# ORDINANCE NO. 2010-037

Adopted by the Sacramento City Council

November 9, 2010

**AN ORDINANCE ADDING CHAPTER 5.150 TO TITLE 5 OF THE SACRAMENTO CITY CODE AND REPEALING ORDINANCE NO. 2009 -033, AND ORDINANCE NO. 2009-041, RELATING TO MEDICAL MARIJUANA DISPENSARIES**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

Section 1.

Chapter 5.150 is added to the Sacramento City Code to read as follows:

Chapter 5.150

**MEDICAL MARIJUANA DISPENSARIES**

5.150.010 Purpose and intent.

In 1996 California voters approved Proposition 215, entitled "The Compassionate Use Act," that was later codified at Health and Safety Code section 11362.5. The Compassionate Use Act ensures that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction under state law. In 2003 the state enacted Senate Bill 420, known as the Medical Marijuana Program, codified at Health and Safety Code sections 11362.7 et seq. The Medical Marijuana Program was intended to supplement the provisions, and clarify the intent, of the Compassionate Use Act and to allow cities to adopt and enforce rules and regulations consistent with the Medical Marijuana Program.

It is the purpose and intent of the city council to regulate medical marijuana dispensaries consistent with the Medical Marijuana Program and to protect the health, safety, and welfare of the residents of the City of Sacramento. The regulations in this chapter do not interfere with a qualified patient's right to obtain and use marijuana as authorized under state law, nor do they criminalize the possession or cultivation of marijuana by qualified patients or their primary caregivers. Medical marijuana dispensaries shall comply with all provisions of the Sacramento City Code, state law, and all other applicable local codes and regulations. It is neither the intent nor the effect of this chapter to condone or legitimize the illegal use or consumption of marijuana under federal, state, or local law.

5.150.020 Definitions.

As used in this chapter:

"City manager" means the city manager or designee.

"Dispensary" shall have the same definition as "medical marijuana dispensary," as set forth in this section.

"Dispensary area" means the dispensary property and the area within 100 feet of the dispensary property.

"Dispensary building" means the portion of a building within which a dispensary is operated.

"Dispensary permit" means a medical marijuana dispensary permit issued pursuant to this chapter.

"Dispensary property" means the parcel of real property or portion of the parcel of real property that is owned or leased by a dispensary and upon which a dispensary is operated.

"Drug paraphernalia" shall have the same definition as set forth in California Health and Safety Code section 11364.5.

"Identification card" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Marijuana" shall have the same definition as set forth in California Health and Safety Code section 11018.

"Medical marijuana" means marijuana used for medical purposes in accordance with the Compassionate Use Act (California Health and Safety Code section 11362.5) and the Medical Marijuana Program Act (California Health and Safety Code sections 11362.7 et seq.).

"Medical marijuana dispensary" means a cooperative or collective of four or more members who associate at a particular location or real property to collectively or cooperatively distribute marijuana to members for medical purposes, and operate on a not-for-profit basis, consistent with California Health and Safety Code section 11362.5, Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code sections 11362.7 et seq.), the Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and this chapter. A medical marijuana dispensary shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; and 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 with applicable laws including, but not limited to, California Health and Safety Code section 11362.5, Article 2.5 of Chapter 6 of Division 10 of the Health and Safety Code (Health and Safety Code sections 11362.7 et seq.), and the Sacramento City Code.

"Management member" means a member with responsibility for the establishment, registration, supervision, or oversight of the operation of a medical marijuana dispensary, including but not limited to, a member who performs the functions of a board member, director, officer, owner, operating officer, or manager of the dispensary.

"Member" means any qualified patient, primary caregiver, or person with an identification card who is registered with a medical marijuana dispensary.

"Juvenile" means any natural person who is under the age of 18 years.

"Operate a dispensary" means to engage in or conduct the not-for-profit business of a dispensary, including, but not limited to, distributing medical marijuana and maintaining the facilities of a dispensary.

"Person with an identification card" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Physician" means a licensed medical doctor as defined in California Business and Professions Code section 4039.

"Primary caregiver" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Private medical records" means records related to the medical history of a qualified patient and includes the recommendation of a physician for the medical use of medical marijuana and the designation of a primary caregiver by a qualified patient.

"Qualified patient" shall have the same definition as set forth in California Health and Safety Code section 11362.7.

"Reasonable compensation" means compensation commensurate with wages and benefits paid to officers and employees of other not-for-profit organizations who have similar job descriptions and duties, required level of education and experience, prior individual earnings history, and number of hours worked.

"Special permit" means any special permit issued by the city pursuant to Title 17 of this code related to the operation of a medical marijuana dispensary.

5.150.030 Medical marijuana dispensary permit required to operate.

A. No person shall operate a medical marijuana dispensary unless the dispensary has a valid medical marijuana dispensary permit issued pursuant to this chapter.

