City of Sacramento
City Council

915 I Street, Sacramento, CA, 95814
www.CityofSacramento.org

Meeting Date: **4/3/2012** **Report Type:** Staff/Discussion

Title: Ordinance Amendment: Medical Marijuana Dispensaries Permit Processing Changes (Title 5 and 17) (Passed for Publication on 3-27-12, Published on 3-30-12)

Report ID: 2012-00254

Location: Citywide

Recommendation: Pass and adopt an Ordinance amending Sections 5.150.040, 5.150.070, 5.150.110 and 5.150.130 of the Sacramento City Code relating to medical marijuana dispensaries and adopt an interim Title 17 ordinance relating to special permits for medical marijuana dispensaries

Contact: Brad Wasson, (916) 808-5724, Finance

Joy Patterson, (916) 808-5607, Community Development

Presenter: Brad Wasson, (916) 808-5724, Finance Department, Joy Patterson, (916) 808-5607, Community Development

Department: Finance / Community Development
Division: Revenue Administration
Dept ID: 06001211

Attachments:

1-Description/Analysis
2-Background
3-Attachment 1-Medical Marijuana Legislation Letter
4-Attachment 2-Dispensary Locations
5-Title 5 Red-line version
6-Title 5 Clean version
7-Title 17 Interim Ordinance

City Attorney Review
Approved as to Form
GMartinez
3/29/2012 1:13:23 PM

City Treasurer Review
Reviewed for Impact on Cash and Debt
Russell Fehr
3/21/2012 4:10:53 PM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 3/29/2012 10:35:02 AM

Eileen Teichert, City Attorney Shirley Concolino, City Clerk Russell Fehr, City Treasurer
John F. Shirey, City Manager

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Description/Analysis

Issue: On November 8, 2011, and November 15, 2011, Council adopted amendments to the City's medical marijuana ordinance to extend application deadlines and allow time for the uncertain state of the law to settle or at least buy some time to explore alternatives. The Federal Government is still actively investigating and prosecuting medical marijuana cases. The State Supreme Court accepted for review the Pack vs. City of Long Beach case. Considering the ongoing legal uncertainty, staff is recommending amendments to the City code to extend medical marijuana application deadlines again, providing staff an opportunity to monitor the legal developments, and if necessary, return to the City Council with further amendments.

Policy Considerations: The City of Sacramento has worked closely with the medical marijuana dispensaries to develop a regulatory process that is consistent with state law and with the California Attorney General's guidelines. The proposed amendments will provide additional time for the City to act on the applications while the legal issues settle.

Environmental Considerations: California Environmental Quality Act (CEQA): Under the CEQA guidelines, continuing administrative activities do not constitute a "project" as defined in Section 15378 of the CEQA Guidelines and are therefore exempt from review.

Sustainability: None

Commission/Committee Action: None.

Rationale for Recommendation: The City Manager has frozen or stopped staff's processing of medical marijuana dispensary permits due to the state court case and recent federal enforcement actions. This action was taken so that the City can review its permitting process in light of the legal uncertainties. In the absence of the proposed deadline amendments to Title 5 and Title 17, the City would be required to act on applications. Accordingly, staff is recommending a continued holding pattern that will avoid time sensitive deadlines from expiring. Despite the administrative hold on the permitting process, staff is conducting routine inspections of the dispensaries. It should be noted that there have been no additional calls to the police in the areas around the dispensaries. Consequently, the status quo seems to be the best course of action.

Financial Considerations: The City of Sacramento collected permit fees prior to the City Manager putting an administrative hold on processing the permits. The fees were collected in Fiscal Year (FY) 2011/12 and will cover the cost of the program for the fiscal year. The City also budgeted $750,000 (modified from $1,000,000) in taxes for FY2011/12. Actual collections are on track and may exceed the modified amount budgeted.

Should the administrative hold continue through all of FY2012/13, then the City would not collect any dispensary program permit fees. These fees fund three full-time employees who monitor and enforce the medical marijuana program. Two of these positions are

necessary to hold the status quo. In the absence of the permit fees, staff is recommending using one-time medical marijuana tax revenue which is trending higher than budget projections.

Should more dispensaries close down or the tax revenue decrease, then staffing levels will need to be addressed during FY2012/13.

Emerging Small Business Development (ESBD): No goods or services are being purchased under this report.

