

ORDINANCE NO. 10-2004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE TO AMEND THE ELK GROVE ZONING CODE REGARDING PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS AND TO AMEND TITLE 4 OF THE ELK GROVE MUNICIPAL CODE REGARDING BUSINESS REGULATION REGARDING BUSINESSES PERMITTED BY §11360 ET SEQ. OF THE CALIFORNIA HEALTH AND SAFETY CODE

[THIS ORDINANCE AMENDS TITLE 1, CHAPTER 25, ARTICLE 1 (DEFINITIONS) OF THE ELK GROVE ZONING CODE; TITLE II, CHAPTER 25, ARTICLE 2 (PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS) OF THE ELK GROVE ZONING CODE; AND TITLE 4, (BUSINESS REGULATION) OF THE ELK GROVE MUNICIPAL CODE]

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose

The purpose of this Ordinance is to amend Title I, Chapter 25, Article 1 of the Elk Grove Zoning Code, creating definitions of “Medical Cannabis Dispensary” to amend Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code, establishing Medical Cannabis Dispensaries as conditionally permitted use within the buildable area of lots with a zoning designation of SC; and amend Title 4 of the Elk Grove Municipal Code regarding Business Regulation requiring a license for the operation of a Medical Cannabis Dispensary within the City of Elk Grove.

Section 2: Findings

1. In adopting this Ordinance, the City Council makes the following findings:
 - A. The People of the State of California passed Proposition 215, The Compassionate Use Act of 1996, which protects patients and physicians who prescribe marijuana for medical treatment.
 - B. The Legislature of the State of California passes SB 420 which was designed to provide greater certainty regarding the medical use of marijuana and establishes use procedures and voluntary identification/registration cards to qualified patients.
 - C. The City of Elk Grove does not condone the use of marijuana. However, the City recognizes that the People of the State of California by passing Proposition 215, and the Legislature of the State of California by passing SB 420, have provided for the medical use of marijuana, and with that in mind, the City Council wishes to insure that the adverse impacts from the medical use of marijuana are minimized in the City of Elk Grove.

- D. On March 25, 2004, the Elk Grove Planning Commission held public hearings on the proposed amendment to the City Code, and recommended that the City Council approve the proposed amendment.
- E. On April 7, 2004, the City Council held a public hearing on the proposed amendment to the City Code, at which time public testimony was taken and duly considered.
- F. The City Council finds that the revised Code is consistent with the goals, policies, implementation programs and land use designations specified in the City's General Plan, as required by Government Code Section 65860.
- G. The establishment of Medical Cannabis Dispensaries is contemplated by Health & Safety Code sections 11362.5 et seq.
- H. Medical Cannabis Dispensaries create adverse secondary effects, including but not limited to, an increase in driving under the influence of marijuana in the community in which they exist, increase illegal drug trafficking near their location, and increased burglaries and/or robberies at their locations.

Section 3. CEQA Findings

- 1. The proposed project is exempt pursuant to CEQA §15061(b)(3).
- 2. The City Council finds that adoption of this ordinance does not have the potential for causing a significant effect on the environment.

Section 4. Amendments to Title I, Chapter 25, Article 1 and to Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code

- 1) Title I, Chapter 25, Article 1 of the Zoning Code of the City of Elk Grove is hereby amended by adding the sections as shown below:

a) §130-122.3. Medical Cannabis Dispensary

“Medical Cannabis Dispensary” shall mean a “Primary Care Giver,” provides education, referral, network services, facilitation or assistance in the lawful possession, acquisition, and distribution of medical cannabis, to two (2) or more “Qualified Patients” and/or “Primary Care Givers”, in possession of an identification card, or Written Recommendation, issued by the County of Sacramento, or the State of California, or other agency recognized by the City of Elk Grove pursuant to the California Health & Safety Code

Medical cannabis may not be provided to another person in the City of Elk Grove except by a Medical Cannabis Dispensary.

B. §130-137.1. Primary Care Giver

“Primary Care Giver” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

C. §130- 138.5. Qualified Patient

“Qualified Patient” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

D. §130-198.9.e. Written Recommendation

“Written Recommendation” shall have the same definition as California Health & Safety Code Section 11362.7 *et seq.*, and as may be amended.

