



City of Sacramento City Council

915 I Street, Sacramento, CA, 95814

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Meeting Date: 11/8/2011

Report Type: Staff/Discussion

Title: Medical Marijuana Dispensaries Permit Processing Changes (Title 5 and Title 17) [2/e Vote Required]

Report ID: 2011-00943

Location: Citywide

Recommendation: 1) Review 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, 2) pass for publication the ordinance title as required by Sacramento City Charter section 32(c) to be adopted on November 15, 2011, and 3) adopt an interim ordinance relating to special permits for Medical marijuana dispensaries and declaring the ordinance to be an emergency measure to take effect immediately.

Contact: Greg Bitter, AICP, Principal Planner, Community Development Department, (916) 808-7816; Brad Wasson, Revenue Manager, (916) 808-5844, Finance Department

Presenter: Greg Bitter, AICP, Principal Planner, Community Development Department, (916) 808-7816

Department: Finance

Division: Revenue Administration

Dept ID: 06001211

Attachments:

- 1-Description/Analysis
- 2-Background
- 3-Ordinance Redlined
- 4-Ordinance Final
- 5-MMJ Emergency Ordinance

City Attorney Review

Approved as to Form
Gustavo Martinez
11/1/2011 2:01:53 PM

City Treasurer Review

Reviewed for Impact on Cash and Debt
Janelle Gray
10/25/2011 8:27:38 AM

Approvals/Acknowledgements

Department Director or Designee: Brad Wasson - 10/27/2011 8:51:25 AM

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk
John F. Shirey, City Manager

Russell Fehr, City Treasurer

Description/Analysis

Issue: On October 4, 2011, a significant state court decision on the viability of local government permitting of medical marijuana was published. On October 7, 2011, the four US Attorneys in California held a press conference to announce a new federal enforcement policy against California medical marijuana dispensaries. In light of these events on October 11, 2011, a request was made by Council Member Sandy Sheedy to report back on possible amendments to the medical marijuana ordinance that included an extension on deadlines for medical marijuana dispensary fee payments. Considering the legal uncertainty, staff is recommending minor amendments to the City code that will have the effect of extending medical marijuana application deadlines, providing staff an opportunity to monitor the legal developments, and if necessary, return to the City Council with further amendments. In addition, staff is recommending adoption of an emergency ordinance that will prevent the medical marijuana dispensaries that successfully obtained Title 17 special permits from being deemed automatically revoked due to missing a required deadline.

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 to Title 5 and the emergency ordinance 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: Council Member Sandy Sheedy requested that the amendments bypass the Law and Legislation Committee due to the legal uncertainty that applicants are facing. The City Manager agrees and has further determined that the proposed amendments are urgent and necessary and should be immediately considered by the City Council.

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 amendments to Title 5 and the emergency ordinance, set deadlines would require the City to act on applications, and in other cases prevent applicants from moving forward in the process due to missed deadlines. Accordingly, staff is recommending a holding pattern that will avoid time sensitive deadlines from expiring.

Financial Considerations: For this immediate action there is not a fiscal impact to the City.

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

Background:

On October 4, 2011, a significant state court decision on the viability of local government permitting of medical marijuana dispensaries was published. Shortly thereafter the four US Attorneys in California held a press conference on October 7, 2011 announcing a new federal enforcement policy against California medical marijuana dispensaries.

The US Attorneys announced they would be taking an aggressive enforcement position against dispensaries located within 1000 feet of a playgrounds, parks and schools. This position is based, in part, by a desire to prevent medical marijuana dispensaries from operating in areas where children are present. While the City's ordinance provides for a buffer of 600 feet from certain sensitive uses, including schools and parks, staff recognizes the potential deleterious effects of locating medical marijuana dispensaries in proximity to schools, parks, and other areas where children are present, and will apply the 1000 foot criteria when evaluating land use entitlements for medical marijuana dispensaries. If processing of special permits for medical marijuana dispensaries is later resumed, staff will not be recommending to the Planning Commission and Zoning Administrator approval of special permits for medical marijuana dispensaries that are located within 1000 feet of a school or park.

Staff has also learned from the City Attorney's Office that a state court decision filed on October 4, 2011, questioned the ability of local governments to permit medical marijuana dispensaries.

As a result of the uncertain legal climate on medical marijuana, staff has taken 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 will not accept any new applications, or set future hearing dates until we receive further clarification on the legal issues from the City Attorney.

