

ORDINANCE NO. 08-01

AN ORDINANCE OF THE CITY OF LAGUNA WOODS, CALIFORNIA, ADDING SECTION 13.26.025 TO THE LAGUNA WOODS MUNICIPAL CODE AND MAKING MODIFICATIONS TO SECTION 13.10.020, ALLOWING THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS

WHEREAS, in November 1996, the voters of California passed Proposition 215, the Compassionate Use Act (CUA), which has been codified as California Health and Safety Code Section 11362.5; and

WHEREAS, in 2003, the California Legislature passed Senate Bill 420, which supplemented and clarified the scope of the application of the Compassionate Use Act, promoted uniform and consistent application of the CUA within the State, and enhanced access of patients and caregivers to medical marijuana; and

WHEREAS, Section 11362.83 of the California Health and Safety Code provides that localities are free to adopt laws that are consistent with State law, and as such, it is up to each jurisdiction to decide if they will allow medical marijuana dispensaries, in what zones, and under what regulations; and

WHEREAS, on September 17, 2008, the City Council held a noticed public hearing and all interested parties were heard.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA WOODS, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that the actions contemplated by this ordinance are exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061 (b) 3 and 15305 of the Guidelines, in that the amendment does not have the potential for causing a significant effect on the environment.

SECTION 2. The City Council finds that:

- A. The voters of the state of California approved Proposition 215; and
- B. The intent of Proposition 215 was to enable persons who might benefit from the use of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances; and
- C. The state enacted Senate Bill 420 (SB 420) in October 2003, relating to controlled substances, to clarify the scope of the Compassionate Use Act of 1996, and to allow cities to adopt and enforce rules and regulations consistent with SB 420; and

D. Recognizing that there is a potential conflict between Federal and State law, it is the City Council's intention that this Chapter shall be deemed to comply with California law as established by Proposition 215 and SB 420, which provide for the use of medical marijuana by qualified patients and the dispensation of medical marijuana to qualified patients by medical marijuana dispensaries, regarding the location and operation of medical marijuana dispensaries; and

E. To protect the public health, safety and welfare, it is the desire of the City Council to modify the Laguna Woods Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

F. It is the City Council's intention that nothing in this Chapter shall be construed to:

- 1) Allow persons to engage in conduct that endangers others or causes a public nuisance;
- 2) Allow the use of marijuana for nonmedical purposes; or
- 3) Allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise not permitted under state law.

SECTION 3. Based on the findings outlined in Section 2 above, the City Council hereby adopts the following provisions as Section 13.26.025, Medical Marijuana Dispensaries, of the Municipal Code:

(a) Legislative purpose. It is the intent of the City of Laguna Woods to allow the establishment of Medical Marijuana Dispensaries within the boundaries of the City of Laguna Woods to serve the bona fide medical needs of the residents of the City as provided by state law. Further, it is the intent of the City Council to regulate the offsite and other public impacts of such facilities to protect the public health, safety, and welfare of the residents, children, and businesses from harmful secondary effects that could result from a dispensary.

(b) Definitions. All definitions set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq., as may be amended from time to time, including, but not limited to, the terms "attending physician", "persons with an identification card", and "serious medical conditions" shall apply under this section in addition to the definitions set forth as follows:

- (1) "Applicant" means the person who is managing or responsible for the Medical Marijuana Dispensary's activities.
- (2) "City" means the City of Laguna Woods.
- (3) "City Manager" means the City Manager of the City of Laguna Woods or his/her designee.

(4) "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.

(5) "Drug Paraphernalia" shall have the same definition as contained in California Health and Safety Code section 11354.5, as may be amended from time to time.

(6) "Identification Card" shall have the same definition as contained in California Health and Safety Code section 11362.7, as may be amended from time to time.

(7) "Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq. "Medical Cannabis" shall mean the same as Medical Marijuana.