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Background:

On October 4, 2011, a state court decision (Pack vs. City of Long Beach), found that Long Beach's medical marijuana dispensary permitting scheme was preempted by federal law. The Pack decision raised doubts on the ability of local governments to permit medical marijuana dispensaries and correspondingly questioned the viability of the City of Sacramento's own medical marijuana ordinance. Shortly, thereafter the four US Attorneys in California held a press conference on October 7, 2011, to announce a new federal enforcement policy against California medical marijuana dispensaries.

As a result of the Pack decision and new federal enforcement activity, staff took immediate action to freeze or halt the processing of applications for medical marijuana dispensaries. On October 13, 2011, staff recommended, and the City Planning Commission withdrew, six dispensary applications from the Commission's agenda. On October 13, 2011, the Zoning Administrator (ZA) withdrew one dispensary application from the ZA agenda. Staff also withdrew three dispensary applications from the Planning Commission's October 27, 2011, agenda. As of this time, staff is not accepting any new applications, or setting future hearing dates pursuant to the City's administrative hold or freeze that is in effect.

Consequently, on November 8, 2011, Council adopted amendments to the City's medical marijuana ordinance to extend deadlines until May 14, 2012, to submit applications and August 13, 2012, to have received a permit. At the same time Council voted to clarify the Title 5 ordinance to require the Title 5 operating requirements be followed at all times whether the dispensary is permitted or not. The intent of the extension was to allow time for the Supreme Court to grant the petition for review of the Pack decision, depublish it, or deny review to guide future recommendations on the City's ordinance.

The Supreme Court granted review. On average it takes two years after a petition for review is filed for the Supreme Court to issue a decision. The petition was filed on November 10, 2011. Two years from that date is November 12, 2013, (two days were added to avoid a holiday). That would be the date, on average, that the Supreme Court is expected to issue its decision and the date staff propose for the phase 2 application deadline.

Current Analysis:

The legal uncertainty surrounding medical marijuana has increased in the past several months in light of federal law enforcement's recent actions against marijuana dispensaries. These events are complicated by the California Supreme Court's action granting review in four decisions regarding the regulation of medical marijuana at the local level. Two of the decisions, Pack v. City of Long Beach and City of Riverside v. Inland Empire Patient's Health & Wellness Center, address how far a local jurisdiction may "permit" or regulate dispensaries and whether or not the cities have the ability to ban dispensaries entirely. The other two cases address preemption and who has the ability to challenge ordinances. In short, the legal

landscape has become more uncertain.

This legal uncertainty is further exacerbated by Attorney General Kamala Harris' inability to issue revised statewide guidelines. In 2003, the Medical Marijuana Program authorized the State's Attorney General to develop and adopt appropriate guidelines to ensure the "security and nondiversion of marijuana grown for medical use by qualified patients under the Compassionate Use Act of 1996." In 2008, then Attorney General Brown adopted guidelines, which soon became outdated by the ever-evolving case law regarding medical marijuana. When Kamala Harris was elected, she was urged to revisit the 2008 guidelines.

On December 21, 2011, Attorney General Harris issued two letters on medical marijuana, one addressed to state legislators and the other to "partners and colleagues," stating that her office is unable to issue updated guidelines until there is clarification of the state's laws. (Attachment 1.) In those letters, Attorney General Harris stated that she "cannot protect the will of the voters, or the ability of seriously ill patients to access their medicine, until statutory changes are made that define the scope of the cultivation right, whether dispensaries and edible marijuana products are permissible, and how marijuana grown for medical use may be lawfully transported."

The dispensaries located in the City of Sacramento have felt the impact of the U.S. Attorney's enforcement action. Some have closed operations and others have moved locations to try to comply with sensitive use issues. City staff is working with the dispensaries to try to keep their permit application information current. Attachment 2 represents dispensary locations and status as of March 9, 2012.

The current deadline dates are fast approaching but little has changed with the uncertain legal climate. Staff sees four options available to the City Council at this time. These options are:

1. **Continue the Administrative Hold** and extend the application deadlines while we wait for the final Supreme Court decision in the Pack et. al cases on review. This holding pattern could be for another two years. However, if the current pace of closures caused by federal enforcement activity continues, it is possible there will be no dispensaries left to issue a permit to in two years.

