

ORDINANCE O2010 12

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NAPA, STATE OF CALIFORNIA, AMENDING THE NAPA MUNICIPAL CODE BY ADDING A NEW SECTION 17.52.275, AMENDING SECTIONS 17.10.020, 17.12.020, AND 17.14.020, AND REPEALING CHAPTER 5.82, ALL RELATED TO PERMITTING AND REGULATING OPERATION OF MEDICAL MARIJUANA DISPENSARIES AND ASSOCIATED CULTIVATION FACILITIES

WHEREAS, in 1996, California voters enacted the Compassionate Use Act (the Act") of 1996, which, as codified in California Health and Safety Code Section 11362.5, decriminalizes the possession and cultivation of medical marijuana for limited personal medical purposes; and

WHEREAS, in 2004, the California legislature enacted Senate Bill 420, the Medical Marijuana Program, which, as codified in California Health and Safety Code Section 11362.7 *et seq.*, clarifies the scope of the Act and sets forth the allowable scope of the use of marijuana for medical purposes; and

WHEREAS, the Act and the Medical Marijuana Program contemplate a clinical relationship between qualified patients (or persons with identification cards issued by Department of Health) and their primary caregivers, under which qualified patients (upon the recommendation of a physician) and primary caregivers may possess or cultivate marijuana for specified medical purposes; and

WHEREAS, State law provides a narrow defense to criminal statutes otherwise criminalizing the possession and cultivation of marijuana for designated primary caregivers and qualified patients and persons with identification cards who associate (collectively or cooperatively) in order to cultivate marijuana for medical purposes; and

WHEREAS, the City Council takes legislative notice that, based upon materials presented to the City Council during public hearings during the legislative process leading to the adoption of this ordinance, several California cities and Counties have experienced serious adverse public safety impacts associated with unregulated medical marijuana dispensaries, or an overconcentration of medical marijuana dispensaries within a single jurisdiction. These impacts include, but are not limited to: increased criminal activity, burglary, loitering, armed robbery, diversion of marijuana for non-medical or recreational purposes, increased incidence of driving under the influence of marijuana and alcohol in the areas surrounding such facilities, adverse traffic impacts, increased sale of recreational marijuana in the areas surrounding such facilities, increase in unreported crime to avoid negative publicity for the facilities, sales of other illegal substances from the facilities, noise and nuisance impacts, and related adverse impacts on surrounding businesses; and

WHEREAS, the City Council takes legislative notice of a California police Chief's Association compilation of police reports, news stories and statistical research regarding such secondary impacts, contained at <http://www.californiapolicechiefs.org/navfiles/medicalmarijuana.html> ; and

WHEREAS, in August of 2008, the California Attorney General's office, under direct authority of the Medical Marijuana Program, issued a set of guidelines to ensure the security and non-diversion of marijuana grown for medical use; and

WHEREAS, the City Council hereby finds that there exists ample evidence, in the record and in the experiences of other California jurisdictions that have not regulated medical marijuana dispensaries, or that have an overconcentration of such facilities, that such lack of adequate regulation or overconcentration of such facilities within a community pose a direct threat to the public health, safety and welfare; and

WHEREAS, the City has conducted a broad and inclusive public process, including workshops and hearings open to the public regarding the issue of regulating medical marijuana dispensaries and cultivation (including community workshops, a Planning Commission hearing, and City Council hearings, on: August 18, 2009, September 1, 2009, September 15, 2009, December 9, 2009, February 9, 2010, March 16, 2010, April 15, 2010, and June 1, 2010), and has heard public testimony, and adopted a framework of five policy principles to guide the regulation of medical marijuana dispensaries and associated cultivation facilities, which principles include the regulation of the physical aspects of dispensaries, limitations on number and size, separation and appearance standards, establishing a process for review of applications, setting forth regulations for cultivation and supply of medical marijuana to dispensaries, the establishment of regulations regarding residential medical marijuana cultivation by qualified individuals, the establishment of a framework for enforcement of permits, and the monitoring of issues related to dispensaries and associated cultivation facilities; and

WHEREAS, under Article XI, section 7 of the California Constitution, California Cities are authorized to make and enforce within their limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws; and

WHEREAS, an ordinance regulating medical marijuana dispensaries and associated cultivation facilities, limiting the total potential number of permitted dispensaries in the City to two, and establishing regulations regarding residential medical marijuana cultivation by qualified individuals is thus necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the City of Napa; and

WHEREAS, the City Council has considered all information related to this matter, as presented at the public meetings of the City Council identified herein, including any supporting reports by City Staff, and any information provided during public meetings.

NOW, THEREFORE, BE IT ORDAINED, by the City Council of the City of Napa as

follows:

SECTION 1: Napa Municipal Code Chapter 5.82 repealed. Chapter 5.82 of Title 5 of the Napa Municipal Code, "Medical Marijuana Dispensaries Prohibited," is hereby repealed in its entirety.