B. Neither the obtaining of a dispensary permit nor compliance with the operating standards provided in this chapter shall excuse any violation of this code or state law.

5.150.040 Registered medical marijuana dispensaries.

A. For purposes of this section a "registered medical marijuana dispensary" means a dispensary: (1) that was properly registered with the city manager pursuant to Ordinance No. 2009-033; and (2) that is organized and operates as a cooperative or collective within the meaning of this chapter; and (3) the owner and operator of which has not been cited or convicted of maintaining a public nuisance or of a public safety violation of state or local law relating to the operation of a medical marijuana dispensary by the city or any governmental law enforcement agency.

B. An application for a dispensary permit may only be filed by a registered medical marijuana dispensary.

C. The applicant for the dispensary permit must be the same owner(s) or principal(s) named on the medical marijuana dispensary's registration as of July 27, 2010, and must be a management member of the registered medical marijuana dispensary.

D. Notwithstanding the provisions of Section 5.150.030, a person may continue to operate a registered medical marijuana dispensary without a dispensary permit until February 7, 2011. If an application for a dispensary permit is properly filed, a person may continue to operate that dispensary without a dispensary permit until January 9, 2012, and while the application's approval is pending.

E. The authorization to continue to operate a dispensary pursuant to subsection D of this section shall not entitle the applicant to an approval of their dispensary permit application, a determination that the dispensary is a legally established use under the provisions of this code, or legal nonconforming status.

5.150.050 Phase one applications for medical marijuana dispensary permit.

A. Phase one applications for dispensary permits shall be filed with the city manager's office no later than February 7, 2011. Applications shall be on forms provided by the city and shall be accompanied by a non-refundable dispensary permit application fee, in the amount established by resolution of the city council. Applications received after February 7, 2011, shall be rejected.

B. The phase one application shall be signed by one or more management members under penalty of perjury and shall set forth in writing:

1. Identity of the dispensary. A description of the statutory entity or business form that will serve as the legal structure for the collective or cooperative and a copy of its formation and organizing documents, including but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement. If a corporation, limited liability company, or a

general or limited partnership is a stockholder owning more than 10 percent of the stock or membership interest of an applicant's dispensary, or is one or more of the partners in an applicant's dispensary, the applicant shall set forth the names and addresses of each of the partners, officers, directors, and stockholders of the corporation, limited liability company, or general or limited partnership.

2. Management Information.

   a. The name, address, telephone number, title, and function(s) of each management member of the dispensary.

   b. For each management member, a legible copy of one valid government-issued form of photo identification, such as a state driver's license, a passport issued by the United States, or a permanent resident card.

3. Applicant's Phone Number and Mailing Address. The phone number and address to which notice of action on the application and future correspondence is to be mailed.

4. Previous Addresses. Previous addresses of the applicant for the past five years immediately prior to the present address.

5. Verification of Age. Evidence that the applicant and all management members of the dispensary are at least 18 years of age.

6. Criminal Background.

   a. A list of each misdemeanor and/or felony conviction, if any, of the applicant and the management member(s), whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant or management member was convicted.

   b. The applicant and each management member shall consent to fingerprinting and a criminal background investigation.

7. Employee Information. Number of employees, volunteers, and other persons who will work or provide services at the dispensary.

8. Plan of Operations. A plan describing how the dispensary will operate consistent with state law and the provisions of this chapter, including controls to:

   a. Ensure that medical marijuana is not purchased or sold by the dispensary in a manner that would generate a profit.

   b. Ensure that medical marijuana will be distributed to members only.

c. Ensure that access to the dispensary property is adequately monitored and restricted to members.

9. Dispensary Description. A description of the proposed location, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

10. Response to Title 17. An explanation of how the dispensary complies or expects to comply with Title 17 of this code, including but not limited to, the location requirements.

11. Compliance with Applicable Taxes. The applicant shall provide a current copy of its business operations tax certificate and state sales tax seller's permit.

12. City Authorization. Authorization and consent for the city manager to seek verification of the information contained within the application.

13. Statement of Owners Consent. Consent to operate a dispensary at the proposed location, specifying the street address and parcel number, from the owner or landlord, of the proposed location.

5.150.060 Review of phase one application.

A. Upon receiving a phase one application for a dispensary permit, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension of up to ten days to complete the phase one application.

B. If the city manager determines that the phase one application is complete and, on the face of the application, there appears to be no basis for denial of the permit under Section 5.150.090, the city manager shall notify the applicant that it may continue to phase two in the application process pursuant to Section 5.150.070.

C. If the application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase one application, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

D. In the event of denial, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful and subject to the penalties in Section 5.150.220.

