

ORDINANCE NUMBER _____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MODOC AMENDING TITLE 18 ZONING ORDINANCE BY ADDING CHAPTER 18.170 'MEDICAL MARIJUANA COLLECTIVE USES', AS RECOMMENDED IN MODOC COUNTY PLANNING COMMISSION.

WHEREAS, as a result of Proposition 215, an initiative approved by the voters of California referred to as the "Compassionate Use Act of 1996" ("Act") which allows the use of medical marijuana for medical reasons when recommended by a physician; and

WHEREAS, the intent of the Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances; and

WHEREAS, individuals have established medical marijuana collectives in various cities and counties for lawful access and distribution; and

WHEREAS, on January 1, 2004, Senate Bill 420 became effective to clarify the scope of the Act and to allow cities and counties to adopt and enforce rules and regulations consistent with SB 420 and the Act; and

WHEREAS, a medical marijuana collective currently is not an expressly permitted use or a use permitted subject to a conditional use permit in any zoning district in the County; and

WHEREAS, the Board of Supervisors have reviewed the recommended Chapter 18.170 as recommended for approval by the Planning Commission by Resolution No. 2010-08 hereto attached as "Exhibit A;" and

WHEREAS, the Modoc County Planning Commission held public hearings on July 21, 2010 and on September 22, 2010 in accordance with California Government Code Section 65854 to determine the relationship of the proposed amendment and its effect on the General Plan, Zoning Regulations, and the health, safety, peace, morals, comfort and general welfare of persons within the County; and

WHEREAS, Planning Commission Resolution No. 2010-08 serves to meet the requirements of Government Code Section 65855 to provide a written recommendation to the Board of Supervisors of the decision rendered; and

WHEREAS, the Board of Supervisors makes the following findings:

1. There currently exists a lack of appropriate regulations governing the establishment and operation of medical marijuana collectives.
2. Interim Urgency Ordinance #340-A shall expire on November 23, 2010.
3. That in California marijuana can be used legally for personal medical use in accordance with Proposition 215, an initiative called the "Compassionate Use Act of 1996."
4. The requirements set forth in the recommended Title 18 Zoning Ordinance amendment, Chapter 18.170, shall establish an effective regulatory mechanism to allow for the operation of medical marijuana collectives in the County.
5. Specific use permit fees should apply to medical marijuana collective uses.
6. Limited-term use permits for medical marijuana collectives shall expire annually.

WHEREAS, the Board of Supervisors makes the following finding for the California Environmental Quality Act (CEQA):

1. This ordinance is exempt from CEQA, Public Resources Code 21000 et seq., including without limitation Public Resources Code 21065, CEQA Guidelines 153788(b)(4) and 15061(b)(3), as it can be seen that there is no possibility that the activity authorized herein may have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED, the Board of Supervisors of the County of Modoc ordains as follows:

The Modoc County Zoning Ordinance is amended to add the following sections:

Chapter 18.170
Medical Marijuana Collective Uses

Sections:

18.170.010	Purpose
18.170.020	Regulations Applicable
18.170.030	Definitions
18.170.040	Operating Plan
18.170.050	Required Conditions
18.170.060	Limited Term
18.170.070	Signed Affidavit
18.170.080	Exercise of Permit
18.170.090	Annual Renewal
18.170.100	Location Requirements
18.170.110	General Development Standards and Operation Criteria
18.170.120	Fees
18.170.130	Indemnification
18.170.140	Severability

18.170.010 Purpose.

It is the purpose and intent of this Chapter to regulate the availability and the distribution, by whatever means, of medical marijuana within the unincorporated area of Modoc County in accordance with California Health and Safety Code Section 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act of 1996 and the Medical Marijuana Program.

18.170.020 Regulations Applicable.

Medical marijuana collective uses shall be a permitted use in the Commercial (C) Zoning District with a use permit in compliance with Sections 18.44, 18.110 and 18.128. The operation of medical marijuana collective must be in compliance with all applicable state and federal laws, rules and regulations and must comply with all other applicable building codes, development standards and requirements, including accessibility requirements.

18.170.030 Definitions.

When used in this Chapter, the words or phrases shall be defined as the following:

- A. "Medical Marijuana Collective" or "Collective" shall be as defined by California statute or determined by case law and may include any facility or location where the primary purpose is to dispense medical marijuana that has been recommended by a physician, and where medical marijuana is made available to or distributed by or to a primary caregiver or a

qualified patient in strict accordance with California Health and Safety Code Section 11362.5 *et seq.* A collective shall not include dispensing by primary caregivers to qualified patients in the following locations unless otherwise permitted by applicable local code sections and state law:

1. A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.
 2. A health care facility licensed pursuant to Chapter Two of Division 2 of the California Health and Safety Code.
 3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code.
 4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code.
 5. A residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code provided that any such clinic, health care facility, hospice or residential care facility complies with applicable laws, including but not limited to, Health and Safety Code Section 11362.5.
- B. "Premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.
- C. Other words and phrases contained in this Chapter specifically relating to the operation of medical marijuana collectives shall be defined as set forth in California Health and Safety Code Section 11362.5 *et seq.* and as may be amended from time to time.

