

ORDINANCE NO. 1709 N.C. (2d)

AN ORDINANCE ADDING CHAPTER 7.100 OF THE VALLEJO MUNICIPAL CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the Compassionate Use Act adopted by voters in 1996, and the Medical Marijuana Program Act, enacted by the state legislature in 2003, provided California's qualified patients and their primary caregivers with limited immunities to specified criminal prosecutions under state law for purposes including to ensure that qualified patients and their primary caregivers who obtain and use marijuana for medical purposes are not subject to state criminal prosecution; and

WHEREAS, in November 2011, City of Vallejo voters passed Measure C, a marijuana business tax-revenue ordinance which provides that payment of a business license tax and its acceptance by the City shall not entitle any person to carry on a marijuana business in a zone or locality in which the conduct of such marijuana business is in violation of any law; and

WHEREAS, the zoning ordinance of the City of Vallejo does not allow medical marijuana dispensaries or any marijuana business as a use, which renders any such use an illegal public nuisance per se; and

WHEREAS, in recent years, according to police sightings, neighborhood complaints, and internet information, more than 40 medical marijuana businesses operated or are operating in the City of Vallejo without any land use approval under the Vallejo Municipal Code, and an unknown number of these businesses continue to open, close, and reopen in Vallejo with no regulatory authorization from the City; and

WHEREAS, the City wishes to address the continued proliferation of unauthorized medical marijuana dispensaries in the City by granting limited immunity from enforcement of its prohibition on medical marijuana dispensaries under the Vallejo Municipal Code for up to four (4) medical marijuana dispensaries until such time as the California Supreme Court rules on what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with court decision; and

WHEREAS, medical marijuana dispensaries are not legal within the City of Vallejo because Vallejo's zoning ordinance does not allow 'medical marijuana' as a use and therefore by law such use is prohibited; and

WHEREAS, despite the prohibition medical marijuana dispensaries have opened their doors and continue to operate in the City of Vallejo; and

WHEREAS, neither electrical or building permits, nor fire inspections, nor payment of taxes in any way bestows a legal right to use land for a medical marijuana dispensary, and

WHEREAS, all medical marijuana dispensaries currently operating are operating in violation of local law and therefore each such operation constitutes a nuisance.

WHEREAS, Vallejo Municipal Code section 1.12.020 provides that uses contrary to the ordinances of the City of Vallejo constitute a public nuisance; and

WHEREAS, the City nevertheless recognizes that the availability of medical marijuana through a limited number of regulated medical marijuana dispensaries is a valid governmental interest to ensure access to those sick people who have a doctor's recommendation in compliance with state law while ensuring that the impacts of those dispensaries on the neighborhood are regulated, as detailed in the staff report;

NOW, THEREFORE, The City of Vallejo City Council does hereby find that:

1. Existing medical marijuana dispensaries are operating illegally despite the City's prohibition and such operations constitute a public nuisance.
2. The City Attorney issued and mailed a written cease-and-desist letter to identified dispensary owners, managers and property owners on March 11, 2015, dispelling any doubt about the illegality of their operations.
3. Based on a comparison with other cities, and the information in the staff report, up to four (4) dispensaries is a reasonable number of dispensaries for Vallejo citizens to have access to medical marijuana while at the same time containing the proliferation of unregulated, illegal dispensaries.

AND FURTHER, THE CITY COUNCIL OF THE CITY OF VALLEJO DOES ORDAIN as follows:

SECTION 1. Vallejo Municipal Code Chapter 7.100 is hereby added to read as follows:

Chapter 7.100 Medical Marijuana

- 7.100.010 Purpose and Intent
- 7.100.020 Definitions
- 7.100.030 No Authority to Permit Use in Any Zone; Unlawful to Distribute Marijuana; Unlawful to Make False Statements
- 7.100.040 No Vested or Nonconforming Rights
- 7.100.050 Limited Immunity
- 7.100.060 Permit Required; Mandatory Permit Fee; Failure to Commence Operations
- 7.100.070 Location and Number
- 7.100.075 Prohibited Activity
- 7.100.080 Permit Application Process
- 7.100.090 Permit Approval and Operating Conditions
- 7.100.100 Permit Non-Transferable and Revocable
- 7.100.105 Revocation Process
- 7.100.110 Modification of Permit Conditions
- 7.100.120 Maintenance of Records
- 7.100.130 Inspection Authority

