

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF UPLAND REPEALING CHAPTER 9.48, OF TITLE 9 AND SUBSECTION "E" OF SECTION 17.12.050 OF CHAPTER 17.12 OF TITLE 17 OF THE UPLAND MUNICIPAL CODE AND AMENDING TITLE 17 WITH THE ADDITION OF CHAPTER 17.158 OF THE UPLAND MUNICIPAL CODE RELATED TO THE LEGALIZATION OF MEDICAL MARIJUANA DISPENSARIES

THE CITY COUNCIL OF THE CITY OF UPLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Ordinance: Repealing Chapter of Municipal Code.

Chapter 9.48 of the Upland Municipal Code is hereby repealed.

Section 2. Ordinance: Repealing Chapter of Municipal Code.

Subsection "E" of Section 17.12.050 of Chapter 17.12 of Title 17 of the Upland Municipal Code is hereby repealed.

Section 3. Ordinance: Amending Municipal Code.

Title 7 of the Upland Municipal Code is hereby amended with the addition of a Chapter 17.158 (Marijuana Dispensaries) as follows:

17.158 MARIJUANA DISPENSARIES

17.158.010 Purpose and Intent

A. It is the purpose of this chapter to establish criteria and standards for the establishment and conduct of Marijuana Dispensaries which will protect the public health, safety, and welfare, preserve locally recognized values of community appearance, minimize the potential for nuisances related to the operation of Marijuana Dispensaries, maintain local property values, and preserve the quality of urban life. Permitting well-regulated Marijuana Dispensaries will enable Upland's numerous qualified patients to obtain safe access to a crucial, low-impact source of medication recommended by their doctors. These regulations are designed to assure that the operations of Marijuana Dispensaries are in compliance with California law and to mitigate the adverse effects from unregulated operation of Marijuana Dispensaries.

17.158.020 Definitions

A. For the purpose of carrying out the intent of this chapter, words, terms and phrases shall be deemed to have the meaning ascribed to them in the following section covering definitions.

B. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words used in the plural number include the singular number. Words used in the masculine gender include the feminine gender, and words used in the feminine gender include the masculine gender. The word "shall" is always mandatory and not merely directive.

C 1. "Marijuana Dispensary" means any site, facility, location, use, collective, association, cooperative or business that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, possesses and/or cultivates marijuana for medical purposes to, with, for and/or from qualified patients, health care providers, primary caregivers or physicians pursuant to 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. These establishments shall be regulated by the performance standards set forth in Section 17.158.050, as well as the zoning and locational requirements of Sections 17.158.030 and 17.158.040.

2. "Marijuana" shall have the same meaning as used in Health and Safety Code Section 11018.

17.158.030 Zoning Districts - Permitted

Any Marijuana Dispensary as defined in this chapter shall be permitted only in the CC (Community Commercial) Zone along Foothill Boulevard west of Airport Drive and east of Monte Vista Blvd. No Marijuana Dispensary shall be permitted within any other zone, nor shall any Marijuana Dispensary be located in the CC (Community Commercial) Zone east of Airport Drive or west of Monte Vista Blvd.

17.158.040 Locational Criteria

A Marijuana Dispensary shall not be located within certain distances of sensitive uses.

A. For the purposes of this chapter, all distances shall be measured in a straight line, without regard for intervening

structures, from the nearest exterior wall of the unit or building containing the Marijuana Dispensary to the nearest property line of a sensitive use or zone as listed in this section, or to the nearest corner of any traffic intersection named herein.

B. In establishing a Marijuana Dispensary, the locational criteria shall apply to sensitive uses only if they are located inside the boundaries of the city.

C. The establishment or maintenance of a Marijuana Dispensary shall be subject to the locational criteria setting forth minimum distances from sensitive uses as follows:

1. School: 1,000 feet.
2. Park: 500 feet.
3. Residence: 100 feet.

If a school, park or residence is established within the minimum distances set forth above after the establishment of a Marijuana Dispensary, the Marijuana Dispensary shall be deemed a legal nonconforming use.

17.158.050 Design and Performance Standards

The establishment of a Marijuana Dispensary shall comply with the applicable site development standards, including parking, of the zone in which the dispensary is located, the building code, fire code, and the health and safety code of the city. A Marijuana Dispensary shall comply with the applicable city permit and inspection procedures. In addition, Marijuana Dispensaries shall comply with the following design and performance standards:

A. No Alcohol or Tobacco Sales. No alcohol or tobacco may be sold by Marijuana Dispensaries.

B. Mandatory Warning Sign. A sign shall be posted in a conspicuous location inside each Marijuana Dispensary stating as follows: "The diversion of marijuana for nonmedical purposes is a violation of State law, as is loitering at this location for an illegal purpose. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery."