2. **Remove the Administrative Hold** and allow the remaining dispensaries to complete the application process. Because the Pack decision was depublished, the City's ordinance remains viable. We could proceed forward as Council intended when it adopted the ordinance. However, if later the Supreme Court upholds the Pack decision and follows its reasoning, the City's ordinance will be subject to attack. If the City's ordinance is found fatally defective, the dispensaries will have incurred non-refundable costs, including but not limited to, building and dispensary permit fees,

special permit fees, and infrastructure expenditures. The result could create additional policy and budgetary challenges such as whether to refund fees and, if yes, which fees.

3. **Amend the Ordinance** to remove the objectionable sections that the Pack court determined were pre-empted by federal law. The ordinance would require substantial amendments to comply with the Pack decision and, in particular, the City would lose out on application and permit fees that currently fund the program and enforcement staff. The ordinance would be so scrubbed down that the City would be unable to issue permits and thus regulate the dispensaries in the traditional business regulation model. In other words the ordinance would not resemble the ordinance, in intent or effect, which the Council adopted in 2010.

4. **Repeal the Ordinance and Ban Dispensaries** would be the most conservative option and consistent with the U.S. Attorney's enforcement efforts. Long Beach has recently repealed its permitting ordinance and banned dispensaries; Los Angeles is considering doing the same. However, this would be a complete reversal from the Council's compassionate support of medical marijuana. In addition to the loss of permit fees, the City would lose 4% of voter approved tax on medical marijuana. Of significance, is that the critical issue of whether a ban is even permissible is presented in a case on review by the Supreme Court. It's possible that the Supreme Court will find that local government bans are inconsistent with state law.

Recommendation:

On November 9, 2010, Council adopted the medical marijuana ordinance with the intent to have it comply with the provisions of the Sacramento City Code and state law, including the Attorney General Guidelines, in effect at that time. However, these intentions have become increasingly difficult, if not impossible, to meet in light of the federal enforcement actions and the state Attorney General's inability to provide further guidance on the scope of legal dispensary operations. Moreover, the Supreme Court's decision to address four medical marijuana cases presents future challenges and uncertainty.

Accordingly, staff recommends option 1, continuing the administrative hold on processing permit applications and extending the application and permit deadlines for two years from the date the petition with the Supreme Court was filed. The proposed deadline dates are November 12, 2013 (phase 2 applications) and February 11, 2014 (all permits issued). A decision from the Supreme Court is realistically expected on or before November 12, 2013, and with that we expect that there will be controlling authority and guidance to return to Council with new recommendations. However, if the Supreme Court issues a decision before the deadline dates staff will promptly return to the Council within 90 days of the decision to propose new amendments consistent with the court's decision. In the meantime staff will continue to collect taxes from the dispensaries and conduct routine inspections to ensure compliance with operating restrictions.

Finally, staff is proposing minor clarification language to the indemnification section of Title 5 to require the applicants to hold the City harmless and waive future application fee refunds in the event state law changes and the City is forced to repeal the ordinance.

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STATE OF CALIFORNIA

OFFICE OF THE ATTORNEY GENERAL

KAMALA D. HARRIS
ATTORNEY GENERAL

December 21, 2011

The Honorable Darrell Steinberg
President Pro-Tempore
State Capitol, Room 205
Sacramento, CA 95814

The Honorable John A. Perez
Speaker of the Assembly
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0046

Re: Medical Marijuana Legislation

Dear President Pro-Tempore Steinberg and Speaker Perez:

As the state's chief law enforcement official, I am troubled by the exploitation of California's medical marijuana laws by gangs, criminal enterprises and others. My Office recently concluded a long series of meetings with representatives across the state from law enforcement, cities, counties, and the patient and civil rights communities. The primary purpose of the meetings was to assess whether we could clarify the medical marijuana guidelines that my predecessor published in 2008 in order to stop the abuses. These conversations, and the recent unilateral federal enforcement actions, reaffirmed that the facts today are far more complicated than was the case in 2008. I have come to recognize that non-binding guidelines will not solve our problems – state law itself needs to be reformed, simplified, and improved to better explain to law enforcement and patients alike how, when, and where individuals may cultivate and obtain physician-recommended marijuana. In short, it is time for real solutions, not half-measures.