- 7.100.140 Existing Medical Marijuana Dispensaries
- 7.100.150 Enforcement
- 7.100.160 Limited Severability

7.100.010 Purpose and Intent.

It is the purpose and intent of this chapter to prohibit Medical Marijuana Dispensaries but grant limited immunity from the enforcement of its prohibition to four (4) Medical Marijuana Dispensaries that do not violate the restrictions set forth in this ordinance, until such time as the California Supreme Court rules on what cities can and cannot regulate and the City enacts new medical marijuana legislation consistent with court ruling. This ordinance is not intended to conflict with federal or state law. Nothing in this ordinance purports to permit activities that are otherwise illegal under federal, state, or local law.

7.100.020 Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

“Chief of Police” as used in this chapter is defined to mean the City of Vallejo Chief of Police, or his/her designee.

“City” means the City of Vallejo, and any legislative body granted regulatory authority over Medical Marijuana Dispensary operations by this ordinance.

“City Manager” means the City Manager of the City of Vallejo or his/her designee.

“Delivery Service” means the transportation or delivery of medical Marijuana by any means, including a vehicle, to its intended recipient.

“Manager” means a Medical Marijuana Dispensary member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Medical Marijuana Dispensary, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Medical Marijuana Dispensary.

“Marijuana” shall be construed as defined in California Health and Safety Code section 11018 and further shall specifically include any product that contains marijuana or a derivative of marijuana, including edibles.

“Medical Marijuana Dispensary” is any collective, cooperative, dispensary or association as described in California Health and Safety Code section 11362.775 that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away Marijuana in the City for medicinal purposes to four (4) or more Qualified Patients and/or Primary Caregivers pursuant to California Health and Safety Code sections 11362.5, 11362.7 et seq.

(1) Notwithstanding the above, "Medical Marijuana Dispensary" does not include:

(a) Any dwelling unit where a maximum of three (3) or fewer Qualified Patients, persons with an identification card, and/or primary caregivers process or associate to collectively or cooperatively cultivate Marijuana on-site, with respect to Qualified Patients and persons with an identification card for their own personal medical use, and with respect to the Primary Caregivers for the personal medical use of the Qualified Patients or persons with an identification card who have designated the individual as a Primary Caregiver, in accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq.;

(b) Any location during only that time reasonably required for a Primary Caregiver to distribute, deliver, or give away Marijuana to a Qualified Patient or person with an identification card who has designated the individual as a Primary Caregiver, for the personal medical use of the Qualified Patient or person with an identification card, in accordance with California Health and Safety Code section 11362.5 and 11362.7 et seq.;

(c) The location of any clinic licensed pursuant to Chapter 1 (commencing with section 1200), a health care facility licensed pursuant to Chapter 2 (commencing with section 1250), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with section 1569), a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with section 1725), all of Division 2 of the California Health and Safety Code where: (i) a Qualified Patient or person with an identification card receives medical care or supportive services, or both, from the clinic, facility, hospice, or home health agency, and (ii) the owner or operator, or one of not more than three employees designated by the owner or operator, of the clinic, facility, hospice, or home health agency has been designated as a Primary Caregiver pursuant to California Health and Safety Code section 11362.7(d) by that Qualified Patient or person with an identification card; or

(d) Any vehicle during only that time reasonably required for its use by: (i) a Qualified Patient or person with an identification card to transport Marijuana for his or her personal medical use, or (ii) a Primary Caregiver to transport, distribute, deliver, or give away Marijuana to a Qualified patient or person with an identification card who has designated the individual as a Primary Caregiver, for the personal medical use of the Qualified Patient or person with an identification card, in accordance with California Health and Safety Code section 11362.765.

"Member" is a patient, manager, or other person who has acquired membership and who participates in the collective, cooperative or dispensary by buying, receiving, distributing, dispensing, storing, exchanging, processing, or delivering marijuana to the Medical Marijuana Dispensary.

"Property" as used in this chapter means the location at which the Medical Marijuana Dispensary members, employees, volunteers or agents distribute Marijuana.

“Quadrant” as used in this chapter means the four (4) geographical areas within the City of Vallejo (including incorporated and unincorporated territory) roughly created by bisecting the City of Vallejo into four (4) Quadrants. The bisecting lines defining the Quadrants shall be California state route 80 (north to south) and Tennessee Street (east to west), with Mare Island being part of the Southwestern Quadrant.

