, *People v. Mentch*, which delved deeply into defining who may qualify as a “primary caregiver.” Those representing law enforcement interests and some medical cannabis opponents assert that the ruling in *Mentch*⁸ makes Medical Cannabis Dispensing Collectives and Cooperatives illegal because they do not meet the criteria set out in this case.

Others claim that while the *Mentch* decision upholds a narrow definition of the term “Primary Caregiver” in Proposition 215, the ruling only concerns *an individual’s* claim to be a Primary Caregiver under state law; and does not address the legality of patients’ collectives and cooperatives. If this latter interpretation becomes the majority view, this holding could actually increase the utilization of lawful collectives and cooperatives.

B. THE FEDERAL ROLE IN REGULATING MARIJUANA

(1) *Historical*

The federal government’s stance on marijuana has not been unequivocal. For example, the federal government did not directly criminalize the possession and sale of marijuana until 1970, though previous to that time it was not necessarily legal either. Marijuana was determined to be a legal drug for qualified patients in the 1976 federal Single Patient Investigational New Drug Program for Compassionate Use, administered by the Food and Drug Administration. This program allows individuals whose physicians think they will benefit from unapproved drugs to receive them. The program was closed to new medical marijuana applicants in 1992 when the number of applicants, mainly people with HIV wasting syndrome, apparently overwhelmed the government’s ability to supply marijuana through the program.

The *War on Drugs*, a term first popularized by President Nixon in 1969, represented a surge in federal laws and policies encompassing international and domestic drug enforcement and protections, which included marijuana related activities. The political and legal approach of the time resulted in the federal government having strong prosecutorial power over such activities. The federal government regulates drugs through the Controlled Substances Act (CSA) (21 U.S.C. § 811). These laws are generally applied against persons who possess, cultivate, or distribute large quantities of marijuana.

⁷ “Cooperatives” are formal statutory bodies that need to register as a corporation under California state law while “collectives” are not formally defined under any California statutes.

⁸ The *People v. Mentch*, <http://www.courtinfo.ca.gov/opinions/archive/S148204.PDF>.

(2) *Federal and State Contradiction*

The passage of a state law that provides for a legalized form of marijuana creates a discrepancy resulting in tension between state and federal powers. Each level of government has asserted that its own constitutional powers cannot be eroded by the other “side” flexing its own legal powers. A fairly recent federal Supreme Court case, *Gonzales v. Raich*, (2005) 125 S.Ct. 2195, found that state-initiated medical marijuana laws do not provide a federally authorized exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁹ The case addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.



However, in December, 2008 the U.S. Supreme Court refused to review *Garden Grove v. Kha*, a landmark decision in which California state courts found that its medical marijuana law was not preempted by federal law.¹⁰ The state appellate court decision ruled that “it is not the job of the local police to enforce the federal drug laws.” The case, involving Felix Kha, a medical marijuana patient from Garden Grove, was the result of a seizure of medical marijuana by local police in June, 2005. This decision helped in clarifying law enforcement’s role in upholding California state law (regardless of opposing federal law).

A similar challenge to state’s rights was also denied even more recently. In May 2009, the US Supreme Court declined to hear an appeal brought by a pair of Southern California counties that sought to challenge the legality of the state’s medical marijuana laws. The Court’s order lets stand a unanimous 2008 Fourth District CA Court of Appeals ruling determining that state laws allowing for the medical use of cannabis by qualified patients “do not create a ‘positive conflict’ [with federal law.]”¹¹

C. CONFLICTS OF LAWS - CONCLUSIONS

(1) *Between Federal and State Government*

At this juncture, federal law does not authorize the use of marijuana for medical purposes. Federally, all existing store-front medical marijuana businesses are subject to search and closure since they stand in violation of federal law. Federal law enforcement officials may prosecute medical marijuana patients, even if they grow their own marijuana for medicinal use and even if they reside in a state where medical marijuana use is protected under state law. However, as noted previously, the current federal policy that supports the closing of dispensaries has been given a lower profile and priority in the Obama administration.¹²

Further, the *Raich* decision does not say that the laws of California (or any other medical marijuana state) are unconstitutional; nor does it invalidate them in any way. Also, it does not say that federal officials must prosecute patients. Decisions about prosecution are still left to the discretion of the federal government. Consistent with

⁹ The court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated. “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.” The court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s.

¹⁰ The state Court of Appeal decision can be found at: <http://americansforsafeaccess.org/downloads/GardenGroveDecision.pdf>.

¹¹ *County of San Diego v. State of California*. State decision that was affirmed can be found at <http://www.courtinfo.ca.gov/opinions/archive/D050333.PDF>.

