

ORDINANCE NO. 304

ORDINANCE OF THE COUNCIL OF THE CITY OF SUTTER CREEK ADDING CHAPTER 8.25 TO TITLE VIII OF THE SUTTER CREEK MUNICIPAL CODE IMPOSING OPERATIONAL RESTRICTIONS ON AND REQUIRING A REGULATORY PERMIT TO OPERATE A MEDICAL CANNABIS DISPENSARY WITHIN THE CITY OF SUTTER CREEK; AND DEFINING MEDICAL CANNABIS DISPENSARY; ADDING MEDICAL CANNABIS DISPENSARY AS A CONDITIONAL USE IN COMMERCIAL AND INDUSTRIAL ZONES; AND DEFINING LOCATIONAL AND OPERATIONAL CRITERIA FOR MEDICAL CANNABIS DISPENSARIES, TO BE IMMEDIATELY EFFECTIVE AS AN URGENCY ORDINANCE

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SUTTER CREEK:

SECTION 1. FINDINGS RELATED TO URGENCY. The City Council finds as follows:

Currently, the City has no rules or regulations governing medical cannabis or dispensaries of medical cannabis. The City has received inquiries from prospective operators of such dispensaries and one application for a dispensary. There is insufficient time for the City to adopt a regular, non-urgency ordinance applicable to such dispensaries. Unless adopted on an urgency basis, therefore, such a dispensary may open without any regulation applicable to it and thereafter be “grandfathered” in its operation. Such dispensaries require careful consideration and regulation of the location and manner in which they are to operate so as to prevent impacts on nearby residents and businesses. Federal law prohibits such dispensaries and use of cannabis, regardless of the reason for such use; while state law allows the use of medical cannabis on limited terms and conditions. This Ordinance both complies with applicable state law, as well as imposing reasonable rules and regulations protecting the public health, safety, and welfare of the residents and businesses within the City of Sutter Creek.

SECTION 2. ADDITIONAL FINDINGS RELATING TO NEED FOR REGULATION, INTENT AND CEQA. The City Council finds as follows:

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996"). The intent of Proposition 215 was to enable persons who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances. Further, effective January 1, 2004 the State Legislature enacted SB 420 to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations laws consistent with SB 420.

B. To protect the public health, safety, and welfare, it is the desire of the City Council to modify the Municipal Code consistent with SB 420, regarding the location and operation of medical cannabis dispensaries.

C. It is the City Council's intention that nothing in this Ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to otherwise permit any activity that is prohibited under that Act. It is further the City Council's intention that nothing in this Ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of cannabis for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

D. Pursuant to Health and Safety Code Section 11362.7 et seq., the State Department of Health is responsible for establishing and maintaining a voluntary identification card program; and Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the manner set forth in Section 11362.71 et seq.; and

E. This Ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15321.

SECTION 3. Chapter 8.25 is hereby added to the Sutter Creek Municipal Code to read as follows:

**CHAPTER 8.25
MEDICAL CANNABIS REGULATIONS**

8.25.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate availability and/or the distribution, by whatever means, of medical cannabis within the city limits.

8.25.020 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 Cannabis Dispensary" or "Dispensary" means any facility or location where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health & Safety Code section 11362.(d)(2) and (3). The terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.5 et seq. A "medical cannabis dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & 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 & Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency

licensed pursuant to Chapter 8 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

B. “City Manager” means the City Manager of the City of Sutter Creek or his or her designee. In the even the Office of the City Manager shall be vacant, it shall mean the Police Chief of the City of Sutter Creek.

C. Qualified patient means a resident of the City of Sutter Creek meeting all lawful requirements to receive cannabis for treatment plus one other person who may not be a resident of the City but meets all lawful requirements to receive cannabis for treatment.

D. “Sheriff” means the Sheriff of Amador County or his or her designee.

8.25.030 Enforcement of Chapter.

The City Manager shall have the responsibility and duty of enforcement of this Chapter.

8.25.040 Medical Cannabis Dispensary Permit.

A. Prior to initiating operations, and as a continuing prerequisite to conducting legally valid operations, any person or entity wishing to operate a medical cannabis dispensary shall apply for and receive from the City Manager a medical cannabis dispensary permit, on the terms and conditions set forth in this Chapter.

B. The applicant for a medical cannabis dispensary permit shall submit to the City Manager an application for a medical cannabis dispensary permit. Based on the information set forth therein, the City Manager may impose reasonable terms and conditions on the proposed operations, consistent with Health & Safety Code Section 11362.5 et seq. and with public health, safety, and welfare. Such terms and conditions may include, but not be limited to, requirements as to parking, adequate lighting, hours of operation, and adequate security.

C. A medical cannabis dispensary permit shall be valid for one year. An operator of a medical cannabis dispensary may re-apply for a permit for subsequent year(s).

D. The City Manager may issue not more than one medical cannabis dispensary permit each year.

E. The City Manager, in consultation with the Sutter Creek Chief of Police and/or the Sheriff of Amador County, shall conduct a background check of any applicant for a dispensary permit or employee thereof and, based on that and other relevant information, determine whether to issue a dispensary permit.

F. A dispensary shall also be required to apply for and maintain a City business license as a prerequisite to obtaining a permit pursuant to the terms hereof, and shall be located only in

zoning districts permitted by and under the terms required by the City Zoning Ordinance, as amended from time to time.