SECTION 2: Land Use Regulations amended. Section 17.10.020 of Chapter 17.10 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection C (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Subsection C of the Land Use Regulations table in Section 17.10.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.10.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.10.020

Zoning Districts	C L	C T	C C	C D	CDP Gnd Lvl	CDP Upper Basmt	Added Use Regulations
C. Offices and Related Uses							
2. Medical services (medical, dental and health-related, with accessory sales)							
Medical Marijuana Dispensaries	<u>C</u>		<u>C</u>				<u>Subject to Section 17.52.275</u>

SECTION 3: Land use regulations amended. Section 17.12.020 of Chapter 17.12 of Title 17 of the Napa Municipal Code is hereby amended to add a new use, "Medical Marijuana Dispensaries" in the appropriate alphabetical location to the uses listed under Subsection A (2), "Medical Services (medical, dental, health-related services, accessory sales)" within Section A of the Land Use Regulations table in Section 17.12.020, "Offices and Related Uses," to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.12.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.12.020

	R O	O C	O M	Added Use Regulations
2. Medical services (medical, dental and health-related, with accessory sales)				
Medical Marijuana Dispensaries			C	<u>Subject to Section 17.52.275</u>

SECTION 4: Land use regulations amended. Section 17.14.020 of Chapter 17.14 of Title 17 of the Napa Municipal Code is hereby amended to: (1) add a new use, "Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit," in the appropriate alphabetical location to the uses listed under Subsection A, "Industrial Uses" within the Land Use Regulations table in Section 17.14.020; and (2) to add a new use under a new Subsection 17.14.020 C (2), "Medical Services (medical, dental, health-related services, accessory sales)" listing "Medical Marijuana Dispensaries" as a use within the table to read as follows [Note: none of the other subsections of the Land Use Regulations table in Section 17.14.020 are amended by this Ordinance]

AMENDING NAPA MUNICIPAL CODE SECTION 17.14.020

Zoning Districts	IL	IP-A	IP-B	IP-C	Added Use Regulation
A. Industrial Uses					
<u>Aggregated cultivation of medical marijuana in conjunction with a Medical Marijuana Dispensary Use Permit</u>	<u>C</u>			<u>C</u>	<u>Subject to Section 17.52.275</u>
C. Offices and Related Uses					
2. Medical services (medical, dental and health-related, with accessory sales)					
<u>Medical Marijuana Dispensaries</u>	<u>C</u>				<u>Subject to Section 17.52.275 [with particular reference to subsection D.(2)]</u>

SECTION 5: New Section 17.52.275 added to Chapter 17.52. A new Section 17.52.275 is hereby added to Chapter 17.52 of Title 17 of the Napa Municipal Code to read as follows:

17.52.275 Medical Marijuana Dispensaries and Cultivation.

A. Purpose, Scope, and Findings

1. The City Council finds that, in the absence of the regulations set forth in this Section, the adverse impacts directly associated with the cultivation, sale, and distribution of Medical Marijuana, as defined herein, pose a substantial threat to the public health, safety and welfare of residents and businesses within the City. The City Council also finds that it is in the public interest to permit a limited number (not to exceed two) of Medical Marijuana Dispensaries with accessory aggregated cultivation to provide access to Medical Marijuana for the residents of the City of Napa, provided that

any Medical Marijuana Dispensary and any Aggregated Cultivation of Medical Marijuana is in full compliance with this Section.

2. This Section is not intended to, and does not, authorize the violation of State or Federal law.

3. It is the purpose of this Section to provide for a limited number of Medical Marijuana Dispensaries with accessory Aggregated Cultivation Facilities, with regulations as to their location, physical dimensions, appearance, and operations; and to provide for regulated cultivation of Medical Marijuana in residential uses.

4. Notwithstanding the general references in this Section to Chapter 1.16 of this Code, and notwithstanding the general provisions of Chapter 1.20 of this Code, this Section is not intended to, and does not, establish any criminal liability for a violation of this Section. A violation of this Section shall be subject to all other enforcement methods identified in Chapter 1.16 of this Code.

5. This Section is not intended to, and does not, authorize the sale or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) for any non-medical purposes. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own any parcel or location (whether fixed or mobile) where there occurs any sale, distribution, or any other means of providing marijuana for any non-medical purpose. For the purpose of this Section, a "non-medical purpose" shall mean any sale or distribution of marijuana that is not subject to the protections of the Medical Marijuana Laws.

B. Definitions

"Aggregated Cultivation Facility" shall mean any parcel or location, whether fixed or mobile, where Aggregated Cultivation of Medical Marijuana occurs.

"Aggregated Cultivation of Medical Marijuana" shall mean the collective or cooperative cultivation or storing of Medical Marijuana, pursuant to Medical Marijuana Laws. (See California Health and Safety Code Section 11362.775.)

"Director" means the Community Development Director, or a designee of the Community Development Director or City Manager.

"Identification Card" shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

"Medical Marijuana" is marijuana possessed, distributed, or cultivated for medical purposes, in full compliance with Medical Marijuana Laws.

“Medical Marijuana Dispensary” means any parcel or location, whether fixed or mobile, where either: (i) a Primary Caregiver cultivates, makes available, sells, transmits, gives, distributes, or otherwise provides Medical Marijuana to two or more Qualified Patients; or (ii) two or more Qualified Patients and/or Primary Caregivers meet or congregate collectively or cooperatively to cultivate, make available, sell, transmit, give, distribute, or otherwise provide Medical Marijuana under the purported authority of Medical Marijuana Laws. A “Medical Marijuana Dispensary” shall not include any of the following uses, so long as such uses otherwise comply fully with this Code, Medical Marijuana Laws, and other applicable 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 2 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 hospice or home health agency, licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

“Medical Marijuana Laws” shall mean California Health and Safety Code Section 11362.5 (the “Compassionate Use Act of 1996”), and the laws and regulations of the State of California adopted in furtherance thereof, including California Health and Safety Code Sections 11362.7, *et seq.* (the “Medical Marijuana Program Act”), and guidelines adopted by the Attorney General pursuant to California Health and Safety Code Subsection 11362.81(d).