The administrative freeze creates some timing conflicts for the dispensaries in the permitting process. Title 17(Zoning code) currently requires applicants that receive a special permit to be in operation with a Title 5 permit within 90 days from the date the special permit is issued. Because of the administrative freeze, Title 5 permits are not being issued. Accordingly, for those applicants that possess a Title 17 special permit, their permits will automatically expire in 90 days unless the proposed emergency ordinance is adopted. Staff is recommending a specific date of August 13, 2012 for all permits to be completed. This ordinance requires a 2/3 vote (6 affirmative votes) to be adopted.

Title 5 requires the extension of two dates. The October 11, 2011 deadline to apply for the

phase 2 dispensary permit has expired, and it is recommended that it be changed to May 14, 2012. The final permit completion date of January 9, 2012 is recommended to change to August 13, 2012, to be consistent with Title 17.

Title 5 includes operating requirements to require that dispensaries be in compliance with state law, and not diverting medical marijuana for non-medical purposes. Staff is further recommending that Title 5 be clarified so that the operating requirements are to be followed at all times, whether the dispensary is permitted or not.

Staff will continue to keep the City Council informed of legal developments as they occur, and if necessary, return to the City Council with proposed amendments.

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:

5.150.040 Registered medical marijuana dispensaries.

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

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

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

D. Notwithstanding the provisions of Section 5.150.030, a person may continue to operate a registered medical marijuana dispensary without a dispensary permit until February 7, 2011. If 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 ~~January 9~~August 13, 2012, and while the ~~application’s application~~ approval or denial is pending.

E. The authorization to continue to operate a dispensary pursuant to subsection D of this section shall not entitle the applicant to an approval of their dispensary permit

application, a determination that the dispensary is a legally established use under the provisions of this code, or legal nonconforming status.

SECTION 2.

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

5.150.070 Review of phase two application.

A. If the city manager notifies the applicant that it may continue to phase two in the application process the applicant shall, no later than ~~October 11~~May 14, 2011~~2012~~, file a phase two application with the city manager's office, that includes the following:

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

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

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

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

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

6. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1000 feet of the dispensary property, and the uses of those properties, specifically including, but not limited to, any use identified in the location requirements of Title 17 of

this code. The map must be professionally prepared by a licensed civil engineer or architect.

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

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

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

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

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

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

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

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

B. Complete Application.

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

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

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

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

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

SECTION 3.

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

5.150.110 Issuance of Dispensary Permit.

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 within 90 days from the date the phase two application is complete as specified in Section 5.150.070(B)(5).—on or before August 13, 2012.

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

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

SECTION 4.

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

5.150.130 Operating requirements.

~~Dispensary~~ Dispensaries ~~operations whether permitted or not,~~ shall comply at all times with the following:

A. Criminal History. No person who has been convicted of a felony, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall operate the dispensary, or manage or handle the receipts, expenses or medical marijuana of the dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

B. Juveniles.

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

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

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

D. Dispensary Size and Access.

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

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

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

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

E. Dispensing Operations.

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

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

b. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.

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

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

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

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

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

G. Dispensary Supply and Distribution

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

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

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

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

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

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

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

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

H. Operating Plans.

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

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

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

4. Security Plans. A dispensary shall comply with a security plan that is approved by the city manager that includes, but is not limited to, building security

specifications, lighting, alarms, and adequate state licensed security personnel to patrol the dispensary area in order to preserve the safety of persons and to protect the dispensary from theft.

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

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

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

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

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

I. Signage

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

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

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

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

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

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

J. Maintenance of Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

L. Trash, Litter, Graffiti.

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

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

M. Alcoholic Beverages.

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

N. Indemnification.

Every permit issued under this chapter shall contain a condition requiring the dispensary, through its management members, to execute an agreement in a form approved by the city attorney whereby the dispensary (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the dispensary or its management members, employees, or members for violation of state or federal laws, and (2) defends, indemnifies and holds harmless the city and its agents, officers,

elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution of medical marijuana provided at the dispensary.

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:

5.150.040 Registered medical marijuana dispensaries.

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

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

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

D. Notwithstanding the provisions of Section 5.150.030, a person may continue to operate a registered medical marijuana dispensary without a dispensary permit until February 7, 2011. If 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, and while the application approval or denial is pending.

E. The authorization to continue to operate a dispensary pursuant to subsection D of this section shall not entitle the applicant to an approval of their dispensary permit

application, a determination that the dispensary is a legally established use under the provisions of this code, or legal nonconforming status.

SECTION 2.