(8) "Medical Marijuana Dispensary" means any facility or location where the purpose is to dispense Medical Marijuana on a non-profit basis as a medication that has been recommended by a physician and where Medical Marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver and/or qualified patient, in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7 et seq. "Medical Marijuana Dispensary" also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary due to physical or mental disability, for medical purposes in compliance with Health and Safety Code sections 11362.5 and 11362.7 et seq.

A "Medical Marijuana Dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and 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 the 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 Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7 et seq.

(9) "Permittee" means the person to whom a Medical Marijuana regulatory permit is issued.

(10) "Police Chief" means the Police Chief – staff or contract employee – designated by the City Council of the City of Laguna Woods, or the authorized representatives thereof.

(11) "Primary Caregiver" shall have the same definition as California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

(12) "Qualified Patient" shall have the same definition as contained in California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

(13) "School" means an institution of learning for juveniles under the age of 18, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education. This definition does not include collegiate level institutions including colleges, graduate schools, universities, and non-profit research institutions.

(14) "Written Recommendation" means the same as contained in California Health and Safety Code Section 11362.715 et seq.

(c) No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a Medical Marijuana Dispensary shall be granted or permitted except in conformance with this section.

(d) Permitted zoning district. Medical Marijuana Dispensaries shall be permitted, upon application and approval of a regulatory permit in accordance with the criteria set forth in this section, only within the community commercial (cc) and professional and administrative office (ap) zoning districts.

(e) No Nonconforming Uses. No use which purports to have distributed marijuana prior to the enactment of this section shall be deemed to have been a legally established use under the provisions of the Zoning Code and such use shall not be entitled to claim legal nonconforming status.

(f) Location standards. The following location standards shall apply to Medical Marijuana Dispensaries:

(1) A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned planned, or otherwise designated for such use.

(2) A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of a youth-oriented establishment, or an establishment that provides youth-oriented services characterized by either or both of the following:

a. The establishment advertises in a manner that identifies the establishment as catering to or providing services intended for minors;

or

b. The individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

(3) All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building, or structure in which the medical marijuana dispensary is, or will be located, to the nearest property line of those uses describe in Sections 13.26.020 (e) (1) and 13.26.020(e) (2).

(4) A Medical Marijuana Dispensary is not and shall not be approved as an accessory use to any other use permitted by this Zoning Code.

(5) On-site parking. A Medical Marijuana Dispensary shall be parked at a rate of 1 space for every 250 gross square feet of the entire business space.

(g) Permits required. Prior to initiating operations and as a continuing requisite to conducting operations, any person or entity wishing to operate a Medical Marijuana Dispensary shall obtain a regulatory permit from the City Manager or his/her designee, under the terms and conditions set forth herein.

(h) Medical Marijuana Dispensary regulatory permit. Every person who proposes to maintain, operate or conduct a medical marijuana dispensary in the City of Laguna Woods shall file an application with the City Manager upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.

(i) Application Process.

(1) An application for a regulatory permit for a Medical Marijuana Dispensary shall include, but shall not be limited to, the following information:

a. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the non-profit dispensary; this description should include whether delivery service will be provide and the extent of such service.

b. The address of the location from which the dispensary for which application is made will be operated;

c. A site plan and floor plan of the premises denoting:

1. Waiting Area
2. Dispensing Area
3. Location of Storage Area
4. Separate air handling/HVAC system for the lease space. Neither the ventilation system for the lease space/premise nor the air handling/HVAC controls are to be shared with another lease space.
5. Exterior Lighting
6. Restrooms
7. Signage Plan (both interior and exterior)

d. A security plan including the following measures:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 120 concurrent hours of digitally recorded documentation in a format approved by the Police Chief. The cameras shall be in use 24 hours per day, 7 days per week. The areas to be covered by the security cameras include, but are not limited to, the dispensing areas, storage areas, all doors and windows, and any others as determined by the Police Chief.

2. The lease/business space shall be alarmed with an alarm system that is operated and monitored by a recognized security company.

3. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of dispensary staff.

4. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.

e. The name and address of the person who is managing or responsible for the Medical Marijuana Dispensary's activities;

f. The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property; the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana dispensary will be operated on his/her property.

g. Any such additional and further information as is deemed necessary by the City Manager or Police Chief to administer this chapter.

(j) Regulatory permit review and approval.

(1) The Police Chief shall conduct a background check of any applicant for a regulatory permit and report his/her determination on the acceptability of the applicant's background and the suitability of the proposed location to the City Manager.

(2) Upon completing the review process, the regulatory permit shall be granted or conditionally granted, unless the City Manager, in consultation with the Police Chief, finds that the applicant:

a. Has made one or more false or misleading statements, or omissions on the application or during the application process; or

b. Is not a Primary Caregiver or Qualified Patient; or

c. Has not satisfied all of the requirements of this Section.

(3) Based on the information set forth therein, and in consultation with the Police Chief, the City Manager may impose reasonable terms and conditions on the proposed operations in addition to those specified in this Chapter.

(4) A Medical Marijuana regulatory permit shall be valid for one year. Sixty days prior to the expiration of a medical marijuana regulatory permit, the operator of the Medical Marijuana Dispensary may apply for renewal of the permit for a subsequent year. Each renewal application shall certify the accuracy of the information in the prior application and document any changes or additions to that information as of the date of the application for renewal.

(5) A Medical Marijuana regulatory permit is not transferable. Prior to a change in operator, the applicant shall secure a new medical marijuana regulatory permit from the City. Failure to do so may be grounds for revocation.

(k) Operational requirements. No persons shall engage in, conduct, or permitted to be engaged in or conducting a Medical Marijuana Dispensary (“dispensary”) unless each of the following requirements is continually met:

(1). The dispensary shall comply fully with all of the applicable restrictions and mandates set forth in state law.

(2) The dispensary shall only be open between the hours of 9:00 a.m. and 5:00 p.m., Monday through Saturday.

(3) Physician’s referrals shall be verified by the dispensary prior to dispensing initially and at least every six months.

(4) Patients must be residents of the City of Laguna Woods and must provide adequate identification to that effect.

(5) Dispensary staff shall maintain patient records on site, including, but not limited to, a copy of the physician’s referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by the said primary caregiver.

(6) The dispensary must maintain a lobby/waiting area at the entrance of the business, which is physically separated from the dispensing area. Only staff shall be allowed in the dispensing area. The public areas of the business shall be open and viewable at all times by owner/staff.

(7) Marijuana shall be kept in a secured manner during business and non- business hours.

(8) At all times, the air handling/HVAC system for the lease space shall be isolated to the lease space and in no way linked or extended to another lease space. The controls for said system shall be self contained for the lease space as well.

(9) If consumable Medical Marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for sale/distribution, then the applicant needs to secure Orange County Department of Health Services approval for handling food products and the associated letter grade must be displayed.

(10) 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 marijuana on terms and conditions consistent with this Code and applicable law.

(11) Any Medical Marijuana Dispensary must pay any applicable sales tax pursuant to federal, state, and local law.

(12) The entrance and lobby/waiting area of the Dispensary shall be posted at all times indicating that smoking, ingesting, or consuming marijuana on premise or in the associated parking lot is prohibited.

(13) Signage for the dispensary shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.

(14) Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises.

(15) Windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

(16) No person under the age of 18 years shall be allowed on premise at any time.

(17) Physician service shall not be provided on the premise. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site. However, no social service activities may be provided in the dispensing area.

(18) All applicable permits, including the medical marijuana regulatory permit, shall be conspicuously posted at the location of the dispensary in full public view.

(1) Enforcement

(1) Recordings made by the security cameras shall be made available to the City Manager and/or Police Chief upon verbal request; no search warrant or subpoena is needed to view the recorded materials.

(2) The Police Chief, City Manager, City Building Official and their authorized representatives shall have the right to enter the Dispensary from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter and all laws of the City and State of California.

