

ORDINANCE NO. 05-1998

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TULARE
AMENDING TITLE 5 ADDING CHAPTER 5.96 OF THE TULARE MUNICIPAL
CODE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES**

SECTION 1. Title 5 of the Tulare Municipal Code is hereby amended by the addition thereto of Chapter 5.96, which shall read as follows:

Chapter 5.96

MEDICAL MARIJUANA DISPENSARIES

- 5.96.010 Purpose and Intent**
- 5.96.020 Definitions**
- 5.96.030 Enforcement of Chapter**
- 5.96.040 Medical Marijuana Business Permit Required**
- 5.96.050 Applications**
- 5.96.060 Term, Renewals and Fees**
- 5.96.070 Notification**
- 5.96.080 Investigation and Action on Application**
- 5.96.090 Grounds for Denial of Permit**
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- 5.96.160 Minors**
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- 5.96.200 Severability**
- 5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit**

Section 5.96.010 Purpose and Intent

It is the purpose and intent of this ordinance to promote the health, safety, and general welfare of the residents and businesses within the city by regulating medical marijuana dispensaries. It is not the intent nor effect of this ordinance to restrict or deny qualified patients access to marijuana for medical purpose as intended by the passage of the Compassionate Use Act of 1996 and SB 420 in 2004. Neither is it the intent nor effect of this ordinance to condone or legitimize the use of marijuana.

Section 5.96.020 Definitions

All definitions set forth in Health & Safety Code sections 11362.5 and 11362.7 *et seq.*, as may be amended, including but not limited to the terms "attending physician", "person with an identification card", "serious medical conditions", shall apply under this Ordinance in addition to the definitions set for as follows:

"Applicant" means 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 Business.

"City Planner" means the Planning and Building Director holding office in the City of Tulare or his or her designee.

“Medical Marijuana” is defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

“Medical Marijuana Dispensary” means any facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed by, or distributed to one or more of the following: (1) a qualified patient, (2) a person with an identification card, or (3) a primary caregiver. All three of these terms are defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.* Unless otherwise regulated by this Code or applicable law, a “medical marijuana dispensary” shall not include the following uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and 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 and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

“Medical Marijuana Businesses” means any Medical Marijuana Dispensary; any cultivation and/or processing of medical marijuana operations by primary caregivers for three or more qualified patients or persons with identification cards; or collective or cooperative cultivation operations.

“Cultivation of Medical Marijuana” means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

“Collective or Cooperative Cultivation” means the association with California of qualified patients, per sons with valid identification cards, and designated primary caregivers to cultivate marijuana for medical purposes as defined in strict accordance with California Health and Safety Code sections 11362.5, and 11362.7 *et seq.*

“Processing of Medical Marijuana” means the harvesting of marijuana or the use of any process or equipment, including but not limited to dehydrators or humidifiers, that may be necessary to convert raw marijuana plants or plant parts into a consumable product.

“Permittee” means the person to whom a Medical Marijuana Business permit is issued.

“Written Recommendation” shall have the same definition as California Health and Safety Code section 11362.7 *et seq.*, and as may be amended.

Section 5.96.030 Enforcement of Chapter.

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

Section 5.96.040 Medical Marijuana Business Permit Required.

- A. 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 of Tulare the operation of a Medical Marijuana Business unless the person first obtains and continues to maintain in full force and effect a Medical Marijuana Business permit from the City of Tulare as herein required.
- B. A Medical Marijuana Business shall also be required to apply for and maintain a general City of Tulare business license as a prerequisite to obtaining a permit pursuant to the terms hereof.

Section 5.96.050 Applications.

