

## ORDINANCE NO. 19-2010

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE ADDING ELK GROVE MUNICIPAL CODE CHAPTER 9.31 TITLED MEDICAL MARIJUANA DISPENSARIES

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 (“CUA” or the “Act”) was subsequently codified as California Health and Safety Code section 11362.5; and

**WHEREAS**, the Act was designed to provide a defense to persons charged with possessing or cultivating marijuana for the personal medical use of patients who have received a recommendation from a physician that the use of marijuana may be beneficial in the treatment of that patient; and

**WHEREAS**, the state legislature subsequently enacted the “Medical Marijuana Program”, codified as Health and Safety Code section 11362.7 (the “Program”) to provide guidance for the use and cultivation of medical marijuana; and

**WHEREAS**, the Program prohibits the arrest of any qualified patient (or that patient’s primary caregiver) for the possession, transportation, delivery or cultivation of medical marijuana. In order to qualify for this immunity, the Program provided that the person possesses an identification card issued by the State Department of Health Services; and

**WHEREAS**, the State of California has not yet implemented the statewide identification card program for qualified patients and their primary caregivers envisioned by the Program; and

**WHEREAS**, despite CUA and the Program, the possession, sale and distribution of marijuana are still criminal offenses under both California state and Federal law; and

**WHEREAS**, even though the Act and the Program do not authorize the creation, operation or legality of medical marijuana dispensaries, local jurisdictions throughout California have seen such uses established; and

**WHEREAS**, once established, medical marijuana dispensaries have created a number of secondary effects associated with them, including:

- illegal drug activity and drug sales in the vicinity of dispensaries;
- robbery of persons leaving dispensaries;
- driving under the influence of controlled substances obtained from dispensaries;
- persons acquiring marijuana from a dispensary and then selling it to non-qualified persons;
- burglaries and robberies; and

- increased vacancies in the commercial areas near such dispensaries; and

**WHEREAS**, the City Council of the City of Elk Grove previously adopted an interim moratorium on January 13, 2010 in order to study the issue of whether to allow medical marijuana dispensaries in the City of Elk Grove; and

**WHEREAS**, there is anecdotal and documented evidence that medical marijuana dispensaries pose a threat to the public health, safety and welfare.

**NOW, THEREFORE**, the City Council of the City of Elk Grove does hereby ordain as follows:

Section 1: Adoption.

Chapter 9.31, "Medical Marijuana Dispensaries" is hereby added to read as follows:

**Chapter 9.31  
MEDICAL MARIJUANA DISPENSARIES**

Sections:

- 9.31.010 Purpose and Authority.
- 9.31.020 Definitions.
- 9.31.030 Dispensaries prohibited.
- 9.31.040 Punishment.

**9.31.010 Purpose and Authority.**

The City Council of the City of Elk Grove finds that federal and state laws prohibiting the possession, sale and distribution of marijuana would preclude the opening or establishment of medical marijuana dispensaries sanctioned by the City of Elk Grove, and in order to serve public health, safety and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit medical marijuana dispensaries from being opened or established within the City of Elk Grove. Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

**9.31.020 Definitions.**

When used in this chapter, the following words shall have the meanings ascribed to them in this section:

A. "Identification card" means a document issued by the State Department of Health Services which identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

B. "Medical marijuana" means marijuana authorized in strict compliance with and as set forth in California Health and Safety Code Section 11362.5 et seq. used for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine or any other serious medical condition for which marijuana is deemed to provide relief.

C. "Medical marijuana dispensary" means any facility or location where medical marijuana is made available to, distributed by, or distributed to one or more of the following: a qualified patient, a person with an identification card, or a primary caregiver. All three of these terms are identified in strict accord with California Health and Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such use is otherwise in accord with this Code and other applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq.

D. "Person with an identification card" shall have the meaning given that term by Health and Safety Code Section 11362.7.

E. "Primary caregiver" shall have the meaning given that term by Health and Safety Code Section 11362.7.

F. "Qualified patient" shall have the meaning given that term by Health and Safety Code Section 11362.7, but who does not have an identification card issued by the State Department of Health Services.

**9.31.030      Dispensaries prohibited.**

Medical marijuana dispensaries are prohibited and it shall be unlawful for any person to operate or permit to be operated a medical marijuana dispensary in or upon any premises in the City.

### **9.31.040 Punishment.**

Each failure to comply with any provision of this title or any regulation promulgated under this title is unlawful and constitutes a public nuisance and shall be enforced in accordance with procedures set out in EGMC Chapters 1.04 and 16.18. Additionally, any person who violates this chapter shall be guilty of a misdemeanor which shall be enforced pursuant to the provisions of EGMC Chapter 1.04.

#### Section 2: No Mandatory Duty of Care.

This Ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

#### Section 3: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

#### Section 4: Savings Clause

The provisions of this Chapter shall not affect or impair an act done or right vested or approved or any proceeding, suit or prosecution had or commenced in any cause before such repeal shall take effect; but every such act done, or right vested or accrued, or proceeding, suit or prosecution shall remain in full force. No offense committed and no liability, penalty or forfeiture, either civilly or criminally incurred prior to the time when any such ordinance or part thereof shall be repealed or altered by said Code shall be discharged or affected by such repeal or alteration; but prosecutions and suits for such offenses, liabilities, penalties or forfeitures shall be instituted and proceeded with in all respects as if such prior ordinance or part thereof had not been repealed or altered.


#### Section 5: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within fifteen (15) days after its passage, a summary of the ordinance may be published at least five (5) days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 19-2010  
**INTRODUCED:** August 25, 2010  
**ADOPTED:** September 8, 2010  
**EFFECTIVE:** October 8, 2010

  
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SOPHIA SCHERMAN, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
JASON LINDGREN, INTERIM CITY CLERK

APPROVED AS TO FORM:

  
\_\_\_\_\_  
SUSAN COCHRAN, CITY ATTORNEY

Date signed: September 20, 2010

**CERTIFICATION  
ELK GROVE CITY COUNCIL ORDINANCE NO. 19-2010**

STATE OF CALIFORNIA       )  
COUNTY OF SACRAMENTO    )       ss  
CITY OF ELK GROVE         )

*I, Jason Lindgren, Interim City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on August 25, 2010 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on September 8, 2010 by the following vote:*

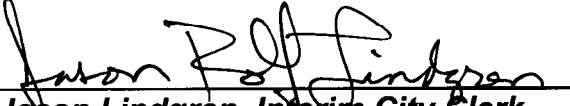
**AYES :**       **COUNCILMEMBERS:**       *Scherman, Detrick, Davis, Hume*

**NOES:**       **COUNCILMEMBERS:**       *None*

**ABSTAIN:**   **COUNCILMEMBERS:**       *None*

**ABSENT:**    **COUNCILMEMBERS:**       *Cooper*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
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**Jason Lindgren, Interim City Clerk  
City of Elk Grove, California**