(3) Operation of the dispensary in non-compliance with any conditions of approval or standards of this section, or continuing a use after a medical marijuana regulatory permit has expired, shall constitute a violation of the Municipal Code and shall be handled in accordance with Chapter 1.04: Code Enforcement in general; penalty.

(4) The City Manager may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

a. The business has three violations outlined in this Chapter that occur within a 180-day period; or

b. Operations cease for more than 90 calendar days, including during change of ownership proceedings; or

c. A use is continued after a Medical Marijuana Regulatory Permit has expired; or

d. Ownership is changed without securing a Medical Marijuana Dispensary regulatory permit; or

e. Operator fails to maintain 120 hours of security recordings; or

f. Operator fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.

(m) Appeal of decisions. Any decision regarding the approval, conditional approval, denial of a new or renewed, or revocation of a Medical Marijuana regulatory permit may be appealed to the City Council. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council amended from time to time, and a written, verified declaration setting forth the basis for the claim that the permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of a Medical Marijuana regulatory permit until action is taken on the appeal.

(n) Indemnification and disclaimer provisions.

(1) To the fullest extent permitted by law, the City of Laguna Woods shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the medical marijuana, or for the activities of any medical marijuana dispensary. Upon

receiving possession of a regulatory permit for a Medical Marijuana Dispensary, the Operator of the dispensary

- a. Shall sign an agreement indemnifying the City of Laguna Woods; and
- b. Carry insurance in the amounts and of the types that are acceptable to the City Manager; and
- c. Name the City as an additionally insured.

(2) As a condition of approval of a regulatory permit for a Medical Marijuana Dispensary, the operator, by utilizing the benefits of the approval, shall thereby agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval. In addition, the applicant/owner shall reimburse the City et al. for any court costs and attorney fees that the City et al. may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

(3) Approval and inspection processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

SECTION 4. Chapter 13.06 of the Laguna Woods Municipal Code is hereby amended to add the following section:

Section 13.06.010 (d) (658) "Regulatory Permit" a special regulations permit required for a land use that may be appropriate within a particular zoning district, but not compatible with other permitted uses in the district, or where additional development or performance standards are required.

SECTION 5. Section 13.10.020 of the Laguna Woods Code is hereby amended to add the following:

A. To the Permitted Commercial Uses Legend

RP = The use is permitted with an approved regulatory use permit

B. To Table of Permitted Uses

	Districts				Code Reference
	NC	HC	CC	PA	
Adult Entertainment Business	X	X	RP	X	13.26.020
Medical Marijuana Dispensary	X	X	RP	RP	13.26.025

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity of effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs sentences, clauses, or phrases are declared unconstitutional, invalid, or ineffective.

SECTION 7. This Ordinance shall take effect and be in full force and effect thirty (30) days from and after the date of its final passage and adoption, or until otherwise superseded by action of the City Council or by operation of State Law.

SECTION 8. The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

PASSED, APPROVED AND ADOPTED THIS 17th DAY OF SEPTEMBER, 2008.


BERT HACK, Mayor

ATTEST:


SUSAN M. CONDON, City Clerk

APPROVED AS TO FORM:

Stephen A. McEwen
STEPHEN A. MCEWEN, City Attorney

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF LAGUNA WOODS)

I, SUSAN M. CONDON, City Clerk of the City of Laguna Woods, California DO
HEREBY CERTIFY that the foregoing Ordinance No. 08-01 was duly introduced and placed
upon its first reading at a Regular Meeting of the City Council on the 20th of August, 2008, and
that thereafter, said Ordinance was duly adopted and passed at a Regular Meeting of the City
Council on the 17th day of September, 2008 by the following vote to wit:

AYES: COUNCILMEMBERS: Robbins, Ross, Ring, Hack
NOES: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: Bouer

Susan M. Condon
SUSAN M. CONDON, City Clerk