

ORDINANCE NO. 2004-06

AN ORDINANCE OF THE CITY OF CITRUS HEIGHTS
AMENDING THE CITRUS HEIGHTS MUNICIPAL CODE TO ADD
CHAPTER 47 IMPOSING OPERATIONAL RESTRICTIONS ON MEDICAL CANNABIS
DISPENSARIES AND REQUIRING A PERMIT TO
OPERATE A MEDICAL CANNABIS DISPENSARY AND AMENDING THE CITRUS
HEIGHTS ZONING CODE TO ADD MEDICAL CANNABIS DISPENSARIES AS A
PERMITTED USE IN CERTAIN ZONING DISTRICTS

WHEREAS, the voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"); and

WHEREAS, the intent of Proposition 215 was to enable persons who are in need of cannabis for specified medical purposes to obtain and use it under limited, specified circumstances; and

WHEREAS, the State enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420; and

WHEREAS, to protect the public health, safety, and welfare, it is the desire of the City Council to modify the municipal code consistent with SB 420, regarding the location and operation of Medical Cannabis Dispensaries; and

WHEREAS, it is the City Council's intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act or other applicable law; and

WHEREAS, it is the City Council's intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of cannabis for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal; and

WHEREAS, pursuant to Health and Safety Code Section 11362.7 et seq., the State Department of Health shall be responsible for establishing and maintaining a voluntary identification card program; and

WHEREAS, Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the manner set forth in Section 11362.71 et seq.; and

WHEREAS, this Ordinance is hereby found to be categorically exempt from

environmental review pursuant to CEQA Guidelines Section 15061(b)(3),

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CITRUS HEIGHTS:

SECTION 1. Chapter 47 of the Citrus Heights Municipal Code is amended to read as follows:

CHAPTER 47

MEDICAL CANNABIS REGULATIONS

47-1 Purpose and Intent

It is the purpose and intent of this chapter to regulate availability and/or the distribution, by whatever means, of medical cannabis within the city limits.

47-2 Definitions

The following words and phrases, when used in this chapter, shall be construed as defined in this section, unless it is apparent from the context that they have a different meaning:

A. "Medical Cannabis Dispensary" or "Dispensary" means any facility or location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical cannabis to two or more of the following: a qualified patient or a person with an identification card, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety Code Section 11362.7 (d) (2) and (3). The terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.5 et seq. A "Medical Cannabis Dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

B. "City Manager" means the City of Citrus Heights City Manager or the City Manager's designee.

47-3 Enforcement of Chapter

The City Manager shall have the responsibility and duty of enforcement of this Chapter.

47-4 Medical Cannabis Dispensary Permit

A. Prior to initiating operations, and as a continuing prerequisite to conducting

legally valid operations, any person or entity wishing to operate a Medical Cannabis Dispensary shall apply for and receive from the City Manager and Police Chief jointly a Medical Cannabis Dispensary permit, on the terms and conditions set forth herein.

B. The applicant for a Medical Cannabis Dispensary permit shall submit to the City Manager an application for a Medical Cannabis Dispensary permit. The application for a Medical Cannabis Dispensary permit shall be filed on a form and shall contain such information as is requested by the City, including the following:

1. A complete description of the type, nature and extent of the enterprise to be conducted and for which application is made;
2. The address of the location from which the Dispensary for which application is made will be operated;
3. The name and address of the person who owns the Dispensary for which application is made;
4. Such information as is necessary to permit the determinations prescribed by section 47-5.
5. Such other and further information as is deemed necessary to administer this Chapter.

C. Based on the information set forth therein, the City Manager and Police Chief may impose reasonable terms and conditions on the proposed operations, consistent with Health & Safety Code Section 11362.5 et seq. and with public health, safety, and welfare. Such terms and conditions may include, but not be limited to, requirements as to parking, lighting, hours of operation, trash collection and disposal, and security system. Such terms and conditions may be imposed at the time a Dispensary permit is issued, upon renewal of the permit, or at any time during the term of the permit.