- A. The applicant for a Medical Marijuana Business permit shall submit to the City Planner or designee an application for a permit. The application shall be made under penalty of perjury and 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 is 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 eighteen (18) years of age.
5. Applicant's height, weight, color of eyes and hair;
6. An identification photograph of the applicant;
7. All business, occupation, or employment of the applicant for the five years immediately preceding the date of the application;
8. The business license history of the applicant, including whether such person, in previously operating in this or another city, county or state under a license has had such license revoked or suspended, the reason therefore, and the business or activity or occupation subsequent to such action of suspension or revocation;
9. The name or names of the person or persons having the management or supervision of applicant's business;
10. Whether the person or persons having the management or supervision of applicant's business have been convicted of a crime(s), the nature of such offense(s), and the sentence(s) received therefore;
11. The name of all employees, independent contractors, and other persons who will work at the proposed Medical Marijuana Business;
12. The proposed security arrangements for ensuring the safety of persons, safe and secure storage of the marijuana, and to protect the premises from theft which shall be kept confidential and not disclosed to the public as the public interest is served in preserving the confidentiality of such security arrangements;
13. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the proposed Medical Marijuana Business. The sketch or diagram need not be professionally prepared, but must be drawn with marked dimensions of the interior of the premises;
14. A current and accurate straight-line drawing depicting the building and/or the portion thereof to be occupied by the proposed Medical Marijuana Business;
15. Authorization for the City of Tulare, its agents and employees to seek verification of the information contained within the application;
16. 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; and

- B. If the applicant has completed the application improperly, or if the application is incomplete, the City Planner or designee shall within ten (10) days of receipt of the original application, notify the applicant of such fact.
- C. 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 Business permit.

Section 5.96.060 Term, Renewals and Fees.

- A. Unless otherwise suspended or revoked, a Medical Marijuana Business permit shall expire one (1) year following its issuance. An operator of a Medical Marijuana Business may re-apply for a permit for subsequent year(s).
- B. Every application for a 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 shall not include fingerprinting, photographing or background check costs and shall be in addition to any other business license fee or permit fee imposed by this code or other governmental agencies.

Section 5.96.070 Notification of Community.

- A. Within ten (10) calendar days of filing an application for a Medical Marijuana Business permit, the applicant shall provide the City Planner or designee with proof that all residents and property owners within 300 feet of the proposed premises have been notified in writing by U.S. mail of the applicant's intent to open such a business and filing of such application.

- B. After the background checks and investigation are complete, and in no case later than forty-five (45) days after receipt of a completed application, the City Planner or designee shall determine whether to issue the Medical Marijuana Business permit. The City Planner or designee may grant the permit subject to conditions he or she deems reasonable under the circumstances to protect the public health, safety and welfare of the community. The City Planner or designee shall cause a written notice of his or her decision to issue or deny a permit to be delivered in person or mailed to the applicant by certified U.S. mail, postage prepaid, return receipt requested.

Section 5.96.090 Grounds for Denial of Permit.

The grounds for denial of a permit shall be one 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 relating to 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 has engaged in misconduct related to the qualifications, functions or duties of a permittee. 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. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocations of a permit.
- G. An applicant is under eighteen (18) years of age.
- H. The Medical Marijuana Business does not comply with the ordinance standards of the City of Tulare Municipal Code or the development standards set forth in this Chapter.
- I. The required application or renewal fees have not been paid.

Section 5.96.100 Appeal from Denial.

- A. An applicant aggrieved by the decision of the City Planner or designee to deny a permit may appeal such decision to the City Council by filing a written notice with the City Clerk within ten (10) calendar days of service of the written notice of decision. If an appeal is not taken within such time, the City Planner's decision shall be final.
- B. Upon filing of a timely appeal, the permit application shall be scheduled by the City Clerk for a public hearing within forty-five (45) calendar days.
- C. Notice of the hearing shall be given by the posting of notice on the premises where the activity is to be conducted for a period of not less than five (5) working days prior to the date of the hearing. In addition, a copy of the notice of hearing shall be mailed to the applicant at least five (5) working days in advance of the hearing. The City Council may give such additional notice of hearing as it deems appropriate in a particular case.
- D. Following public hearing, the City Council may grant the permit subject to such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community or it

may deny the issuance of the permit for any of the grounds specified in this Chapter. The decision of the City Council shall be final.

Section 5.96.110 Suspension or Revocation of Permit.

