

ORDINANCE NO. SCC 2011-04

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SHASTA
ENACTING SECTION 17.88.310 OF THE SHASTA COUNTY CODE,
PROHIBITING MEDICAL MARIJUANA DISPENSARIES**

The Board of Supervisors of the County of Shasta ordains as follows:

SECTION I.

Section 17.88.310 of the Shasta County Code is enacted to read in its entirety as follows:

17.88.310 Medical Marijuana Dispensaries

A. Legislative Findings.

The Board of Supervisors finds as follows:

1. In 1996, the voters of the State of California approved Proposition 215 which was codified as Health and Safety Code section 11362.5, and entitled "The Compassionate Use Act of 1996" ("the Compassionate Use Act").
2. The intent of the Compassionate Use Act was to enable persons who are in need of marijuana for medical purposes to obtain and use it under limited, specific circumstances, without being subject to criminal prosecution under certain state statutes.
3. On January 1, 2004, Senate Bill 420, codified as Health and Safety Code sections 11362.7 *et seq.*, entitled "The Medical Marijuana Program Act," and as subsequently amended, became effective to clarify the scope of the Compassionate Use Act.
4. The County of Shasta has adopted a Zoning Plan identified as Title 17 (Zoning) of the Shasta County Code.
5. Prior to the enactment of this Section, Medical Marijuana Dispensaries were considered similar to "clubs," and were only permissible in the following zone districts and only upon first securing a use permit:
 - Community Commercial (C-2) District;
 - Office Commercial (C-O) District; and
 - Mixed Use (M-U) District.

6. Other than the foregoing, prior to the enactment of this Section, there were no other regulations addressing Medical Marijuana Dispensaries in the Zoning Plan.
7. Other public entities have reported adverse impacts from Medical Marijuana Dispensaries, including, but not limited to, an increase in crime such as burglary and robbery, disagreeable odor, negative effects on physical, mental, and community health, loitering, increases in traffic, noise, and the sale of illegal drugs (including the illegal resale of marijuana from medical marijuana dispensaries) in the areas immediately surrounding such medical marijuana dispensaries.
8. The County of Shasta may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.
9. Preemption of the County of Shasta's authority will not be implied when the legislative scheme of the law, including the Medical Marijuana Program Act and the Compassionate Use Act, either permits or recognizes local regulation.
10. The Medical Marijuana Program Act, at Health & Safety Code section 11362.768, authorizes the County of Shasta to adopt an ordinance restricting the establishment of Medical Marijuana Dispensaries.
11. Effective January 1, 2012, AB 1300, amending Health & Safety Code section 11362.83, additionally authorizes the County of Shasta to adopt an ordinance restricting the establishment of medical marijuana cooperatives and collectives.
12. Regulations are needed to protect the public health, safety, and welfare of residents, children, and businesses from harmful secondary effects of sales and distribution of marijuana and any other illegal drugs under local, state, or federal laws.
13. The Board of Supervisors enacts this Section to further regulate Medical Marijuana Dispensaries in furtherance of the public necessity, health, safety, convenience, and general welfare.

B. Intent.

It is the intent of the Board of Supervisors to prohibit the operation of Medical Marijuana Dispensaries in the unincorporated area of the County of Shasta.

C. Definitions.

“Cultivation” shall mean the planting, growing, harvesting, drying, or processing of Marijuana or any part thereof.

“Marijuana” shall have the same meaning as that set forth in Health and Safety Code section 11018, as may be amended.

“Medical Marijuana Dispensary” shall mean any facility or location, whether fixed or mobile, where Medical Marijuana is made available, sold, transmitted, given, distributed by or to, or otherwise provided by or to, one or more of the following: a Primary Caregiver, or a Qualified Patient.

A Medical Marijuana Dispensary does not include the providing of Medical Marijuana to Qualified Patients by their designated Primary Caregivers in the following locations and uses, as long as the location is otherwise regulated by the Shasta County Code and/or applicable law and as long as the use complies with the Shasta County Code and/or applicable law, including, but not limited to, the Compassionate Use Act and The Medical Marijuana Program Act:

1. A clinic licensed pursuant to Chapter 1 (commencing with section 1200) of Division 2 of the Health and Safety Code if the owner or operator of the clinic (or no more than three employees designated by the owner or operator) is a Qualified Patient’s designated Primary Caregiver.
2. A health care facility licensed pursuant to Chapter 2 (commencing with section 1250) of Division 2 of the Health and Safety Code if the owner or operator of the health care facility (or no more than three employees designated by the owner or operator) is a Qualified Patient’s designated Primary Caregiver.
3. A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with section 1568.01) of Division 2 of the Health and Safety Code if the owner or operator of the residential care facility (or no more than three employees designated by the owner or operator) is a Qualified Patient’s designated Primary Caregiver.
4. A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with section 1569) of Division 2 of the Health and Safety Code if the owner or operator of the residential care facility (or no more than three employees designated by the owner or operator) is a Qualified Patient’s designated Primary Caregiver.