The following words or phrases when used in this section shall be construed as defined in the California Health and Safety Code sections 11362.5 and 11362.7: “Attending Physician,” “Identification Card,” “Primary Caregiver,” “Qualified Patient.”

7.100.030 No Authority to Permit Use in Any Zone; Unlawful to Distribute Marijuana; Unlawful to Make False Statements.

A. The use of any building, structure, location, premises or land for a Medical Marijuana Dispensary is not currently enumerated in the Vallejo Municipal Code’s zoning ordinance as a permitted use in any zone. The Medical Marijuana Dispensary land use is therefore not allowed. So long as this chapter remains in effect, the planning manager shall not have the authority to determine that the use of any building, structure, location, premise or land as a Medical Marijuana Dispensary may be permitted in any zone, or to grant any variance authorizing any Medical Marijuana Dispensary. Both primary and accessory Medical Marijuana Dispensary uses are included in this prohibition.

B. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution, exchange or giving away of Marijuana or products containing Marijuana in any form, for medical or non-medical purposes except as provided in this chapter, and pursuant to any and all other applicable local and state law. The prohibition includes renting, leasing, or otherwise permitting a Medical Marijuana Dispensary to occupy or use a location, vehicle, or other mode of transportation.

C. It is unlawful for any person knowingly to make any false, misleading or inaccurate statement or representation in any form, record, filing or documentation required to be maintained, filed or provided to the City under this chapter or any applicable section of the Vallejo Municipal Code. A violation of this subsection may be prosecuted as a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding one-thousand dollars (\$1,000), or by both.

7.100.040 No Vested or Nonconforming Rights.

This chapter prohibits Medical Marijuana Dispensaries. Neither this chapter, nor any other provision of the Vallejo Municipal Code, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right or benefit regarding any Medical Marijuana Dispensary.

7.100.050 Limited Immunity.

Notwithstanding the activities prohibited by this chapter, and notwithstanding that Medical Marijuana Dispensary is not and shall not become a permitted use in the City for so long as this chapter remains in effect, a limited immunity shall be available and may be asserted as an affirmative defense to an action brought by the City of Vallejo to enjoin activity prohibited under VMC 7.100.030B but only so long as each and every provision and clause of this chapter remains valid, effective and operative and only if the Medical Marijuana Dispensary has a permit under section 7.100.060, and only if the Medical Marijuana Dispensary remains in compliance with all the terms and conditions of the Permit. The limited immunity provided in this chapter shall not be asserted as an affirmative defense to any violation of law except as expressly set forth in this chapter. Further, nothing contained in this limited immunity is intended to provide or shall be asserted as a defense to a claim for violation of law brought by any county, state or federal governmental authority. Finally, any immunity or benefit conferred by this ordinance shall expire permanently and in full on the effective date of the City Council's enactment of new medical marijuana legislation after medical marijuana ruling by the California Supreme Court, or otherwise upon repeal of this ordinance.

7.100.060 Permit Required; Mandatory Permit Fee; Failure to Commence Operations.

A. No Medical Marijuana Dispensary, Manager or person shall carry on, maintain or conduct any Medical Marijuana Dispensary related operations, including retail or wholesale sales of Marijuana or preparing, giving away or distributing edible Marijuana products, in the City without first obtaining a Medical Marijuana Dispensary permit from the Chief of Police.

B. Mandatory Payment of Fees to Maintain Permit.

Once a Medical Marijuana Dispensary has been granted/issued a permit under this chapter, it shall remit to the City the annual permit fee that has been set by the Fee Schedule, and as amended by resolution. The permit fee shall be made in quarterly installments and is due and payable no later than ten (10) days from the due date. In order to maintain a permit issued under this chapter, the Medical Marijuana Dispensary must timely pay every quarterly payment. Failure to remit the quarterly permit fees shall result in revocation of the permit pursuant to section 7.100.105.