I am writing to identify some unsettled questions of law and policy in the areas of cultivation and distribution of physician-recommended marijuana that I believe are suitable for legislative treatment. Before I get into the substance, however, I want to highlight two important legal boundaries to keep in mind when drafting legislation.

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First, the Court of Appeal for the Second Appellate District recently ruled in *Pack v. Superior Court* (2011) 199 Cal.App.4th 1070 that state and local laws which license the large-scale cultivation and manufacture of marijuana stand as an obstacle to federal enforcement efforts and are therefore preempted by the federal Controlled Substances Act. Although the parties involved in that case have sought review of the decision in the California Supreme Court, for now it is binding law. As mentioned below, the decision in *Pack* may limit the ways in which the State can regulate dispensaries and related activities.

Second, because the Compassionate Use Act (Proposition 215) was adopted as an initiative statute, legislative efforts to address some of the issues surrounding medical marijuana might be limited by article II, section 10(c) of the Constitution, which generally prohibits the Legislature from amending initiatives, or changing their scope or effect, without voter approval. In simple terms, this means that the core right of qualified patients to cultivate and possess marijuana cannot be abridged. But, as long as new laws do not "undo what the people have done" through Proposition 215, we believe that the Legislature remains free to address many issues, including dispensaries, collective cultivation, zoning, and other issues of concern to cities and counties unrelated to the core rights created in the Compassionate Use Act.

With this context, the following are significant issues that I believe require clarification in statute in order to provide certainty in the law:

(1) <u>Defining the contours of the right to collective and cooperative cultivation</u>

Section 11362.775 of the Health and Safety Code recognized a group cultivation right and is the source of what have come to be known as "dispensaries." It provides, in full:

> Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

There are significant unresolved legal questions regarding the meaning of this statute. Strict constructionists argue that the plain wording of the law only provides immunity to prosecution for those who "associate" in order to "collectively or cooperatively . . . cultivate" marijuana, and that any interpretation under which group members are not involved in physical cultivation is too broad. Others read section 11362.775 expansively to permit large-scale cultivation and transportation of marijuana, memberships in multiple collectives, and the sale of marijuana through dispensaries. These divergent viewpoints highlight the statute's ambiguity. Without a substantive change to existing law, these irreconcilable interpretations of the law, and the resulting uncertainty for law enforcement and seriously ill patients, will persist. By articulating the scope of the collective and cooperative cultivation right, the Legislature will help law enforcement and others ensure lawful, consistent and safe access to medical marijuana.

(2) Dispensaries

The term "dispensary" is not found in Proposition 215 and is not defined in the Medical Marijuana Program Act. It generally refers to any group that is "dispensing," or distributing, medical marijuana grown by one or more of its members to other members of the enterprise through a commercial storefront.

Many city, county, and law enforcement leaders have told us they are concerned about the proliferation of dispensaries, both storefront and mobile, and the impact they can have on public safety and quality of life. Rather than confront these difficult issues, many cities are opting to simply ban dispensaries, which has obvious impacts on the availability of medicine to patients in those communities. Here, the Legislature could weigh in with rules about hours, locations, audits, security, employee background checks, zoning, compensation, and whether sales of marijuana are permissible.

As noted, however, the *Pack* decision suggests that if the State goes too far in regulating medical marijuana enterprises (by permitting them, requiring license or registration fees, or calling for mandatory testing of marijuana), the law might be preempted by the Controlled Substances Act. We also cannot predict how the federal government will react to legislation regulating (and thus allowing) large scale medical marijuana cultivation and distribution. However, the California-based United States Attorneys have stated (paraphrase Cole memo re: hands off approach to those clearly complying with relevant state medical marijuana laws).

(3) Non-Profit Operation

Nothing in Proposition 215 or the Medical Marijuana Program Act authorizes any individual or group to cultivate or distribute marijuana for profit. Thus, distribution and sales for profit of marijuana – medical or otherwise – are criminal under California law. It would be helpful if the Legislature could clarify what it means for a collective or cooperative to operate as a "non-profit."

The issues here are defining the term "profit" and determining what costs are reasonable for a collective or cooperative to incur. This is linked to the issue of what compensation paid by a collective or cooperative to members who perform work for the enterprise is reasonable.

