

ORDINANCE NO. 1417

**ORDINANCE OF THE CITY OF SAN CARLOS
ADDING CHAPTER 8.09 TO THE MUNICIPAL CODE: REGULATION OF
COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA AND
REQUIRING LICENSING OF MEDICAL MARIJUANA COLLECTIVES WITHIN THE
CITY OF SAN CARLOS.**

IT IS ORDAINED by the City Council of the City of San Carlos as follows:

Section 1: RECITALS

WHEREAS, 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,

WHEREAS, 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,

WHEREAS, 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,

WHEREAS, the Medical Marijuana Program Act allows cities and counties to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

WHEREAS, 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

WHEREAS, 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 City's constitutional police power to protect the health, safety

and welfare of the residents of the City of San Carlos; and

WHEREAS, 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;

SECTION 2: Chapter 8.09 - REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA is added to the Municipal Code as follows:

Chapter 8.09

REGULATION OF COLLECTIVE CULTIVATION AND DISTRIBUTION OF MEDICAL MARIJUANA

8.09.010	Purpose and Intent
8.09.020	Definitions
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8.09.090	Violation and Penalties
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8.09.010	Purpose and Intent.

It is the purpose and intent of this chapter to:

- A. Regulate the collective cultivation and distribution of medical marijuana within the City limits; and,
- B. Provide that Medical Marijuana Collectives be appropriately located to provide for the health, safety and welfare of the public; and
- C. Regulate Medical Marijuana Collectives consistent with 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 City of San Carlos; and

D. Provide lawful restrictions on the exterior appearance of Medical Marijuana Collectives in order to prevent the misunderstanding that such collectives are places where marijuana may be purchased; and

E. Provide for the adoption and enforcement of 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 City of San Carlos, consistent with state law; and

F. This chapter 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.

G. The ordinance codified in this chapter, in compliance with California Health and Safety Code Section 11362, does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to state law.

8.09.020 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 Marijuana Collective or Collective means a location where marijuana is cultivated collectively by more than one qualified patient, person with valid identification card or designated primary caregiver of a person with a valid identification card, within the City of San Carlos in order collectively or cooperatively to cultivate and/or store marijuana for medical purposes, as provided in Health & Safety Code section 11362.775.

B. Person with a valid identification card means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to California Health and Safety Code Section 11362.7. The identification card must be obtained via written recommendation from the individual's attending licensed physician, after an examination.

C. An Attending Physician is defined as a duly licensed medical doctor who has the patient's medical records. Those patients who seek medical services from clinics are required to obtain identification cards from said clinics.

D. Police Chief means the City's chief of police or the chief's designee.

E. Primary Caregiver means a primary caregiver as that term is defined in Health and Safety Code Section 11362.7, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, *et seq.* A primary caregiver shall be at least eighteen years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient, and the parent of such minor child is also a minor.

F. Qualified Patient means a person who is entitled to the protections of California Health and Safety Code Section 11362.7, but who does not have a valid identification card issued pursuant to California Health and Safety Code Section 11362.7. A qualified patient is someone who could possess a valid identification card pursuant to California Health and Safety Code Section 11362.7, but has either failed to apply for such a card, or not yet received such a card. The patient is deemed as qualified, if a licensed physician would have recommended the patient use marijuana for medical relief.

G. Residential district means any of the following zoning districts in the City's zoning ordinance: R1-LD (Ch. 18.24), R-1 (Ch. 18.28), multifamily residential (Ch. 18.30), P-r (Ch. 18.44), and P-C with residential use (18.104).

8.09.030 Enforcement of Chapter.

A. The Police Chief and City Attorney shall have the authority to enforce any violations of this chapter, and to report and enforce against any violations of the conditions of approval attached to use permits obtained under the authority of the Zoning Ordinance. The Police Chief shall provide a report of all violations of these provisions to the City Attorney and Planning Director for possible enforcement.

B. The Planning Director shall have the duty and responsibility of processing and referring to the Planning Commission all use permit applications, which shall include as conditions the registration restrictions in Section 8.09.040 and the operating restrictions in 8.09.050.

8.09.040 Registration

(a) Primary caregivers, qualified patients and persons with valid identification cards cultivating medical marijuana at such collectives shall register the collective with the Police Chief, providing the name of a responsible party, a telephone number, the place of operation of the medical marijuana collective and shall be subject to the following restrictions:

1. Only qualified patients, persons with valid identification cards and primary

caregivers may cultivate medical marijuana collectively or associate for the purpose of doing so;

2. No collective shall consist of more than ten (10) qualified patients or persons with valid identification cards and no qualified patients or persons with valid identification cards shall be members of more than one collective in the City of San Carlos.

3. Absolutely no advertising of marijuana is allowed at any time;

4. Exterior signage is limited to site addressing only;

5. The collective site will be monitored at all times by web-based closed circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution, as to allow the ready identification of any individual committing a crime anywhere on the site;

6. A centrally monitored alarm system is required;

7. 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 (40) feet;

8. 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;

9. Absolutely no cultivated marijuana or dried marijuana product may be displayed or visible from the building exterior;

10. The activities that may be conducted at a registered and permitted 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. No further refinement of marijuana, or the preparation of marijuana products, such as but not limited to hashish, hash oil or marijuana butter is allowed;

11. 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;

12. No display or sales of cultivated marijuana are allowed on site;

13. No persons under the age of eighteen (18) are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian;

14. 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 California Health and Safety Code Section 11362.77, multiplied by the number of participants who are served by the collective, consistent with the regulations set forth in this chapter and State law;

15. The Chief of Police may inspect the Collective at any reasonable time to ensure that the amounts of medical marijuana on site conform to California Health and Safety Code Section 11362.77. The City reserves the right to require additional security and safety conditions, if necessary, upon receipt of detailed/revised building plans

16. No individual or group may cultivate or distribute marijuana for profit;

17. No money or any other thing of value shall be exchanged for medical marijuana. 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;

18. 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 (4) walls and a roof, and conform to specified Security Standards, as to locks, deadbolts and additional security measures;

19. 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;

20. The medical marijuana collective shall comply with the all applicable building, zoning, and environmental requirements set forth in the Municipal Code or state law;

21. The medical marijuana collective may not be operated or located in or within one thousand (1000) feet of the grounds of a school, park, recreation center, youth center or playground.