7.100.70 Location and Number.

A. For purposes of the grant of limited immunity only, all Medical Marijuana Dispensaries shall be located as follows:

A maximum of four (4) Medical Marijuana Dispensaries shall be located in the City of Vallejo, including the unincorporated areas. One dispensary per Quadrant is desirable, however, two (2) dispensaries may be located in the same quadrant if the Chief of Police makes a finding that the proposed or actual locations within the quadrant are acceptable given the totality of the circumstances and all other requirements under this chapter are

met. Within these quadrants, Medical Marijuana Dispensaries may only be located in districts as described in section 16.22, 16.33, and 16.34 of the Vallejo Municipal Code.

B. All Medical Marijuana Dispensaries shall be a minimum of six hundred (600) feet from any public or private school, kindergarten through high school, or public or private child-care center, pre-school or nursery, public park, religious institution, youth center, alcoholism, drug abuse recovery or treatment facility; or any other Medical Marijuana Dispensary. The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school, park or other facility, to the closest property line of the lot on which the Medical Marijuana Dispensary is to be located without regard to intervening structures.

C. All Medical Marijuana Dispensaries shall be no larger than 8,000 square feet of retail size.

D. The City shall permit no more than four (4) Medical Marijuana Dispensaries to operate in the City of Vallejo. When there are fewer than four (4) permitted Medical Marijuana Dispensaries operating within the City, the Chief of Police shall publish an Invitation for Applications on the City's website, stating the period during which applications will be accepted.

7.100.075 Prohibited Activity.

A. No Medical Marijuana Dispensary or Manager shall cause or permit the sale, distribution or exchange of medical Marijuana or of any edible medical marijuana product manufactured, processed, prepared, or packaged at the property to any person who is not a member or a Manager of the permitted Medical Marijuana Dispensary.

B. There shall be no cultivation of Marijuana at the Property.

C. No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed.

D. No Medical Marijuana Dispensary shall be open to or provide Marijuana, in any form, to anyone between the hours of eight o'clock (8:00) p.m. and nine o'clock (9:00) a.m.

E. No person under the age of eighteen (18) shall be employed by or allowed to volunteer at the Medical Marijuana Dispensary, or allowed on the property, unless that minor is a Qualified Patient and is accompanied by his or her licensed attending physician, parent(s) or documented legal guardian.

F. No Medical Marijuana Dispensary shall possess Marijuana that was not cultivated by its Managers or members.

G. No Medical Marijuana Dispensary, Manager or member shall cause or permit the sale, dispensing, or consumption of alcoholic beverages, or any controlled substance, on the property or in the parking area of the Property.

H. No transactions outside, or partially outside of an enclosed building are permitted. No transactions which are performed through walk-up or drive-through service are allowed.

I. No Medical Marijuana Dispensary, Manager or member shall cause or permit the use, inhalation, smoking, eating, ingestion, or otherwise consumption of marijuana on the Property, including the parking areas of the property.

J. No person who is currently charged with or has been convicted within the previous ten (10) years of a crime of moral turpitude (such as theft, fraud, or assault), or who is currently on parole or probation for crimes involving the sale or distribution of any controlled substance, shall be engaged directly or indirectly in the management of the Medical Marijuana Dispensary nor, further, shall manage or handle the receipts and expenses of the collective.

7.100.080 Permit Application Process.

Any prospective Medical Marijuana Dispensary seeking a permit required by this chapter shall complete and file an application on a form supplied by the Chief of Police, and shall submit with the completed application payment of a nonrefundable processing and notification fee, as established by the City Council by resolution.

A. Filing. The prospective Medical Marijuana Dispensary shall provide the following information:

1. The address of the property where the proposed Medical Marijuana Dispensary will operate.

2. A request for mailing and notice, together with the appropriate fee. The request shall be forwarded to the Planning Manager to process and mail, and shall be addressed to all property owners and tenants within 500 feet of the proposed site. The notice shall include the following text:

"A permit application for a Medical Marijuana Dispensary proposed to be located at [insert address] has been submitted to the Vallejo Chief of Police. Any comments pertaining to this proposal are to be submitted, in writing, to the Chief of Police, Vallejo Police Department, 555 Amador Street, Vallejo, CA 94590, by [insert date three weeks from the date of this notice] to VPD."