¹² <http://www.washingtontimes.com/news/2009/feb/05/dea-led-by-bush-continues-pot-raids>.

this position, the Attorney General for California released medical marijuana guidelines in the summer of 2008. Their legal conclusion read:

“In light of California’s decision to remove the use and cultivation of physician-recommended marijuana from the scope of the state’s drug laws, this Office recommends that state and local law enforcement not arrest individuals or seize marijuana under federal law when the office determines from the facts available that the cultivation, possession, or transportation is permitted under California’s medical marijuana laws.”¹³

This position is arguably aligned with the historical interpretation of our federalist system, which entrusts to the states, not the federal government, the general police powers for the benefit of their citizens.

(2) *Between State and Local Government (“Preemption”)*

When working with local governments to invoke their land use powers, it is critical to examine the dynamic between local land use powers and state legislative authority. Authority is not clearly defined, as neither the locality nor the state retains all of or none of the powers over certain products or issues. The exception to this rule is when the state government explicitly determines that it “preempts” county and local governments so that only the state has regulatory powers.

For medical marijuana there is no such preemption in the state of California. While the CUA initiative and the follow-up statutes have certainly laid a foundation for the legitimization of medical marijuana, it is the purview of local government to determine if and how to regulate dispensaries using their constitutionally protected land use powers.

D. LAND USE POWER

(1) *History*

The legal basis of local zoning powers dates back to a time of great industrial and business growth in America, which presented a familiar moral conflict between individual rights and public good. **Village of Euclid, Ohio v. Ambler Realty Co.**, 272 U.S. 365 (1926), more commonly known as **Euclid v. Ambler**, was a United States Supreme Court case argued in 1926. It was the landmark case regarding the relatively new practice of zoning and served to substantially bolster zoning ordinances in towns nationwide. At the time of *Euclid*, zoning was a relatively new concept, and there was one camp asserting that zoning was an unreasonable intrusion into private

property rights by government. The court, in finding there was valid government interest in maintaining the character of a neighborhood and in regulating where certain land uses should occur, provided a clear legal basis for the subsequent boost in zoning ordinances across the country.



This validated governmental interest was based upon the notion of “police powers.” Police power is the capacity of a state or local government to regulate behaviors and enforce order within its territory, often framed in terms of public welfare, security, health and safety. Police power is legally considered an

¹³ See bottom of p. 3. http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf



inherent power, limited only by prohibitions specified in the constitution of a state, making it the most expansive authorized power exercised by a state. A typical use of police power over real property is the adoption and enforcement of zoning regulations, building codes, and environmental protection regulations, by local, regional and national governments. Other uses of the police power include public health regulations, vice laws, traffic laws, and family law.

As noted previously, a conditional use permit (CUP) is a particular type of land use ordinance that provides communities and local governments control over *where* certain land uses (e.g., bars, liquor stores, non-residential storage buildings, and duplexes) may be located and *how* they operate, (e.g., hours of operation, parking, staff training). Said another way, the conditional use permit includes specific conditions that limit the applicant's authority to use the property. The CUP process also provides citizens a voice in determining if and how proposed new businesses should open in their neighborhoods. CUP ordinances also provide a mechanism for localities to revoke the use permits of those businesses that operate out of compliance with the conditions set forth in the CUP.

SECTION II

OVERVIEW OF LAND USE POLICY AND MATRIX
OF IDENTIFIED PROBLEMS AND CONDITIONS

SECTION II: OVERVIEW OF LAND USE POLICY AND MATRIX OF IDENTIFIED PROBLEMS AND CONDITIONS

STATE APPROACHES

While 14 states have passed versions of medical marijuana laws, only California has seen any proliferation of dispensaries. Generally speaking, these facilities are able to operate within the boundaries of the law because they apply for and receive local business licenses and/or zoning permits from cities or counties. California does not use any form of state licensing laws. To date, one state, Rhode Island, has enacted laws that create a statewide licensing system for dispensaries.¹⁴

MUNICIPAL APPROACHES

To date, there have been several approaches to the regulation of dispensaries which are noted below:

1. BANS AND MORATORIUMS

Overall, cities initially took a cautious and speculative view of dispensaries as a legitimate land use. Hence, the first generation of local ordinances banned such land use entirely or, at the least, placed a moratorium on issuing any more business licenses. Some of these municipalities may be revisiting the issue as moratoriums expire and new elected officials govern.

2. LAND USE REGULATION

As some municipalities in California authorized the opening of dispensaries, other cities and counties taking a less aggressive stance are just now entering into debates about how to authorize and regulate dispensaries.



¹⁴ <http://www.riflin.state.ri.us/PublicLaws/law09/law09016.htm>.

The following three tables are designed to offer city/county planners, law enforcement and interested parties a range of options to consider when designing a municipal regulatory framework for Medical Marijuana Dispensaries.