“Person with an Identification Card” shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

“Preferred Applicant” shall mean the person or entity qualified, through a selection process, to file a use permit application for a Medical Marijuana Dispensary.

“Primary Caregiver” shall have the meaning given that term by the Medical Marijuana Laws. (See California Health and Safety Code Section 11362.7.)

“Qualified Patient” shall mean a person who is entitled to the protections of California Health and Safety Code Section 11362.5, whether or not that person has an Identification Card. Thus, for the purpose of this Section, the term “Qualified Patient” shall encompass both the definition of “Qualified Patient” and the definition of “Person

with an Identification Card” (as those terms are used in the Medical Marijuana Laws). (See California Health and Safety Code Section 11362.7.)

“Youth Population Uses” shall mean any elementary or secondary school (whether public or private), and public parks owned and/or maintained by the City of Napa.

C. Permit for Medical Marijuana Dispensary and Cultivation

1. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to establish, operate, or own a Medical Marijuana Dispensary or an Aggregated Cultivation Facility within the City of Napa, except to the extent established, operated, and owned in accordance with a Medical Marijuana Dispensary Use Permit issued pursuant to this Section and in conformance with other applicable provisions of this Title.

2. It is a violation of this Code, subject to enforcement pursuant to Chapter 1.16 of this Code, for any person to cultivate medical marijuana unless either: (a) it is conducted at a Medical Marijuana Dispensary or Aggregated Cultivation Facility permitted in accordance with this Section; or (b) it is conducted at the residence of a Qualified Patient for the sole purpose of the personal medical purposes of the resident, in accordance with this Section. A Primary Caregiver shall only cultivate Medical Marijuana at the residence of a Qualified Patient for whom he/she is the Primary Caregiver. Cultivation of Medical Marijuana for personal medical purposes of the resident shall be conducted in conformance with all of the following standards for each residence:

a. The space within any residence in which Medical Marijuana is cultivated shall not exceed a contiguous space of 25 square feet, and ten feet in height, and inclusive of all plant containers, canopies, and specialized equipment. The medical marijuana cultivation area shall be located in one contiguous area of the residence;

b. Medical Marijuana cultivation lighting shall not exceed 1200 watts;

c. The use of manufactured gas products (CO₂, butane, etc.) for Medical Marijuana cultivation or processing is prohibited;

d. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited;

e. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the residence;

f. The Qualified Patient shall reside in the residence where the Medical Marijuana cultivation occurs;

g. No Qualified Patient shall provide Medical Marijuana to any collective or cooperative within the City of Napa, unless it is done in compliance with a Medical Marijuana Dispensary use permit issued pursuant to this Section;

h. The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use, and shall not use those areas for Medical Marijuana cultivation;

i. Any indoor Medical Marijuana cultivation space shall be in compliance with Title 15 of this Code, including but not limited to provisions regarding natural ventilation and mechanical ventilation (or equivalent(s)); and

j. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

k. Any Qualified Patient or Primary Caregiver who asserts that the personal medical purposes of a Qualified Patient require Medical Marijuana cultivation that exceeds the requirements of this Section may submit a request to the Director for a modification of these requirements to permit an expanded Medical Marijuana cultivation area. The applicant shall bear the burden of providing adequate documentation, to the satisfaction of the Director, of the need for an expanded Medical Marijuana cultivation area. The required documentation may include information such as a physician's recommendation, a verification that more than one Qualified Patient is living in the residence, and technical analysis regarding limitations on the Medical Marijuana that may be cultivated in the available space, to show why compliance with the cultivation area standard is not feasible. The Director shall review the submitted documentation and make a determination to approve, conditionally approve, or deny a use permit for the request, subject to compliance with all of the following:

- (1) The expanded Medical Marijuana cultivation space (inclusive of all plant containers, canopies, and specialized equipment) shall not exceed the space necessary to serve the personal medical purposes of the resident Qualified Patient, and it shall be a contiguous space in the residence of the Qualified Patient.
- (2) At a minimum, the expanded Medical Marijuana cultivation space shall be constructed with a 1-hour firewall assembly of green board. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.
- (3) The expanded Medical Marijuana cultivation space shall be located in a detached single family residence, or in a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

D. Zone and Separation Standards

1. Zones. Medical Marijuana Dispensary Use Permits may be permitted as a conditional use on properties within the zones so indicated in Sections 17.10.020, 17.12.020 and 17.14.020 of this Title.

2. Conditions Applicable to Medical Marijuana Dispensary Use in the IL Zone. In addition to all other applicable criteria and requirements contained in this Chapter and in Chapter 17.14, all of the following additional provisions shall be applied to Medical Marijuana Dispensaries proposed and permitted within the IL zone:

a. The Medical Marijuana Dispensary shall be operated adjacent to, but separately from, the accessory Aggregated Cultivation Facility.

b. There shall be no direct internal access from the Medical Marijuana Dispensary to the Aggregated Cultivation Facility that is open to the public or members (who are customers) of the Medical Marijuana Dispensary. Any access to the Aggregated Cultivation Facility shall be limited to employees and contractors of the permittee for the purpose of operation in accordance with the permit and this Chapter.

c. The Aggregated Cultivation Facility and the Medical Marijuana Dispensary shall have separate entry doors.

d. The Medical Marijuana Dispensary shall have access to off street parking in compliance with NMC Chapter 17.54, on site and adjacent to the public entry door, provided at a rate equal to one space for each 250 square feet of floor space.

e. The public entry door to the Medical Marijuana Dispensary must be visible from, and within 200 feet of, a public street right-of-way.

f. The area within 50 feet of the public entry door of the Medical Marijuana Dispensary shall be illuminated, to a minimum level of two (2) candle foot, during the time between dusk and the permitted closing time of the Medical Marijuana Dispensary, with such lighting subject to shielding as set forth in NMC Section 17.14.040.L.

