

Compassionate Use Dispensary Regulation and Taxation ORDINANCE

WHEREAS the California voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS the California State Legislature adopted Senate Bill 420, the Medical Marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing patients and primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS California courts upheld the legality of compassionate use dispensaries under state law, including in *People v. Hochandel*, 176 Cal.App.4th 997, and *People v. Urziceanu*, 132 Cal.App.4th 747;

WHEREAS California courts have ruled that federal law does not preempt municipalities from regulating compassionate use dispensaries under California and local law, including in *Qualified Patients Association v. City of Anaheim*, 187 Cal.App.4th 997, *County of San Diego v. San Diego NORML*, 165 Cal.App.4th 798, and

THEREFORE, BE IT RESOLVED that the City of La Mesa does hereby enact the following:

TITLE

These provisions of the Municipal Code shall be known as the Compassionate Use Dispensary Regulation and Taxation Ordinance.

PURPOSE AND INTENT

It is the purpose and intent of the Compassionate Use Dispensary Restriction and Taxation Ordinance to ensure safe access to medical cannabis in the City of La Mesa for qualified patients and their primary caregivers in compliance with California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2003 through regulated compassionate use dispensaries in the City of La Mesa.

Extensive medical research, including research conducted at the University of California San Diego, has shown that medical cannabis helps to alleviate the pain and suffering caused by diseases and ailments including cancer, multiple sclerosis, chronic pain, arthritis, and HIV/AIDS wasting syndrome. To reduce pain and suffering, the citizens of La Mesa desire that qualified patients who have received a recommendation for the use of medical cannabis from a licensed physician shall have safe access to the medical cannabis that gives them relief through regulated compassionate use dispensaries. These compassionate use dispensaries shall be operated by collectives, cooperatives, or associations of qualified patients and primary caregivers, who cultivate, exchange, and distribute medical cannabis in a

closed circuit in compliance with California law.

By regulating compassionate use dispensaries, the City of La Mesa will ensure safe access while protecting public safety. This Ordinance will prevent the proliferation of dispensaries, ensure dispensaries are safe distances from residences and areas where children gather, and require dispensaries to obey strict operational standards. Also, this Ordinance will improve the local economy by creating jobs and generating tax revenue for the City of La Mesa.

DEFINITIONS

The following phrases, when used in this Chapter, shall be construed as defined in California Health and Safety Code Sections 11362.5 and 11362.7:

“Person with an identification card;”

“Identification card;”

“Primary caregiver,” and

“Qualified patient.”

The following phrases, when used in this Chapter, shall be construed as defined below:

“Cannabis.” All parts of the plant *Cannabis Sativa L.*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

“Compassionate Use Dispensary” or “CUD.” means ten (10) or more, qualified patients, persons with identification cards who associate, as an incorporated or unincorporated association, within the City of La Mesa, in order to collectively or cooperatively provide medical cannabis from a licensed or permitted location pursuant to this Chapter for use exclusively by their registered members, in accordance with California Health and Safety Code Sections 11362.5 and 11362.7., *et seq.*

“Marijuana.” For the purposes of this Ordinance, marijuana shall mean the same as cannabis, as defined above.

“Playground.” Any park or recreational area specifically designed to be used by children that has play equipment installed, or any similar facility located on public or private school grounds, or on city, county, or state park grounds, that is open to the public, as defined in California Health and Safety Code Section 104495, subdivision (a)(1).

“School.” Shall be as as defined in California Health and Safety Code Section 11362.768, subdivision (h).

OPERATIONAL REQUIREMENTS

(1) Security Personnel Required. Compassionate use dispensaries must have at least one security guard on duty during operating hours who possesses a valid guard card from the California Department of Consumer Affairs. Members of a collective that operates a Compassionate Use Dispensary who possess a valid guard card from the California Department of Consumer Affairs may serve as security guards.