Table 1.0 provides examples of land use conditions that address identified local community issues associated with existing or new dispensaries. It lists core issues that can, in some way, be linked to the business of operating a dispensary. It cross references these issues with the related conditions that can be deployed to allay or mitigate these potential problems. It must be acknowledged that the body of evidence connecting the various issues identified and the operation of dispensaries is in its infancy.

Table 2.0 provides a list of subproblems identified by the municipalities within each of the core issue areas listed in the first table. This provides the reader with a more detailed understanding of specific types of problems that municipalities are encountering within each of the 7 broader core issue areas.

The 7 core issue areas are as follows:

1. SAFETY
2. NUISANCE
3. HEALTH
4. COMMUNITY NORMS
5. INCREASED NEED FOR POLICE RESOURCES
6. UNREGULATED AVAILABILITY OF MARIJUANA
7. ADDITIONAL ISSUES FOUND TO HAVE NEXUS

Table 3.0 provides an additional list of subproblems identified by the municipalities that do not have any clear nexus or connection with the operation and/or potential regulation of dispensaries.

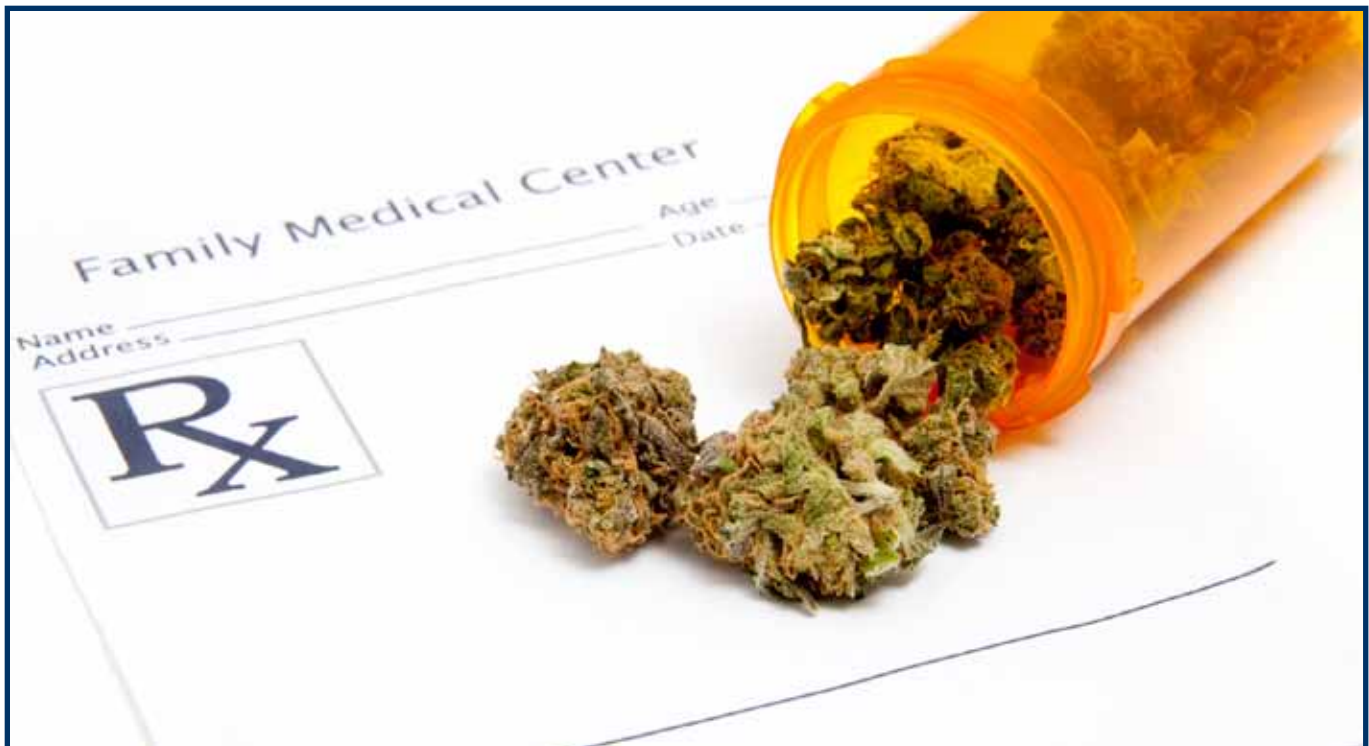


TABLE 1.0

	Core Issues Areas						Orphan Issues			
	Safety	Nuisance	Health	Community Norms	Police Resource	Unregulated availability	Home Robberies	Cultivations	Business loss	\$\$ laundering
Core Conditions										
Building										
Adequate exterior lighting	•	•				•			•	
Post signage prohibiting loitering, likelihood of regular police patrols of premise and existence of neighborhood watch, if one exists	•	•							•	
Security patrols exterior premise of building, including parking lots, rear of building, etc	•	•								
Dispensary to maintain burglary and robbery alarms	•	•			•					
Provide security at door	•	•				•				
Require security to patrol exterior premise of building, including parking lots, rear of building, etc						•			•	
Operation										
Restrict/set days and hours of operation	•	•				•			•	
24 hour video surveillance keeping tapes/CD's for 30 days	•	•								
No sale of alcoholic beverages on dispensary premises	•	•				•			•	
No sales of paraphernalia as defined Health and Safety Code section 11364.5 as permitted				•						
No operators or employees of dispensaries shall have been convicted of any felony under state or federal law nor any conviction of a crime related to moral turpitude as verified by local law enforcement						•				
Require Medical Marijuana ID card or doctor's prescription with photo ID, for entry to dispensary and on all sales						•				
Distance Requirement										
Distance requirement from residential areas of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from dispensary property line to property line of residential use	•	•								
Distance requirement between dispensaries, smoke shops or similar establishments SUGGESTED RANGE: 500 ft – 1,500 as measured from dispensary property line to property line of another dispensary	•	•			•	•				
Distance requirement from dispensary of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from dispensary property line to property line to sensitive land uses including but not limited to places of worship, alcohol and other drug treatment facilities, and senior facilities	•	•		•						