(4) Edible medical marijuana products

Many medical marijuana collectives, cooperatives, and dispensaries offer food products to their members that contain marijuana or marijuana derivatives such as cannabis oils or THC. These edible cannabis products, which include cookies, brownies, butter, candy, ice cream, and cupcakes, are not monitored or regulated by state and local health authorities like commercially-distributed food products or pharmaceuticals, nor can they be given their drug content. Likewise, there presently are no standards for THC dosage in edible products.

Commercial enterprises that manufacture and distribute marijuana edibles and candy do not fit any recognized model of collective or cooperative cultivation and under current law may be engaged in the illegal sale and distribution of marijuana. Clarity must be brought to the law in order to protect the health and safety of patients who presently cannot be sure whether the edibles they are consuming were manufactured in a safe manner.

I hope that the foregoing suggestions are helpful to you in crafting legislation. California law places a premium on patients' rights to access marijuana for medical use. In any legislative action that is taken, the voters' decision to allow physicians to recommend marijuana to treat seriously ill individuals must be respected.

Please do not hesitate to contact me if you have questions or concerns.

Sincerely,

KAMALA D. HARRIS
Attorney General

cc: The Honorable Mark Leno
The Honorable Tom Ammiano

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

December 21, 2011

Re: Medical Marijuana Guidelines

Dear Partners and Colleagues:

As the state's chief law enforcement official, I am troubled by the exploitation of California's medical marijuana laws by gangs, criminal enterprises, and others. Senior members of my staff recently concluded an almost yearlong series of meetings with representatives across the state from law enforcement, cities, counties, and the patient and civil rights communities. The primary purpose of the meetings was to assess whether we could clarify the medical marijuana guidelines that my predecessor published in 2008 in order to stop the abuses.

These conversations, as well as the federal government's recent unilateral enforcement actions, reaffirmed that the facts today are far more complicated than was the case in 2008. The consensus from our conversations is that state law itself needs to be reformed, simplified, and improved to better explain how, when, and where individuals may cultivate and obtain physician-recommended marijuana, and to provide law enforcement officers with guidelines for enforcement. In short, it is time for real solutions, not half-measures.

At the same time, almost every group of stakeholders has asked me to postpone issuance of new guidelines until the courts have acted in a number of key cases. Because I have come to recognize that non-binding guidelines will not solve the problems with the state's medical marijuana law, I have decided to honor this request and am urging the California Legislature to amend the law to establish clear rules governing access to medical marijuana.

We cannot protect the will of the voters, or the ability of seriously ill patients to access their medicine, until statutory changes are made that define the scope of the group cultivation right, whether dispensaries and edible marijuana products are permissible, and how marijuana grown for medical use may lawfully be transported.

I have begun discussions with the California Legislature about legislative solutions. One point is certain—California law places a premium on patients' rights to access marijuana for medical use.

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I look forward to working with you on these issues going forward. Please do not hesitate to contact my office if you have questions or concerns.

Sincerely,

KAMALA D. HARRIS
Attorney General

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Dispensary Location and Status as of March 9, 2012

Name of Dispensary	Current Address	Council District	Current Status
12 Hour Care Collective	6666 Fruitridge Rd #C	6	Open
A Therapeutic Alernative	3015 H Street	3	Open
All About Wellness	1900 19th Street	4	Open
Alternative Medical Center	8665 Folsom Blvd	6	Closed
Canna Care Inc	320 Harris Ave #G	2	Open
Capitol Wellness Inc dba Abatin	2100 29th St	4	Open
Capitol Wellness Inc	2400 14th Street	4	Closed
CC101 dba Mad Medicine	6435 Florin Perkins	6	Open
CNAA California Naturopathic Agricultural Assoc	8112 Alpine Ave	2	Open
Delta Health & Wellness	2418 17th Street	4	Open
Didacus Flower Company-DBA Grass	4381 Gateway Park Blvd #560	1	Open
Doctors Orders	1704 Main Ave	2	Open
East Bay Health Solutions EBHS-DBA Medizen	2201 Northgate Blvd Ste H	3	Closed
Florin Wellness Center Inc	7047 S. Land Park Dr	5	Open
Fruitridge Health & Wellness Collective	2831 Fruitridge Rd, Ste E	5	Closed
Green Solutions	1404 28th Street	4	Closed
Horizon Nonprofit Collective	3600 Power Inn Rd Ste 1A	6	Open
Hugs Alternative Care LLC	2035 Stockton Blvd	6	Open
J Street Wellness Collective	2321 J Street #A	4	Open
Nor Cal Alternative Healing	515 Broadway	4	Open
Northstar Holistic Collective	1236 C Street	4	Open
P Street Health Center	2012 P Street	4	Closed
R & R Coffee & Collective	75 Quinta Ct Ste 4	8	Closed
River City Cooperative Corporation-DBA One Love Wellness	1841 El Camino Ave	2	Closed
River City Phoenix	1508 El Camino	2	Open
True Compassion	3830 Northgate Blvd Ste A	3	Open
Roseville Gold	315 N 10th Street, Ste A	3	Open
Sacramento Holistic Healing Center-DBA Grass	2014 10th Street	4	Closed
El Camino Wellness Collective	2511 Connie Dr	2	Open
Power Inn Wellness	7551 14th Ave, Unit D	6	Open
SaraJane & Co. Cooperative Inc-Green Door	908 21st Street	4	Closed
South Sacramento Care Center	114 A Otto Cir	5	Open
Unity Non-profit collective	1832 Tribute Rd #E	3	Open
Valley Health Options	1421 Auburn Blvd	2	Open

