Meeting Date: **2/2/2016**

Report Type: Public Hearing

Report ID: 2016-00186

City of SACRAMENTO 19

City Council Report
915 I Street, 1st Floor
www.CityofSacramento.org

Title: Ordinance Amending Title 5 of the Sacramento City Code Relating to the Relocation of a Medical Marijuana Dispensary (Noticed 01/15/2016; Passed for Publication 01/19/2016; Published 01/22/2016) {Continued from 01/26/2016}

Location: Citywide

Recommendation: Conduct a public hearing and upon conclusion, pass an Ordinance amending various sections of chapter 5.150 of the Sacramento City Code relating to the relocation of a medical marijuana dispensary.

Contact: Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance; Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Presenter: Brad Wasson, Revenue Manager, (916) 808-5844, Department of Finance; Joy Patterson, Principal Planner, (916) 808-5607, Community Development Department

Department: Finance / Community Development Department

Division: Revenue Administration

Dept ID: 06001211

Attachments:

1-Description/Analysis

2-League of California Cities Webinar

3-Dispensary Relocation Ordinance (Redline)

4-Dispensary Relocation Ordinance (Clean)

City Attorney Review

Approved as to Form
Steve Itagaki
1/28/2016 10:31:12 AM

Approvals/Acknowledgements

Department Director or Designee: Leyne Milstein - 1/28/2016 9:08:56 AM

Description/Analysis

Issue Detail:

On January 26, 2016 City Council continued Council Agenda Item 14 addressing the dispensary operating issues and location/land use regulation of medical marijuana businesses for one week. For clarification, the issues to be addressed have been split into two reports. This report addresses dispensary operating issues.

At the January 26th Council meeting Councilmember Hansen asked that the City Code be modified to allow current dispensary operators the ability to move into "grandfathered" locations (locations that do not meet the sensitive use requirements, but have a conditional use permit). Staff is currently analyzing this request, but unable to complete the analysis by this report's deadline. Additional information will be provided to Council when it is available.

Current City Code does not allow dispensaries to relocate or change management members. This report recommends changes to the Code that will allow dispensaries to change location within the currently approved parameters as well as address changes in nonprofit dispensaries management structures.

Numerous public meetings were held in efforts to develop location criteria for medical marijuana dispensaries before operating permits were issued by the City. At that time, Council allowed dispensaries to continue operating in their original location if they were in good standing with the community and obtained a conditional use permit (CUP). Dispensaries are required to meet stringent location requirements for sensitive uses.

Dispensaries are required to be:

- 1,000 feet from any other medical marijuana dispensary, park, or K-12 school;
- 600 feet from any childcare center, in-home child/family day care home, youth-oriented facility, church or faith congregation, substance abuse center, cinema, or tobacco retailer; and
- 300 feet from any existing residential zone.

During the CUP process, the owners of a registered medical marijuana dispensary could apply to the Planning and Design Commission to modify the above location criteria on a case by case basis. However, in no case could the Commission reduce the distance from a dispensary to a park or a K-12 school to less than 600 feet.

The current process has worked well and very few complaints have been received regarding the operation of dispensaries. Title 5 of the Sacramento City Code, however, does not allow a dispensary to relocate after the dispensary permit has been issued and

does not allow the management members of a dispensary to change. Two dispensaries have indicated that they will need to relocate to continue operating. In the first case, the dispensary property was sold and the new owner does not want a dispensary on the property. The other dispensary has not been able to open in its approved location due to a fire. Other dispensaries have also expressed a desire to relocate and reorganize to better serve their patients.

Finally, dispensaries are required to operate as a nonprofit entity. In nonprofit organizations officers and managers change over time. Current City Code does not allow management members to change. This is not practical for ongoing operations and City Code should reflect this.

Policy Considerations: Current City Code does not allow dispensaries to relocate or change management members. Some dispensaries will be forced to close if they are not allowed to relocate. The intent of the current Code was to ensure adherence to strict location requirements but not to stifle the businesses' capacity to respond to changes in both real estate concerns and patient needs. The current policy on location requirements was vetted carefully before instituted and would remain applicable in consideration of relocation proposals.

It is not practical to require a dispensary to keep its officers and manager static. The City should not allow the entity to change in its entirety, however employees, managers, and officers will need to change on occasion and City Code should reflect this reality.

Economic Impacts: None.