Distance requirement from residential areas of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from dispensary property line to property line of park or other youth oriented facility				•						
Limit square footage of the portion of the Dispensary	•	•								
Supplemental Conditions										
Building										
Limits or restrict exterior signage advertising the availability of marijuana (footnote on size, location and type of signage)		•			•	•			•	
Permit specific number of parking spaces for dispensary									•	
Adequate ventilation systems to mitigate smell		•								
Operation										
No sale of tobacco products allowed on premise	•	•							•	
Post signage indicated that all illegal activity will be reported to law enforcement	•	•				•				
Prohibit marijuana smoking on dispensary premises	•									
Prohibit consumption of foods containing Marijuana on dispensary premises	•									
Limits on the number of clients any one dispensary may service	•	•							•	
Provide security at door with requirement to screen for weapons	•				•					
Security required on premise with one uniformed guard per 1000 sq ft of occupied building space	•									
No on-site cultivation of marijuana allowed	•	•			•					
Required use of time delay vaults and drawer and related signage	•				•					
Restrict the # of ounces of marijuana per patient allowed on dispensary premises (8 – 10 oz)	•				•					
Restrict # of immature cannabis plants per patient allowed on dispensary premises (6 – 12 plants)	•				•					
Ensure that the storage of usable marijuana is in a locked area with adequate security.	•				•					
Regulate/prohibit sale of other merchandise on-site including drug paraphernalia, t-shirts, bumper stickers, etc.	•	•				•			•	
Only consumption through use of vaporizer permitted on-site		•								
No sales of paraphernalia as defined Health and Safety Code section 11364.5 as permitted.		•				•				
No sale of food products containing THC			•							
Employees must be 21 years or older						•				
Employees must be bonded						•				•
Data secured on dispensaries premises							•			
No operators or employees of dispensaries shall have been convicted of any felony under state or federal law nor any conviction of a crime related to moral turpitude									•	
Security should be at site one-hour prior to opening and one hour after closing	•	•				•			•	
No persons allowed on premises with obvious signs of alcohol or drug impairment									•	
Neighborhood/Community										
Establish mechanism for dispensary neighbor meetings when problems arise	•									
Require participation in nearby organized neighborhood group, if one exists	•									
Limits on number of dispensaries per census tract	•	•							•	
Cultivation occurs in properly zoned areas of city								•		
No off-site delivery of marijuana permitted						•				
Local law enforcement required to verify the absence of any disqualifying conviction of operators or employees									•	

TABLE 2.0

Subproblems Identified By Municipalities

1. SAFETY

- Increased crime in surrounding areas
- Robberies by people frequenting dispensaries occurring in residential areas
- Illegal drug sales in surrounding areas
- Sale of marijuana around dispensaries
- Increased driving under the influence of marijuana
- Harassment of passersby
- Violence in and near dispensaries
- Assaults on property
- Robberies of marijuana from vehicles leaving dispensaries
- Homicides in dispensaries
- Robberies at dispensaries
- Robberies around dispensaries as people leave