5.150.070 Review of phase two application.

A. If the city manager notifies the applicant that it may continue to phase two in the application process the applicant shall, no later than October 11, 2011, file a phase

two application with the city manager's office, that includes the following:

1. A non-refundable dispensary permit program fee in the amount established by resolution of the city council. The dispensary permit program fee shall be in addition to any other fee imposed by this code.

2. Security Plan. A detailed security plan, prepared by a qualified professional, outlining the measures that will be taken to ensure the safety of persons and to protect the dispensary property from theft.

3. Floor Plan. A scaled floor plan for each level of the entire building showing the interior configuration of the dispensary building, including a statement of the total floor area occupied by the dispensary. The floor plan must include entrances, exits, restrooms, waiting area, office space, storage, and area for distributing marijuana to members. The floor plan must be professionally prepared by a licensed civil engineer or architect.

4. Site Plan. A scaled site plan of the parcel of real property on which the dispensary building is located, including the outline of all structures, driveways, parking and landscape areas, and boundaries of the parcel. The site plan must be professionally prepared by a licensed civil engineer or architect.

5. Accessibility Evaluation. A written evaluation of accessibility by the physically disabled to and within the building and identification of any planned accessibility improvements to comply with all state and federal disability access laws, including, but not limited to, Title 24 of the California Code of Regulations and the Americans with Disabilities Act. The evaluation must be professionally prepared by a licensed civil engineer or architect.

6. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1000 feet of the dispensary property, and the uses of those properties, specifically including, but not limited to, any use identified in the location requirements of Title 17 of this code. The map must be professionally prepared by a licensed civil engineer or architect.

7. Lighting Plan. A lighting plan showing existing and proposed exterior and interior lighting levels that would be the minimum necessary to provide adequate security lighting for the use.

8. Zoning Code Compliance. A copy of a valid special permit approved by the city's zoning administrator or planning commission for the proposed dispensary location.

9. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

10. A copy of the dispensary's annual budget for operations.

11 A copy of the dispensary's most recent year's financial statement and tax return.

12. A list of the most recent prices for all products and services provided by the dispensary.

13. Applicant's Certification. A statement dated and signed by each management member, under penalty of perjury, that the management member has personal knowledge of the information contained in the phase one and phase two applications, that the information contained therein is true and correct, and that the applications have been completed under their supervision.

14. Other Information. Such other information as deemed necessary by the city manager to demonstrate compliance with this code.

B. Complete Application.

1. Upon receiving a phase two application, the city manager shall determine whether the application is complete. If the city manager determines that the application is incomplete or has been completed improperly, the city manager shall notify the applicant. The city manager may grant the applicant an extension up to ten days to complete the phase two application.

2. An application is not to be considered incomplete for purposes of this subsection B if the sole document remaining to be filed is a copy of the special permit referenced in subsection A (8) of this Section.

3. If the phase two application is incomplete, or remains incomplete upon the expiration of any extension, the city manager may deny the application. If the city manager denies the phase two application for being incomplete, pursuant to the provisions of this section, written notice of denial shall be served on the applicant. Notwithstanding any provisions of this code to the contrary, the decision of the city manager shall be final and not subject to administrative appeal.

4. In the event of denial, the applicant shall cease operating the dispensary within 15 days from the date notice of denial is served on the applicant. Continued operations shall be unlawful and subject to the penalties in Section 5.150.220.

5. If the city manager determines that the application is complete, the completion date of a phase two application shall be the date when the city manager notifies the applicant that it has received all of the information or materials required, including compliance with subsection (A)(8); has determined that the content in the submitted documents is responsive to the requirements; and has deemed the application complete

5.150.080 Notices.

All notices required by this chapter shall be deemed issued and served upon the date

they are either deposited in the United States mail, postage pre-paid, addressed to the applicant or dispensary at the mailing address identified in its application, the last updated address on file with the city manager's office, or the mailing address on the appeal form; or the date upon which personal service of such notice is provided to the applicant or a management member identified on the application or appeal form.

5.150.090 Criteria for review.

The city manager may deny, revoke, or suspend a dispensary permit on the following grounds:

A. The application(s) and/or documents submitted are incomplete, filed late, or not responsive to the requirements of this chapter.

B. The issuance of the dispensary permit or operation of the dispensary at the proposed location is inconsistent with state law, the provisions of this chapter, or this code.

C. The dispensary has generated an excessive number of calls for police service compared to similarly situated businesses of the same size as the dispensary.

D. The dispensary has caused secondary criminal or public nuisance impacts in the surrounding area or neighborhood, including, but not limited to, disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passersby, littering, loitering, illegal parking, loud noises, or lewd conduct.

E. The applicant, management member, or any employee is a juvenile.

F. The dispensary has a history of inadequate safeguards or procedures that show it would not comply with the operating requirements and standards in this chapter.