3. Separation. The zoning of a property notwithstanding, Medical Marijuana Dispensaries shall also be subject to the following separation standards:

a. A Medical Marijuana Dispensary shall not be located less than 1000 feet from any other Medical Marijuana Dispensary. For the purposes of measuring the separation to between Medical Marijuana Dispensaries, the distance of separation shall be measured from the exterior walls of the building containing the first medical Marijuana Dispensary to the exterior wall of the building containing the second Medical Marijuana Dispensary.

b. A Medical Marijuana Dispensary shall not be located less than 500 feet from any youth population use. For the purpose of measuring the operation between Medical Marijuana Dispensaries and Youth Population Uses, the distance of separation shall be measured from the exterior walls of the building containing the Medical Marijuana Dispensary premises to the property line of the property occupied by the youth population use.

c. The foregoing separation standards may be reduced only to the extent that the City Council finds, based on substantial evidence, that an intervening permanent feature in the landscape (such as a creek or a highway) provides an impenetrable barrier to pedestrian access between the uses, so that the separation of the uses is functionally equivalent to the requirements of this Section.

E. City Council as the Authority to Issue Medical Marijuana Dispensary Use Permits

Notwithstanding Section 17.60.020 of this Title, the City Council shall approve, conditionally approve, or deny any application for a Medical Marijuana Dispensary Use

Permit pursuant to this Section, based on an advisory recommendation from the Planning Commission.

F. Maximum Number of Medical Marijuana Dispensaries

For each competitive application process for a use permit under this Section, the City Council shall issue no more than one Medical Marijuana Dispensary use permit. Following the date of issuance of the first use permit under this Section, the City shall not commence the competitive application process for a second Medical Marijuana Dispensary use permit for 365 days. Notwithstanding the limitations of this Subsection (F), upon the revocation of a permit (pursuant to Subsection 17.52.275(P), the Director is authorized to issue a notice to commence a competitive application process for a replacement permit (pursuant to Subsection 17.52.275(I)).

Following the issuance of the first use permit under this Section, the City shall not commence the competitive application process for any subsequent Medical Marijuana Dispensary use permit unless the City Council finds, by resolution, that the issuance of a Medical Marijuana Dispensary use permit to a subsequent permittee is necessary to adequately serve the needs of the residents of the City of Napa.

At no time shall there be more than two validly-permitted Medical Marijuana Dispensaries within the City of Napa. Nothing in the foregoing shall obligate the approval of any application by the City.

G. Aggregated Cultivation Facilities Accessory to a Medical Marijuana Dispensary

Each permittee of a permitted Medical Marijuana Dispensary may establish and operate an Aggregated Cultivation Facility, subject to the requirements of this Section. The Aggregated Cultivation Facility shall be subject to the following additional requirements.

1. Application for an Aggregated Cultivation Facility, if sought, shall be made concurrently with, and accessory to, the application for a Medical Marijuana Dispensary Use permit, or as a subsequent amendment to an approved Medical Marijuana Dispensary Use permit. The applicant for an Aggregated Cultivation Facility shall be the same entity as the permittee for the Medical Marijuana Dispensary Use permit. The application for the Aggregated Cultivation Facility shall include all information required for the primary use subject to the Medical Marijuana Dispensary Use permit (See Subsections 17.52.275 (J) through (L)).

2. An Aggregated Cultivation Facility may be permitted as a conditional use on properties within the industrial zones so indicated in Section 17.14.020 of this Title.

3. The Aggregated Cultivation Facility shall be subject to all requirements of this Section, including those related to physical security, maintenance of records, employee training, mitigating adverse impacts on neighbors, and the responsibility of the operator for nuisance (See Subsection 17.52.275 (O)). All cultivation activities of an

Aggregated Cultivation Facility shall be conducted indoors. From a public right of way, there shall be no visual evidence of Medical Marijuana cultivation either within or outside the facility, except to the extent that signage is authorized pursuant to the use permit. Adverse impacts of Medical Marijuana cultivation shall be mitigated so that a "public nuisance" (as defined by California Civil Code Section 3480) does not exist, including but not limited to adverse impacts of dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or the use or storage of hazardous materials, processes, products or wastes.

4. The Aggregated Cultivation Facility shall be operated for the sole purpose of providing Medical Marijuana to the primary use subject to the Medical Marijuana Dispensary Use Permit. Medical Marijuana cultivation for purposes not authorized by the Medical Marijuana Laws is prohibited. No commercial activity shall occur at the Aggregated Cultivation Facility.

H. Membership Limits for Medical Marijuana Dispensaries

No Medical Marijuana Dispensary use, as permitted in accordance with this Section, shall have a membership of cooperative members exceeding ten percent (10%) of the population of the City of Napa as established by the most recent final United States census. Provided, however, as a part of the annual review of a Medical Marijuana Dispensary Use Permit (pursuant to Subsection 17.52.275(O)(16), the City Council, by resolution, may increase in the maximum membership limitation of this paragraph if it finds that the increase is necessary to adequately serve the needs of the residents of the City of Napa.