- 2) Title II, Chapter 25, Article 2 of the Elk Grove Zoning Code is hereby amended to establish Medical Cannabis Dispensaries as conditionally permitted uses in the SC zoning designation, as shown below by the additional rows added to Table II, in §225-11 and by the additional condition of approval in §225-14.

A. §225-11. Table II

TABLE II PERMITTED USES WITHIN THE BUILDABLE AREA OF COMMERCIAL LOTS									
USE, SERVICE OR FACILITY (Unless otherwise indicated, listings denote retail sales operations)	MP*	BP	SC	LC	GC	AC	TC	CO	DW
C. Health Services									
1 Acupuncture or Acupuncture Office	X	14	X	X	X	X			
1.5 Adult Day Health Center		14	X	X	X			14	
2 Ambulance Service			14	X	X	X	X		
3. Clinic, Child-Family Guidance	X	X	X	X	X				
4. Clinic, Counseling	X	X	X	X	X				
4.5 Clinic, Diet Counseling with Incidental Sales of Diet Products	X	X	X	X	X				
5. Clinic, Kidney Dialysis	X	X	X	X	X				
6. Clinic, Physical Therapy	X	X	X	X	X				
7. Convalescent Hospital		14		14	14			14	
8. Eyeglasses, Frames, Contact Lens - Sales and Service	X	X	X	X	X				

9 Hearing Aids - Sales and Service	X	X	X	X	X				
10 Hospital		14		14	14			14	
11 Laboratory - Medical, Dental or Optical	X	X	X	X	X				
12 Laboratory - Research, Analysis	14			10	10				
13 Medical or Dental Office	X	X	X	X	X	X			
14 Psychiatric Facility				14	14				
15 Sanitarium		14		14	14				
16 Social Rehabilitation Center		14		14	14				
17. Orthopedic Appliances Sales/Service	X	X	X	X	X				
18 Medical Cannabis Dispensary			63						

B. §225-14. Special Conditions

(63) Permitted, subject to the issuance of a conditional use permit by the Elk Grove Planning Commission, and when all of the following criteria are met:

1. **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
2. **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
3. **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.
4. **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
5. **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.

6. **On-site Use Prohibited:** On-site use of cannabis is prohibited.
7. **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
8. **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
9. **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
10. **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
11. **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
 - a. The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
 - b. Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
12. **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
13. **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
 - a. The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs

the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

b. Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

14. **No Interstate Commerce:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

15. **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.

Section 5: Title 4, of the Elk Grove Municipal Code is hereby amended as follows:

- a) Section 4.06.015(a) is amended to add a subsection 4.06.15 (a) (1) that shall read as follows: "A Medical Cannabis Dispensary shall not for the purposes of this Title be considered a medical delivery service and any Medical Cannabis Dispensary shall be subject to the general and special licensing requirements."
- b) Section 4.10.005 is amended to add subsection 4.10.005 (p) that shall read as follows: "Any Medical Cannabis Dispensary."
- c) Section 4.10.045 is amended to add a subsection 4.10.045 (a) that shall read as follows:

"A Medical Cannabis Dispensary shall obtain a Special Business License pursuant to Elk Grove Municipal Code chapter 4.10 and in addition to the general and special licensing requirements each business license for a Medical Cannabis Dispensary shall have, and each licensee shall be required to obtain a conditional use permit from the Elk Grove Planning Commission which conditional use permit shall have, the following conditions:

- 1) **Hours of Operation:** The hours of operation are such that the Medical Cannabis Dispensary shall not be open before 9:00 a.m. and shall not be open after 3:00 p.m.
- 2) **Distance Requirements:** The structure is located 1,000 feet or more from the property line of any public or private school (kindergarten through twelfth grade). The distance shall be measured from the entrance of the facility to the school property line or the zone boundary.
- 3) **Conditional Use Permit:** Based on the circumstances of the area and to insure the least impact on the community, the Planning Commission may impose additional distance requirements on the granting and maintenance of the Conditional Use

Permit with respect to the distance the structure is from Parks, Teen Centers, Youth Recreational facilities, Day Care Centers, and other uses that draw minors.