G. The dispensary has failed to pay fees, penalties, or taxes required by this code or has failed to comply with the production of records or other reporting requirements of this chapter.

H. The proposed location does not comply with the provisions of this code or is prohibited by state law.

I. The site plan, floor plan, or security plan do not incorporate features necessary to assist in reducing potential crime-related problems as specified in Section 5.150.130. These features include, but are not limited to, security on site; procedure for allowing entry; openness to surveillance and control of the area, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting outdoor furnishings and features that encourage loitering and nuisance behavior.

J. The dispensary or one or more management members, employees, or volunteers have violated a provision of this chapter.

K. The proposed location of the dispensary is likely to adversely affect the health, peace,

or safety of persons living or working in the surrounding area or contribute to a public nuisance.

L. One or more provisions of this code, conditions of the dispensary permit, conditions imposed by another city issued permit, or any provision of any other local, state law or federal law, regulation, order, or permit has been violated.

M. It appears, based upon the information before the city manager, that the applicant has provided a false statement of material fact or has knowingly omitted a material fact in the application for, or renewal of, a dispensary permit.

N. The applicant or one or more management members, or employees has been convicted of a felony, or has engaged in misconduct that is substantially related to the qualifications, functions or duties of a dispensary operator. A conviction within the meaning of this section means a plea or verdict of guilty, or a conviction following a plea of nolo contendere. Notwithstanding the above, an application shall not be denied solely on the basis that the applicant, any management member or any employee has been convicted of a felony if the person convicted has obtained a certificate of rehabilitation (expungement of felony record) under California law or under a similar federal statute or state law where the expungement was granted.

O. The applicant or dispensary has previously or is currently engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

5.150.100 Payment of fees.

A. Every phase one application for a dispensary permit shall include a non-refundable dispensary permit application fee and every phase two application for a dispensary permit shall include a non-refundable dispensary permit program fee, in the amounts established by resolution of the city council.

B. In addition to any other fees, a dispensary shall be required to pay a non-refundable annual dispensary permit program fee at the time the dispensary submits an application for renewal, in the amount established by resolution of the city council

C. Any applicant or dispensary that files an appeal as provided by this chapter shall be required to pay a non-refundable appeal fee in the amount established by resolution of the city council.

D. In addition to any other city imposed fees, a dispensary shall be required to pay the applicable business operations tax pursuant to Title 3 of this code, and be subject to state law requirements regarding sales tax.

5.150.110 Issuance of Dispensary Permit

A. The city manager shall either grant or deny a dispensary permit within 90 days from the date the phase two application is complete as specified in Section 5.150.070(B)(5).

B. In granting a permit, the city manager may impose conditions on the permit.

C. Conditions placed on the medical marijuana dispensary special permit issued under Title 17 shall be conditions of the dispensary permit. Violations of the special permit's conditions are grounds for suspending or revoking the dispensary permit. Nothing in this section shall be construed to limit the authority of the city manager to place additional conditions upon the dispensary permit.

5.150.120 Request for reconsideration.

A. If the city manager denies the application for a dispensary permit after the application is accepted as complete, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the applicant may request reconsideration of the denial, in writing to the city manager, within ten days of the date of service of the notice.

3. A statement that the failure to request reconsideration of the denial will constitute a waiver of all rights to a hearing for reconsideration, and the denial will be final.

B. If the applicant properly files a request for reconsideration the city manager shall set the date of the hearing within 30 days from the date the request is filed. The hearing shall be conducted by the city manager.

C. Failure to properly file a written request for reconsideration of the notice of denial within ten days of the date of service of the notice shall constitute a waiver of all rights to a hearing, and the city manager's decision shall be final. Failure to properly and timely file a request for reconsideration of the notice of denial shall also constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the city manager's decision.

D. If the applicant files a proper request for reconsideration and then fails to appear at the hearing, the request for reconsideration is abandoned, and the decision of the city manager is final and may not be further appealed. Failure to appear at the hearing constitutes a waiver of all rights to a hearing and shall also constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the city manager's decision.

E. Written notice of the decision of the city manager shall be served on the applicant within ten days following the hearing.

F. The decision of the city manager under this section shall be subject to appeal in accordance with Section 5.150.170.

5.150.130 Operating requirements.

Dispensary operations shall comply with the following:

A. Criminal History. No person who has been convicted of a felony, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall operate the dispensary, or manage or handle the receipts, expenses or medical marijuana of the dispensary. 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. Juveniles.

1. No juvenile shall operate a dispensary in any capacity, including but not limited to, as a management member, employee, contractor or volunteer.

2. No juvenile shall be allowed on the dispensary property unless they are a qualified patient or a primary caregiver, and they are accompanied by their parent or legal guardian.

