

CHAPTER 9.30: MEDICAL MARIJUANA DISPENSARIES

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§ 9.30.010 PURPOSE AND INTENT.

It is the purpose and intent of this ordinance to regulate Medical Marijuana Dispensaries in order to promote the health, safety, morals, and general welfare of the residents and businesses within the City. It is not the intent nor effect of this ordinance to condone or legitimize the use of marijuana. (Ord. 850, passed - -2005)

§ 9.30.020 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPLICANT. A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a medical marijuana dispensary.

CHIEF OF POLICE. The Chief of Police of the City of Fort Bragg or the authorized representatives thereof.

CHURCH. A structure or leased portion of a structure which is used primarily for religious worship and related religious activities.

CONTROLLED SUBSTANCES. A drug, substance, or immediate precursor which is listed in any schedule in Cal. Health and Safety Code §§ 11054, 11055, 11056, 11057, or 11058.

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DRUG PARAPHERNALIA. Shall have the same definition as Cal. Health and Safety Code § 11364.5, and as may be amended.

IDENTIFICATION CARD. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as may be amended.

MEDICAL MARIJUANA DISPENSARY or **DISPENSARY.** Any facility or location where medical marijuana is made available to and/or distributed by or to two (2) or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with Cal. Health and Safety Code §§ 11362.5 *et seq.* A **MEDICAL MARIJUANA DISPENSARY** shall not include the following uses, as long as the location of the uses are otherwise regulated by this code or applicable law: a clinic licensed pursuant to Cal. Health and Safety Code Chapter 1 of Division 2, a health care facility licensed pursuant to Cal. Health and Safety Code Chapter 2 of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Cal. Health and Safety Code Chapter 3.01 of Division 2, a residential care facility for the elderly licensed pursuant to Cal. Health and Safety Code Chapter 3.2 of Division 2, a residential hospice, or a home health agency licensed pursuant to Cal. Health and Safety Code Chapter 8 of Division 2, as long as any such use complies strictly with applicable law, including, but not limited to, Cal. Health and Safety Code §§ 11362.5 *et seq.*

PERMITTEE. The person to whom a medical marijuana dispensary permit is issued.

PERSON WITH AN IDENTIFICATION CARD. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as may be amended.

PRIMARY CAREGIVER. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as may be amended.

QUALIFIED PATIENT. Shall have the same definition as Cal. Health and Safety Code §§ 11362.5 *et seq.*, and as may be amended.

SCHOOL. An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code, or any child or day care facility. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education, but it does not include a vocational or professional institution of higher education, including a community or junior college, college, or university.

(Ord. 850, passed - -2005; Am. Ord. 870, § 14, passed 8-25-2008)

§ 9.30.030 PERMIT REQUIRED.

It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City the operation of a medical marijuana

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dispensary unless the person first obtains and continues to maintain in full force and effect a medical marijuana dispensary permit from the City as herein required.

(Ord. 850, passed - -2005)

§ 9.30.040 APPLICATIONS.

A. All applications for medical marijuana dispensary permits shall be filed with the Chief of Police. The application shall be made under penalty of perjury.

B. Any application for a medical marijuana dispensary permit shall include the following information:

1. The full name, present address, and telephone number of the applicant;
2. The address to which notice of action on the application and all other notices are to be mailed;
3. Previous addresses for the past five (5) years immediately prior to the present address of the applicant;
4. Written proof that the applicant is over the age of 18 years of age;
5. Photographs for identification purposes (photographs shall be taken by the Police Department);
6. The medical marijuana dispensary business history of the applicant, including whether the person, in previously operating in this or another City, county, or state under permit has had the permit revoked or suspended, the reason therefore;
7. The name or names of the person or persons having the management or supervision of applicant's business;
8. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of the offense(s), and the sentence(s) received therefore;
9. The names of all employees, independent contractors, and other persons who will work at the medical marijuana dispensary;
10. The proposed security arrangements for insuring the safety of persons and to protect the premises from criminal activity;
11. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the medical marijuana dispensary;
12. An accurate straight-line drawing prepared within 30 days prior to application depicting the building and the portion thereof to be occupied by the medical marijuana dispensary:
 - a. The property line of any other medical marijuana dispensary within 500 feet of the primary entrance of the medical marijuana dispensary for which a permit is requested; and
 - b. The property lines of any church, school, park, or residential zone or use within 500 feet of the primary entrance of the medical marijuana dispensary.
13. Authorization for the City, its agents and employees to seek verification of the information contained within the application; and
14. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

C. If the applicant has completed the application improperly, or if the application is incomplete, the Chief of Police shall, within ten (10) days of receipt of the original application, notify the applicant

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of the fact and, on request of the applicant, grant the applicant an extension of time of ten (10) days or more to submit a complete application.

D. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a medical marijuana dispensary permit.

(Ord. 850, passed - -2005)

§ 9.30.050 TIME LIMIT FOR FILING APPLICATION FOR PERMIT.

All persons who possess an outstanding business license heretofore issued for the operation of a medical marijuana dispensary, must apply for and obtain a medical marijuana dispensary permit within 90 days of the effective date of this ordinance. Continued operation of a medical marijuana dispensary without a permit more than 90 days after the effective date of this ordinance shall constitute a violation of this chapter.

(Ord. 850, passed - -2005)

§ 9.30.060 TERM OF PERMITS AND RENEWALS.

Medical marijuana dispensary permits issued under this chapter shall expire one (1) year following their issuance. Medical marijuana dispensary permits shall be renewed by the Chief of Police for additional one (1)-year periods upon application by the permittee, unless the permit is suspended or revoked subject to § 9.30.180. Applications for renewal shall be made at least 45 days before the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in § 9.30.070. When made less than 45 days before the expiration date, the expiration of the permit will not be stayed. Applications for renewal shall be acted on as provided herein for action upon applications for permits.

(Ord. 850, passed - -2005)

§ 9.30.070 FEES.

Every application for a medical marijuana dispensary use permit or renewal shall be accompanied by a nonrefundable fee, as established by resolution adopted by the City Council from time to time. This application or renewal fee is in addition to fingerprinting, photographing, and background check costs and shall be in addition to any other permit fee imposed by this code or other governmental agencies. Fingerprinting, photographing, and background check fees will be as established by resolution adopted by the City Council from time to time.

(Ord. 850, passed - -2005)

§ 9.30.080 INVESTIGATION AND ACTION ON APPLICATION.

After the making and filing of the application for the medical marijuana dispensary use permit and the payment of the fees, the Chief of Police shall conduct a background check of the applicant and all employees and conduct an investigation of the application. After the background checks and investigation are complete, and in no case later than 45 days after receipt of a completed application, the Chief of Police shall either formally accept or reject the application in accordance with the provisions of this chapter.

(Ord. 850, passed - -2005)

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§ 9.30.090 GROUNDS FOR REJECTION OF MEDICAL MARIJUANA DISPENSARY PERMIT APPLICATION.

The grounds for rejection of a medical marijuana permit application shall be one (1) or more of the following:

A. The business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation;

B. The applicant has violated any local or state law, statute, rule, or regulation respecting the medical marijuana business;

C. The applicant has knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit;

D. The applicant, his or her agent or employees, or any person who is exercising managerial authority on behalf of the applicant has been convicted of a felony, or of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution, or similar activities related to controlled substances, with the exception of marijuana related offenses for which the conviction occurred prior to passage of Proposition 215. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere;

E. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices;

F. An applicant is under 18 years of age;

G. The medical marijuana dispensary does not comply with the Title 18 (Land Use and Development Code); and/or

H. The required application or renewal fees have not been paid.

(Ord. 850, passed - -2005)

§ 9.30.100 APPEAL FROM CHIEF OF POLICE DECISION TO REJECT APPLICATION.

The Chief of Police shall cause a written notice of his or her decision to reject a medical marijuana dispensary permit application to be mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested, to the address provided by the applicant for sending of notices. An applicant aggrieved by the Chief of Police's decision to reject an application may appeal the decision in accordance with the procedures described in Chapter 1.08. If an appeal is not taken within such time, the Chief of Police's decision shall be final.

(Ord. 900, § 11, passed 12-12-2011)

§ 9.30.110 PROCESSING OF MEDICAL MARIJUANA DISPENSARY PERMIT.