22. The medical marijuana collective may not employ any persons who are felons or who are currently on probation.

23. No designated Primary Caregiver shall be responsible for more than ten (10) qualified patients or persons with valid identification cards. The limit of ten

(10) qualified patients or persons with valid identification cards in a collective shall not be increased by this provision.

24. The California State Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use dated August 2008, and as amended, shall be complied with.

(b) The Chief of Police and City may make additional security and safety conditions, upon receipt of detailed/revised building plans.

8.09.050 Operating Restrictions

In addition to the Registration requirements, as a condition to receipt of a Registration Permit under this chapter, the Collective shall provide the following:

1. A warning that operators, employees, and members of facilities where medical marijuana is collectively cultivated may be subject to prosecution under federal laws.

2. The applicant's waiver and release of the City from any and all legal liability related to or arising from the Registration or the Business License, the registration process, or the enforcement of the conditions of the City's Ordinances, and/or the operation of any facility at which where medical marijuana is collectively cultivated.

3. Medical marijuana cultivated collectively may be distributed by a primary caregiver to a qualified patient or patients, or to a person or persons with valid identification card(s) for medical purposes, in accordance with Health and Safety Code Section 11362.7, et seq.

4. The Primary Caregiver shall keep a list of his or her assigned ten (10) qualified patients or persons with a valid identification card; such a list must minimally contain those persons' contact information, such that it may be immediately provided to the chief of police upon request, for the purposes of determining the proper legal amounts of cultivated and/or dried marijuana that may be possessed at the collective.

5. Only these three classifications of person may possess or cultivate medical marijuana individually or collectively, in accordance with California Health and Safety Code Section 11362.7.

8.09.060 Permit Requirements.

A. Medical marijuana collectives are required to obtain a use permit to operate within the city limits under Title 18 of the Municipal Code.

8.09.070 Revocation.

A. The Registration Permit may be revoked by the Chief of Police for any violation of state law or this chapter, or for failure to comply with the conditions listed on said registration permit or use permit.

B. Upon the revocation of any Registration Permit issued under this chapter, the Chief of Police shall make his findings and reasons for revocation and transmit them to the registrant whose registration permit has been revoked, and a copy thereof to the City Clerk. Revocation of a Registration permit automatically revokes the business license to which the registration permit applies.

8.09.080 Marijuana Produced for On-Site Consumption.

A. Nothing in this chapter shall be deemed to make it unlawful for an individual to grow marijuana at his or her residence for his or her own consumption at such residence, or for consumption by another person regularly residing at such residence, if such consumption is permitted under Health and Safety Code Sections 11362.5 through 11362.77.

B. Marijuana cultivated pursuant to these sections must be secured from public access, and not be visible from the public domain. All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and be held secure to the satisfaction of the police chief.

C. Medical marijuana cultivated at registered collectives may not be consumed on-site, in the parking areas, inside vehicles, or in those areas already restricted by the California Health and Safety Code Section 11362.79.

8.09.090 Violation and Penalties

Any violation of this chapter shall be deemed a misdemeanor, unless the circumstances that create the violation are subject to prosecution as a felony under state or federal law. Any violation of this chapter shall also be deemed a public nuisance and may be enforced by any remedy available to the City for abatement of public nuisances.

8.09.100 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.

8.09.110 Appeals

The Chief of Police shall make findings and reasons for disapproval or revocation and transmit the same to the City Clerk, who shall notify the applicant that the application is disapproved or registration permit revoked. Upon the disapproval or revocation, any person aggrieved by the action of the Chief of Police, and the denial of the application for a registration permit or revocation of a registration permit, shall have the right of appeal to the City Council, after paying the required fee. Such appeal shall be taken by filing with the City Council, within ten days after notice of the action complained of has been mailed to the applicant's last known address (or to the applicant's address as appearing on his application or registration permit), a written statement setting forth fully the grounds of appeal. The City Council shall set a time and place for a hearing of such appeal, and notice shall be given to the appellant by mail, postage prepaid, to his address as aforesaid, at least five days prior to the date set for a hearing. The disposition and order of the Council shall be final and conclusive.

8.09.120 Severability

If any section, sentence, clause or phrase of this Chapter is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. The City Council hereby declares that it would have passed this ordinance and adopted this Chapter and each section, sentence, clause or phrase thereof, even if one or more sections, subsections, sentences, clauses or phrases is declared invalid or unconstitutional.

Section 3. The City Clerk is hereby directed to publish this ordinance, or the title hereof as a summary, pursuant to state statute.

Section 4. This ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

Introduced on the 8th day of February, 2010.

Passed and adopted on the 22nd day of February, 2010 by the following vote:

AYES: COUNCILMEMBERS: _____

NOES: COUNCILMEMBERS: _____

ABSENT: COUNCILMEMBERS: _____

Mayor

ATTEST:

City Clerk