C. Operating Hours. The maximum hours of operation shall be daily from 7:00 a.m. to 9:00 p.m. unless the city manager imposes more restrictive hours as a condition of the permit.

D. Dispensary Size and Access.

1. The dispensary building shall not exceed 8,000 square feet.

2. Management members, employees, and volunteers must be registered members of the dispensary.

3. All entrances into the dispensary's building shall be locked from the exterior at all times with entry controlled by dispensary personnel.

4. Only dispensary members and persons with bona fide purposes for being in the dispensary shall be allowed entry into the dispensary property. Non-members shall be escorted by a management member at all times while in the dispensary building.

E. Dispensing Operations.

1. A dispensary shall only distribute to members that are:

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

b. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification

such as a Department of Motor Vehicles driver's license or State Identification Card.

2. A dispensary shall not have a physician on the dispensary property to evaluate patients or provide a recommendation for medical marijuana.

3. Notwithstanding the provisions of Chapter 9.08 of this code to the contrary, up to 150 square feet of the dispensary building may be utilized for display and distribution of drug paraphernalia necessary for administering medical marijuana, including but not limited to, rolling papers and related materials and devices, pipes, water pipes, and vaporizers. Such paraphernalia may only be provided to members and shall not generate a profit.

4. A dispensary shall not conduct or engage in the commercial sale of products, goods, or services. The term "commercial sale" does not include the provision of marijuana paraphernalia as specified above in subsection 3, or the provision of services, for members only, that do not generate a profit and are incidental to the medicinal use of marijuana, such as yoga, meditation, and substance abuse counseling.

5. A dispensary shall not provide any form of a delivery service. All distribution of medical marijuana must be conducted within the enclosed building areas of the dispensary property.

F. Consumption Restrictions. Marijuana shall not be smoked, ingested or otherwise consumed in any form on, or within 20 feet of, the dispensary property.

G. Dispensary Supply and Distribution

1. A dispensary may only possess an amount of medical marijuana consistent with each member's reasonable medical needs.

2. Except for immature nursery stock marijuana plants, no medical marijuana shall be grown or cultivated on the dispensary property.

3. A dispensary shall acquire its supply of medical marijuana only from its members.

4. A dispensary shall not purchase or otherwise supply itself with medical marijuana from non-members.

5. A dispensary shall operate on a not-for-profit basis. It may credit its members for medical marijuana they provide to it, which it may then distribute to other members. Members may also reimburse the dispensary for medical marijuana or marijuana paraphernalia that has been distributed to them. Any monetary reimbursement that members provide to the dispensary shall not exceed the dispensary's overhead costs and expenses for operating the dispensary, including reasonable compensation for services provided to members.

6. A dispensary shall not distribute or sell medical marijuana or marijuana paraphernalia to non-members or for a profit.

7. A dispensary shall comply with the operating criteria for the distribution of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 et seq.

8. Dispensary operations shall not result in the diversion of marijuana for non-medical purposes in any manner that violates local or state law.

H. Operating Plans.

1. Floor Plan. A dispensary shall have a lobby waiting area at the entrance to receive persons to verify that they are members of that dispensary or to determine whether the person meets the criteria of a valid qualified patient or primary caregiver. A dispensary shall also have a separate and secure area designated for distributing medical marijuana to its members. The main entrance shall be located and maintained clear of barriers, landscaping, and similar obstructions so that it is clearly visible from public streets or sidewalks.

2. Storage. A dispensary shall have adequate locked storage on the dispensary property, identified and approved as a part of the security plan, for after-hours storage of medical marijuana. Medical marijuana shall be stored at the dispensary property in secured rooms that are completely enclosed or in a safe that is bolted to the floor.

3. Odor Control. A dispensary shall have an air treatment system that prevents odors generated from the storage of marijuana on the dispensary property from being detected by any reasonable person of normal sensitivity outside the dispensary property.

4. Security Plans. A dispensary shall comply with a security plan that is approved by the city manager that includes, but is not limited to, building security specifications, lighting, alarms, and adequate state licensed security personnel to patrol the dispensary area in order to preserve the safety of persons and to protect the dispensary from theft.

5. Security Cameras. Security surveillance cameras and a video recording system shall be installed to monitor the interior, main entrance, and exterior dispensary area to discourage loitering, crime, and illegal or nuisance activities. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the identification of any individual present in the dispensary area.

6. Security Video Retention. Video from the security surveillance cameras shall be maintained for a period of not less than 30 days and shall be made available to the city upon request.

7. Alarm System. Professionally and centrally-monitored fire, robbery, and burglar alarm systems shall be installed and maintained in good working condition.