I. Notice of Commencing Competitive Application Process

Any person who desires to be considered as an applicant for a Medical Marijuana Dispensary use permit under this Section may submit contact information to the Director. The Director shall maintain the contact information of each such person, on a list of potential applicants, for two years thereafter.

For each competitive application process authorized pursuant to Subsection (F), above, the Director shall provide at least sixty days prior notice for the submittal of applications. The notice shall be provided to the general public and to each individual on the maintained list of potential applicants. The notice shall identify the deadline date on which applications are required to be submitted to the Director, and the location where potential applicants may obtain additional information regarding the selection criteria and process.

J. Screening Application for Competitive Selection of Preferred Applicant

1. Any person seeking a Medical Marijuana Dispensary use permit under this Section shall submit a screening application to the Director no later than the deadline set forth in the notice of commencing competitive application process (issued pursuant

to Subsection (I), above). In the event that the Director determines that a screening application is incomplete or fails to provide the information and documentation required by this Section, the Director shall notify the applicant in writing, and the applicant shall have an additional 30 days (or longer as authorized by the Director) in which to submit needed supplemental information or documentation as specified by the Director. If an application is incomplete after the Director provides an opportunity to submit needed supplemental information or documentation, the Director is authorized to reject the application as incomplete.

2. Each applicant shall submit the following information (for the primary Medical Marijuana Dispensary, and any requested accessory Aggregated Cultivation Facility) in the screening application, in a form acceptable to the Director:

a. The name, address, telephone number and chief executive of the applicant (the cooperative or collective organization to which the permit is to be issued).

b. The name, address and telephone number of the authorized agent for the applicant.

c. Documentation of the legal entity and organizational structure of the applicant organization, demonstrating that it is a collective or cooperative operating in conformance with the requirements of the Medical Marijuana Laws.

d. Documentation of the experience and background of principals and management staff of the applicant, subject to verification by background check to be conducted by the Director. Such documentation shall include: licensing records for any collective or cooperative for which the person is or has been a principal or manager in any other location.

(1) No applicant shall be selected nor shall an application be approved if a principal or manager shall have been convicted of:

- Any offense related to possession, manufacture, sales, or distribution of controlled substance, with the exception of marijuana related offenses; or
- Any offense involving the use of force or violence upon the person of another.

(2) The Director may also consider (as indications of the qualifications of the applicant) but shall not necessarily be obligated to deny an application if a principal or manager shall have been convicted of any other criminal offense, including but not limited to:

- Any offense involving theft, fraud, dishonesty or deceit; and,
- Any offense related to possession, manufacture, sales, or distribution of marijuana related offenses.

(3) For the purpose of this Subsection (J)(2)(d), a conviction includes a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

e. Proposed plan of operation for the prospective Medical Marijuana Dispensary to demonstrate compliance with the requirements of the Medical Marijuana Laws and this Section. This shall include, but not be limited to an indication of: (1) the manner of maintaining an adequate (and not surplus) of supply, including any intent to operate an Aggregated Cultivation Facility, methods of documenting source of supply,

and methods of precluding supply from illegal "grow houses" in residential zones; (2) limitations that will be imposed on off-site deliveries of Medical Marijuana; (3) methods of focusing the services to residents of Napa; (4) methods of mitigating adverse impacts on neighbors; (5) methods of ensuring compliance with the security plan; and (6) methods of ensuring adequate record-keeping systems and providing regular reports to the City.

f. Demonstration of a record-keeping system for operational records which will include continuing maintenance of membership records to document collective or cooperative organizational structure (including the ability to sort members into those who cultivate medical marijuana, those who are persons with an Identification Card, those who are qualified patients and those who are primary caregivers), and include documentation that the organization will operate on a not for profit basis.

g. Demonstration of a record-keeping system for medical records which will allow for continuing maintenance of such records, including procedures to protect patient privacy, document physician recommendations, and primary caregiver and qualified patient status.

h. Demonstration of screening and training procedures for employees and volunteers, including maintenance of records, demonstrating the means of confirming identification, qualifications, and conducting criminal background checks for employees and volunteers.

i. A security plan proposal, indicating the methods and measures which would be taken to protect the premises, employees, clients, immediate neighbors, the medical marijuana product, and records files. The security plan shall include the methods and measures for handling and banking cash.

j. A statement of any intention to provide consumable products other than raw harvested Medical Marijuana, including edibles, lozenges, other such product preparations, and a demonstration of the means of achieving appropriate health and safety approvals. A statement of the system for providing for necessary consumer safety packaging and labeling for consumable products as well as the raw harvested Medical Marijuana.

k. Acknowledgment by signature that the chief executive and authorized agent have read all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

l. Certification of the accuracy of the information submitted, and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the conditions of the use permit.

m. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

n. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable

and shall cease upon lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

o. Such other information as the Director deems reasonably necessary to administer this Section may be required.