18.170.040 Operating Plan.

A medical marijuana collective use application shall include an operating plan, which outlines the proposed collective business operations in detail.

- A. The operating plan shall specifically outline how the collective will provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and protect the premises from theft, as approved by the Sheriff.
- B. The operating plan shall specify the specific size of the location of collective.
- C. The operating plan shall specify the maximum number of employees that shall be employed by the collective at one time on the premises.
- D. The operating plan shall provide specific details on the policies and procedures for record keeping for the members of the collective.
- E. Times and days the collective will be open to members and other activity that may occur at the location required for operation.
- F. Any other relevant information regarding the operation of the proposed medical marijuana collective use.

18.170.050 Required Conditions.

Each and every use permit approved for medical marijuana collective uses as contained in the Chapter will contain the following conditions:

- A. A medical marijuana collective approved under this Chapter shall be operated in conformance with the approved operating plan and shall meet any specific, additional operating procedures and measures that may be imposed as conditions of approval to insure that the operation is consistent with protection of the health, safety and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.
- B. The collective shall require a current and valid physician's written recommendation in compliance with state law and shall implement the approved procedures and policies for verifying the identification for any person entering the site.
- C. A collective shall not cultivate or distribute medical marijuana for profit. A collective may receive compensation for its actual expenses, including reasonable compensation for services provided, or for payment of out-of-pocket expenses incurred in providing those services.
- D. Notwithstanding, a use permit approved may be revoked or modified at any time following public hearing in accordance with Chapter 18.140 of this title.
- E. The following language shall be included on the recorded document: "This use permit does not in any way permit illegal activity or provide immunity from prosecution. By granting this use permit, the County is regulating land use and does not warrant that the operation (or manner of operation) of this collective is not in violation of state or federal law."

18.170.060 Limited Term.

All use permits issued for medical marijuana collective uses shall be limited-term, and shall be issued for a period of one year and shall contain the following provision: "This permit is a limited-term permit and shall expire one year after the date of issuance. In addition, this permit shall be subject to revocation or modification following a public hearing if the approving body finds that there has been a violation or noncompliance with the operating plan or any of the use permit conditions, or if the use for which this permit is hereby granted constitutes a nuisance."

18.170.070 Signed Affidavit.

The property owner and applicant, if other than the property owner, shall sign the application for the use permit, and shall include affidavit(s) agreeing to abide by and conform to the conditions of the use permit and all provisions of the Modoc County Code pertaining to the establishment and operation of the medical marijuana collective use, including, but not limited to, the provisions of this Chapter. The affidavit(s) shall acknowledge that the approval of the medical marijuana collective use permit shall in no way permit any activity contrary to this code or in violation of applicable state laws.

18.170.080 Exercise of Permit.

Use permits issued for medical marijuana collective uses shall be exercised only by the applicant, who must be a qualified patient or primary caregiver, and shall expire upon termination of the business for which it was issued, or upon sale or transfer of ownership of the medical marijuana collective.

- A. All use permits issued for medical marijuana collective uses shall include the following provision: "This use permit shall expire upon change of tenancy or sale or transfer of the business or property." Any use permit that is abandoned for a period of ninety (90) days shall automatically expire, and shall become null and void with no further action required on the part of the County.

18.170.090 Annual Renewal.

Use permits issued for medical marijuana collective uses are limited-term and therefore must be renewed annually prior to the date of expiration.

- A. The Planning Director may approve the annual renewal of the use permit, not to exceed a total of five (5) years, from original date of issuance if the application requesting renewal was received sixty (60) days prior to the expiration date and all of the following findings are made:
1. The use has been conducted in accordance with this Chapter, with the approved operating plan, and with all applicable use permit conditions of approval and state laws.
 2. The business for which the use permit was approved has not been transferred to another owner or operator.
 3. An annual audit of the collective has been conducted by the Planning Department to verify compliance permit conditions, with emphasis on proper implementation of record keeping procedures.
 4. There are no outstanding code enforcement violations.
 5. All required fees have been paid.

18.170.100 Location Requirements.

Medical marijuana collectives shall have to meet the following location specifications:

- A. A medical marijuana collective shall not be established on any parcel containing a dwelling unit used as a residence, nor within one hundred feet (100') of a residential zoning district.
- B. A medical marijuana collective shall not be established within one thousand feet (1,000') of any other medical marijuana collective.
- C. A medical marijuana collective shall not be established within one thousand feet (1,000') from any public school, park or an establishment, public or private, that caters to or provides services primarily to persons under eighteen (18) years of age.
- D. Notwithstanding, the subsections (18.170.100)(A) – (C) may be waived by the Planning Commission when the applicant can show that an actual physical separation exists between land uses or parcels such that no off-site impacts could occur.