- 4) **Development Requirements:** The development requirements of Title III, Chapter 15, Article 3 are applicable to all such uses.
- 5) **Notification of Community:** At least 30 days prior to the approval of the associated business license, applicants must provide proof to the City verifying that all residents and property owners within 1,000 feet of such uses have been notified in writing by U.S. Mail of the applicant's intent to open such a business.
- 6) **On-site Use Prohibited:** On-site use of cannabis is prohibited.
- 7) **On-site cultivation prohibited:** On-site cultivation of cannabis is prohibited.
- 8) **Sale/Display of Paraphernalia Prohibited:** Sale and/or display of drug paraphernalia (H&S Code §§11014.5, 11364, *et seq.*, EG MC Art. 5 §4.54 *et seq.*, both of which are incorporated herein by this reference) and/or any implement that may be used to administer medical marijuana is prohibited at any Medical Cannabis Dispensary.
- 9) **Disclosure of Supplier:** Medical Cannabis Dispensary shall disclose the names and addresses of all suppliers of cannabis products on their business license application. Any changes in suppliers must be disclosed in advance to the City by requesting an amended business license.
- 10) **On-Site Alcohol Prohibited:** Alcohol shall not be provided, stored, kept, located, sold, dispensed or used on site.
- 11) **Safety and Security Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Safety and Security Plan for the safe and secure storage and distribution of cannabis, which Plan shall include a hard-wired monitored alarm system.
 - (a) The City Council finds that the public interest served in preserving the confidentiality of any such Safety and Security Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove.
 - (b) Said current approved written Safety and Security Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.
- 12) **Removal of Solid Waste:** All solid waste shall be physically removed from the premises at least twice per operating day, and each removal shall be separated by at least three (3) hours. No solid waste shall be allowed to remain on site during time that the Medical Cannabis Dispensary is not open to the public.
- 13) **Confidentiality Plan:** Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written Confidentiality Plan for preserving the confidentiality of all "Qualified Patients" and/or "Primary Care Givers" to whom medical cannabis has been dispensed by the Medical Cannabis Dispensary.
 - (a) The City Council finds that there is an important security public interest served in preserving the confidentiality of any such Confidentiality Plan and not disclosing the Plan to the general public far outweighs the public's interest in Disclosure of the Plan, but a copy shall be kept on file by the City of Elk Grove. Further, the City Council finds there is an important

privacy interest in not disclosing such Confidentiality Plans that far outweighs the public's interest in disclosure of such Confidentiality Plans.

- (b) Said current approved written Confidentiality Plan shall be kept on the premises and be made available to the City of Elk Grove on demand during business hours.

14)No Interstate Commerce: Each Medical Cannabis Dispensary shall provide to, maintain with, and receive approval from, the Elk Grove Police Department a current written certification that the marijuana that is being dispensed for medical use, has not crossed state lines.

15)Applications for Employee Permits: In addition to the matters prescribed by Section 4.10.080, an application for an Employee Permit, or an application for the renewal of an Employee Permit, to work in a Medical Marijuana Dispensary, shall contain the following:

- (a) A list of each criminal conviction of the applicant, whether such conviction was by verdict, plea of guilty, or plea of nolo contendere. The list shall, for each such conviction, set forth the date of arrest, the offense charged, and the offense of which the applicant was convicted;
- (b) A list of the applicant's physical or mental disabilities or incapacities. With respect to each such disability or incapacity, the applicant shall state whether the same would interfere with the proper management and control regulated substances;
- (c) A declaration by a Medical Marijuana Dispensary employer that the applicant is employed by or has an offer of employment by that employer to work in the Medical Marijuana Dispensary;
- (d) A declaration by the Medical Marijuana Dispensary employer that the applicant, who is employed by or has an offer of employment with the employer, has been tested for controlled substances (and alcohol for permit renewal) in accordance with Government Code section 53075.5 and the results thereof are negative;
- (e) The name of the Medical Marijuana Dispensary business which the applicant is employed by or has an offer of employment from;
- (f) A statement as to whether the applicant is or ever has been addicted to the use of alcohol or any controlled substance as defined by the California Health and Safety Code;
- (g) Such other information as may be required by the Chief of Police to further the purposes of this Chapter, Chapter 4.02, or Chapter 4.10 of Title 4 of this Code. (SCC 1048 § 20, 1996; SCC 578 § 6 (part), 1983).