2. NUISANCE

- Impacts on neighboring businesses
- Loitering around dispensaries
- Mistaken robberies of other businesses
- Impacts on neighboring residences
- Smell of marijuana nearby
- Illegal drug sales in surrounding areas
- Vandalism in close proximity to dispensary
- Smoking marijuana in public around dispensary
- Impacts on nearby sensitive land uses such as places of worship, day care facilities, etc

3. HEALTH

- Distribution and consumption of foods unknowingly made with marijuana laced ingredients

4. COMMUNITY NORMS

- Youth who are observed smoking marijuana which was purchased at dispensaries in areas where young people congregate

5. POLICE RESOURCES

- Increase burglaries of dispensaries

6. UNREGULATED AVAILABILITY

- Street -level dealers attempting to sell to people entering dispensaries and nearby businesses
- Smoking marijuana in commercial areas around or adjacent to dispensary
- Use of fake ID's
- Sale of illicit drugs at dispensaries
- Underage persons allowed to enter dispensaries
- Sale of marijuana to non-medical users

7. ADDITIONAL ISSUES

- Robberies in homes where marijuana is grown for dispensary sale
- Increased cultivation in communities that supply dispensaries
- Loss of other businesses operating near dispensaries
- Dispensaries used as money laundering businesses

There were additional problems identified by some municipalities that were seen to have little or no nexus to the operation of dispensaries. These represent issues that have been identified by cities as having a nexus to dispensaries but may not be aligned closely enough to the actual operation of dispensaries to warrant any conditions of use. Experience and time will tell us if these problems should remain outside the orbit of land use regulations.

TABLE 3.0

Subproblems Identified for Which No Current Regulatory Nexus Exists

- Increased number of firearms for protection of marijuana crops sold to dispensaries
- Increased resale of marijuana which was originally purchased at dispensaries
- Robberies of cash from dispensaries sales kept in homes
- Homicides/shootings at home of dispensaries' growers
- Home robberies of marijuana purchased at dispensaries
- Resale of marijuana which was originally purchased in dispensaries at community locations (i.e. parks)
- Youth having access to marijuana from dispensaries and later reselling to other youth

SECTION III

SAMPLE ORDINANCE FOR REGULATION OF
MEDICAL MARIJUANA DISPENSARIES

SECTION III: SAMPLE ORDINANCE FOR REGULATION OF MEDICAL MARIJUANA

DISPENSARIES

This section provides a sample ordinance that is “scalable” to the needs of a specific community. As such, the suggested *Findings, Definitions, Dispensary Operations, Fees and Districts* are all offered for consideration and may be as liberal or restrictive as appropriate. However, the proposed *Core Standards* differ from the other sections of the ordinance in that each standard is recommended as essential and necessary to ensure a safe and well-run establishment. **The ordinance is intended only as an example and is not endorsed as a model.**

SAMPLE ORDINANCE FOR REGULATION OF MEDICAL MARIJUANA DISPENSARIES

Purpose

The purpose of this ordinance is to establish a comprehensive set of regulations applicable to the operation of Medical Marijuana Dispensaries in a manner consistent with the overall health, welfare and safety of the City of _____ / County of _____ and its populace.

Findings

WHEREAS the City of _____ / County of _____ pursuant to the land use and police powers delegated to it by the United States Constitution, has the power to enact laws that promote the public health, safety and general welfare of its residents;

WHEREAS, it is in furtherance of the health, welfare and safety of the populace with the City/County of _____ that Collectives or Cooperatives operated for the purpose of facilitating the lawful cultivation and distribution of marijuana in a manner compliant with the Compassionate Use Act be subjected to reasonable regulation;

WHEREAS, the voters of California affirmed the medical use of marijuana by voting for proposition 215 (codified as Health and Safety Code Section 11362.5).

WHEREAS, in 2002 the California Supreme Court held that under Proposition 215 patients have the same legal rights to marijuana as to any legally prescribed drug (*People v. Mower*, (2002) 28 Cal.4th 457).

WHEREAS the intent of this Proposition is to enable persons who are in medical need of marijuana to be able to obtain and use it without fear of criminal prosecution.

WHEREAS the specific purposes of the Ordinance are to safeguard the community environment by permitting compliance with state law in a manner consistent with community concerns.

NOW THEREFORE, the City/County of _____ does hereby find:

(a) **Issues of Safety:** That the operation of Medical Marijuana Dispensaries can contribute to a reduction of public safety for patrons, passersby and others in proximity to the business. Safety issues documented in other California jurisdictions with dispensaries include but are not limited to Medical Marijuana Dispensary robberies, harassment, robberies of persons leaving Dispensary premises and violence associated with illegal drug sales in nearby neighborhoods.