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTIONS 5.150.040, 5.150.070, 5.150.110, AND 5.150.130 OF THE SACRAMENTO CITY CODE, RELATING TO MEDICAL MARIJUANA DISPENSARIES

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

SECTION 1.

Section 5.150.040 of the Sacramento City Code is amended to read as follows:

A. Subsection D is amended to read as follows:

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 a phase one and/or phase two application for a dispensary permit is or has been properly filed and has not been denied, a person may continue to operate that dispensary without a dispensary permit until ~~August 13, 2012~~February 11, 2014, and while the application approval or denial is pending.

B. Except as amended in subsection A, above, Section 5.150.040 shall remain unchanged and in full force and effect.

SECTION 2.

Section 5.150.070 of the Sacramento City Code is amended to read as follows:

A. Subsection A is amended to read as follows:

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 ~~May 14, 2012~~November 12, 2013, 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. Except as amended in subsection A, above, Section 5.150.070 shall remain unchanged and in full force and effect.

SECTION 3.

Section 5.150.110 of the Sacramento City Code is amended to read as follows:

A. Subsection A is amended to read as follows:

A. After the phase two application is complete, as specified in Section 5.150.070(B)(5), the city manager shall either grant or deny a dispensary permit on or before ~~August 13, 2012~~February 11, 2014.

B. Except as amended in subsection A, above, Section 5.150.110 shall remain unchanged and in full force and effect.

SECTION 4.

Section 5.150.130 of the Sacramento City Code is amended to read as follows:

A. Subsection N is amended to read as follows:

N. Indemnification. Every application filed or permit issued under this chapter shall contain a term or 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 (a) any repeal or amendment of this chapter and/or Title 17 (the zoning code) relating to medical marijuana dispensaries, or (b) 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.

B. Except as amended in subsection A, above, Section 5.150.130 shall remain unchanged and in full force and effect.

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTIONS 5.150.040, 5.150.070, 5.150.110, AND 5.150.130 OF THE SACRAMENTO CITY CODE, RELATING TO MEDICAL MARIJUANA DISPENSARIES

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

SECTION 1.

Section 5.150.040 of the Sacramento City Code is amended to read as follows:

A. Subsection D is amended to read as follows:

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 a phase one and/or phase two application for a dispensary permit is or has been properly filed and has not been denied, a person may continue to operate that dispensary without a dispensary permit until February 11, 2014, and while the application approval or denial is pending.

B. Except as amended in subsection A, above, Section 5.150.040 shall remain unchanged and in full force and effect.

SECTION 2.

Section 5.150.070 of the Sacramento City Code is amended to read as follows:

A. Subsection A is amended to read as follows:

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 November 12, 2013, 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. Except as amended in subsection A, above, Section 5.150.070 shall remain unchanged and in full force and effect.

SECTION 3.

Section 5.150.110 of the Sacramento City Code is amended to read as follows:

A. Subsection A is amended to read as follows:

A. After the phase two application is complete, as specified in Section 5.150.070(B)(5), the city manager shall either grant or deny a dispensary permit on or before February 11, 2014.

