

ORDINANCE NO. _____
BOARD OF SUPERVISORS, COUNTY OF SAN MATEO,
STATE OF CALIFORNIA

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**AN ORDINANCE ADDING CHAPTER 5.148 TO TITLE 5 OF THE SAN MATEO
COUNTY ORDINANCE CODE, RELATING TO REGULATION OF
COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA**

The Board of Supervisors of the County of San Mateo, State of California,
ORDAINS as follows

SECTION 1. Chapter 5.148 is hereby added to Title 5 (Business Regulations) of the San Mateo County Ordinance Code, to read as follows:

Chapter 5.148 Regulation of Collective Cultivation and Distribution of Medical Marijuana

5.148.010 Purpose.

- A. In 1996, the voters of the State of California approved Proposition 215, “the Compassionate Use Act”, which was intended to permit cultivation and possession of medical marijuana by single patient, or the patient’s caregiver, for the patient’s personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana; and

- B. In 2004, the State Legislature enacted Senate Bill 420, “the Medical Marijuana Program Act”, to clarify the scope of the Compassionate Use Act and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to the crimes of possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage or distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance; and

- C. The Medical Marijuana Program Act defines a “primary caregiver” as an individual who is designated by a qualified patient or by a person with an identification card, and who has consistently assumed responsibility for the housing, health, or safety of that patient or person; and

- D. The Medical Marijuana Program Act allows cities and counties to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

- E. In August 2008, the California Attorney General issued guidelines that clarify the state's laws governing medical marijuana, and provided guidelines for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets; and
- F. This Chapter is enacted, pursuant to the Compassionate Use Act, and the Medical Marijuana Program Act, the Guidelines issued by the California Attorney General, and the County's constitutional police power to protect the health, safety and welfare of the residents of the County of San Mateo; and
- G. Since the sale of medical marijuana is unlawful, it is necessary to place restrictions on the exterior appearance of medical marijuana collectives in order to prevent the misunderstanding that collectives are places where marijuana may be purchased; and
- H. It is the purpose and intent of this chapter to adopt and enforce rules consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines issued by the California Attorney General, which will provide for the health, safety and welfare of the public by regulating the collective cultivation and possession of medical marijuana within the unincorporated area of the County of San Mateo, consistent with state law; and
- I. This Chapter is intended to be consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines issued by the California Attorney General, and towards that end, it is not intended to and does not criminalize activity which is otherwise permitted under state law, and it is not intended to and does not authorize conduct that is otherwise prohibited by state law, or to prohibit conduct that is authorized by state law.

5.148.020 Definitions.

- (a) "Medical marijuana collective" or "collective" means a facility or location at which qualified patients, persons with identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, associate within the unincorporated area of the County of San Mateo in order collectively or cooperatively to cultivate and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775.
- (b) "Primary caregiver" shall have the same meaning as provided in Health & Safety Code section 11362.7.

5.148.030 Requirement that Primary Caregivers Create and Maintain Patient List.

Each and every primary caregiver, as that term is defined by state law, is required to create and maintain an up to date list of qualified patients or persons with identification cards for whom the caregiver provides service. The list must immediately be provided

to the Sheriff or the Sheriff's designee upon request, for the purposes of verifying that the primary caregiver possesses no more than the maximum quantity per patient of medical marijuana authorized by state law, multiplied by the number of patients for whom the primary caregiver is providing service.

5.148.040 Requirement of and Application for County License.

- (a) Medical marijuana collectives are required to obtain a license to operate within the unincorporated area of the County of San Mateo. The license procedure shall be as set forth in Chapter 5.04 of this Code, and in addition, shall be subject to the specific requirements and regulations set forth in this Chapter.

In addition to the information ordinarily required in an application for a license, an application for a license under this Chapter shall include information that will enable the license board to make a finding that the collective meets the criteria that are included in the state law definition of a medical marijuana collective.

In addition, the application shall also include:

- (1) a warning that operators, employees, and members of facilities where medical marijuana is collectively cultivated may be subject to prosecution under federal laws, and
 - (2) the applicant's waiver and release of the County from any and all legal liability related to or arising from the application for a license, the issuance of the license, or the enforcement of the conditions of the license, and/or the operation of any facility at which where medical marijuana is collectively cultivated.
- (b) In addition to the findings ordinarily required for a County License, the approval of a County License for a medical marijuana collective shall require the following specific findings:
 - (1) That the requested use at the proposed location will not adversely affect the economic welfare of the nearby community;
 - (2) That the requested use at the proposed location will not adversely affect the use of any property used for a school, playground, park, youth facility, child care facility, place of religious worship, or library;
 - (3) That the requested use at the proposed location is sufficiently buffered in relation to any residential area in the immediate vicinity so as not to adversely affect said area; and

- (4) That the exterior appearance of the structure is compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area.