8.25.050 Operating Restrictions.

A medical cannabis dispensary, once permitted by the City Manager, shall meet the following operating standards for the duration of the use:

A. A medical cannabis dispensary may possess no more than 8 ounces of dried cannabis per qualified patient or caregiver, and maintain no more than 6 mature and 12 immature cannabis plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the dispensary may possess an amount of cannabis consistent with the patient's needs.

B. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the Dispensary. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.

C. Persons under the age of 18 shall not be allowed on the dispensary's premises unless they are a qualified patient or a primary caregiver.

D. No Dispensary shall hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

E. 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 cannabis on terms and conditions consistent with this Code and applicable law.

F. Each Dispensary shall allow the City Manager to have access to the Dispensary's books, records, accounts, and any and all data relevant to its permitted activities for the purpose of conducting an audit or examination. Books, records, accounts, and any and all relevant data will be produced no later than 24 hours after receipt of the City Manager's written request(s).

G. The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft, as approved by the Chief of Police and/or Sheriff.

H. The Dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the City Manager to insure that the operations of the Dispensary is consistent with protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

I. The building in which the Dispensary is located shall comply with all applicable local, state and federal rules, regulations, and laws including, but not limited to, building codes and the Americans with Disabilities Act, as certified by the Building Official of the City.

J. A Dispensary shall not cultivate or distribute medical cannabis for profit. A Dispensary may receive compensation for its actual expenses, including reasonable compensation for services provided, or for payment of out-of-pocket expenses incurred in providing those services. However, any such Dispensary must pay applicable sales tax on such sales or services and maintain the applicable sellers permit or similar permit from the State Franchise Tax Board or other applicable agency.

K. No cannabis may be cultivated on the premises.

L. A Dispensary that provides cannabis in the form of food or other comestibles shall obtain and maintain the appropriate licenses from the County Health Department for the provision of food or other comestibles.

M. A Dispensary shall provide to the City Manager, upon request, written evidence to the City Manager's reasonable satisfaction, that the Dispensary is not engaged in interstate commerce.

8.25.060 Fees.

The City Manager may impose such reasonable fees on both the application for, and the issuance of a permit for, a Dispensary to recoup the City's cost in administering and implementing the provisions relating thereto, including but not limited to the costs for background checks or charges by the Chief of Police, Sheriff or Building Official.

8.15.070 Violations.

Violations of the terms and conditions of the Dispensary's permit, of this Code, or of applicable local, state, and federal rules, regulations, and laws shall be unlawful, and shall also be grounds for revocation of the permit or for nonrenewal.

SECTION 4. Section 18.08.355 is hereby added to the Sutter Creek Municipal Code ("the Zoning Ordinance") to read as follows:

18.08.355 Medical Cannabis Dispensary.

"Medical cannabis dispensary" means any facility or location where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with Health and Safety Code Section 11362.5 et seq., including but not limited to Health and Safety Code Section 11362.7(d)(2) and (3). The terms "primary caregiver", "qualified patient", and "person with an identification card" shall be as defined in Health and Safety Code Section 11362.5 et seq. A "medical cannabis dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & 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 &

Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the Health & Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health & Safety Code Section 11362.5 et seq.

SECTION 5. Section 18.60.025 of the Zoning Ordinance of Sutter Creek is hereby added to read as follows:

18.60.025 Medical Cannabis Dispensaries.

Medical Cannabis Dispensaries shall be allowed only in C-2 and M-1 zones within the City, subject to the issuance of a conditional use permit under the standards set forth in Section 18.60.035.

SECTION 6. Section 18.60.035 is hereby added to the Zoning Ordinance of Sutter Creek to read as follows:

18.60.035 Use Permits for Medical Cannabis Dispensaries.

A. Purpose. The purpose of this section is to establish requirements and standards for the location and operation of Medical Cannabis Dispensaries in which zone such uses are permitted.

B. Mandatory Locational Standard. No Medical Cannabis Dispensary shall be located:

1. in any residential zone;
2. within 1,000 feet of another Medical Cannabis Dispensary, an elementary school, middle school, high school, public library, or public park; or
3. within 1,000 feet of a youth-oriented establishment 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 primarily intended for minors; or (b) the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

The uses and zones set forth in this subsection shall be collectively known as "sensitive uses." The distance between a Medical Cannabis Dispensary and a "sensitive use" shall be measured in a straight line, without regard to the intervening structures or objects, from the closest exterior wall of the building or structure, or a portion of the building or structure, in which the Medical Cannabis Dispensary is located to the boundary of the property on which the building or structure, or portion of the building or structure, in which the "sensitive use" occurs or is located.

C. Accessory Use. A Medical Cannabis Dispensary is not and may not be approved as an accessory use to any other use permitted by this Code.

SECTION 7. SEVERABILITY.

If any section, subsection, sentence, clause or phrase or word of this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council of the City of Sutter Creek hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions be declared unconstitutional, unlawful or otherwise invalid.

SECTION 8. ORDINANCE IMMEDIATELY EFFECTIVE. This Ordinance shall become effective immediately as an urgency ordinance upon its adoption by the Sutter Creek City Council.

SECTION 9. The City Clerk is hereby directed to publish this Ordinance within fifteen (15) days after its passage at least once in a newspaper of general circulation published in the City of Sutter Creek or to post it in at least three (3) public locations in the City of Sutter Creek.

INTRODUCED and ADOPTED this 15th day of November, 2004, by the following vote on roll call:

AYES: Mayor Parsons, Council Members Crosby, Hepworth, Murphy and Wooten

NOES: None

ABSENT: None

W. Brent Parsons, Mayor

ATTEST:

Judy Allen, City Clerk