

ORDINANCE NO. 328

AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE MALIBU MUNICIPAL CODE TO MAKE MEDICAL MARIJUANA DISPENSARIES A CONDITIONALLY PERMITTED USE IN ALL COMMERCIAL ZONES

The Council of the City of Malibu does ordain as follows:

Section 1. The City Council hereby finds that Zoning Text Amendment No. 08-001 is consistent with the General Plan and Local Coastal Program (LCP). The ordinance would support the objectives and policies of the City of Malibu General Plan to preserve and enhance the quality of life of the City's residents by allowing the use that provides a medical service to people that is not easily available in other areas. The ordinance will also ensure compatibility between land uses by reducing any potential negative indirect effects that have been associated with this type of use, such as an increase in crime, vehicle and pedestrian traffic congestion, and loitering contributing to the deterioration of commercial and residential neighborhoods. In accordance with the LCP Local Implementation Plan, Chapter 1, Section 1.2, Purpose, (F), the proposed ordinance will promote the public health, safety and general welfare.

Section 2. Section 17.02.020 (Definitions) of the Malibu Municipal Code shall be amended to include in the alphabetic list of definitions a definition for marijuana and medical marijuana dispensary to read as follows:

"Marijuana" shall have the same meaning as the definition of that word in Health and Safety Code Section 11018, as amended.

"Medical marijuana dispensary" means any association, cooperative, club, coop, delivery service, collective, and any other similar use involved in the sale, possession, cultivation, use, and/or distribution of marijuana for medicinal purposes in accordance with Health and Safety Code Section 11362.5, as amended.

Section 3. Section 17.22.040 is hereby amended by adding a new subsection P to the list of conditionally permitted uses to read as follows:

P. Medical marijuana dispensaries, subject to the standards set forth in Section 17.66.120.

Section 4. Section 17.24.030(A) shall be amended to read as follows:

A. All conditionally permitted uses set forth in Section 17.22.040 (CN District).

Section 5. Section 17.66.120 is hereby added to Chapter 17.66 of the Malibu Municipal Code to read as follows:

17.66.120 Medical Marijuana Dispensaries.

A. Location Criteria. A medical marijuana dispensary shall be located in compliance with the following requirements:

1. The use shall not be located within a 1,000-foot radius of any other medical marijuana dispensary located within or outside the city.

2. The use shall not be located within a 1,000-foot radius of a church, temple, or other places used primarily for religious worship, or a playground, park, library, licensed child day care facility, nursery school or school that is located within or outside the city. For the purposes of this requirement, "school" shall mean any property containing a structure which is used for education or instruction, whether public or private, at grade levels preschool and kindergarten through 12.

B. Development and Performance Standards. To assure that the operations of medical marijuana dispensaries are in compliance with California law and to mitigate the adverse secondary effects from operations of dispensaries, medical marijuana dispensaries shall operate in compliance with the following standards:

1. Dispensaries shall install lighting to illuminate the exterior of the building and all entrances and exits to the facility. Exterior lighting shall be one foot candle, and shall remain on until at least one hour after the closing of the dispensary.

2. Security guards shall be provided at the main entrances and exits during all hours of operation. All security guards employed by dispensaries shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times.

3. If determined necessary by the City Manager at any time, dispensaries shall provide a neighborhood security guard patrol for a two-block radius surrounding the dispensary during all or specified hours of operation.

4. No doctor shall issue a recommendation on-site for medical marijuana.

5. There shall be no on-site sales of alcohol or tobacco, and no on-site consumption of food, alcohol, tobacco or marijuana.

6. Hours of operation shall be limited to Monday through Saturday, between the hours of 10:00 a.m. and 8:00 p.m. and Sunday between the hours 12:00 p.m. and 7:00 p.m.

7. Dispensaries shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code Section 11362.5 (Proposition 215). Qualifications shall include, but not necessarily be limited to, possession of a valid doctor's recommendation, not more than one-year old, for medical marijuana use by the patient or a

medical marijuana identification card issued as part of the Medical Marijuana ID Program for Los Angeles County.

8. Dispensaries shall notify patrons of the following verbally and through posting of a sign in a conspicuous location on the project site:

a. Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.

b. Patrons must immediately leave the site and not consume medical marijuana until at home or in an equivalent private location. Dispensary staff shall monitor the site and vicinity to ensure compliance.

c. Forgery of medical documents is a felony.

9. Dispensaries shall not provide marijuana to any individual in an amount not consistent with personal medical use.

10. Dispensaries shall not store more than two hundred dollars (\$200.00) in cash reserves overnight on the premises.

11. Any patient under 18 years of age shall be accompanied by a parent or legal guardian.

12. Dispensaries shall provide law enforcement and all interested neighbors with the name and phone number of an on-site community relations staff person to notify if there are operational problems with the establishment.

13. The exterior appearance of the structure shall be compatible with commercial structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity.

14. Malibu Code Enforcement Officers, Sheriff's deputies or other agents or employees of the City requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.

15. The proposed use shall comply with all other applicable property development and design standards of the Malibu Municipal Code and with the provisions of Health and Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof.

16. Numerical Limit. No more than two (2) medical marijuana dispensaries shall be permitted to operate in the City at any time.

17. Indemnification and disclaimer provision.

a. To the fullest extent permitted by law, the City of Malibu 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 conditional use permit, the operator of the dispensary shall sign an agreement: 1) indemnifying the City of Malibu; 2) carrying insurance in the amounts and of the types that are acceptable to the City Manager; and 3) naming the City as an additionally insured.

b. As a condition of approval of a conditional use permit, the applicant, property owner, business operator, and their respective successors in interest, agree to indemnify, defend, and hold harmless City and its officers, officials, employees and volunteers from and against any and all claims, demands, damages, costs, and expenses of liability (including without limitation attorney's fees and costs of litigation) of every nature arising out of or in any way connected with the issuance of the conditional use permit and the operation of the use authorized thereby. The applicant, property owner, business operator, and their respective successors in interest shall be jointly and severally obligated for purposes of this paragraph.

c. 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 or 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.

d. Should any medical marijuana dispensary be determined to be in violation of local, State or federal laws, the conditional use permit shall automatically become null and void and of no further force or effect.

Section 6. Environmental Review and Mitigated Negative Declaration.

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the Planning Division has analyzed the proposed zoning text amendment and after reviewing Initial Study No. 08-006, has determined that the project will not have a significant effect on the environment. Accordingly, a project description, Initial Study and Mitigated Negative Declaration No. 08-005 were circulated for public review from July 10, 2008 to August 8, 2008, and based on the entire record and comments received, the City Council determined that (i) there is no substantial evidence that the request set forth in this ordinance will have a significant effect on the environment and (ii) the Mitigated Negative Declaration prepared for this request reflects the City's independent judgment and analysis. The City Council hereby adopts Mitigated Negative Declaration No. 08-005.

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Section 7. Nothing in this ordinance shall be interpreted to conflict with the provisions of Health and Safety Code Section 11362.5, et seq.

Section 8. Any dispensary operating in Malibu on the day this ordinance is introduced shall have 120 days therefrom to submit a complete application for a conditional use permit and for the first 90 days from the effective date of the ordinance the City shall only accept applications from such dispensary.

Section 9. The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of Malibu's book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.

Section 10. This Ordinance will become effective on the thirty-first day following its passage and adoption.

PASSED AND ADOPTED this 11th day of August, 2008.

ATTEST:

PAMELA CONLEY ULICH, Mayor

LISA POPE, City Clerk
(seal)

APPROVED AS TO FORM:

Christy Hugin
For CHRISTY HOGIN, City Attorney