If an application is not rejected by the Chief of Police, it shall be forwarded to the Community Development Department for processing using the same permit process and requirements for a use permit as defined in Title 17 (Coastal Land Use and Development Code) and Title 18 (Land Use and Development Code).

(Ord. 850, passed - -2005; Am. Ord. 900, § 12, passed 12-12-2011)

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§ 9.30.120 OPERATING REQUIREMENTS.

A medical marijuana dispensary shall meet the following operating requirements for the duration of the use.

A. A medical marijuana dispensary shall be open for business only between the hours of 8:00 a.m. and 6:00 p.m. on any particular day.

B. A medical marijuana dispensary shall maintain a current register of the names of all employees currently employed by the dispensary.

C. A medical marijuana dispensary shall maintain records of all patients and primary caregivers using only the identification card number issued by the county, or its agent, pursuant to Cal. Health and Safety Code §§ 11362.71 *et seq.*, as a protection of the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.

D. The building entrance to a medical marijuana dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

E. A medical marijuana dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or primary caregiver. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of marijuana consistent with the patient's needs as prescribed by the recommending doctor.

F. No marijuana shall be smoked, ingested, or otherwise consumed on the premises of the dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings. The building entrance to a medical marijuana dispensary shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming marijuana on the premises or in the vicinity of the dispensary is prohibited.

G. No marijuana shall be grown or cultivated on the premises of the dispensary.

H. No medical marijuana dispensary shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the dispensary.

I. No medical marijuana dispensary shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and conditions consistent with this chapter and applicable law.

J. No accessory uses shall be permitted in conjunction with a medical marijuana dispensary.

K. No medical marijuana dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical marijuana.

L. A medical marijuana dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from criminal activity.

M. A medical marijuana dispensary shall provide the Chief of Police with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the dispensary. The dispensary shall make every good faith effort to encourage residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police or planning departments.

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N. A medical marijuana dispensary shall meet all the operating criteria for the dispensing of medical marijuana as is required pursuant to Cal. Health and Safety Code §§ 11362.5 *et seq.*

O. Signage will be limited to one (1) sign on premises not to exceed four (4) square feet.
(Ord. 850, passed - -2005)

§ 9.30.130 MINORS.

A. It shall be unlawful for any permittee, operator, or other person in charge of any medical marijuana dispensary to employ any person who is not at least 18 years of age.

B. Persons under the age of 18 shall not be allowed on the premises of a medical marijuana dispensary unless they are a qualified patient or a primary caregiver and they are in the presence of their parent or legal guardian.

(Ord. 850, passed - -2005)

§ 9.30.140 DISPLAY OF PERMIT.

Every medical marijuana dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for the medical marijuana dispensary in a conspicuous place so that the same may be readily seen by all persons entering the medical marijuana dispensary.

(Ord. 850, passed - -2005)

§ 9.30.150 REGISTRATION OF NEW EMPLOYEES.

A. As a further condition of approval of every medical marijuana dispensary permit issued pursuant to this chapter, every owner or operator shall register every employee with the Police Department within five (5) business days of the commencement of the employee's period of employment at the medical marijuana dispensary, in order to provide necessary information to conduct background checks.

B. Each employee shall be required to provide two (2) recent color passport-quality photographs and, at the discretion of the Chief of Police, shall allow himself or herself to be fingerprinted by the Police Department for purposes of identification.

C. Failure to register each new employee within five (5) days of the commencement of employment, or to maintain a current register of the names of all employees shall be deemed a violation of the conditions of the permit and may be considered grounds for suspension or revocation of the permit.

(Ord. 850, passed - -2005)

§ 9.30.160 TRANSFER OF PERMITS.

A. A permittee shall not operate a medical marijuana dispensary under the authority of a medical marijuana dispensary permit at any place other than the address of the medical marijuana dispensary stated in the application for the permit.

B. A permittee shall not transfer ownership or control of a medical marijuana dispensary or transfer a medical marijuana dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Chief of Police stating that the transferee is now the permittee. The amendment may be obtained only if the transferee files an application with the Chief of Police in

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accordance with § 9.30.040, accompanies the application with a transfer fee in an amount set by resolution of the City Council, and the Chief of Police determines in accordance with § 9.30.090 that the transferee would be entitled to the issuance of an original permit.