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

5.150.070 Review of phase two application.

A. If the city manager notifies the applicant that it may continue to phase two in the application process the applicant shall, no later than May 14, 2012, file a phase two application with the city manager's office, that includes the following:

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

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

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

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

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

6. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the dispensary property, the boundaries of all other properties within 1000 feet of the dispensary property, and the uses of those properties, specifically including, but not limited to, any use identified in the location requirements of Title 17 of

this code. The map must be professionally prepared by a licensed civil engineer or architect.

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

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

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

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

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

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

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

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

B. Complete Application.

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

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

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

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

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

SECTION 3.

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

5.150.110 Issuance of Dispensary Permit.

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.

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

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

SECTION 4.

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

5.150.130 Operating requirements.

Dispensaries whether permitted or not, shall comply at all times with the following:

A. Criminal History. No person who has been convicted of a felony, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall operate the dispensary, or manage or handle the receipts, expenses or medical marijuana of the dispensary. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

B. Juveniles.

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

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

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

D. Dispensary Size and Access.

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

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

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

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

E. Dispensing Operations.

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

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

b. Primary caregivers with a verified primary caregiver designation by their qualified patients, a copy of their qualified patient's valid physician's recommendation in compliance with the criteria in California Health and Safety Code sections 11362.5 et seq., and valid official identification such as a Department of Motor Vehicles driver's license or State Identification Card.

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

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

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

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

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

G. Dispensary Supply and Distribution

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

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

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

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

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

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

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

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

H. Operating Plans.

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

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

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

4. Security Plans. A dispensary shall comply with a security plan that is approved by the city manager that includes, but is not limited to, building security

specifications, lighting, alarms, and adequate state licensed security personnel to patrol the dispensary area in order to preserve the safety of persons and to protect the dispensary from theft.

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

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

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

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

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

I. Signage

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

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

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

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

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

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

J. Maintenance of Records.

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

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

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

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

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

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

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

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

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

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

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

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

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

L. Trash, Litter, Graffiti.

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

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

M. Alcoholic Beverages.

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

N. Indemnification.

Every permit issued under this chapter shall contain a condition requiring the dispensary, through its management members, to execute an agreement in a form approved by the city attorney whereby the dispensary (1) releases the city, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the dispensary or its management members, employees, or members for violation of state or federal laws, and (2) defends, indemnifies and holds harmless the city and its agents, officers,

elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the dispensary, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution of medical marijuana provided at the dispensary.

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN INTERIM ORDINANCE RELATING TO SPECIAL PERMITS FOR MEDICAL MARIJUANA DISPENSARIES AND DECLARING THE ORDINANCE TO BE AN EMERGENCY MEASURE TO TAKE EFFECT IMMEDIATELY (M11-023)

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, which ordinance added 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. As of the date of adoption of this Ordinance, a number of special permits for medical marijuana dispensaries have been approved, and these same dispensaries have applied for medical marijuana dispensary permits under Sacramento City Code Chapter 5.150. However, due to recent developments in the law relating to the City's authority to regulate and issue permits for medical marijuana dispensaries, the processing of Chapter 5.150 medical marijuana dispensary permit applications has been suspended to give the City Council time to evaluate and consider changes to the medical marijuana dispensary permit program. As a consequence, the medical marijuana dispensary special permits that have already been approved are at risk of automatic revocation as early as November 10, 2011. Because the

application, processing, approval, and issuance of these special permits represent a substantial investment of time, effort, and financial resources, revocation of the special permits would result in a significant loss for the City and medical marijuana dispensary members.

- D. Recognizing this potential loss, the City Council adopts this Ordinance to prevent the automatic revocation of the medical marijuana special permits that have been approved and are valid as of the date of adoption of this Ordinance, thereby allowing these special permits to remain in effect while the City Council evaluates and considers 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 the 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 August 13, 2012.

SECTION 3.

A medical marijuana dispensary special permit that was approved prior to and remains in effect as of the date of adoption of this Ordinance shall not be deemed to have been exercised 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 August 13, 2012, and that this interim Ordinance will be repealed at that time, with the newly adopted regulations superseding the provisions of this Ordinance.

SECTION 5.

This interim Ordinance is declared to be an emergency measure to take effect immediately upon adoption by the City Council pursuant to Sacramento City Charter Section 32(g)(2). The facts supporting this declaration are the facts set forth in Section 1 of this Ordinance, all of which are incorporated into this Section 5. For this Ordinance to achieve its purpose to prevent the automatic revocation of medical marijuana dispensary special permits, which will occur as early as November 10, 2011, and recognizing the potential loss of the substantial investment of time, effort, and financial resources that has been made in the processing, approval, and issuance of these special permits, this Ordinance must take effect immediately upon adoption.