(2) Security Cameras. For security purposes, the premises of compassionate use dispensaries shall be monitored at all times by a closed circuit video recording system. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime on the premises. Recordings must be kept for at least thirty calendar days.

(3) Alarm System. The premises of compassionate use dispensaries shall have centrally-monitored alarm systems.

(4) Lighting to Ensure Safety. Interior building lighting, exterior building lighting, and parking area lighting, if applicable, of compassionate use dispensaries must be in compliance with applicable regulations, and must be of sufficient foot-candles and color rendition so as to allow the ready identification at a distance of no less than twenty feet from any individual committing a crime on premises.

(5) Secured Storage of Medical Cannabis. Medical cannabis shall be stored in compassionate use dispensaries with at least four walls and a roof, or stored in a vault or safe, or other secured storage structure. If the safe or vault weighs less than 450 pounds, it must be bolted to the floor or structure of compassionate use dispensaries.

(6) Hours of Operation. Compassionate use dispensaries may operate within the hours of 8:00 AM to 10:00 PM every day.

(7) Exterior Signs. Signs displayed on the exterior of the premises of compassionate use dispensaries shall conform to existing regulations.

(8) Interior Signs. A sign shall be posted in a conspicuous location inside compassionate use dispensaries, stating as follows: "The diversion of marijuana for non-medical purposes is a violation of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery. Loitering at the location of a medical marijuana dispensing collective for an illegal purpose is prohibited by California Penal Code Section 647(h)."

(9) No Alcoholic Beverages. No compassionate use dispensaries shall cause or permit the sale or dispensing of alcoholic beverages for consumption on or off the premises.

(10) No Cannabis Visible from Exterior of Compassionate Use Dispensaries. No cultivation of cannabis, dried cannabis, or dried cannabis products may be visible by the naked eye from the exterior of compassionate use dispensaries.

(11) Packaging of Foods Containing Medical Cannabis. Any beverage or edible produced, provided, or distributed at compassionate use dispensaries containing medical cannabis shall be so identified as part of the packaging with a prominent and clearly legible warning advising that the product contains medical cannabis and that it is to be consumed only by those with a physician's recommendation.

(12) Operation in Compliance with California and Local Law Required. Compassionate use dispensaries must comply with state laws regarding medical cannabis, and they must ensure that only qualified patients and designated primary caregivers who are members of the collective that operates the compassionate use dispensary receive medical cannabis from the compassionate use dispensary.

(13) Restrictions on Dispensing to Qualified Patients Under Eighteen Years of Age. Compassionate use dispensaries may not dispense medical cannabis to anyone under the age of eighteen unless he or she is a qualified patient and is accompanied by a parent or legal guardian in accordance with state law. The parent or legal guardian shall sign a statement of fact that they are the parent or legal guardian of the minor, and produce legal proof of parental or guardian status, such as a birth certificate or court order.

(14) No Evaluations for the Use of Medical Cannabis Allowed on Premises. Compassionate use dispensaries may not allow any licensed medical doctor or doctor of osteopathic medicine to provide medical cannabis evaluations within the physical premises of the compassionate use dispensary.

(15) No Consumption of Medical Cannabis Allowed on Premises. Compassionate use dispensaries may not allow any consumption of medical cannabis within the physical premises of compassionate use dispensaries.

(16) Background Checks Required for Directors. Compassionate use dispensaries must obtain a background check through the California Department of Justice, Office of the Attorney General, for all directors, to verify that no director has been convicted in the past seven years of a serious felony, as defined in California Penal Code section 1192.7, subdivision (c).

(17) Community Relations Liaison Required. Compassionate use dispensaries shall designate a community relations liaison who shall be at least eighteen (18) years of age. The individual(s) designated as the community relations liaison shall provide his or her name to the Community Development Department to receive all complaints and be given by the director(s) of the compassionate use dispensary the responsibility and duty to address and immediately resolve all violations taking place on the premises. The name and a telephone number for the community relations liaison for a compassionate use dispensary shall also be made available to the public to address community complaints and questions.