(b) **Issues of Nuisance:** That Medical Marijuana Dispensaries can contribute to public nuisances. Negative impacts on nearby and commercial businesses may include but are not limited to loitering, loss of customers, and closing of nearby businesses have been documented in jurisdictions with operating Medical Marijuana

Dispensaries. Residents living in proximity to Medical Marijuana Dispensaries report vandalism and behaviors related to illegal drug sales in their neighborhoods.

(c) **Issues of Need for Increased Police Resources:** That law enforcement agencies in jurisdictions with operating Medical Marijuana Dispensaries have found that they can contribute to negative impacts on police resources including but not limited to law enforcement personnel responding to increased home burglaries related to activities associated with Medical Marijuana Dispensaries and other police calls for services related to dispensary operations.

(d) **Issues of Availability of Marijuana:** That Medical Marijuana Dispensaries can increase the general availability of marijuana to the community. Jurisdictions with Medical Marijuana Dispensaries report increased problems including but not limited to illegal sales of marijuana near Medical Marijuana Dispensaries and use of fake identification in Medical Marijuana Dispensaries.

(e) **Secondary Impacts:** That secondary impacts on communities reported by jurisdictions with Medical Marijuana Dispensaries may include but are not limited to: increased presence of firearms at Medical Marijuana Dispensaries and homes to protect marijuana for sale in Medical Marijuana Dispensaries, Medical Marijuana Dispensaries serving as money laundering businesses, sale of marijuana purchased at Medical Marijuana Dispensaries to non-medical youth and adult users and home robberies of marijuana cultivated for sale at local dispensaries.

Definitions

Medical Marijuana Dispensary shall operative as a **Cooperative or Collective**. Sometimes referred to hereinafter as “Cooperative,” “Collective,” “Cooperative/Collective,” or “MMD,” shall include the terms “Dispensing Collective,” “Dispensing Cooperative,” “Medical Cannabis Collective,” “Medical Cannabis Cooperative,” “Medical Marijuana Collective,” “Medical Marijuana Cooperative,” “Dispensary,” or similar term, and shall mean a cooperative or collective of three or more Qualified Patients or Primary Caregivers that facilitates the lawful cultivation and distribution of medical marijuana and operates not-for-profit, consistent with California Health & Safety Code Sections 11362.5 *et seq.*, with the Guidelines for the Security and Non-diversion of marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and with this Article.

Cooperative: A Cooperative must be organized and registered as a Consumer Cooperative Corporation under the California Corporations Code, Sections 12300, *et seq.*, or a Nonprofit Cooperative Association under the California Food and Agricultural Code, Sections 54002, *et seq.*

Collective: A Collective may be organized as a corporation, partnership or other legal entity under California state law, but must be jointly owned and operated by its members. As set forth in Section 46.64(b)(3), an MMCC may obtain medical marijuana only from members of the Cooperative or collective and may distribute medical marijuana only to members of the Cooperative or Collective.

Non-profit: As also set forth in Section 46.64(b)(3), an MMCC may operate only on a not-for-profit basis and reimburse only reasonable out-of-pocket expenses to itself and its members.

Primary caregiver has the same meaning as California Health and Safety Code § 11362.5, and as may be amended.

Qualified patient has the same meaning as California Health and Safety Code § 11362.5, and as may be amended.

Dispensary Operations

Facility Operations: Each Medical Marijuana Dispensary shall notify the Planning Department in writing of the name (alias), address, and date of birth of any new principal officer, board member, agent, volunteer or employee before a new agent, volunteer or employee begins working at the Dispensary.

Operations Manual: Each Medical Marijuana Dispensary shall/may develop, implement and maintain on the premises an operations manual which contains, as a minimum, the following requirements:

- (a) Procedures for the oversight of the Dispensary;
- (b) Procedures for safely dispensing medical marijuana to registered qualifying patients or their other registered primary caregiver;
- (c) Procedures to ensure accurate record keeping, including protocols to ensure that quantities purchased do not suggest re-distribution;
- (d) Employee security policies;
- (e) Safety and security procedures, including a disaster plan with procedures to be followed in case of fire or other emergencies;
- (f) Personal safety and crime prevention techniques;
- (g) A job description or employment contract developed for all employees and a volunteer agreement for all volunteers, which includes duties, responsibilities, authority, qualification and supervision; and
- (h) The Dispensary's alcohol and drug free work place policy.

Personnel Training: Medical Marijuana Dispensaries shall/may maintain on the premises an on-site training curriculum, or enter into contractual relationships with outside resources capable of meeting employee, agent and volunteer training needs. Each employee, agent or volunteer, at the time of his or her initial appointment, shall/may receive, as a minimum, training in the following:

- (a) Professional conduct, ethics, and state and federal laws regarding patient confidentiality;
- (b) Informational developments in the field of medical use of marijuana;
- (c) The proper use of security measures and controls that have been adopted; and
- (d) Specific procedural instructions for responding to an emergency, including robbery or violent incident.