5.148.050 Conditions of License.

- (a) The County License will include, at a minimum, the following conditions:
 - (1) Only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana collectively or associate for the purpose of doing so;
 - (2) Absolutely no advertising of marijuana is allowed at any time;
 - (3) Exterior signage is limited to site addressing only;
 - (4) The collective site will include an alarm system that is monitored at all times for security purposes;
 - (5) A centrally monitored alarm system is required;
 - (6) Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty feet;
 - (7) Windows and roof hatches will be secured with bars on the windows so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency;
 - (8) No cultivated marijuana or dried marijuana product may be visible from the building exterior;
 - (9) The activities that may be conducted at a licensed collective are limited to cultivation and storage of marijuana for personal use and preparation of cultivated marijuana for personal use, such as drying and processing;
 - (10) No cooking, sale, preparation, or manufacturing of marijuana enhanced or edible or drinkable products, including but not limited to cookies, candy, drinks, or brownies is allowed;

- (11) No sales of cultivated marijuana are allowed on site;
- (12) No persons under the age of eighteen are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian;
- (13) The quantity of marijuana located at the facility where medical marijuana is collectively cultivated may not exceed the maximum quantity per patient of medical marijuana authorized by state law, multiplied by the number of participants who are served by the collective, consistent with the regulations set forth in this Chapter;
- (14) The Sheriff may inspect the collective at any reasonable time to ensure that the amounts of medical marijuana on site conform to this Chapter and state law;
- (15) No individual or group may cultivate or distribute marijuana for profit;
- (16) No money or any other thing of value shall be exchanged for medical marijuana, with the sole exception that a primary caregiver, as defined herein, who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under this Chapter;
- (17) Marijuana cultivated in a licensed collective must be secured from public access, and not be visible to the public domain. All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and conform to specified Security Standards, as to locks, deadbolts and additional security measures;
- (18) This Chapter does not authorize the consumption, use, or smoking of marijuana in the parking areas of a collective, or in vehicles located at or near or under said collective, or under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by state law;
- (19) The medical marijuana collective shall comply with the all applicable building, zoning, and environmental requirements set forth in this Ordinance Code or state law;
- (20) The medical marijuana collective may not be operated or located in or within 1000 feet of the grounds of a school, recreation center, or youth center;

- (21) The medical marijuana collective may not employ any persons who are felons or who are currently on probation.

- (b) The Sheriff reserves the right to make additional security and safety conditions, if necessary, upon receipt of detailed/revised building plans.

5.148.060 Revocation of License.

This license may be revoked for any violation of state law or this Chapter, or for failure to comply with the conditions listed on said license. The revocation shall comply with the procedural requirements of Chapter 5.04 of this Code.

5.148.070 Enforcement of Chapter

The Sheriff or the Sheriff's designee shall have the duty and responsibility to investigate and enforce any violations of this chapter, and to report and enforce against any violations of the conditions of approval attached to licenses required by and obtained pursuant to this Chapter. The Sheriff shall provide a report of all violations of these provisions to the License Board, for possible revocation of the license obtained under this Chapter, pursuant to the use revocation procedures contained in Chapter 5.04 of this code.

The Sheriff or the Sheriff's designee shall have the duty and responsibility of processing and referring to the license board all license applications using the minimum guidelines established by this Chapter consistent with the license procedure established by Chapter 5.04 of this code. The Sheriff or Sheriff's designee shall also have the duty and responsibility to consider the initiation of modification or revocation proceedings in accordance with the procedures outlined in Chapter 5.04 of this code.

5.148.080 Marijuana Produced for Individual Residential On-Site Consumption.

This Chapter does not apply to individual cultivation of marijuana for consumption or use of an individual at his or her residence, or for consumption by another individual or individuals regularly residing at said residence, if such consumption is otherwise permitted by state law.

5.148.090 Violation and Penalties.

Any violation of this chapter shall be deemed a misdemeanor. Any violation of this chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the County for abatement of public nuisances.

5.48.100 Severability.

If any section, subsection, sentence, clause, or phrase of this Chapter, is for any reason held to be invalid, unlawful, or unconstitutional, such invalidity or unconstitutionality shall not affect the validity, lawfulness, or constitutionality of any or all other portions of this Chapter.

SECTION 2. This Ordinance shall be effective sixty (60) days from the passage date thereof.

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