LIMITATIONS ON THE PERMITTED LOCATIONS OF COMPASSIONATE USE DISPENSARIES

The location at which a compassionate use dispensary distributes medical cannabis must meet the following requirements:

(1) Appropriate Zones. The location must be in a Non-Residential Zone appropriate for Commercial,

Manufacturing, Industrial, or Retail Sales uses, including health care use;

(2) Distance Restrictions for Compassionate Use Dispensaries from Schools. Compassionate use dispensaries may not operate within a 600-foot radius from an accredited kindergarten through twelfth-grade school, as measured in Health and Safety Code section 11362.768, subdivision (c).

If a kindergarten through twelfth-grade school begins operating within a 600-foot radius as measured in Health and Safety Code section 11362.768, subdivision (c), of a compassionate use dispensary after the compassionate use dispensary has received a business license from the City of La Mesa, the compassionate use dispensary shall remain a lawful use of land under local law and shall remain eligible to receive renewal of all applicable permits, including its business license.

(3) Distance Restrictions for Compassionate Use Dispensaries from Playgrounds. Compassionate use dispensaries may not operate within 600 feet, measured in a path along public thoroughfares, from the perimeter of the suite or unit of a compassionate use dispensary to the boundary of a playground. The boundary of a playground shall be defined by the edge of the material surrounding the playground, such as a fence, concrete, or wood, or it shall be defined by the end of the groundcover for the playground, such as grass, sand, or gravel.

If a playground begins operating within 600 feet, measured in a path along public thoroughfares, from the perimeter of the suite or unit of a compassionate use dispensary to the boundary of a playground, after the compassionate use dispensary has received a business license from the City of La Mesa, the compassionate use dispensary shall remain a lawful use of land under local law and shall remain eligible to receive renewal of all applicable permits, including its business license.

(4) Distance Required Between Compassionate Use Dispensaries. Compassionate use dispensaries may not operate within 1000 feet of each other, as measured in a path along public thoroughfares from the perimeter of the suite or unit of the compassionate use dispensaries.

COMPASSIONATE USE DISPENSARIES SHALL BE REGULATED BY THE CITY OF LA MESA'S COMMUNITY DEVELOPMENT DEPARTMENT

(1) Requirements to Receive a Compassionate Use Dispensary Permit. All Compassionate Use Dispensaries must seek and receive a Compassionate Use Dispensary Permit from the Community Development Department of the City of La Mesa. The requirements for receiving this permit are as follows:

A. The intended proposed physical location of the compassionate use dispensary complies with the provisions of this Ordinance;

B. The applicant has demonstrated a plan to comply with all of the operational requirements set forth in this Ordinance; and,

C. No director of the dispensary-applicant collective has been convicted of a serious felony, as defined in California Penal Code section 1192.7, subdivision (c), in the past seven years.

If all of these requirements are met, the Community Development Department of the City of La Mesa must issue the Compassionate Use Dispensary Permit.

(2) City of La Mesa Community Development Department Shall Develop the Compassionate Use Dispensary Permit Application Process Promptly After this Ordinance Goes into Effect. The Community Development Department shall formally develop and put into effect the permit application process set forth in this Section of this Ordinance within forty-five (45) working days after when this Ordinance goes into effect.

(3) City of La Mesa Community Development Department Shall Grant or Deny All Applications for Registry Within Fifteen Days of Submission. The City of La Mesa Community Development Department shall process and grant or deny all applications for compassionate use dispensary permits within fifteen (15) working days of when applications are submitted. If the Community Development Department determines within that fifteen working days that the permit application is incomplete, the Community Development Department shall immediately notify in writing the permit applicant of such fact and the reasons therefore, including any additional information necessary to render the application complete. Such writing shall be deposited in the U.S. mail, postage prepaid, immediately upon determination that the application is incomplete. The applicant shall be permitted sixty (60) working days from when the writing informing the applicant that the application is incomplete is deposited in the U.S. mail to amend the application or submit supplemental information. Within fifteen (15) working days following the receipt of an amended application or supplemental information, the Community Development Department shall again determine whether the application is complete in accordance with the provisions set forth above. Evaluation and notification shall occur as provided herein until such time as the application is found to be complete.