Training documentation shall include a signed statement from the individual indicating the date, time and place he or she received said training and topics discussed, including the name and title of presenters. Such documentation shall also be maintained for a period of at least six (6) months after termination of the individual's affiliation with the Medical Marijuana Dispensary.

Personnel Records: Each Medical Marijuana Dispensary shall/may maintain a personnel record for each employee, agent or volunteer that includes, as a minimum, the following:

- (a) An application for employment or to volunteer;
- (b) A record of any disciplinary action taken;
- (c) A copy of the individual's most current full Bureau of Criminal Investigation record; and
- (d) Documentation of all required training.

Fees

Application for Use Permit-Application Fees:

An application for a use permit required by this ordinance shall be accompanied by an application fee in an amount established by resolution of the city council [REDACTED]/county supervisors [REDACTED], based on the estimated costs of reviewing and acting on such applications and compliance monitoring and public education.

Other Fees:

Use Permit Fee: The City Council/Board of Supervisors shall/may establish by resolution an annual use permit fee that shall be imposed on each Medical Marijuana Dispensary issued a use permit pursuant to the provisions of this Chapter.

- (a) The City/County shall/may establish a “Medical Marijuana Permit Fee Account” for the collection of the fees described in this Chapter.
- (b) Funds from the “Medical Marijuana Permit Fee Account” shall/may be used only to recover the cost of the services including education, inspections, enforcement operations and administrative hearings, related to the monitoring and enforcement of the use permit standards, conditions of operation and regulations established for Medical Marijuana Dispensaries in this ordinance.

Cost Recovery Fee: When law enforcement, fire or other emergency response provider responds to a nuisance, crime or other disturbance at a Medical Marijuana Dispensary two or more times within a twelve month period all responsible persons within the premises related to the operations of the Medical Marijuana Dispensary shall be jointly and severally liable for the city’s/county’s costs of providing response costs for the second response and all subsequent responses during the 12 month period.

Response costs means the cost associated with responses by law enforcement to Medical Marijuana Dispensary related nuisance activities or other criminal activities including but not limited to:

- (a) Salaries and benefits of law enforcement personnel for the amount of time spent responding to, remaining at, or otherwise dealing with Dispensary related nuisance or criminal activities attributable to a Dispensary, and the administrative costs attributable to such responses;
- (b) The cost of any medical treatment to or for any law enforcement personnel injured responding to, remaining at or leaving the scene of a call based on a Dispensary related nuisance or criminal activity attributable to a Dispensary;
- (c) The cost of repairing any city/county equipment or property damage, and the cost of the use of any such equipment, in responding to, remaining at or leaving the scene of a call based on a Dispensary related nuisance or criminal activity; or
- (d) Any costs recoverable in accordance with California Civil Code section 1714.9.

Permitted Uses

Medical Marijuana Dispensaries may operate with the issuance of a Special/Conditional Use Permit.

Medical Marijuana Dispensaries may operate only in compliance with the standards and requirements of this ordinance.

Medical Marijuana Dispensaries may be permitted in the following zoning districts: .

Medical Marijuana Dispensaries shall not acquire, possess, cultivate, manufacture, deliver, transfer, transport, supply or dispense marijuana for any purpose except to assist registered qualifying patients with the medical use of marijuana directly or through the qualifying patients other primary caregiver.

Medical Marijuana Dispensaries may not change mode and character of operation without the issuance of a new use permit. Changes in mode and character include but are not limited to: modification in square footage of interior space, increase in quantity of marijuana sold to individuals, any change in the non-medicinal marijuana product mix from the point at which the use permit was issued, change in hours of operation and change in security plan or security vendor.

Medical Marijuana Dispensaries shall/may be required to renew their use permit on an annual basis. Renewals shall be permitted only if the application has been submitted prior to the use permit expiration date and only where the decision making body has determines that the use has been conducted in accordance with this ordinance. A use permit issued under this ordinance may be revoked or modified at any time following a public hearing.

Medical Marijuana Dispensaries are prohibited from changing ownership (including other family members), tenancy or transfer of property without a new use permit. Any use permit that goes unused for a period of SUGGESTED RANGE: 3–6 months or more shall automatically expire and shall become null and void with no further action required.

Deemed Approved Status Bestowed on Medical Marijuana Dispensaries: Except as otherwise provided in this chapter, any Medical Marijuana Dispensary operating prior to the effective date of this ordinance that authorizes the sale of medicinal marijuana for on-site or off-site consumption shall be deemed approved and may continue to lawfully operate without a use permit provided the operation is conducted in compliance with the definition of a Medical Marijuana Dispensary provided in this ordinance, adheres to performance standards set forth in this ordinance and has paid any annual permit fee required.