Environmental Considerations: This action is not a project subject to CEQA because it involves only general policy and procedure making and does not have the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (CEQA Guidelines, §15061(b)(3).)

Sustainability: Not applicable.

Commission/Committee Action: The Committee has conducted numerous meetings on the dispensing of medical marijuana:

- June 16, 2009 – Directed staff to bring an urgency ordinance to City Council placing a moratorium on dispensaries and requiring them to register with the City.
- December 1, 2009 – Received options for regulation and input from the public.
- April 6, 2010 – Forwarded regulation framework to City Council.
- July 24, 2012 – Discussed U.S. Attorney decisions, cultivation in residential zones and dispensary location in relation to parks and K-12 schools.
- January 15, 2013 – Forwarded zoning code amendments for location of dispensaries in relation to parks and K-12 schools to the Commission and City Council.

- June 4, 2013 – Forwarded location of dispensaries in relation to sensitive uses and extending processing timelines for applications to the Commission and City Council.
- November 6, 2014 – Forwarded dispensary permit processing time extension to City Council.
- November 10, 2015 – Forwarded dispensary relocation ability and nonprofit membership changes to City Council.

Rationale for Recommendation: City dispensaries should operate in locations as established in City Code. Management changes to dispensaries should be allowed for continued operations.

Financial Considerations: The City collects four percent Business Operations Tax on the dispensaries' sales. In fiscal year 2014/15 the City collected $2.86 million. The average annual amount collected per dispensary is approximately $103,000. In addition, the dispensaries pay an annual permitting fee of $12,600 to cover the cost of permitting and enforcing the ordinance.

Local Business Enterprise (LBE): Not applicable.

Informational Webinar: Medical Marijuana Regulation and Safety Act

- This is the first of at least two webinars designed to educate our members on the three bills comprising the Medical Marijuana Regulation and Safety Act (MMRSA). Its goals are to:
  - Explain how this legislation protects local control;
  - Review the details of what each bill does;
  - Highlight specific regulatory issues that require immediate attention from local governments;
  - Discuss timelines for implementation
  - Field your questions

Note: Some of the provisions of the new laws discussed in this webinar are not included in the Medical Marijuana Regulation and Safety Act.

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Medical Marijuana Regulation and Safety Act

- Presenters:
  - Tim Cromartie, Legislative Representative, League of California Cities
  - Lauren Michaels, Legislative Affairs Manager, California Police Chiefs Association
  - Steve McEwen, Attorney at Law; Partner with Burke, Williams & Sorensen, LLP

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Medical Marijuana Regulation and Safety Act

- **Medical Marijuana: Schedule of Events**

- Webinar Dates:
  - Tuesday, October 20
  - Thursday, November 12
-
- Informational Briefings
  - San Leandro - Monday, November 9
  - Eureka – Monday, November 16
  - Sacramento – Wednesday, January 13
  - Pasadena – Thursday, January 14
  - Riverside - Friday, January 15
  - Fresno - Monday, January 25
  - San Luis Obispo - Thursday, January 28
  - San Diego - Tuesday, February 9

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Medical Marijuana Regulation and Safety Act

- The Medical Marijuana Regulation and Safety Act consists of three discrete pieces of legislation:
- **AB 266 (Bonta, Cooley, Jones-Sawyer, Lackey, Wood)** – Establishes dual licensing structure requiring state license ***and*** a local license or permit. Department of Consumer Affairs heads overall regulatory structure imposing health and safety and testing standards.
- **AB 243 (Wood)**– Establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture.
- **SB 643 (McGuire)** - Establishes criteria for licensing of medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees.

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Medical Marijuana Regulation and Safety Act

- This legislation protects local control in the following ways:
- **Dual licensing:** A requirement in statute that all marijuana businesses must have **both** a state license, and a local license or permit, to operate legally in California. Jurisdictions that regulate or ban medical marijuana will be able to retain their regulations or ban.
- **Effect of Local Revocation of a Permit or License:** Revocation of a local license or permit terminates the ability of a marijuana business to operate in that jurisdiction under its state license.
- **Enforcement:** Local governments may enforce state law in addition to local ordinances, if they request that authority and if it is granted by the relevant state agency.
- **State law penalties for unauthorized activity:** Provides for civil penalties for unlicensed activity, and applicable criminal penalties under existing law will continue to apply.
- Expressly protects local licensing practices, zoning ordinances, and local actions taken under the constitutional police power.