D. A Medical Cannabis Dispensary permit shall be valid for only one year. An operator of a Medical Cannabis Dispensary may re-apply for a permit for subsequent year(s).

E. Only one Medical Cannabis Dispensary permit may exist at any one time.

F. The Chief of Police or designee thereof shall conduct a background check of any applicant for a Dispensary permit and report his/her determination on the acceptability of the applicant's background to the City Manager. The City shall not issue a Dispensary permit to any applicant for whom the Police Chief determines the background to be unacceptable. A Dispensary shall have no employees unless such employees involved in transactions relating to the Medical Cannabis Dispensary are primary caregivers meeting all terms and conditions of applicable law, including the Citrus Heights Municipal Code, and for whom the Police Chief determines the background to be acceptable.

G. A Dispensary shall also apply for and maintain a general City business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

47-5 Background Check of Applicant for Dispensary Permit

A. Any applicant for a Dispensary permit shall provide the following information, to enable the Chief of Police, or designee thereof, to perform the background check specified herein:

1. The name, address, phone number, and fingerprints of the applicant.
2. A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted.
3. Such other information as may be required by the City Manager, the Police Chief, or designee thereof consistent with the purposes of this Chapter, the Municipal Code, and applicable law.

B. Upon receipt of the information referenced above, the Chief of Police shall conduct an investigation and shall determine the background of the applicant to be acceptable for the purposes of the Dispensary license, unless the Chief makes a written finding as to any of the following:

1. The applicant failed to provide the information required herein;
2. The applicant failed to submit or otherwise refuses to submit to fingerprinting;
3. The applicant provided false, inaccurate, or otherwise misleading information; or
4. The applicant has committed any act involving dishonesty, fraud or deceit with intent to substantially benefit him or her self, or another, or substantially injure another, or illegal use, possession, distribution or similar action relating to illegal drugs or controlled substances and the Police Chief concludes that, by reason of such crime or act, the applicant would not work in or otherwise operate a Dispensary in a law-abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise illegal practices. Notwithstanding the above, an applicant shall not be denied solely on the basis that the applicant has been convicted of a felony if the applicant has obtained a certificate of rehabilitation under California law or that the applicant has been convicted of a misdemeanor if the applicant has met all applicable requirements of rehabilitation pursuant to California law.

47-6 Contents, Posting and Changes in Status of Permits

A. The Medical Cannabis Dispensary permit shall contain but not be limited to the following:

1. A complete description of the Dispensary authorized by the permit;

2. The name and address of the Dispensary so permitted;
3. The name and address of the owner of the Dispensary; and
4. Any conditions upon which the permit is issued.

B. The permit shall be conspicuously posted at the location of the Dispensary in full public view.

C. Failure of the applicant to comply with all terms and conditions of the Dispensary permits shall be grounds for the revocation.

47-7 Employee Permits

A. It shall be unlawful for a person to work or volunteer in a Medical Cannabis Dispensary as a manager, employee or independent agent and unlawful for the holder of a Medical Cannabis Dispensary permit to allow the person to perform such duties or functions unless the person has first applied for and obtained an employee permit.

B. Applications for an employee permit shall be filed in the office of the City Manager. The City Manager shall receive any fee required for the application; ensure that the application is complete; and refer the application to the Chief of Police for processing, investigation, review and action.

C. The application for an employee permit shall be filed on a form and shall contain such information as is prescribed by the Chief of Police, including the following:

1. The name, current residential address, and phone number of the applicant;
2. The name and address of the Dispensary which has retained the services of the applicant for which the permit is required; and
3. A statement certifying that the applicant, if engaged in transactions relating to the medical cannabis, is a primary caregiver meeting all terms and conditions under applicable law.