3. Selection Process.

a. The Director is authorized to determine which applicant is the "preferred applicant" based on the demonstrated experience, training, capability, and plan to best fulfill the purposes and requirements of this Section. The Director is authorized to establish conditions of approval for the determination of the preferred applicant, and the applicant is required to comply with the conditions of approval as a part of the application for the Medical Marijuana Dispensary use permit.

b. All timely and complete applications shall be evaluated by the Director and a team of application reviewers (City staff and consultants selected by the City Manager). The Director and the application reviewers may interview one or more of the applicants, to the extent the Director determines it would assist in the evaluation process.

c. After consideration of input from the application reviewers, the Director shall make a preliminary determination of which applicant is the preferred applicant, and the Director shall provide written notice of the preliminary determination to each applicant.

d. Within ten working days of the Director's issuance of the notice of preliminary determination, any applicant shall have an opportunity to provide written comments to the Director regarding any bases upon which an applicant asserts that the preliminary determination should not be finalized by the Director.

e. After considering any written comments provided by applicants, the Director shall make a final determination of the preferred applicant. If the Director determines that no applicant has demonstrated the experience, training, capability, and plan to fulfill the objectives and requirements of this Section, the Director may reject all applications, and commence a new competitive application process.

f. The preferred applicant, as determined by the Director, shall be the only entity authorized to submit an application for a Medical Marijuana Dispensary use permit. Notwithstanding the appeal provisions set forth in Subsection 17.52.275(P) and Chapter 17.70, the Director's determination regarding the selection of the preferred applicant shall be final and not subject to appeal.

K. Application for Medical Marijuana Dispensary Use Permit

The Preferred Applicant, as determined by the Director, may submit an application for a Medical Marijuana Dispensary Use Permit, which shall include all information necessary

to evaluate compliance with this Section for the proposed Medical Marijuana Dispensary and any proposed Aggregated Cultivation Facility. Each application for a Medical Marijuana Dispensary Use Permit shall be made on a form provided by the Director, and shall include the following:

1. Diagrams, plans, tenant improvement plans and photographs of the intended premises sufficient to demonstrate location and intended improvements.

2. Documentation establishing that the premises meet all local building and safety code requirements.

3. A diagram of the premises showing and indicating the number and location of designated on-site parking spaces.

4. All documents required by Chapter 17.60 of this title.

5. All information previously submitted for the screening application, supplemented and updated for the purposes of issuing the use permit for the specified locations of the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, including compliance with any conditions of approval of the preferred applicant determination. This shall specifically include documentation of adequate physical security, including: a well defined separate entrance for the Medical Marijuana Dispensary and the Aggregated Cultivation Facility, limited number of building entrances which are easily securable, main entrances that are visible from a public street, a lobby area that is physically separated from any medical marijuana supply, mitigation of any adverse impacts of potential hidings places on the site, no pay phones within the immediate vicinity of the site, use of security guards to enforce permit compliance for activities on site and in the immediate vicinity of the site, and use of surveillance cameras (and other forms of technology). For the Medical Marijuana Dispensary, the reception area shall be located at the main entrance with a view of visitor parking areas.

6. A 300 foot notification mailing label submittal as provided for in Subsection 17.68.070 (A)(3) of this Title for both the site of the proposed Medical Marijuana Dispensary and its associated aggregated cultivation facility, if any.

7. Acknowledgment by signature that the property owner, the permittee's chief executive officer, and the permittee's authorized agent have read, and will comply with, all regulations pertaining to the operation of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility, including the Medical Marijuana Laws, this Section, the City's Business License Regulations as contained in this Code, and any additional administrative regulations promulgated by the Director in furtherance of the objectives of this Section.

8. Certification of the accuracy of the information submitted, and agreement to comply with all requirements of the Medical Marijuana Laws, this Section, and the

conditions of the permit.

9. Agreement to hold harmless, indemnify and defend the City against claims and litigation arising from the issuance of the Medical Marijuana Dispensary use permit, including any claims and litigation arising from the establishment, operation, or ownership of the Medical Marijuana Dispensary or Aggregated Cultivation Facility.

10. Acknowledgement and agreement that claims, requests, objections and arguments not timely raised in the Medical Marijuana Dispensary use permit application are and shall be deemed waived.

11. Agreement that any and all use of the property for Medical Marijuana Dispensary and any Aggregated Cultivation Facility purposes shall be non-transferable and shall cease upon any lapse of use of the permit, pursuant to NMC Subsection 17.52.275(O)(15).

12. Such other information as the Director deems reasonably necessary to administer this Section.

L. Fees

Medical Marijuana Dispensary Use Permits shall be subject to the payment of the fees established by Council resolution based on the estimated reasonable costs incurred by the City for processing the application materials consistent with Sections 1.16.050 and 3.04.040 of this Code, as well as the estimated reasonable costs of implementing a regulatory program related to inspecting and monitoring the impacts of the permit. These shall include:

1. A competitive application processing fee, as established by Council resolution, payable by each applicant at the time of application to cover the cost of reviewing applications through the process of screening and identifying the preferred applicant.

2. A use permit processing fee, as established by Council resolution, payable by each preferred applicant at the time of application for each use permit. The processing fee may also include a fee to process applications for an expanded Medical Marijuana cultivation space, pursuant to Subsection 17.52.275(C)(2)(k).

3. A premises inspection and regulatory review fee, as established by Council resolution, payable annually by each permittee. This fee shall include the City's costs of administration of the program, including the costs of preparation of necessary ordinances and resolutions.

M. Findings

The City Council may approve, or conditionally approve, a Medical Marijuana Dispensary Use Permit (including any accessory Aggregated Cultivation Facility) only if

the City Council first makes all findings (based on substantial evidence) set forth in Section 17.60.070 of this Code as well as all of the following:

1. That the location of the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility, if applicable, complies with the zoning and use separation standards of this Section;

2. That the premises for the Medical Marijuana Dispensary and its associated Aggregated Cultivation Facility meet all of the physical requirements of this section; and,

3. That the operator of the Medical Marijuana Dispensary has demonstrated its ability and commitment to operate the facility(ies), and provide adequate security in compliance with the standards of this Section.