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Key State Medical Marijuana Laws Following AB 243, AB 266, and SB 643

- Medical Marijuana Regulation and Safety Act (Business and Profession Code section 19300 through 19360). Governs the licensing and control of all medical marijuana businesses in the state and provides criminal immunity for licensees.

- Compassionate Use Act of 1996 (Health and Safety Code section 11362.5). Provides criminal immunity for patients and primary caregivers for possession and cultivation of marijuana if a doctor has recommended the marijuana for medical use.

- Medical Marijuana Program (Health and Safety Code section 11362.7 through 11362.9). Establishes voluntary program for identification cards for qualified patients and primary caregivers and provides criminal immunity to qualified patients and primary caregivers for certain activities involving medical marijuana.

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Medical Marijuana Regulation and Safety Act

Two areas will require immediate attention from local governments:

- **Deliveries and mobile dispensaries:** Jurisdictions that currently ban, or that may wish to ban, deliveries or mobile dispensaries should be aware that under AB 266, they will need to have an ordinance in place that affirmatively identifies and prohibits this activity.
- **Cultivation ordinances:** AB 243 contains a provision stating that cities that do not have an ordinance regulating or prohibiting cultivation by March 1, 2016 will lose the authority to regulate or ban cultivation within their city limits. The state will become the sole licensing authority. The author has agreed to fix this via clean-up legislation, but to be safe, cities are advised to enact emergency ordinances by the end of February to protect themselves.

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Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**

- Establishes a statewide regulatory scheme with the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA) at its head.
- Provides for dual licensing: both a state license, and a local permit or license, ***issued according to local ordinances,*** are required.
- Caps total cultivation for a single licensee at 4 acres statewide, subject to local ordinances.
- Creates four licensing categories: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing: Operators may hold one state license in up to two separate license categories. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.

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Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**

- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and it was enacted on or before July 1, 2015. Requires businesses to operate in compliance with local ordinances, and to have been engaged in all the specified activities on July 1, 2015.
- Requires establishment of uniform state minimum health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product. Product testing is mandatory.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.

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Medical Marijuana Regulation and Safety Act

- **AB 266 Medical Marijuana – what the bill does:**

- Labor Peace: Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.

- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.

- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.

Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**
- Places the Dept. of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites.
- Mandates the Dept. of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Dept. of Public Health to develop standards for production and labelling of all edible medical cannabis products.
- Assign joint responsibility to DFA, Dept. of Fish and Wildlife, and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.

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Medical Marijuana Regulation and Safety Act

- **AB 243 Medical Marijuana – what the bill does:**

- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.

- Specifies various types of cultivation licenses.

- Directs the multi-agency task force headed by the Dept. of Fish and Wildlife and the SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**

- Directs California Medical Board to prioritize investigation of excessive recommendations by physicians;
- Imposes fines ($5000.00) vs. physicians for violating prohibition against having a financial interest in a marijuana business;
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct;
- Imposes restrictions on advertising for physician recommendations;

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Medical Marijuana Regulation and Safety Act

- **SB 643 Medical Marijuana – what the bill does:**

- Places Dept. of Food and Agriculture in charge of cultivation regulations and licensing, and requires a track and trace program;
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure;
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles;
- Upholds local power to levy fees and taxes.

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Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- "Delivery" means the commercial transfer or medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health & Safety Code, or a testing laboratory.
- "Delivery" also includes the use by a dispensary or any technology platform owned and controlled by the dispensary or independently licensed under this chapter that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products. (Business & Professions Code 19300.5(m))

Medical Marijuana Regulation and Safety Act

- **Delivery of Medical Marijuana (AB 266)**
- *"Deliveries" can only be made by a dispensary and in a city, county, or city and county that does not* ***explicitly prohibit*** *it by local ordinance*. Business & Professions Code 19340(a). See also Section 19340(b)(1).
- Therefore, if your city wishes to prohibit delivery of medical marijuana within your city, an ordinance must be adopted to <u>explicitly prohibit</u> deliveries.
- Timing: State licenses are expected to be issued starting January 1, 2018. A facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements may continue its operations until its application for licensure is approved or denied effective January 1, 2018 (Business & Professions 19321(c)).
- Ordinance explicitly prohibiting deliveries should include (1) an amendment to the zoning code prohibiting "delivery" (as defined in AB 266) in any zoning district; or (2) an amendment to the Municipal Code relating to business operations prohibiting "delivery" of 'medical marijuana" and "medical cannabis products" (as defined in AB 266) as a business within the city.