C. Dispensing of Marijuana. Marijuana Dispensaries shall only dispense marijuana to qualified patients and/or their primary caregivers as defined by Health and Safety Code Section 11362.5, et seq.

D. No Marijuana Visible from Outside. No marijuana may be visible by the naked eye from the exterior of any Marijuana Dispensary.

E. Smoking Prohibition. While Labor Code Section 6404.5 only prohibits the smoking of tobacco products in the workplace this regulation will prohibit the smoking of marijuana in all workplaces including Marijuana Dispensaries. However, recognizing that some qualified patients may have an immediate need, consumption of edible marijuana products, marijuana tinctures, and/or vaporizing of marijuana is permitted.

F. Restriction on Underage Dispensing. No Marijuana Dispensary may dispense marijuana to anyone under the age of 18 unless he or she is a qualified patient and is accompanied by a parent or legal guardian in accordance with California law.

G. Appearance. The exterior appearance of the structure housing any Marijuana Dispensary shall be compatible with surrounding structures in the immediate vicinity to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the area.

H. City Enforcement Access. All local code enforcement officers, police officers, and other agents or employees of the City of Upland requesting admission for the sole purpose of determining compliance with the provisions of this Section shall be given unrestricted access upon reasonable notice.

I. Indemnification of City. To the fullest extent permitted by law, the City of Upland shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to any medical marijuana dispensed through any Marijuana Dispensary, or for the activities of any Marijuana Dispensary. Upon receiving a business permit, the primary operator (or officer or board, depending on the legal structure) of each Marijuana Dispensary shall sign an agreement indemnifying and holding the City of Upland harmless to the fullest extent permitted by law, on behalf of the Marijuana Dispensary.

J. There shall be a maximum of 3 (three) Marijuana Dispensaries permitted within the City of Upland.

17.158.060 Permit approval - Findings

A. The City shall only deny the approval of a permit for a Marijuana Dispensary for the following reasons:

1. That an applicant is under 18 years of age;
2. That an applicant has not paid the filing fee required for a

standard city business permit;

3. That an applicant has failed to provide information required by this chapter or the permit application for the issuance of the permit, or that the applicant has knowingly made any false, misleading or fraudulent statement of material facts in the permit application or any other document required by the city in conjunction therewith;

4. That the premises to be used for the Marijuana Dispensary have not been approved as being in compliance with health, fire, building or zoning codes by the department or agency responsible under law for investigating the compliance;

5. That the use is not permitted in the zone in which it is proposed to be located or is not in conformity with the applicable development standards of that zone, including:

a. That the use is not in conformity with the zoning criteria set forth in Section 17.158.030, or the location requirements set forth in Section 17.158.040.

b. That the design of the site and proposed improvements are not in compliance with all applicable design provisions of UMC Section 17.158.050,

c. That the proposed conduct of the marijuana dispensary is not in compliance with all applicable performance standards of UMC Section 17.158.050.

B. Provided the applicant complies with the findings of this section as set forth above, the applicant shall be granted a permit to operate the Marijuana Dispensary and a business license shall be issued to the applicant for this purpose.

C. Prior to occupancy of the building approved for Marijuana Dispensary usage, the applicant shall obtain all applicable city permits and licenses.

D. If the City denies the application, the planning director shall notify the applicant in writing of the denial and state the reason(s) for the denial.

E. The City shall be guided only by the law of the State of California and this Section of the Municipal Code of Upland to make its determination to approve or deny an application. The administrative committee is expressly prohibited from using any Federal law, statute, or Federal agency guideline as a reason to deny an application for a Marijuana Dispensary.

17.158.070 Time limits for Action

An application for a Marijuana Dispensary shall be reviewed and acted upon in accordance with the following time limits:

A. Review of the Application for Completeness. Not later than 14

calendar days after submittal of an application for a Marijuana Dispensary permit, the planning director shall notify the applicant, by mail in writing, if the application is not complete. If it is not complete, the planning director shall specify those parts of the application which are incomplete and shall identify the manner by which it can be made complete. If a written determination is not mailed to the applicant within 14 calendar days after it is submitted, the application shall be deemed complete. Additional 14-day notice requirements shall apply to any subsequent submittals until the applicant files a complete Marijuana Dispensary permit application.

B. The City shall take action to approve, conditionally approve, or deny a Marijuana Dispensary permit application within 30 days after a determination has been made that the application is complete.