8. Concealed. A dispensary shall not allow or permit medical marijuana to be visible from the building exterior.

9. Emergency Contact. A dispensary shall provide the city manager with the current name and primary and secondary telephone numbers of at least one 24-hour on-call management member to address and resolve complaints and to respond to operating problems or concerns associated with the dispensary. The dispensary shall make good faith efforts to encourage neighborhood residents to call this person to solve operating problems, if any, before any calls or complaints are made to the city.

I. Signage

1. The following signs in measurements of not less than eight by ten inches shall be clearly and legibly posted in a conspicuous location inside the dispensary where they will be visible to members in the normal course of a transaction, stating:

a. "Smoking, ingesting or consuming marijuana on this property or within 20 feet of the dispensary is prohibited."

b. "Juveniles are prohibited from entering this property unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian."

c. "Neither the City of Sacramento, County of Sacramento, nor any other governmental agency has tested or inspected any marijuana product for pesticides, or other regulated contaminants, distributed at this location."

d. "The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law."

2. Signs on the dispensary building shall not obstruct the entrance or windows of the dispensary.

J. Maintenance of Records.

1. A dispensary shall maintain the following records on the dispensary property:

a. The name, address, and telephone number(s) of the owner and/or landlord of the dispensary property.

b. The name, address, and telephone number(s) of each member and management member who participates in the cultivation of medical marijuana for the benefit of the dispensary.

c. The name, date of birth, physical address, and telephone number(s) of each member and management member of the dispensary; the date each member and management member joined the dispensary; the nature of each member's and management member's participation in the dispensary; and the status of each member and management member as a qualified patient or primary caregiver.

d. A copy of each member's and qualified patient's written physician recommendation and the designation of a primary caregiver by a qualified patient.

e. A written accounting of all cash and in-kind contributions, reimbursements, and reasonable compensation provided by the management members and members to the dispensary, and all expenditures and costs incurred by the dispensary.

f. A copy of the dispensary's commercial general liability insurance policy and all other insurance policies related to the operation of the dispensary.

g. A copy of the dispensary's most recent year's financial statement and tax return.

h. An inventory record documenting the dates and amounts of medical marijuana received at the dispensary, the daily amounts of medical marijuana stored on the dispensary property, and the daily amounts distributed to members.

i. Proof of a valid and current dispensary permit issued by the city in accordance with this chapter. Every dispensary shall display at all times during business hours the dispensary permit issued pursuant to the provisions of this chapter in a conspicuous place so that it may be readily seen by all persons entering the dispensary.

2. These records shall be maintained by the dispensary in printed format for a period of not less than three years and shall be produced to the city within twenty-four hours after receipt of the city's request.

3. Any loss, damage or destruction of these records shall be reported to the city manager within 24 hours of the loss, damage or destruction.

K. Site Management. The dispensary shall prevent and eliminate conditions in the dispensary area that constitute a nuisance.

L. Trash, Litter, Graffiti.

1. The dispensary shall maintain the sidewalks within 20 feet of the dispensary property as well as any parking lots under the control of the dispensary, free of litter, debris, and trash.

2. Notwithstanding any provisions of this code to the contrary, the dispensary shall remove all graffiti from the dispensary property and parking lots under the control of the dispensary within 72 hours of its application.

M. Alcoholic Beverages.

No dispensary or management member shall cause or permit the sale, distribution, or consumption of alcoholic beverages on the dispensary property; hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages; or operate a business on or adjacent to the dispensary property that sells alcoholic beverages. No alcoholic beverages shall be allowed or stored on the dispensary property.

N. Indemnification.

Every permit issued under this chapter shall contain a condition requiring the dispensary, through its management members, to execute an agreement in a form approved by the city attorney whereby the dispensary (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the dispensary or its management members, employees, or members for violation of state or federal laws, and (2) defends, indemnifies and holds harmless the city and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution of medical marijuana provided at the dispensary.

5.150.140 Inspection authority.

A. City officials may enter and inspect the dispensary property at any time between the hours of 7:00 a.m. and 9:00 p.m. on any day of the week or at any reasonable time to ensure compliance and enforcement of the provisions of this chapter.

B. City officials may inspect and demand copies of records maintained by the dispensary, except for private medical records that shall be made available to law enforcement agencies only pursuant to a properly executed search warrant, subpoena, or court order.

C. No person shall refuse, impede, obstruct, or interfere with an inspection pursuant to this chapter.

5.150.150 Term of Permits and Renewals

A. Unless revoked on an earlier date, all dispensary permits shall expire one year after the date of issuance.

B. A dispensary permit may be renewed for additional periods of one year by filing an

application for renewal with the city manager's office. Applications shall be on forms provided by the city and shall be accompanied by the annual dispensary permit program fee, in the amount established by resolution of the city council. The application for renewal and the fee shall be filed at least 30 days, but not more than 60 days, prior to the expiration of the permit. If a timely renewal application is filed, the dispensary permit's expiration shall be stayed until the date that notification is provided by the city manager pursuant to subsection G of this section.