3. A site plan demonstrating that the site:

a. Is not located in a high-crime area according to the Police Department, based on a 12-month review of calls for service for the site and surrounding area.

b. Complies with state requirements applicable to the location of dispensaries as well as the location requirements for limited immunity under this ordinance.

c. Contains site and building improvements which enhance the visual appearance of the site and surrounding neighborhood, including signage as follows: one building-mounted sign at one square foot per one-half linear foot of street frontage, no taller than the roofline with a maximum size of 100 square feet, no window signs and no freestanding signs (unless part of an existing multi-tenant sign). Signage will clearly state the nature of the operations as a Medical Marijuana Dispensary and include in a manner clearly legible to the public, the name and phone number of a property or business manager responsible for readily addressing any nuisance conditions generated by the Medical Marijuana Dispensary. The site will not include barbed wire, razor wire, or chain link fencing.

d. Is located near other land uses that could help optimize natural surveillance and safety, and the layout and design promotes safety and ease of surveillance by police, safety personnel, and persons in the surrounding area, to the satisfaction of the Police Chief.

e. Contains a description of the Property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federal Americans with Disabilities Act.

f. The site plan shall demonstrate that there are separate rooms or partitioned areas within the Medical Marijuana Dispensary for the receipt of supplies and for the distribution of Medical Marijuana to Qualified Patients and/or Primary Caregivers, including exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front, rear and side(s) of the proposed property and photographs depicting the entire interior of the proposed property.

4. A security plan including procedures for verifying identification of Qualified Patients and Primary Caregivers both before entering the collective and again before receiving medical marijuana; a description of the physical presence of licensed and uniformed security guards required to be present including their number, location and specific hours on site; and a theft prevention plan which includes locked exterior doors and windows during the times the business is closed.

5. A letter by the property owner indicating his or her consent that the property will be used as a Medical Marijuana Dispensary.

6. The name, address, telephone number, title and function(s) of each Manager. For each Manager, a fully legible copy of one (1) valid government-issued form of photo identification, such as a driver's license.

7. For each Manager, a summary criminal history ("LiveScan") prepared by the Vallejo Police Department not more than two (2) weeks prior to the date of application and demonstrating that there are no pending charges or convictions for any crime (including, without limitation, theft, fraud, or assault) within the previous 10 years, and

that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

8. Written confirmation as to whether a Medical Marijuana Dispensary with one or more Managers in common with the applicant previously operated in the City of Vallejo, Solano County, or any other city, county or state, whether the Medical Marijuana Dispensary permit applicant ever had a license/permit revoked or suspended and the reason(s) therefore.

9. Either (a) if the Medical Marijuana Dispensary is incorporated, a certified copy of Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Medical Marijuana Dispensary's bylaws demonstrating that the Medical Marijuana Dispensary is organized as a non-profit entity; or (b) if the Medical Marijuana Dispensary is unincorporated, a copy of the Medical Marijuana Dispensary's notarized creating document demonstrating that the Medical Marijuana Dispensary is organized as a non-profit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the Medical Marijuana Dispensary will operate.

10. A seller's permit from the California Board of Equalization.

11. The name and address of the applicant's current Agent for Service of Process.

12. A copy of the Medical Marijuana Dispensary's operating conditions, containing a statement dated and signed by each Manager, under penalty of perjury, he or she has read, understands and shall ensure compliance with all operating conditions.

13. A copy of the prohibited activity checklist, available from the Vallejo Police Department, containing a statement dated and signed by each Manager, under penalty of perjury, that he or she has read, understands and shall ensure that neither the Medical Marijuana Dispensary nor its members and Managers shall engage in the prohibited activity. A copy of the prohibited activity checklist shall be posted inside the Medical Marijuana Dispensary on a wall or other surface which is clearly visible to patients, managers and any other persons.

14. A statement dated and signed by each Manager, under penalty of perjury, that the Manager has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the Managers.

15. A statement of whether edible medical marijuana will be prepared at the proposed property and, if so, evidenced of approval from Solano County Department of Resource Management.

B. The request for mailing and notice to neighboring owners and tenants pursuant to section 7.100.080A shall be forwarded to the Planning Manager for processing. After

the closing of the application period, the Chief of Police, in consultation with the Planning Manager, will evaluate all complete applications.

C. Applications will be evaluated and ranked on their proposals to address neighborhood impacts and ability to preserve the public health, safety and welfare, including location, security and surveillance capability. The applications will be evaluated and ranked by criteria set forth in a resolution adopted by City Council. Terms of the proposals acceptable to the Chief of Police will become required terms for the duration of the permits.