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Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**
  - AB 243 (Wood) prohibits cultivation of medical marijuana without first obtaining both a local license/permit/other entitlement for use and a state license. A person may not apply for a state license without first receiving a local license/permit/other entitlement for use.
  - A person may not submit an application for a state license if proposed cultivation will violate provisions of local ordinance or regulation or if medical marijuana is prohibited by city, county, or city and county either expressly or otherwise under principles of permissive zoning (Health & Safety 11372.777(b)).

Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243)**
- **However**…If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, *either expressly or otherwise under the principles or permissive zoning*, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants (Health & Safety 11372.777(c)(4)).
-
- Under a "permissive" zoning code, "any use not enumerated in the code is presumptively prohibited." *City of Corona v. Naulis* (2008) 166 Cal.App.4th 418, 425 cited in *County of Sonoma v. Superior Court* (2010) 190 Cal.App.4th 1312, FN. 3

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Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- City #1: Municipal Code that expressly prohibits cultivation of marijuana or expressly prohibits medical marijuana: No need to take any action.
-
- City #2: Municipal Code that expressly regulates (requires a permit or license or other entitlement) to cultivate medical marijuana: No need to take any action.
-
- City #3: Municipal Code that does not expressly prohibit nor expressly regulates (requires a permit or license or other entitlement) to cultivate medical marijuana and is <u>not</u> a "permissive zoning" code. ***Need to take action (see next slide)***
- City #4: Municipal Code that is a "permissive zoning" code and does not enumerate cultivation of medical marijuana as a permitted or conditional use: **Need to take action (see next slide).**

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Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**

- **City #3 : What needs to be done before March 1, 2016?**

- City #3: The Department of Food and Agriculture will be the sole licensing authority for the cultivation of medical marijuana within City #3 *if City #3 does not have an ordinance either expressly prohibiting or expressly regulating the cultivation of medical marijuana before March 1, 2016*. (Health & Safety Code 11362.777(c)(4). Second reading of an ordinance must occur by January 29, 2016 or a city may consider adopting an urgency ordinance pursuant to Government Code 36937).

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Medical Marijuana Regulation and Safety Act

- **Cultivation (AB 243) – Examples:**
- **City #4 : What needs to be done before March 1, 2016?**
- City #4: If City #4 prohibits the cultivation of medical marijuana "under principles of permissive zoning," then the Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within City #4. (Health & Safety Code 11362.777(b)(3)).

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Medical Marijuana Regulation and Safety Act

- **Cultivation - General Guidelines for Cities**
- Check and confirm that your city's zoning code is adopted and implemented under the principles of permissive zoning. If not, take action recommended for City #3.

- If confirmed that your city's zoning code is adopted and implemented under the principles of permissive zoning: Adopt a resolution that includes the following provisions:
-
  - (1) States that H & S 11362.777(b)(3) states that Department of Food and Agriculture may not issue a state license to cultivate medical marijuana within a city that prohibits cultivation under principles of permissive zoning;
  - (2) Re-affirms and confirms that the Zoning Code is adopted and operates under the principles of permissive zoning;
  - (3) States this means that cultivation of marijuana is not allowed within City #4 because it is not expressly permitted and,
  - (4) Therefore, the State is not allowed to issue a license for the cultivation of medical marijuana within City #4.

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Medical Marijuana Regulation and Safety Act

- Timeline for Implementation
  - None of the bills specify a timeline for implementation
  - This is partly due to various departments being at different stages in terms of their readiness
  - The rough timeline we have been given for state licensing to begin is January 2018
  - The more immediate timeline for locals to bear in mind is March 2016 regarding your cultivation ordinances

Medical Marijuana Regulation and Safety Act

- Questions?

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ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE ADDING AND AMENDING VARIOUS SECTIONS OF CHAPTER 5.150 OF THE SACRAMENTO CITY CODE RELATING TO THE RELOCATION OF A MEDICAL MARIJUANA DISPENSARY

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

SECTION 1.

Section 5.150.075 is added to the Sacramento City Code to read as follows:

5.150.075 Relocation of a dispensary.

A. A dispensary permitee may modify the location for which its dispensary permit is granted by filing a relocation application with the city manager's office.

B. An application for relocation must include the following:

1. Dispensary relocation fee. A nonrefundable dispensary relocation fee, in the amount established by city council resolution. The dispensary relocation fee is in addition to any other fee imposed by this code.