- A. The City Planner or designee may suspend or revoke a permit when the permittee or the permitte's agent or employee has committed any one or more of the following acts:
1. Any act which would be considered a ground for denial of the permit in the first instance.
 2. Violates any other provision of this Chapter or any local or State law, statute, rule or regulation relating to his or her permitted activity.
 3. Engages in or permits misconduct substantially related to the qualification, functions or duties of the permittee.
 4. Conducts the permitted business in a manner contrary to the health, safety, or welfare of the public.
 5. 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
6. Violates or fails to comply with the terms and conditions or the permit.
- B. Prior to suspension or revocation, the City Planner or designee shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five (5) working days prior to the date set for such 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 certified U.S. Mail, postage prepaid, addressed to the permittee at his or her address as it appears in his application for the permit.
- C. If any permittee or person acting under the authority of a permittee is convicted of a public offense in any court for the violation of any law which relates to his or her permit, the City Planner or designee may immediately revoke the permit without any further action, other than giving notice of revocation to the permittee. In this circumstance, during the pendency of any appeal to the City Council, the permit shall not remain in effect.
- D. Any permittee aggrieved by the decision of the City Planner or designee in suspending or revoking a permit may, within ten (10) calendar days, appeal to the City Council by filing a written notice with the City Clerk. Unless otherwise stated in this Chapter, during the pendency of the appeal to the Council, the permit shall remain in effect. If such appeal is not taken within ten (10) days, the decision of the City Planner or designee shall be final. If an appeal is timely filed, the appeal shall be held in accordance with the procedures for considering an appeal of the denial of a permit. The City Council may suspend or revoke the permit for any of the grounds specified in this Chapter. The City Council's decision shall be final

Section 5.96.120 Judicial Review.

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the superior court in accordance with the provision of the California Code of Civil Procedure section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure section 1094.6, which shall be applicable for such actions.

Section 5.96.130 Effect of Denial or Revocation.

When the City Planner or designee has denied or revoked a permit and the time for appeal to the City Council has elapsed, or if after appeal to the City Council, the decision of the City Planner or desingee has been affirmed by the City Council, no new application for a permit shall be accepted from the applicant and no permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one (1) year after the action denying or revoking the permit.

Section 5.96.140 Operating requirements.

A Medical Marijuana Business, once permitted by the City Planner or Designee, shall meet the following operating standards for the duration of the use:

- A. A Medical Marijuana Business shall be open for business only between the hours of 8:00 a.m. and 8:00 p.m. on any particular day.
- B. A Medical Marijuana Business shall maintain a current register of the names of all employees employed by the Business.
- C. A Medical Marijuana Business shall maintain a current register of all qualified patients, persons with identification cards and primary caregivers to whom it provides or distributes medical marijuana. Once documented the qualified patients, persons with identification cards and primary caregivers shall be “registered” patrons of the Business. The Business’s register shall be subject to periodic inspection to ensure compliance with the state law. The Business shall further maintain records of all patients and primary caregivers using the identification card number only when issued by the county, or its agent, pursuant to California Health and Safety Code section 11362.7 *et seq.*, so as to protect the confidentiality of the cardholders, or a copy of the written recommendation from a physician stating the need for medical marijuana.
- D. A Medical Marijuana Business shall post a sign, either at the building entrance or inside at the entrance, with a notice indicating that persons under the age of eighteen (18) years are precluded from entering the premises unless they are a qualified patient and they are in the presence of their parent or guardian.
- E. A Medical Marijuana Dispensary may not possess more than eight (8) ounces of dried marijuana per registered qualified patient or primary caregiver on the premises. 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 increase the amount of dried marijuana per the doctor’s recommendation, the dispensary may not possess an amount of marijuana in excess of the registered patient’s needs.
- F. No marijuana shall be smoked, ingested or otherwise consumed on the premises of the Business. 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 Business 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 Business is prohibited.
- G. Any cultivation of medical marijuana or processing of medical marijuana conducted by the Business shall at all times occur in a secure, locked, and fully enclosed structure. No Medical Marijuana Business may cultivate or process more than 99 marijuana plants, whether mature or immature.
- H. No Medical Marijuana Business 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 Business.
- I. No Medical Marijuana Business 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 the Compassionate Use Act of 1996, and any amendments thereto.
- J. A Medical Marijuana Business shall provide adequate security on the premises, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.
- K. A Medical Marijuana Business shall provide litter removal services once during each day of operation on and in front of the premises and, if necessary, on public sidewalks within one hundred (100) feet of the premises.