D. From among the qualifying applications the Chief of Police has determined are complete and meet all application requirements, a maximum of four (4) applicants shall be selected. Applicants who have previously materially misrepresented the nature of their medical marijuana dispensary operations on a city of Vallejo business license or permit shall be ineligible to receive the permits provided for in this chapter. Permits shall be issued upon payment of all required fees, and after a final fire and building safety inspection conducted by the City. Permits shall be on-going unless revoked pursuant to this chapter.

7.100.090 Permit Approval and Operating Conditions.

Any permit issued pursuant to this chapter shall include a prohibited activity checklist acknowledging each prohibited activity set forth in section 7.100.075, to be signed by each Manager, with an obligation to refrain from such activity. In addition, each permittee shall perform all terms as described in its application and continually comply with all of the following conditions of operation, provided that additional conditions may be imposed as necessary to preserve the public health, safety, and welfare:

A. The Property satisfies all location requirements as set forth in this chapter, and its operations as described in its initial application.

B. Exterior building and parking area lighting at the property are in compliance with initial application, as approved, and all applicable provisions of this Code, including property maintenance ordinance. Sidewalks within 100 feet adjacent to the building and parking lot will be maintained free of debris, litter and trash. To the extent new building improvements are proposed in the future, permittee must submit all required applications.

C. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry; equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and comply with all applicable Building and Fire Code provisions.

D. The Property provides a sufficient odor-absorbing ventilation and exhaust system so that odor generated inside the property is not detected outside the property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the Medical Marijuana Dispensary.

E. The Property is monitored at all times, inside and outside of premises, by closed-circuit television. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the property. The camera and recording system must be able to produce recordings at the request of the Police Department. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

F. The Property has a centrally-monitored fire and burglar alarm system, and adequate lighting.

G. A sign is posted in a conspicuous location inside the property advising:

1. The diversion of Marijuana for non-medical purposes is a violation of State law.

2. The use of Marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

3. Loitering at the location of a Medical Marijuana Dispensary for an illegal purpose is prohibited by California Penal Code section 647(h).

4. The Medical Marijuana Dispensary has obtained all applicable permits, is in compliance with Chapter 5.05 of the Vallejo Municipal Code, and demonstrates the ability to maintain accurate records and remit taxes and fees in accordance with all city and state requirements.

5. The name and address of the agent for service of process for the medical marijuana dispensary. This information shall be posted on the property and furnished to any person who requests it.

H. Each Medical Marijuana Dispensary distributing edible Marijuana or other manufactured infused products for the sole consumption by Qualified Patients of the Medical Marijuana Dispensary shall ensure that the products are manufactured, packaged and labeled in compliance with all applicable state and local laws.

I. No Medical Marijuana Dispensary shall operate for profit. All transactions, including but not limited to cash or in-kind contributions, reimbursement or compensation, shall be fully documented.

J. Prior to distributing any crop, batch or bundle of Marijuana that it cultivates or acquires for distribution or any edible medical marijuana or other manufactured infused products, a Medical Marijuana Dispensary shall submit samples of that crop, batch or bundle to an independent laboratory to be tested using standard analytical methodology for the presence of mold, pesticides, and other additives or adulterants that could be harmful if ingested or applied topically. The laboratory shall be from a list maintained by the Vallejo Police Department. The Marijuana shall not be distributed or consumed before laboratory results demonstrate that it is safe for consumption. Laboratory results shall be maintained by the Medical Marijuana Dispensary for a period of at least two (2) years, and provided to the City for review upon request.

K. Each employee or Manager must undergo, and pay for, prior to employment or becoming a Manager, and at least once a year, or at the request of the Vallejo Police

Department, a summary criminal history check ("LiveScan") conducted at the direction of the Vallejo Police Department demonstrating that there are no pending charges or convictions for any crimes within the previous 10 years, and that the individual is not currently on deferred entry of judgment or diversion for the possession, sale or distribution of a controlled substance. This summary criminal history pre-employment check is also an on-going requirement for all employees and Managers.

L. As a condition of the permit, each Medical Marijuana Dispensary shall ensure that none of the activities enumerated on the prohibited activities checklist occur at the site.