D. The Chief of Police shall conduct such investigation of the background of the applicant for an employee permit as is necessary in order to determine whether the minimum qualifications which have been prescribed are satisfied and as otherwise deemed appropriate. Such investigation shall include the fingerprinting and photographing of the applicant.

E. The Chief of Police shall issue the employee permit within 30 days after the date the application is filed unless he or she finds in writing that the applicant is disqualified for the permit under regulations prescribed by Section 47-5 of this chapter. If the Chief of Police's investigation has not been completed by the date issuance of the permit is required, but that portion of the investigation which has been completed has disclosed no basis for denial of the permit, the Chief of Police shall issue a temporary employee permit, the term of which shall

extend no longer than 120 days from the date of issuance. A temporary employee permit shall expire upon either the date of expiration of its term, the date of issuance of an employee permit, or the date of service of notice that an employee permit has been denied. While in force and effect, a temporary employee permit shall otherwise be accorded the same status as an employee permit.

F. An employee permit shall not be transferable or assignable from one person to another.

G. The employee permit shall contain such information as the Chief of Police requires, including the following:

1. The permit holder's name and address;
2. The name and address of the Medical Cannabis Dispensary retaining his or her services for which the permit is issued;
3. The expiration date of the permit;
4. A description of the duties or functions which the permit authorizes to be performed; and
5. A physical description of the permit holder.

H. The holder of an employee permit shall carry the permit on his or her person at all times while performing services for the Dispensary and shall display the permit for inspection upon request by any peace officer.

I. Applications for renewal shall be filed, processed and permits issued in the manner and pursuant to the standards and procedures prescribed by paragraphs B through E of this section.

47-8 Operating Restrictions

A Medical Cannabis Dispensary, once permitted by the City, shall meet the following operating standards for the duration of the use:

(a) A Medical Cannabis Dispensary may possess no more than 8 ounces of dried cannabis per qualified patient or caregiver, and maintain no more than 6 mature and 12 immature cannabis plants per qualified patient. 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 cannabis consistent with the patient's needs and applicable law.

(b) No cannabis 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.

(c) Persons under the age of 18 shall not be allowed on the Dispensary's premises unless they are a qualified patient or a primary caregiver.

(d) No 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.

(e) No cannabis may be cultivated on the premises.

(f) No 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 cannabis on terms and conditions consistent with this Code and applicable law.

(g) Each Dispensary shall allow the City Manager to have access to the Dispensary's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination to determine compliance with this Municipal Code and applicable law. Books, records, accounts, and any and all relevant data will be produced no later than 24 hours after receipt of the City Manager's written request(s).

(h) The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft.

(i) The Dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the City Manager to insure that the operations of the Dispensary is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

(j) The building in which the Dispensary is located shall comply with all applicable local, state and federal rules, regulations, and laws including, but not limited to, building codes and the Americans with Disabilities Act.

(k) A Dispensary which provides cannabis in the form of food or other comestibles shall obtain and maintain the appropriate license(s) from the health department for providing food or other comestibles.

(l) A Dispensary may receive compensation for actual expenses, including reasonable compensation incurred for services provided, or for payment for out-of-pocket expenses incurred in providing those services. However, any such Dispensary must pay applicable sales tax on such services and obtain and maintain the applicable seller's or similar permit from the Franchise Tax Board or other regulatory agency.

(m) A Dispensary shall also provide to the City Manager, if the Manager so requests, written evidence to the Manager's reasonable satisfaction, that the Dispensary is not engaged in interstate commerce.

47-9 Fees

The City Manager may impose such reasonable fees on both the application for, and the issuance of a permit for, a Dispensary to recoup the City's cost in administering and implementing the provisions relating thereto.

47-10 Violations

Violations of the terms and conditions of the Dispensary's permit, of this Code, or of applicable local, state, and federal rules, regulations, and laws shall be grounds for revocation of the permit or for nonrenewal.

SECTION 2. Section 22-152 of Chapter 22 is amended to add subsection (16), as follows:

(16) Medical Cannabis Dispensaries.