- L. A Medical Marijuana Business shall not cultivate, distribute or sell medical marijuana for a profit. A Business may receive compensation for its actual expenses, including reasonable compensation for service provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Business must pay applicable sales tax on such sales or services and maintain the applicable seller's permit or similar permit from the State Franchise Tax Board or other applicable agency.
- M. A Medical Marijuana Business shall meet all the operating criteria for the dispensing of medical marijuana as required pursuant to California Health and Safety Code sections 11362.5 and 11362.7 *et seq.*
- N. Each Medical Marijuana Business shall allow the City Planner or designee to have access to the Business's books, records, accounts, and any and all data relevant to its activities for the purposes of conducting an audit or examination. Books, records, accounts, and any and all relevant data shall be produced no later than 24 hours after receipt of the City Planner's written request(s).
- O. The Medical Marijuana Business shall meet any specific additional operating procedures and measures as may be imposed as conditions of approval by the City Planner or designee to ensure that operations of the Business 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.
- P. The building in which the Medical Marijuana Business 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 Disability Act, as certified by the Building Official of the City.
- Q. Any marijuana provided by a Medical Marijuana Business for the purpose of consumption by the recipient shall be contained in a package that includes, in a conspicuous location, the following warning: "Smoking may be hazardous to the health of the consumer, and smoking by pregnant women may result in fetal injury, premature birth and low birth weight. Further, ingestion of marijuana in any form may be hazardous to the health of the consumer and may impair the judgment of the consumer."
- R. A Medical Marijuana Business that provides marijuana in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provisions of food or other comestibles.
- S. A Medical Marijuana Business shall provide to the City Planner or designee, upon request, written evidence to the City Planner or designee's reasonable satisfaction, that the Business is not engaged in interstate commerce.
- T. No Medical Marijuana Business shall sell or display any drug paraphernalia as defined in California Health and Safety Code section 11364, *e t seq.*, or any implement that may be used to administer, use, consume, smoke or ingest medical marijuana.

Failure to comply with any of the above operating requirements shall result in the revocation of any permit issued.

Section 5.96.150 Zoning and Development Standards.

The provisions of Chapter 10.168.09 of Title 10 ("Zoning") of the Municipal Code are applicable to Medical Marijuana Dispensaries and compliance with those provisions shall be considered additional requirements for a permit required by this Chapter.

Section 5.96.160 Minors.

- A. It shall be unlawful for any permittee, operator, or other person in charge of any Medical Marijuana Business to employ any person who is not a least eighteen (18) years of age.
- B. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Business unless they are a qualified patient and they are in the presence of their parent or guardian.

Section 5.96.170 Display of permit.

Every Medical Marijuana Business shall display at all times during business hours the permit issued pursuant to the provisions of this Chapter in a conspicuous place so that the same may be readily seen by all persons entering the Medical Marijuana Business.

Section 5.96.180 Transfer of permits.

- A. A permittee shall not operate a Medical Marijuana Business under the authority of a Medical Marijuana Business permit at any place other than the address of the Medical Marijuana Business stated in the application for the permit.
- B. A permittee shall not transfer ownership or control of a Medical Marijuana Business permit to another person unless and until the transferee obtains an amendment to the permit from the City Planner or designee stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the City Planner or designee in accordance with this Chapter and accompanies the application with the transfer fee in an amount set by the resolution of the City Council, and the City Manager determines that the transferee would be entitled to the issuance of an original permit.
- C. No permit may be transferred when the City Planner or designee 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.

Section 5.96.190 Violations of Chapter: Enforcement.

- A. 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.
- B. Any use of 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 summarily abated by the City pursuant to the City of Tulare Municipal Code.
- C. Any person who violates, causes, or permits another person to violate any provision of this Chapter commits a misdemeanor.
- D. The violation of any provisions of this Chapter shall be and is hereby declared to be contrary to the public interest and shall, at the discretion of City, create a cause of action for injunctive relief.
- E. 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.

Section 5.96.200 Severability.

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence, or paragraph of this Chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions of this Chapter.

Section 5.96.210 Existing Medical Marijuana Dispensaries; Time Limit for Filing Application for Permit.

The continued operation of a Medical Marijuana Business in existence before the effective date of this Chapter without having applied for a permit obtained pursuant to the provisions of this Chapter for more than ninety (90) days after the effective date of this Chapter shall constitute a violation of this Chapter.

Section 2. This Ordinance shall be in full force and effect thirty (30) days from and after its adoption.

Section 3. The City Clerk is hereby authorized and directed to publish this Ordinance by one insertion in a newspaper of general circulation in the City of Tulare within ten (10) days of its passage to print.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 2006.

President of the Council and Ex-
Officio Mayor of the City of Tulare

ATTEST:

Chief Deputy City Clerk and Clerk
of the Council of the City of Tulare