4. That the operator of the Medical Marijuana Dispensary has demonstrated its full compliance with the requirements of this Section, and the ability and commitment to adequately mitigate impacts that are potentially detrimental to the public health, safety, or welfare.

N. Conditions of Approval and Term of Permit

As a part of the approval of a Medical Marijuana Dispensary Use permit (including any accessory Aggregated Cultivation Facility), the City Council may impose such conditions in connection with the permit as it deems necessary in order to fulfill the purposes of this Section, and may require such guarantees and evidence that it deems necessary and appropriate to ensure such conditions will be complied with.

O. Permits subject to ongoing restrictions

All Medical Marijuana Dispensary Permits (and any accessory Aggregated Cultivation Facility) shall be subject to the following requirements and restrictions, in addition to all other applicable provisions of this Code.

1. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be the primary uses of their respective premises, and shall not be established or maintained in conjunction with other uses within the same demised tenant space and address;

2. The Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall have direct access to a public space and shall not take access via any other business or tenancy.

3. Commercial signs pertaining to the Medical Marijuana Dispensary shall be regulated in accordance with the provisions related to professional offices, at NMC Section 15.56.080 (table headed, "The following regulations shall apply in the: MO,

MEDICAL OFFICE, CO, COMMERCIAL OFFICE & RP-12, -25, RESIDENTIAL PROFESSIONAL"). Any Aggregated Cultivation Facility shall have only such signs necessary for tenant identification or address purposes.

4. The operator of a Medical Marijuana Dispensary shall post in a conspicuous place near its entry, the following notices, each in a form subject to review and approval by the Director.

- a. A notice that a complete copy of the Medical Marijuana Dispensary Use Permit is available for inspection on the premises;
- b. A notice indicating the uncertain status of Federal and State Law pertaining to Medical Marijuana transactions;
- c. A notice identifying the scope and limitations of any inspections and certifications (related to consumer product safety) of the products available on the premises;
- d. A notice indicating that consumption of Medical Marijuana on the premises of the Medical Marijuana Dispensary is prohibited; and,
- e. Any other notice required by the permit, including any annual extension thereof.

5. The hours of operation for Medical Marijuana Dispensaries shall commence no earlier than 7:00AM, nor shall they end later than 7:00PM.

6. Consumption of Medical Marijuana on the premises of a Medical Marijuana Dispensary or any associated Aggregated Cultivation Facility shall be prohibited.

7. A Medical Marijuana Dispensary shall provide a secured storage area on site. All Medical Marijuana products shall be stored in this area during non-business hours. The design features and maintenance of the storage area shall be subject to the review and approval of the Director.

8. The operator of a Medical Marijuana Dispensary and any associated Aggregated Cultivation Facility shall be responsible for the training of employees in the provisions of these regulations and the conditions and obligations of the Medical Marijuana Dispensary Use Permit.

9. Separate from any permit which may authorize cultivation at an Aggregated Cultivation Facility, Medical Marijuana Dispensaries may conduct limited on site cultivation of Medical Marijuana juveniles as starter plants for residential cultivation as set forth in Subsection 17.52.275 (C)(2), above, subject to the following limitations:

- a. Each plant shall be boxed, in flats or individual nursery containers measuring no more than three inches by three inches (3" X 3")
- b. Cultivation must take place indoors, within the premises of the Medical Marijuana Dispensary, within a floor area not exceeding one hundred square feet.

10. Medical Marijuana Dispensaries are prohibited from selling, renting or providing group smoking apparatus, including but not limited to hookah pipes, but may sell items designed for the smoking or ingestion of Medical Marijuana products by an individual, including such items as pipes.

11. The issuance of physician recommendations for Medical Marijuana is prohibited on the premises of a Medical Marijuana Dispensary or an Aggregated Cultivation Facility.

12. The permittee of a Medical Marijuana Dispensary Use Permit is responsible for the actions of its employees, members, volunteers in violation of any term of this section or any other applicable provision of this Code.

13. The Medical Marijuana Dispensary shall be operated in full compliance with all requirements of State law. The issuance of a permit pursuant to this Section is not intended to, and does not, authorize the violation of State or Federal law.

14. A Medical Marijuana Dispensary may only provide Medical Marijuana consistent with the Medical Marijuana Laws. This Section is not intended to, and does not, authorize the cultivation, sale, or distribution of marijuana (as defined by and used in California Health and Safety Code Division 10, Chapter 6, including Sections 11358 and 11360) from a Medical Marijuana Dispensary or an Aggregated Cultivation Facility for any non-medical purposes.

15. Based on the personal nature of the obligations and responsibilities of each permittee (as set forth in this Section and in each permit), each Medical Marijuana Dispensary Use Permit shall be personal to the permittee, and shall be non-transferable. Any attempt to transfer the permit to an entity other than the permittee, or any lapse of use of the permit by the permittee for six months in any twelve month period, shall be sufficient grounds for termination or revocation of the permit. Notwithstanding this limitation, the Director is authorized to approve a modification to the organizational or operational structure of the permittee only if the Director determines in writing that the modification is minor and does not adversely impact the ability of the permittee to comply with all requirements of the permit and this Section. If a permittee seeks approval of any such modification, the permittee must submit the request to the Director in writing, and obtain the Director's written approval prior to implementing the modification.