B. Except as amended in subsection A, above, Section 5.150.110 shall remain unchanged and in full force and effect.

SECTION 4.

Section 5.150.130 of the Sacramento City Code is amended to read as follows:

A. Subsection N is amended to read as follows:

N. Indemnification. Every application filed or permit issued under this chapter shall contain a term or 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 (a) any repeal or amendment of this chapter and/or Title 17 (the zoning code) relating to medical marijuana dispensaries, or (b) 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.

B. Except as amended in subsection A, above, Section 5.150.130 shall remain unchanged and in full force and effect.

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN INTERIM ORDINANCE RELATING TO SPECIAL PERMITS FOR MEDICAL MARIJUANA DISPENSARIES (M12-002)

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

SECTION 1.

The City Council of the City of Sacramento finds and declares as follows:

A. On November 9, 2010, the City Council adopted Ordinance No. 2010-038, adding Footnote 85 to Section 17.24.050 of Title 17 of the Sacramento City Code (the Zoning Code), to allow the establishment and operation of medical marijuana dispensaries with a special permit in specified zones and subject to specified location, development, and operational standards.

B. Subsection (m)(ii)(E) of Footnote 85 states that a special permit for a registered medical marijuana dispensary shall be deemed automatically revoked if the medical marijuana dispensary fails to obtain a medical marijuana dispensary permit under Sacramento City Code Chapter 5.150 and commence operation within 90 days of the date of approval of the special permit.

C. Following adoption of Ordinance No. 2010-038, medical marijuana dispensaries applied for and received approval of special permits, and these same dispensaries filed timely applications for Chapter 5.150 permits to meet the 90 day time limit. However, due to developments in the law that raised questions about the City's authority to regulate and issue permits for medical marijuana dispensaries, the City suspended the processing of Chapter 5.150 medical marijuana dispensary permit applications to give the City Council time to evaluate and consider changes to the medical marijuana dispensary permit program. As a consequence, the previously approved medical marijuana dispensary special permits were at risk of automatic revocation, jeopardizing the substantial time, effort, and financial resources invested in the application, processing, and approval of the special permits.

D. Recognizing this risk, the City Council adopted Ordinance No. 2011-048 on November 8, 2011. That ordinance granted to medical marijuana dispensaries with valid and unexpired special permits, additional time, specifically until August 13, 2012, to obtain the Chapter 5.150 permit and commence operation, thereby allowing those special permits to remain

in effect while the City Council evaluated and considered changes to the medical marijuana dispensary permit program.

E. Questions about the City's authority to regulate and issue permits for medical marijuana dispensaries remain unsettled and are not likely to be resolved for up to an additional two years. The City Council adopts this Ordinance to allow the medical marijuana special permits that are valid and unexpired as of the date of adoption of this Ordinance to remain in effect while the City Council continues to evaluate and consider changes to the medical marijuana dispensary permit program.

SECTION 2.

The provisions of subsection (m)(ii)(E) of Footnote 85 of Section 17.24.050 of the Zoning Code shall not apply to special permits for medical marijuana dispensaries that were approved prior to and remain in effect as of the date of adoption of this Ordinance. Instead, a special permit for a medical marijuana dispensary that was approved prior to and remains in effect as of the date of adoption of this Ordinance shall be deemed automatically revoked if the medical marijuana dispensary fails to obtain a medical marijuana dispensary permit under Sacramento City Code Chapter 5.150 and commence operation under that permit by February 11, 2014.

SECTION 3.

A medical marijuana dispensary for which a special permit was approved prior to and remains in effect as of the effective date of this Ordinance shall not be deemed to have been established under Section 17.212.100(B) of the Zoning Code unless and until a medical marijuana dispensary permit under Sacramento City Code Chapter 5.150 has been obtained and the dispensary commences operation under that permit.

SECTION 4.

This Ordinance is enacted by the City Council as an interim ordinance, without notice and hearing before the Planning Commission and City Council as otherwise required by Section 17.208.010 of the Zoning Code. It is anticipated that comprehensive and permanent regulations governing medical marijuana dispensaries, which may include amendments to the Zoning Code, will be processed in the manner required by law, adopted, and in effect by February 11, 2014, and that this interim Ordinance will be repealed at that time, with the newly adopted regulations superseding the provisions of this Ordinance.

SECTION 5.

Ordinance No. 2011-048 is repealed.