COMPASSIONATE USE DISPENSARIES SHALL BE ELIGIBLE TO RECEIVE A BUSINESS LICENSE FROM THE CITY OF LA MESA

After receiving a Compassionate Use Dispensary Permit from the Community Development Department of the City of La Mesa, compassionate use dispensaries shall be eligible to apply for and receive a business license from the City of La Mesa.

FEES CHARGED BY THE CITY OF LA MESA SHALL BE FOR COST RECOVERY ONLY

All fees charged to implement this Ordinance by the City of La Mesa shall be for cost recovery only.

ADDITIONAL SALES TAX IMPOSED TO BENEFIT THE GENERAL FUND OF THE

CITY OF LA MESA

(1) Two and One-Half Percent Sales Tax Imposed on Every Transaction of Medical Cannabis. Notwithstanding any provision of law to the contrary, and in addition to the usual state and local sales tax imposed on every retail transaction in the City of La Mesa, for transactions at compassionate use dispensaries involving medical cannabis, an additional tax of two and one-half percent (2.5%) shall be imposed, so long as the State of California does not impose any sales or excise tax on every retail transaction involving medical cannabis beyond the standard sales tax for all retail transactions.

(2) Reduction if Statewide Sales or Excise Tax Imposed on Transactions Involving Medical Cannabis. If the State of California imposes a sales or excise tax on every retail transaction involving medical cannabis in addition to the usual state and local sales tax imposed on every retail transaction in the City of La Mesa, before this Ordinance goes into effect, simultaneous with when this Ordinance goes into effect, or after this Ordinance goes into effect, the additional tax imposed by this Ordinance on every retail transaction involving medical cannabis shall be reduced to one percent (1.0%).

(3) Allocation to General Fund. All revenues collected pursuant to this Ordinance shall be deposited in the General Fund of the City and be used for general governmental purposes as the City Council may from time to time provide in accordance with the Municipal Code of the City of La Mesa and the City Council's Annual Appropriation Ordinance.

COMPASSIONATE USE DISPENSARIES, QUALIFIED PATIENTS, AND PRIMARY CAREGIVERS THAT COMPLY WITH STATE AND LOCAL LAW SHALL NOT BE SUBJECT TO ARREST OR PROSECUTION

(1) Designation of Compassionate Use Activities as the Lowest Priority of the La Mesa Police Department. The activities of Compassionate Use Dispensaries, qualified patients, and primary caregivers shall be the lowest priority of the La Mesa Police Department once the Compassionate Use Dispensary Restriction and Taxation Ordinance goes into effect.

(2) Protection from Arrest for Qualified Patients, Primary Caregivers, and Dispensary Officials in Compliance with this Ordinance. Qualified patients, primary caregivers, and dispensary directors, officers, managers, employees, agents, and volunteers who comply with California's medical marijuana laws and the laws of the City of La Mesa including this Ordinance are not in violation of any local or state law. Thus, they shall not be subject to arrest or prosecution if they come into contact with law enforcement. Further, law enforcement shall not seize any dried cannabis or cannabis plants in their possession.

(3) Update of Police Department Materials. Within six months of the date that this Ordinance goes into effect, the training materials, handbooks and printed procedures of the La Mesa Police Department and Police Academy shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

SEVERABILITY

If any provision of the Compassionate Use Dispensary Regulation and Taxation Ordinance, or the application thereof to any person or circumstance, is held to be invalid or unenforceable, that invalidity or unenforceability shall not affect all of the remaining provisions of this Ordinance that can be given effect without the invalid portion or application; and to this end, the provisions or applications of this Chapter are severable.