C. No permit may be transferred when the Chief of Police has notified the permittee that the permit has been or may be suspended or revoked.

D. Any attempt to transfer a permit either directly or indirectly in violation of this section is hereby declared void, and the permit shall be deemed revoked.

(Ord. 850, passed - -2005)

§ 9.30.170 SUSPENSION AND REVOCATION — NOTICE.

A. Any permit issued under the terms of this chapter may be suspended or revoked by the Chief of Police when it shall appear to him or her that the permittee has committed any one (1) or more of the acts or omissions constituting the grounds for suspension or revocation under this chapter.

B. No permit shall be revoked or suspended by virtue of this section until a hearing shall have been held by the Chief of Police. Written notice of the time and place of the hearing shall be served upon the person to whom the permit was granted at least five (5) days prior to the date set for the hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery to the permittee, or by depositing it in the U.S. mail in a sealed envelope, postage prepaid, addressed to the permittee at the address provided by the permittee for sending of notices.

(Ord. 850, passed - -2005)

§ 9.30.180 SUSPENSION AND REVOCATION — GROUNDS.

It shall be a ground for suspension or revocation of a permit if any permittee or person, his or her agent, or employee:

A. Does any act which violates any of the grounds set forth in § 9.30.090 which sets forth the grounds for rejection of an application for a permit for the medical marijuana dispensary;

B. Violates any other provision of this chapter or any local or state law, statute, rule, or regulation relating to his or her permitted activity;

C. Conducts the permitted business in a manner contrary to the peace, health, or safety of the public;

D. Fails to take reasonable measures to control the establishment's patrons' conduct resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic-control problems, or creation of a public or private nuisance, or obstruction of the business operation of another business; or

E. Violates or fails to comply with the terms and conditions of the permit.

(Ord. 850, passed - -2005)

§ 9.30.190 SUSPENSION AND REVOCATION — APPEALS.

Any permittee aggrieved by the decision of the Chief of Police in suspending or revoking a permit may, within ten (10) calendar days, appeal the decision in accordance with the procedures described in Chapter 1.08. If a decision of the Chief of Police to suspend or revoke a permit is not appealed within ten (10) calendar days, the decision shall be final.

(Ord. 900, § 13, passed 12-12-2011)

§ 9.30.200 SUSPENSION OR REVOCATION WITHOUT HEARING.

If any person holding a permit or acting under the authority of the permit under this article is

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convicted of a misdemeanor in any court for the violation of any law which relates to his or her permit, the Chief of Police shall revoke the permit forthwith without any further action thereof, other than giving notice of revocation to the permittee. If a permit is summarily revoked pursuant to the provisions of this section, a permittee may, within ten (10) calendar days, appeal the revocation in accordance with the procedures described in Chapter 1.08. During the pendency of the appeal, the permit shall be deemed suspended. If the appeal is not taken within ten (10) days, the decision of the Chief of Police shall be final.

(Ord. 900, § 14, passed 12-12-2011)

§ 9.30.210 SEPARATE OFFENSE FOR EACH DAY.

Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized accordingly.

(Ord. 850, passed - -2005)

§ 9.30.220 PUBLIC NUISANCE.

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to Chapter 6.12 of the Fort Bragg Municipal Code.

(Ord. 850, passed - -2005)

§ 9.30.230 CRIMINAL PENALTIES.

Any person who violates, causes, or permits another person to violate any provision of this chapter commits a misdemeanor.

(Ord. 850, passed - -2005)

§ 9.30.240 CIVIL INJUNCTION.

The violation of any provision of this chapter shall be and is hereby declared to be a public nuisance and contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.

(Ord. 850, passed - -2005)

§ 9.30.250 ADMINISTRATIVE REMEDIES.

In addition to the civil remedies and criminal penalties set forth above, any person that violates the provisions of this chapter may be subject to administrative remedies, as set forth by City ordinance.

(Ord. 850, passed - -2005)

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§ 9.30.270 SEVERABILITY.

If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held by a court of competent jurisdiction to be invalid or unconstitutional, the decision shall not affect the validity of the remaining portions of the ordinance. The City Council of the City hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that one (1) or more sections, subsections, sentences, clauses, or phrases may be held invalid or unconstitutional.

(Ord. 850, passed - -2005)