M. All marijuana products will be in a bag or container which is labeled with the following: patient's name, dispensing date, name and address of dispensary, product must be used as recommended, must be kept out of the reach of children, product users must not operate heavy machinery while under the influence of marijuana, sale or transfer of product to non-patients is prohibited and that product is intended for medical use only.

N. A manager will be present in the Medical Marijuana Dispensary at all hours of operation.

7.100.100 Permit Non-Transferable and Revocable.

A. A Medical Marijuana Dispensary permit is revocable for violation of any of the conditions enumerated or for non-payment of taxes or applicable fees.

B. A Medical Marijuana Dispensary permit issued pursuant to this chapter shall become null and void upon the cessation of the Medical Marijuana Dispensary, the unauthorized relocation of the Medical Marijuana Dispensary to a different property, the revocation of the permit for violating one or more of the requirements set forth in this ordinance, or the repeal of this chapter.

C. The following shall be deemed an unauthorized change in location if undertaken without approval of a permit modification in accordance with section 7.100.110:

1. Any relocation or expansion that includes a separate piece of property or parcel of land from the initially permitted property.

2. Any expansion of the initially permitted property which represents a greater than fifty (50) percent increase in the square footage of occupancy or in the square footage that is open to the public.

D. The activity by a permittee immunized by this chapter shall be limited to those activities expressly indicated on the Medical Marijuana Dispensary permit and in the application materials.

E. The holder of a Medical Marijuana Dispensary permit shall not allow others to use or rent the permitted property.

F. No permit may be sold or transferred.

7.100.105 Revocation Process.

This permit may be revoked by the Chief of Police or his or her designee, for non-compliance of the requirements set forth in this chapter. The City shall send written notice to the permittee of the revocation for failure to adhere to any of the requirements of this chapter, including the requirement to pay the mandatory permit fees. Any appeal of such notice shall be submitted within fifteen (15) days of the notice of revocation, and shall be directed to the Chief of Police and heard by a hearing officer appointed by the City Manager and pursuant to the procedures set forth in section 5.04.235 of the Vallejo Municipal Code. The appeal shall include a copy of all documents which the appellant will use to present its appeal, as well as a statement of the reasons for the appeal, and be accompanied by the appropriate appeal fee. Incomplete appeal submissions will be returned to the applicant unprocessed. No appeal of the revocation for non-payment of permit fees shall be granted unless and until the appellant remits the full amount of the delinquent permit fees, including any late penalties or interest imposed by ordinance. A hearing on the appeal shall be set by the City within thirty (30) days of the receipt of a complete application for appeal.

7.100.110 Modification of permit conditions.

A. A Medical Marijuana Dispensary may request a modification of permit condition(s) by submitting a written request to the Chief of Police stating the condition(s) to be modified and the reason(s) for the request. A request must be accompanied by the permit modification fee as set forth in a City Council resolution. The request should be accompanied by all supporting documents. If the request for modification is to relocate, the request must be accompanied by a request for notice to all neighbors within five hundred (500) feet of the proposed new location. The request for notice shall be forwarded to the Planning Manager, who will process the notice and receive any comments in support or opposition to the relocation by the date set forth in the notice.

B. Upon receipt of a request to modify permit condition(s), any required documents, and payment of the required fee, the Chief of Police, or his or her designee, shall determine whether to grant or deny the request.

C. A decision of Chief of Police, or his or her designee, to grant or deny a permit modification shall be appealable to a hearing officer in accord with the procedures established in section 5.04.235 of the Vallejo Municipal Code. A hearing on the appeal shall be set within thirty (30) days of the receipt of a complete application for appeal.

7.100.120 Maintenance of Records.

A. A Medical Marijuana Dispensary shall maintain the following accurate and truthful records on the Property:

1. The full name, address, and telephone number(s) of the owner, landlord and/or lessee of the Property.

2. The full name, address, and telephone number(s) of each Manager and the exact nature of the participation in the management of the Medical Marijuana Dispensary.

3. The full name, address, and telephone number(s) of each Medical Marijuana Dispensary member and Manager who participates in the collective cultivation of Marijuana.

4. The current address of all sites at which Marijuana is cultivated on behalf of the Medical Marijuana Dispensary.

5. The full name, date of birth, residential address, and telephone number(s) of each Medical Marijuana Dispensary member and Manager; the date each joined; the exact nature of each member's and Manager's participation in the Medical Marijuana Dispensary; and the status of each member and Manager as a Qualified Patient or Primary Caregiver.