C. Applications for renewal filed less than 30 days prior to the expiration of the dispensary permit shall not stay the expiration date of the permit and may be rejected or denied.

D. The City Manager shall either approve or deny the renewal of a dispensary permit within 90 days from the date the application for renewal is filed.

E. Applications for renewal shall be acted on using the criteria for review in section 5.150.080 of this chapter. The city manager may add, remove, or modify permit conditions as a condition of permit renewal.

F. If the city manager denies the application for renewal of a dispensary permit, written notice of denial shall be served on the applicant. The notice shall contain:

1. A brief statement of the grounds for the denial.

2. A statement that the dispensary may appeal the denial in accordance with Section 5.150.170.

3. A statement that the failure to appeal the denial will constitute a waiver of all rights to an appeal hearing, and the denial will be final.

G. The denial of a renewal shall cause the dispensary permit to expire and the dispensary shall cease operations within 15 days from the date notice of denial is served. Continued operations shall be unlawful and subject to the penalties in Section 5.150.220.

H. If the city manager approves the application for renewal with new or modified conditions the dispensary shall have ten days from the date the notice of renewal is served on the dispensary to file an appeal of the proposed conditions in accordance with Section 5.150.170. Failure to properly file a written appeal of the proposed conditions within ten days of the date of service of the notice of renewal shall constitute a waiver of all rights to an appeal hearing, and the proposed conditions shall be deemed permanent conditions of the permit. Failure to properly and timely appeal the notice of renewal with the proposed conditions shall also constitute a failure to exhaust administrative remedies and a bar to any judicial action pertaining to the city manager's decision.

5.150.160 Suspension and revocation.

A. In addition to any other remedy authorized by law, a dispensary permit may be

suspended, modified or revoked.

B. If the city manager proposes to suspend, modify, or revoke a permit, written notice of the proposed suspension, modification or revocation shall be served on the dispensary at least 15 days prior to the date of the proposed suspension, modification or revocation. The notice shall contain:

1. A brief statement of the grounds for such suspension, modification, or revocation.

2. A statement that the dispensary may appeal the denial in accordance with Section 5.150.170.

3. A statement that the failure to appeal the notice of suspension, modification or revocation will constitute a waiver of all rights to an appeal hearing, and the suspension, modification, or revocation will be final.

C. Notwithstanding subsection B above, if any dispensary, management member, or employee of a dispensary is convicted of a felony or is convicted of a misdemeanor for misconduct that is substantially related to the qualifications, functions, or duties of a dispensary, the city manager may immediately revoke the dispensary permit without prior notice. A dispensary may appeal the revocation in accordance with Section 5.150.170. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

D. Notwithstanding subdivision B above, if any dispensary or person holding a current dispensary permit or acting under the authority of the permit pursuant to this chapter ceases the operation of a dispensary for 90 consecutive days or longer, the city manager may immediately revoke the dispensary permit without prior notice. A dispensary may appeal the revocation in accordance with Section 5.150.170.

5.150.170 Denial, suspension, revocation, and non-renewal – appeals.

A. Except as otherwise provided in this chapter, any applicant or dispensary aggrieved by the decision of the city manager in conditioning, denying, suspending, revoking, or not renewing a dispensary permit, may appeal the decision by filing a written appeal, accompanied by a non-refundable appeal fee, with the city manager's office within ten days from the date of service of the notice from the city manager. The written appeal shall contain:

1. A brief statement in ordinary and concise language of the specific action protested, together with any material facts claimed to support the contentions of the appellant.

2. A brief statement in ordinary and concise language of the relief sought, and the reasons why it is claimed the protested action should be reversed or otherwise set aside.

3. The verification (by declaration under penalty of perjury) of the applicant or dispensary as to the truth of the matters stated in the appeal.

B. The appeal hearing shall be conducted by a hearing examiner appointed pursuant to

Section 8.04.070 of this code.

C. Upon receipt of any appeal filed pursuant to this section, the city manager shall transmit the appeal to the secretary of the hearing examiner who shall calendar it for hearing as follows:

1. If the appeal is received by the city manager no later than fifteen days prior to the next regular appeal hearing, it shall be calendared for hearing at said meeting.

2. If the appeal is received by the city manager on a date less than fifteen days prior to the next appeal hearing, it shall be calendared for the next subsequent appeal hearing.

D. Written notice of the time and place of the hearing shall be provided at least ten calendar days prior to the date of the hearing to each appellant by the secretary of the hearing examiner either by causing a copy of such notice to be delivered to the appellant personally or by mailing a copy addressed to the appellant at the address shown on the appeal.