18.170.110 General Development Standards and Operation Criteria.

The following are the minimum development standards and operational criteria applicable to any medical marijuana collective use:

- A. The building in which the collective is located shall comply with all applicable local and state rules, regulations, and laws including, but not limited to, building codes and accessibility requirements.

- B. The collective shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. The operational plan shall include a detailed description of proposed security measures.
- C. The membership of a collective shall not exceed 300 members at any one time, unless otherwise approved by the Planning Commission and specifically stated in the use permit.
- D. Medical marijuana shall not be grown at collective sites.
- E. Option: Cuttings of the marijuana plant may be kept or maintained on-site for distribution to qualified patients and primary caregivers in a manner contained within the operating plan and use permit:
 - 1. For the purposes of this Section, the term "cuttings" shall mean rootless pieces cut from marijuana plants, which are no more than six (6) inches in length, and which can be used to grow other plants in a different location.
- F. No exterior signage or symbols shall be displayed which advertises the availability of marijuana, nor shall any such signage or symbols be displayed on the interior of the facility in such a way as to be visible from the exterior.
- G. A collective shall not have operators or employees who are not qualified patients or primary caregivers meeting all terms and conditions of applicable law.
- H. Members of the collective must be residents of Modoc County.
- I. A collective may possess medical marijuana at its facility only in the cumulative amount that each qualified patient or primary caregiver served is allowed to possess under Health and Safety Code Section 11362.77, as may be amended from time to time.
- J. No person shall be allowed onto the premises unless they are a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq.
- K. No person under the age of eighteen (18) shall be allowed on the premises.
- L. All persons entering the collective site will be required to provide identification and shall establish proof of a valid and current doctor's recommendation. The operating plan shall specify how this provision will be complied with and enforced.
- M. No collective shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.
- N. No collective shall conduct or engage in the commercial sale of any drug paraphernalia, products, goods or services unless otherwise approved by the use permit.
- O. No marijuana shall be smoked, ingested or otherwise consumed on the premises.

- P. No recommendations for use of medical marijuana shall be issued on-site, and the collective shall not have a physician on-site to evaluate patients unless specifically approved by the use permit.
- Q. Collective sales shall be subject to sales tax in a manner required by state law. An operator of a collective shall be required to apply for and obtain a Seller's Permit as required by the State Board of Equalization.
- R. Medical marijuana distributed by a collective shall be acquired, possessed and distributed only from the constituent members. Distribution to non-members is prohibited.
- S. The use permit shall specifically define the size of the collective operation. No collective may increase in size without amending the use permit.
- T. Collective operating days and hours shall be limited to Monday through Saturday from 8:00 a.m. to 5:00 p.m., or as otherwise approved by the use permit. Operating hours may be further restricted through the use permit process where needed to provide land use compatibility.
- U. A collective use permit applicant, his or her agent, employees, and/or volunteer workers, shall not have been convicted of, or be on probation or parole for, the sale or distribution of a controlled substance.
 - 1. Background investigations shall be completed at the cost of the applicant/operator and approved by the Modoc County Sheriff, verifying whether the applicant, his or her agent, employees, and/or volunteer workers, have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore.
 - 2. The following information shall be provided in order to perform the background investigation specified herein:
 - a. The individual's name, address, phone number, and fingerprints.
 - b. A list of each criminal conviction of the individual, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. If there are past convictions, the list shall, for each conviction, set for the date of arrest, the offense charged, and the offense of which the applicant was convicted.
 - c. Such other information as may be required that is consistent with this Chapter, Modoc County Code, and applicable law.

18.170.120 Fees.

Application and renewal fees shall apply to use permits for medical marijuana collective uses that shall be adopted in accordance with Chapter 18.162.010 of this Title.

18.170.130 Indemnification.

The owner(s), permittee(s) and members of each collective shall indemnify and hold harmless the County 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 collective, 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 and/or offsite use of medical marijuana as provided in a form as outlined by the applicable use permit.

18.170.140 Severability.

If any section, subsection, sentence, clause, phrase or word of this Chapter is for any reason held unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction such decision shall not affect the validity of the remaining portions of this Chapter.

Introduced at a regular meeting of the Board of Supervisors held on the twenty-sixth day of October, 2010, and passed and adopted by the Board of Supervisors of the County of Modoc, State of California on the ninth day of November, 2010, by the following vote, to wit:

AYES:
NOES:
ABSTAIN:
ABSENT:

BOARD OF SUPERVISORS OF THE COUNTY OF MODOC

By: _____
Dan Macsay, Chairman, Board of Supervisors

ATTEST:

Clerk of the Board of Supervisors