6. A written accounting of all cash and in-kind contributions, reimbursements, and compensation provided by or to the Managers and members to or from the Medical Marijuana Dispensary, and all expenditures and costs incurred by the Medical Marijuana Dispensary.

7. An inventory record documenting the dates and amounts of Marijuana stored on the property.

8. Proof of a valid Medical Marijuana Dispensary permit issued by the Chief of Police in conformance with this chapter.

9. Copies of the prohibited activity checklist, available from the Vallejo Police Department, containing a statement dated and signed by each Medical Marijuana Dispensary member and Manager, under penalty of perjury, that he or she has read, understands and shall not engage in the prohibited activity.

10. Evidence of: (a) verification that all edible Marijuana and other manufactured infused products are manufactured, packaged, and labeled in compliance with all applicable state and local laws; and (b) laboratory testing as required by section 7.100.090K.

B. These records shall be maintained by the Medical Marijuana Dispensary for a period of five (5) years and shall be made available by the collective to the City upon request, subject to the authority set forth in section 7.100.130.

7.100.130 Inspection Authority.

City representatives may enter and inspect the property of every Medical Marijuana Dispensary between the hours of nine o'clock (9:00) a.m. and seven o'clock (7:00) p.m., or at any reasonable time to ensure compliance and enforcement of the provisions of this chapter. It is unlawful for any Property owner, landlord, lessee, Medical Marijuana Dispensary member or Manager or any other person having any responsibility over the operation of the Medical Marijuana Dispensary to refuse to allow, impede, obstruct or interfere with an inspection.

7.100.140 Existing Medical Marijuana Dispensaries.

Existing Medical Marijuana Dispensaries are prohibited. Any existing Medical Marijuana Dispensary, operator, establishment, or provider operating any existing Medical

Marijuana Dispensary on the date this ordinance is adopted must cease operations immediately, and no later than April 21, 2015, until such time, if any, when it complies fully with the requirements of this chapter. Any Medical Marijuana Dispensary, operator, establishment or provider that operates without a permit shall be deemed a public nuisance.

7.100.150 Enforcement.

A. Any person violating any provision of this chapter or misrepresenting any material fact in procuring the permit herein provided for shall be deemed guilty of a misdemeanor punishable by a fine of not more than one-thousand dollars (\$1,000) or by imprisonment for not more than twelve (12) months, or by both such fine and imprisonment.

B. Any person who engages in any Medical Marijuana Dispensary operations without first obtaining a permit, or after a permit has been denied, surrendered, relinquished, declared null and void, or has been revoked, and before a new permit is issued, shall be subject to civil prosecution and fines of up to one-thousand dollars (\$1,000) per day for each day of unpermitted operation.

C. As a nuisance per se, any violation of this chapter shall be subject to injunctive relief, revocation of the certificate of occupancy for the property, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state law for any violation committed by the Medical Marijuana Dispensary, its Managers, members or any person related or associated with the Medical Marijuana Dispensary.

D. Any violation of the terms and conditions of the Medical Marijuana Dispensary, of this chapter, including failure to remit the quarterly annual permit fee required to maintain the permit and/or failure to remit the quarterly gross receipt taxes, or of applicable local or state laws including regulations shall be grounds for permit revocation.

7.100.160 Limited Severability.

If any provision or clause of section 7.100.030 of this chapter is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity shall invalidate every other provision, clause and application of section 7.100.030 of this chapter, and to this end the provisions and clauses of section 7.100.030 of this chapter are declared to be inseverable.

SECTION 2. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

FIRST READ at a regular meeting of the Council of the City of Vallejo held on the 24th day of March, 2015, with a second reading at a regular meeting of the Council of the City of Vallejo held on the 12th day of May, 2015 and finally passed and adopted at a regular meeting of the Council held on the 26th day of May, 2015 by the following vote:

AYES: Mayor Davis, Vice Mayor Malgapo, Councilmembers Dew-Costa,
Miessner, and Verder-Aliga
NOES: Councilmembers McConnell and Sampayan
ABSTAIN: None
ABSENT: None


OSBY DAVIS, MAYOR

ATTEST:


DAWN G. ABRAHAMSON, CITY CLERK
May 29, 2015