Performance Standards: All Deemed Approved Medical Marijuana Dispensaries shall take reasonable steps to discourage and correct objectionable conditions that constitute a nuisance, as defined in Chapter [REDACTED], and adhere to the following performance standards in parking areas, sidewalks, alleys and areas surrounding the establishments and adjacent properties under the control of the establishment. “Reasonable steps” shall include calling the police in a timely manner, preventive design features, and requesting those engaging in such activities to cease those activities, unless personal safety would be threatened in making that request. Failure to correct these conditions may result in revocation of the “deemed approved” status, thereby requiring approval of a new use permit in the manner provided by this Chapter. Performance standards include:

- (a) It does not result in adverse effects to the health, peace or safety of persons residing or working in the surrounding area;
- (b) It does not result in jeopardizing or endangering the public health or safety of persons residing or working in the surrounding area;
- (c) It does not result in repeated nuisance activities within the premises or in close proximity to the premises, including but not limited to disturbance of the peace, illegal drug activity, public drunkenness, drinking in public, harassment of passersby, gambling, prostitution, sexual harassment or sexual battery, sale of stolen goods, public urination, theft, assaults, batteries, acts of vandalism, excessive littering, loitering, graffiti, illegal parking, excessive loud noises, especially in the late night or early morning hours, traffic violations, curfew violations, lewd sexual conduct in public, or police detentions and arrests;
- (d) It does not result in violations to any applicable provision of any other city, county, state, or federal regulation, ordinance, or statute;
- (e) Its upkeep and operating characteristics are compatible with and will not adversely affect the livability or appropriate development of abutting properties and the surrounding area; and
- (f) A copy of the performance standards shall be posted in a conspicuous and unobstructed place visible from the entrance of the establishment for public review.

The continued operation of a deemed approved Medical Marijuana Dispensary shall require approval of a new use permit in the manner provided by this Chapter upon the occurrence of any of the following:

- (a) There is a substantial modification to the mode or character of operation.
As used herein, the phrase “substantial change of mode or character of operation” shall include, but not be limited to the following:
 - 1. The Medical Marijuana Dispensary increases the floor area or shelf space principally devoted to marijuana sales by 25 percent or more;
 - 2. The Medical Marijuana Dispensary proposes to reinstate sales after being closed for a period greater than 30 days.

Core Land Use Standards¹⁵

Distance Requirements:

- Distance requirement from residential areas of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from Dispensary property line to property line of residential use
- Distance requirement from Dispensary of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from Dispensary property line to property line of schools, parks or other youth oriented facilities
- Distance requirement between Dispensaries, smoke shops or similar establishments SUGGESTED RANGE: 500 ft – 1,500 ft as measured from Dispensary property line to property line of another dispensary
- Distance requirement from Dispensary of SUGGESTED RANGE: 500 ft – 1,500 ft as measured from Dispensary property line to property line to sensitive land uses including but not limited to places of worship, alcohol and other drug treatment facilities, and senior facilities

Operational Standards:

- Require Medical Marijuana ID card or doctor's recommendation with photo ID, for entry to Dispensary and on all sales
- 24 hour video surveillance, keeping tapes/CD's for 30 days
- Security patrols exterior premise of building, including parking lots, rear of building, etc
- Post signage prohibiting loitering, likelihood of regular police patrols of premise and existence of neighborhood watch, if one exists
- Adequate exterior lighting
- Restrict/set days and hours of operation
- No sale of alcoholic beverages on Dispensary premises
- No person allowed on premises with obvious signs of alcohol or drug impairment
- Dispensary to maintain burglary and robbery alarms
- No operators or employees of Dispensaries shall have been convicted of any felony under state or federal law nor any conviction of a crime related to moral turpitude
- Limit square footage of the portion of the Dispensary

Grounds for Modification or Revocation

The city/county may require modification, discontinuance, or revocation of use permits for all Medical Marijuana Dispensary if it is found that the use is operated or maintained in a manner that:

- a. Violates any of the land use standards;
- b. Adversely affects the health, peace, or safety of persons living or working in the surrounding area;
- c. Contributes to a public nuisance;
- d. Has resulted in repeated objectionable activities; and
- e. Violates any provision of this code or condition imposed by a county-issued permit, or violates any provision of any other local, state, or federal law, regulation, or order, including those of the California Department of Alcoholic Beverage Control, or violates any condition imposed by permits issued in compliance with those laws, regulations, or orders.

Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

¹⁵ Core standards are considered essential land use conditions for all new dispensaries for which a use permit is being considered by zoning authorities. These are offered as minimum standards of operation.



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