C. Permit Streamlining Act. If the permit requested is for a development project for construction or reconstruction subject to the Permit Streamlining Act (Government Code Section 65920 et seq.), the time limits provided in the Permit Streamlining Act shall apply to the Marijuana Dispensary permit approval or denial, except as to the shorter time period set forth in this section.

17.158.080 Suspension of Marijuana Dispensary Permit

A. The City may suspend a Marijuana Dispensary permit for a period not to exceed 30 days or until the violation has been corrected, whichever is later, if the evidence presented establishes that one or more of the following conditions exist:

1. That the conduct of the Marijuana Business does not comply with the city's fire, building, zoning or health and safety codes; or the locational criteria or design and performance standards as set forth in this chapter;
2. That there was not a responsible person over 18 years of age on the premises to act as a manager at all times during which the Marijuana Dispensary was open; or
3. That the permittee, manager, partner, director, officer, stockholder or manager has violated any provision of this chapter.

B. The review of a Marijuana Dispensary permit for its possible suspension shall be conducted by the City. The City shall make its written determination including findings therefore, in accordance with the findings indicated in this section of this chapter within 10 business days. A copy of the written determination and the findings therefore shall be provided to the permittee.

C. The City shall be guided only by the law of the State of California and this Section of the Municipal Code of Upland to make its determination to suspend a Marijuana Dispensary Permit. The administrative committee is expressly prohibited from using any Federal law, statute, or Federal agency guideline as a reason to suspend a permit for a Marijuana Dispensary.

17.158.090 Deliveries only by Upland Licensed Marijuana Dispensaries

In recognition that some qualified patients are homebound and unable to procure they medicine they need, deliver of medical marijuana to a qualified patient within the city limits of the City of Upland will be allowed only by licensed Marijuana Dispensaries within the City of Upland that are in compliance with this code. All other deliveries of medical marijuana within the City of Upland, whether by licensed Marijuana Dispensaries outside the City of Upland or unlicensed Marijuana Dispensaries of any kind shall be subject to a \$1,000.00 fine for each and every occurrence.

17.158.100 Annual Licensing and Inspection Fee

In recognition that Marijuana Dispensaries may require greater oversight than other businesses in the City of Upland, an annual Licensing and Inspection fee of \$75,000 (seventy-five thousand dollars) will be due from any dispensary that has been granted a business license and approved for operation by the City of Upland. The initial Licensing and Inspection Fee shall be due within 10 days of the City's approval and issuance of the initial business license to the dispensary. Subsequent annual renewal fees of the Licensing and Inspection Fee shall be due in two installments. For the subsequent annual renewal fee, the first installment of the annual Licensing and Inspection Fee of \$37,500 (thirty-seven thousand five hundred dollars) shall be due February 15th of the calendar year. The second installment of the annual Licensing and Inspection Fee of \$37,500 (thirty-seven thousand five hundred dollars) shall be due on June 31st of the calendar year.

17.158.110 Prompt judicial review

After denial of a Marijuana Dispensary permit application, or the suspension or revocation of a Marijuana Dispensary permit, the applicant or permittee may seek prompt judicial review of such administrative action through the planning commission or city council. If the denial, suspension, or revocation is affirmed upon review, the administrative action shall be promptly reviewed by the court.

17.158.120 Penalties for Violation

A. No person shall violate any provision, or fail to comply with any of the requirements of this chapter. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this chapter shall be guilty of a misdemeanor. Any person convicted of a misdemeanor under the provisions of this chapter shall be punishable by a fine of not more than \$1,000.00. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this chapter is committed, continued, or permitted by such person and shall be punishable accordingly.

Section 4. Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060©(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060©(3) (the activity is not a project as defined in Section 15378) of the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly. Further, if the activity is deemed a project this City Council finds that this Ordinance is exempt pursuant to Section 15061(b)(3) of the State CEQA Guidelines.

Section 5. Severability. If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof.

Section 6. Effective Date. This Ordinance shall become effective thirty (30) days from its adoption.

Section 7. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published in a newspaper of general circulation printed and published within the City of Upland, pursuant to all legal requirements.

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2015.

Ray M. Musser, Mayor

Ordinance No.

Page 9

I, Stephanie A. Mendenhall, City Clerk of the City of Upland, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Upland held on the ____ day of _____, 2015, and was adopted at a regular meeting of the City Council of the City of Upland on the ____ day of _____, 2015, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

ATTEST:

Stephanie A. Mendenhall, City Clerk