2. Applicant information. The name, address, and telephone number of the dispensary applying for relocation, to which notice of action on the application is to be mailed.

3. Proposed location. A description of the location proposed for the relocation of the dispensary, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

4. Reasons for relocation. A statement of the reasons for the proposed relocation.

5. Security plan. A detailed security plan for the proposed location, 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.

6. Floor plan. A scaled floor plan for each level of the building in which the dispensary is proposed to be located, 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 prepared by a licensed civil engineer or architect.

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

8. Accessibility evaluation. A written evaluation of accessibility by the physically disabled to and within the proposed dispensary 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 prepared by a licensed civil engineer or architect.

9. Neighborhood context map. An accurate straight-line drawing depicting the boundaries of the proposed dispensary property, the boundaries of all other properties within 1,000 feet of the proposed dispensary property, and the uses of those properties, specifically including any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

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

11. Planning and development code compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

12. Consent to operate. 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.

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 relocation application, that the information contained therein is true and correct, and that the application has been completed under their supervision.

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

C. Unless the city manager determines the existence of one or more of the grounds for denying the application, pursuant to section 5.150.090, the city manager

shall grant the relocation application and modify the dispensary permit to reflect the new location. In granting a relocation application, the city manager may also modify the conditions on the permit.

SECTION 2.

Section 5.150.090 of the Sacramento City Code is amended to read as follows:

5.150.090 Criteria for review.

The city manager may deny, revoke, ~~or~~ suspend or modify a dispensary permit or deny a relocation application, 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 ~~S~~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.

SECTION 3.

Section 5.150.100 of the Sacramento City Code is amended to read as follows:

5.150.100 Payment of fees and taxes.

~~A. Every phase one application for a dispensary permit shall include a nonrefundable dispensary permit application fee and every phase two application for a dispensary permit shall include a nonrefundable 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 nonrefundable 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 nonrefundable appeal fee in the amount established by resolution of the city council.~~

A. The following fees are established and imposed pursuant to the provisions of this chapter:

1. Dispensary permit application fee;

2. Dispensary permit program fee;

3. Dispensary relocation fee; and

4. Appeal fee.

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

~~D~~C. In addition to any other city imposed fees, a dispensary~~ shall be~~ is required to pay~~ the~~ all applicable taxes, including the business operations tax pursuant to ~~T~~title 3~~ of this code,~~ and~~ be subject to state law requirements regarding~~ sales tax pursuant to state law.

SECTION 4.

A. Subsection A of section 5.150.120 of the Sacramento City Code is amended to read as follows:

A. If the city manager denies the application for a dispensary permit after the application is accepted as complete or denies a relocation application, 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. Except as amended by subsection A above, all provisions of section 5.150.120 remain unchanged and in full effect.

SECTION 5.

A. Subsection A of section 5.150.170 of the Sacramento City Code is amended to read as follows:

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, modifying, or not renewing a dispensary permit, or denying a relocation application, may appeal the decision by filing a written appeal, accompanied by a nonrefundable appeal fee, with the city manager's office within ten (10) 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.; and

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. Except as amended by subsection A above, all provisions of section 5.150.170 remain unchanged and in full effect.

SECTION 6.

A. Subsection A of section 5.150.200 of the Sacramento City Code is amended to read as follows:

A. If it is shown, by a preponderance of the evidence, that one or more grounds exist to condition, deny, suspend, revoke, modify, or not renew a dispensary permit or a relocation application, 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. Except as amended by subsection A above, all provisions of section 5.150.200 remain unchanged and in full effect.

SECTION 7.

Section 5.150.210 of the Sacramento City Code is amended to read as follows:

5.150.210 Relocation Dispensary location or -- pPermit transfer prohibited.

A. A dispensaryNo person shall not relocate or operate a dispensary at any place other than the address of the dispensary property or the physical specific location for which their original dispensary permit was is granted. A dispensary may seek to

modify the location for which their dispensary permit is granted, by submitting an application in accordance with section 5.150.075.

B. A dispensary shall not transfer ownership or management control of a dispensary or transfer a dispensary permit may not be transferred, sold, assigned, or bequeathed 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.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE ADDING AND AMENDING VARIOUS SECTIONS OF CHAPTER 5.150 OF THE SACRAMENTO CITY CODE RELATING TO THE RELOCATION OF A MEDICAL MARIJUANA DISPENSARY

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

SECTION 1.