E. Failure of any person to file a timely appeal in accordance with the provisions of this section shall constitute an irrevocable waiver of the right to an administrative hearing and the city manager's decision shall be final.

F. Only those matters or issues specifically raised by the appellant in the appeal notice shall be considered in the hearing of the appeal.

G. Any condition, denial, suspension, revocation, or non-renewal of a dispensary permit shall be stayed during the pendency of an appeal which is properly and timely filed pursuant to this section.

5.150.180 Appeal hearings.

A. At the time set for hearing, the hearing examiner shall proceed to hear the testimony of the city manager, the appellant, and other competent persons, including members of the public, respecting those matters or issues specifically listed by the appellant in the notice of appeal.

B. The proceedings at the hearing shall be electronically recorded. Either party may provide a certified shorthand reporter to maintain a record of the proceedings at the party's own expense.

C. The hearing examiner may, upon request of the appellant or upon request of the city manager, grant continuances from time to time for good cause shown, or upon his or her own motion.

D. In any proceedings under this chapter, the hearing examiner has the power to administer oaths and affirmations and to certify to official acts.

5.150.190 Conduct of hearing.

A. Hearings need not be conducted according to the technical rules relating to evidence

and witnesses. Government Code section 11513, subdivision (a), (b) and (c) shall apply to hearings under this chapter.

B. Oral evidence shall be taken only upon oath or affirmation.

C. Irrelevant and unduly repetitious evidence shall be excluded.

D. Each party shall have these rights, among others:

1. To call and examine witnesses on any matter relevant to the issues of the hearing.

2. To introduce documentary and physical evidence.

3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing.

4. To impeach any witness regardless of which party first called the witness to testify.

5. To rebut the evidence presented against the party.

6. To represent himself, herself, or itself or to be represented by anyone of his, her, or its choice who is lawfully permitted to do so.

E. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact that may be judicially noticed by the courts of this state or that may appear in any of the official records of the city or any of its departments.

5.150.200 Form and contents of decision.

A. If it is shown, by a preponderance of the evidence, that one or more grounds exist to condition, deny, suspend, revoke, or not renew a dispensary permit, the hearing examiner shall affirm the city manager's decision. The decision of the hearing examiner shall be in writing and shall contain findings of fact and a determination of the issues presented.

B. The decision shall inform the appellant that the decision is a final decision and that the time for judicial review is governed by California Code of Civil Procedure Section 1094.6. Copies of the decision shall be delivered to the parties personally or sent by certified mail to the address shown on the appeal. The decision shall be final when signed by the hearing examiner and served as provided in this section.

5.150.210 Relocation or permit transfer prohibited.

A. A dispensary shall not relocate or operate a dispensary at any place other than the address of the dispensary property or the physical location for which the original dispensary permit was granted.

B. A dispensary shall not transfer ownership or management control of a dispensary or transfer a dispensary permit to another person.

C. A dispensary permit is not property and shall have no value. Any attempt to transfer a dispensary permit or relocate a dispensary, directly or indirectly in violation of the provisions of this chapter shall be unlawful and void, and shall automatically revoke the permit.

5.150.220 Violations.

A. In addition to any other remedy allowed by law, any person who violates a provision of this chapter is subject to criminal sanctions, civil actions, and administrative penalties pursuant to chapter 1.28.

B. Violations of this chapter are hereby declared to be public nuisances.

C. Any person who violates a provision of this chapter is liable for civil penalties of not less than two hundred fifty dollars ($250.00) or more than twenty-five thousand dollars ($25,000.00) for each day the violation continues.

D. In addition to criminal sanctions, civil penalties as provided in this section, and other remedies set forth in this code, administrative penalties may be imposed pursuant to chapter 1.28 against any person violating any provision of this chapter. Imposition, enforcement, collection and administrative review of administrative penalties imposed shall be conducted pursuant to chapter 1.28.

5.150.230 Remedies cumulative.

All remedies prescribed under this chapter shall be cumulative and the election of one or more remedies shall not bar the city from the pursuit of any other remedy for the purpose of enforcing the provisions hereof.

5.150.240 Severability.

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

Section 2. Operative Date.

This ordinance shall take effect 60 days after adoption.

Section 3. Repeal of Ordinances Nos. 2009-033 and 2009-041.

Ordinance No. 2009 -033 and Ordinance No. 2009-041 are repealed on the effective date of this ordinance.

Adopted by the City of Sacramento City Council on November 9, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Sheedy, Waters.

Noes: None.

Abstain: None.

Absent: Councilmembers Pannell, Tretheway, and Mayor Johnson.

Robbie Waters, Vice-Mayor

Attest:

Shirley Concolino, City Clerk

Passed for Publication: October, 26, 2010
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