SECTION 3. Section 130-184.5 of the Citrus Heights Zoning Code is amended to add the following definition:

Medical Cannabis Dispensary. Any facility or location where a primary caregiver makes available, sells, transmits, gives, or otherwise provides medical cannabis to two or more of the following: a qualified patient or a person with an identification card, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety code Section 11362.7 (d) (2) and (3). The terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.5 et seq. A "Medical Cannabis Dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

SECTION 4. Section 215-21.5 of the Citrus Heights Zoning Code is amended to add the following:

C, 6 A conditional use permit is required and the use must comply with Chapter 47 of the city of Citrus Heights Municipal Code.

SECTION 5. Table II (Section 215-23) of the Citrus Heights Zoning Code is amended to add the following:

USES	MP	BP	LC	SC	GC	AC	CR
18 Medical Cannabis Dispensary	C,6	C,6	C,6	C,6	C,6		

SECTION 6. Chapter 15 of the Citrus Heights Zoning Code is amended to add Article 12, to read as follows:

315-120 Purpose

The purpose of this article is to establish requirements and standards for the location and operation of Medical Cannabis Dispensaries, as defined in Section 130-184.5.

315-121 Mandatory Locational Standard

No Medical Cannabis Dispensary shall be located: a) in any residential zone (RD-1 through RD-30, inclusive or MH); or b) within 1,000 feet of another Medical Cannabis Dispensary, elementary school, middle school, high school, public library, or public park; or c) within 1,000 feet of a youth-oriented establishment characterized by either or both of the following: (i) the establishment advertises in a manner that identifies the establishment as catering to or providing services primarily intended for minors; or (ii) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors. The uses and zones set forth in this Section shall be collectively known as "sensitive uses." The distance between a Medical Cannabis Dispensary and a "sensitive use" shall be made in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the building or structure, or a portion of the building or structure, in which the Medical Cannabis Dispensary is located to the boundary of the property on which the building or structure, or portion of the building or structure, in which the "sensitive use" occurs or is located.

315-122 Accessory Use

A Medical Cannabis Dispensary is not and may not be approved as an accessory use to any other use permitted by this Zoning Code.

SECTION 7. Ordinance No. 2004- 04 is hereby repealed in its entirety.

SECTION 8. If any section, subsection, sentence, clause or phrase or word of this ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council of the City of Citrus Heights hereby declares that it would have passed and adopted this ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 9. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3).

SECTION 10. This ordinance shall become effective thirty days after adoption by the Citrus Heights City Council.

SECTION 11. The City Clerk is hereby directed to post/publish this ordinance as required by applicable law.

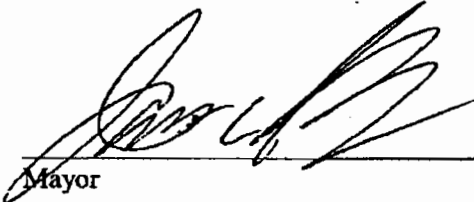
INTRODUCED and ordered posted/published this 12th day of May, 2004.

ADOPTED this 9th day of June, 2004, by the following vote:

AYES: Council Members Bruins, MacGlashan, Slowey and Daniels

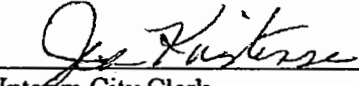
NOES: Shelby

ABSENT: None



Mayor

ATTEST:



Interim City Clerk
686171.2

STATE OF CALIFORNIA
COUNTY OF SACRAMENTO
CITY OF CITRUS HEIGHTS

I, Jean Kristensen, Interim City Clerk of the City of Citrus Heights, certify that the foregoing is the full and true Ordinance No. 2004 – 06 passed and adopted by the City Council of the City of Citrus Heights at a regular meeting held on June 9, 2004, and that it has been duly published or posted in accordance with Government Code Section 36933.

Dated: June 10, 2004



Jean Kristensen
Interim City Clerk