Section 5.150.075 is added to the Sacramento City Code to read as follows:

5.150.075 Relocation of a dispensary.

A. A dispensary permitee may modify the location for which its dispensary permit is granted by filing a relocation application with the city manager's office.

B. An application for relocation must include the following:

1. Dispensary relocation fee. A nonrefundable dispensary relocation fee, in the amount established by city council resolution. The dispensary relocation fee is in addition to any other fee imposed by this code.

2. Applicant information. The name, address, and telephone number of the dispensary applying for relocation, to which notice of action on the application is to be mailed.

3. Proposed location. A description of the location proposed for the relocation of the dispensary, including the street address and parcel number, the square footage, the number of expected members, and the characteristics of the neighborhood or surrounding area.

4. Reasons for relocation. A statement of the reasons for the proposed relocation.

5. Security plan. A detailed security plan for the proposed location, 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.

6. Floor plan. A scaled floor plan for each level of the building in which the dispensary is proposed to be located, 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 prepared by a licensed civil engineer or architect.

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

8. Accessibility evaluation. A written evaluation of accessibility by the physically disabled to and within the proposed dispensary 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 prepared by a licensed civil engineer or architect.

9. Neighborhood context map. An accurate straight-line drawing depicting the boundaries of the proposed dispensary property, the boundaries of all other properties within 1,000 feet of the proposed dispensary property, and the uses of those properties, specifically including any use identified in the location requirements of the Planning and Development Code. The map must be professionally prepared by a licensed civil engineer or architect.

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

11. Planning and development code compliance. A copy of a valid conditional use permit approved by the city's zoning administrator or planning and design commission for the proposed dispensary location.

12. Consent to operate. 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.

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 relocation application, that the information contained therein is true and correct, and that the application has been completed under their supervision.

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

C. Unless the city manager determines the existence of one or more of the grounds for denying the application, pursuant to section 5.150.090, the city manager

shall grant the relocation application and modify the dispensary permit to reflect the new location. In granting a relocation application, the city manager may also modify the conditions on the permit.

SECTION 2.

Section 5.150.090 of the Sacramento City Code is amended to read as follows:

5.150.090 Criteria for review.

The city manager may deny, revoke, suspend or modify a dispensary permit or deny a relocation application, 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.

SECTION 3.

Section 5.150.100 of the Sacramento City Code is amended to read as follows:

5.150.100 Payment of fees and taxes.

A. The following fees are established and imposed pursuant to the provisions of this chapter:

1. Dispensary permit application fee;

2. Dispensary permit program fee;

3. Dispensary relocation fee; and

4. Appeal fee.

B. The city council shall establish by resolution the amounts of the fees specified in subsection A, and any related penalties.

C. In addition to any other city imposed fees, a dispensary is required to pay all applicable taxes, including the business operations tax pursuant to title 3 and sales tax pursuant to state law.

SECTION 4.

A. Subsection A of section 5.150.120 of the Sacramento City Code is amended to read as follows:

A. If the city manager denies the application for a dispensary permit after the application is accepted as complete or denies a relocation application, 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. Except as amended by subsection A above, all provisions of section 5.150.120 remain unchanged and in full effect.

SECTION 5.

A. Subsection A of section 5.150.170 of the Sacramento City Code is amended to read as follows:

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, modifying, or not renewing a dispensary permit, or denying a relocation application, may appeal the decision by filing a written appeal, accompanied by a nonrefundable appeal fee, with the city manager's office within 10 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; and

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. Except as amended by subsection A above, all provisions of section 5.150.170 remain unchanged and in full effect.

SECTION 6.

A. Subsection A of section 5.150.200 of the Sacramento City Code is amended to read as follows:

A. If it is shown, by a preponderance of the evidence, that one or more grounds exist to condition, deny, suspend, revoke, modify, or not renew a dispensary permit or a relocation application, 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. Except as amended by subsection A above, all provisions of section 5.150.200 remain unchanged and in full effect.

SECTION 7.

Section 5.150.210 of the Sacramento City Code is amended to read as follows:

5.150.210 Dispensary location--Permit transfer prohibited.

A. No person shall operate a dispensary at any place other than the specific location for which their dispensary permit is granted. A dispensary may seek to modify the location for which their dispensary permit is granted, by submitting an application in accordance with section 5.150.075.

B. A dispensary permit may not be transferred, sold, assigned, or bequeathed 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.