5. A hospice or a home health agency licensed pursuant to Chapter 8 (commencing with section 1725) of Division 2 of the Health and Safety Code if the owner or operator of the hospice or home health agency (or no more than three employees designated by the owner or operator) is a Qualified Patient's designated Primary Caregiver.
6. A Qualified Patient's or a Primary Caregiver's primary place of residence when the Qualified Patient or Primary Caregiver is in compliance with all applicable land use approvals and requirements for Medical Marijuana Cultivation pursuant to Title 17 of the Shasta County Code.

"Medical Marijuana" shall mean Marijuana recommended by a licensed physician, in accordance with California Health and Safety Code Section 11362.5 through Section 11362.83, inclusive, commonly referred to as the Compassionate Use Act and the Medical Marijuana Program Act.

"Primary Caregiver" shall have the same definition as Health and Safety Code Section 11362.7(d), as may be amended.

"Qualified Patient" shall have the same definition as Health and Safety Code Sections 11362.7 (c) and (f), as may be amended.

"Drug Paraphernalia" shall have the same definition as Health and Safety Code Section 11364.5, as may be amended.

D. Prohibition.

Medical Marijuana Dispensaries are prohibited in all zones of the County and no permit or approval of any type shall be issued therefor.

E. Enforcement.

All Medical Marijuana Dispensaries shall be subject to Chapter 8.28 (Nuisances) of the Shasta County Code and Shasta County Code Section 17.94.060.

F. Liability.

The provisions of this Section shall not be construed to protect Qualified Patients, Primary Caregivers, or any other person from prosecution pursuant to any laws that may prohibit the cultivation, sale, distribution, possession, and/or use of controlled substances, or to authorize conduct that is unlawful under state or federal law. Moreover, cultivation, sale, possession, distribution, and use of Marijuana remain violations of federal law as of the date of adoption of the ordinance creating this Section and this Section is not intended

to, and does not protect any of the above described persons from arrest or prosecution under those federal laws. Qualified Patients, Primary Caregivers, and any other persons assume any and all risk and any and all liability that may arise or result under state and federal laws from the cultivation, sale, possession, distribution, and/or use of Medical Marijuana. Further, to the fullest extent permitted by law, any actions taken under the provisions of this Section by any public officer or employee of the County of Shasta or by Shasta County itself, shall not become a personal liability of such person or a liability of the county.

SECTION II.

The County finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). In addition to the foregoing general exemptions, the following categorical exemptions apply: Sections 15308 (actions taken as authorized by local ordinance to assure protection of the environment) and 15321 (action by agency for enforcement of a law, general rule, standard, or objective administered or adopted by the agency, including by direct referral to the County Counsel as appropriate for judicial enforcement).

SECTION III.

If any provision of this ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION IV.

All former ordinances and resolutions, or parts thereof, conflicting or inconsistent with the provisions of this ordinance are hereby repealed.

The adoption of this ordinance shall not in any manner affect any action or prosecution for violation of ordinances, which violations were committed prior to the effective date hereof, be construed as a waiver of any license, fee, or penalty required by or resulting from any such ordinance, or affect the validity of any bond (or cash deposit in lieu thereof) required to be posted, filed, or deposited pursuant to such ordinance.

SECTION V.

This ordinance shall take effect and be in full force and effect 30 days after its passage. The Clerk shall cause this ordinance to be published as required by law.

DULY PASSED AND ADOPTED this 13th day of December, 2011 by the Board of Supervisors of the County of Shasta by the following vote:

AYES: Supervisors Hartman, Baugh, Kehoe, Moty, and Hawes
NOES: None
ABSENT: None
ABSTAIN: None
RECUSE: None



LES BAUGH, CHAIRMAN
Board of Supervisors
County of Shasta
State of California

ATTEST:

LAWRENCE G. LEES
Clerk of the Board of Supervisors

By: Jayne Accetta
Deputy

THIS INSTRUMENT IS A CORRECT COPY
OF THE ORIGINAL ON FILE IN THIS OFFICE

ATTEST DEC 14 2011

CLERK OF THE BOARD
Supervisors of the County of Shasta, State of California
BY: Jayne Accetta