16. Each Medical Marijuana Dispensary Use Permit shall be issued subject to annual review and extension. Each permittee shall submit an annual report to the Director, in a form satisfactory to the Director, to document compliance with all requirements of the permit and this Section. The Director shall review all application records and inspect the premises, and may review all records as listed in the permit application requirements, to assure that the Medical Marijuana Dispensary (and any accessory Aggregated Cultivation Facility) is compliant with this Section, with other

applicable provisions of this Code and with the permit conditions. As a part of the annual review of the permit, the Director is authorized to impose supplemental conditions on the permit to the extent that the Director determines that the supplemental conditions are necessary in order to, either: (a) achieve compliance with the requirements of the permit or this Section; or (b) mitigate adverse impacts on neighboring properties.

P. Enforcement and Appeal

1. The cost of the ongoing administration of Medical Marijuana Dispensary permits shall be borne by the Medical Marijuana Dispensary permittees according to fees established by resolution of the City Council.

2. The Director may conduct an investigation whenever there is reason to believe that any person has failed to comply with the provisions of a Medical Marijuana Dispensary Use Permit or of this Section. The investigation may include an inspection of the premises. Should the investigation reveal substantial evidence to support a finding that a violation occurred, the Director is authorized to take any enforcement action as set forth in Chapter 1.24 of this Code. The written notice shall be served on the permittee or authorized agent and shall specify the facts which, in the opinion of the Director, constitute substantial evidence to establish grounds for imposition of the enforcement action. Administrative fines, in accordance with Subsection 1.16.050 of this Code, may be assessed to the permittee as a result of violations of either the Permit or this Section. A permittee, or the recipient of the notice of violation, may request an administrative hearing to contest any administrative citation issued by the Director in accordance with the procedures set forth in Sections 1.24.070 through 1.24.090 of this Code.

3. The Director is authorized to initiate proceedings to revoke, or modify the conditions attached to, a Medical Marijuana Dispensary Use Permit if at any time he or she determines in his or her discretion that: (a) a Medical Marijuana Dispensary use is detrimental to the public health, safety, or welfare; (b) the permittee has provided materially false or misleading information in the application for the permit; or, (c) the permittee has failed to comply with any requirements of the permit or of this Section. Any such proceedings shall be conducted in accordance with the general procedures set forth in Chapter 17.72 of this Title.

4. Except as otherwise provided in Subsection J(3) (authorizing the Director to make final decisions to select the preferred applicant) and Subsection P(3) (for appeals subject to Chapter 17.72 of this Title), any person aggrieved by a determination of the Director pursuant to this Section may appeal by filing a written appeal with the City Clerk. Any such appeal must be received by the City Clerk within ten (10) calendar days of written determination by the Director. Each appeal shall be subject to the following:

a. Any such appeal shall state all factual and legal grounds which the appellant wishes the City to consider. Such grounds to be identified by the appellant shall include, without limitation, any and all constitutional or statutory claims.

b. The appeal shall be decided by an administrative hearing which shall be set and conducted pursuant to the procedural provisions of Sections 1.24.080, 1.24.090, and 1.24.100.

- For purposes of this Subsection P(4), as used in Chapters 1.16 and 1.24 of this Code: (1) the "responsible person" shall be the "appellant"; (2) the "administrative citation" shall be the determination under this Section that is the subject of the appeal.
- Any written reports submitted by the Director to the Hearing Officer shall be served on the appellant at least five days before the hearing.
- At the hearing, the appellant shall be given the opportunity to testify and present evidence, and the appellant shall raise any and all legal and factual issues and claims, concerning the determination under this Section that is the subject of the appeal.
- The decision of the Hearing Officer shall be final.
- If the hearing officer finds, as a part of the hearing officer's written decision, that the City is the prevailing party, the City is entitled to its reasonable costs of defending the appeal.

c. Failure to timely request an administrative hearing, and/or to fully state all factual and legal grounds for the appeal, in the manner required by this Subsection P(4) shall constitute a waiver of the hearing and a failure to exhaust administrative remedies, and shall preclude any and all relief and claims arising in connection with the determination by the Director.

SECTION 6: Severability. If any section, sub-section, subdivision, paragraph, clause or phrase in this Ordinance, or any part thereof, is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections or portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, sub-section, subdivision, paragraph, sentence, clause or phrase of this Ordinance, irrespective of the fact that any one or more sections, sub-sections, subdivisions, paragraphs, sentences, clauses or phrases may be declared invalid or unconstitutional.

SECTION 7: Effective Date. This Ordinance shall become effective thirty (30) days following adoption.

City of Napa, a municipal corporation

MAYOR:



ATTEST:



CITY CLERK OF THE CITY OF NAPA

STATE OF CALIFORNIA }
COUNTY OF NAPA } SS:
CITY OF NAPA }

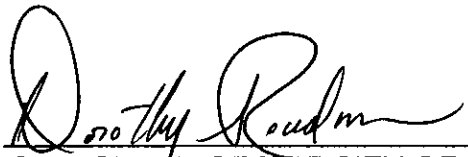
I, Dorothy R. Roadman, City Clerk of the City of Napa, do hereby certify that the foregoing Ordinance had its first reading and was introduced during the regular meeting of the City Council on the 1st day of June, 2010, and had its second reading and was adopted and passed during the regular meeting of the City Council on the 6th day of July, 2010, by the following vote:

AYES: van Gorder, Mott, Inman, Krider, Techel

NOES: None

ABSENT: None

ABSTAIN: None

ATTEST: 
CITY CLERK OF THE CITY OF NAPA

Approved as to Form:



Michael W. Barrett
City Attorney