16)Issuance or Renewal of Employee Permit: Upon receipt of an application for an Employee Permit, or the application for the renewal of an Employee Permit, the Chief of Police shall conduct such investigation pursuant to Section 4.10.085 as is deemed necessary. The Chief of Police shall issue the Permit or renewal of the Permit pursuant to Section 4.10.090 unless the Chief of Police finds in writing grounds to deny as provided in Section 4.10.090 or the Chief of Police finds in writing any of the following:

- (a) That the application fails to contain information required by the Chief of Police or Section 4.10.045 (a), or is otherwise incomplete;

- (b) That the applicant fails to submit or refuses to submit to fingerprinting or photographing;
- (c) That information contained in the application is false or otherwise inaccurate;
- (d) That the applicant has a physical or mental disability or incapacity; or takes medication; or uses alcohol or any controlled substance as defined in the California Health and Safety Code; or has been convicted of a crime (including forfeiture of bail), and the time for appeal has elapsed, or which an order granting probation is made suspending the imposition of sentence, irrespective of the entry of a subsequent order under California Penal Code Section 1203.4; or has done any act involving dishonesty, fraud or deceit with intent to substantially benefit him or herself, or another, or substantially injure another; and, the Chief of Police concludes that by reason of the crime, act, disability, incapacity, or impairment from a substance consumed, the applicant would not work in a Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm or criminal, deceitful or otherwise unethical practices. Notwithstanding the foregoing, an application for a Permit, or a renewal, shall not be denied solely on the basis that a person has been convicted of a felony if the person has obtained a certificate of rehabilitation under California Penal Code Section 4852.01 et seq.; or, that the person has been convicted of a misdemeanor, if the person has met all applicable requirements of the criteria of rehabilitation developed to evaluate the rehabilitation of a person under California Penal Code Sections 4852.01, et seq. Conviction of a moving traffic violation shall constitute grounds for denial of the Permit, or renewal, if the Chief of Police concludes that by reason of such traffic violation conviction the applicant would not work in the Medical Marijuana Dispensary in a law abiding manner or in a manner which does not subject members of the public to risk of harm; or
- (e) One or more of the grounds for Permit revocation or suspension exists pursuant to Section 4.14.100 of this Chapter. (SCC 1048 § 21, 1996; SCC 578 § 6 (part), 1983).

17) Employee Permit Void Upon Termination of Employment. The Employee Permit shall become void upon termination of employment of the holder of an Employee Permit by the holder of a Special Business License. A holder of an Employee Permit shall return his or her Employee Permit to the Chief of Police within three (3) days after termination of employment.

The holder of the Special Business License employing the holder of the Employee Permit shall notify the Chief of Police within three (3) days upon termination of the holder's employment. (SCC 1048 § 22, 1996).

18) **Revocation:** Failure to comply with any of the above special conditions shall result in immediate revocation of the business license.”

d) Section 4.10.070 shall be amended to read as follows:

”4.10.065 EMPLOYEE PERMITS. With respect to certain types of enterprises described by Section 4.10.005, protection of the public health, safety and welfare require that personnel retained by the enterprises to perform specified functions or duties be of good moral character, not have been convicted of particular criminal offenses, and, in certain instances, possess minimum skills necessary to insure public safety. Personnel required to possess such minimum qualifications are identified by the provisions of Chapters 4.14 through 4.50 and section 4.10.005(p). The procedures set forth in this Chapter relating to Employee Permits shall be applicable to all personnel required by Chapter 4.14 through 4.50 and section 4.10.005(p) to possess minimum qualifications which are subject to review by the Chief of Police.” (SCC 578 § 4 (part), 1983)

e) Section 4.10.070 shall be amended to read as follows:

”4.10.070 PERMIT REQUIRED. Whenever under the provisions of Chapters 4.14 through 4.50, or section 4.10.005(p), personnel of a particular enterprise are required to meet minimum qualifications or possess a permit or license, it shall be unlawful for a person to perform the duties or functions specified and unlawful for the holder of a Special Business License to permit the person to perform such duties or functions unless the person has first applied for and obtained an Employee's Permit.” (SCC 578 § 4 (part), 1983.)

Section 6: 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.

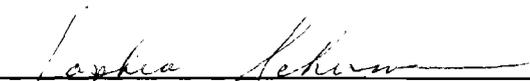
Section 7: Severability

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 8: Urgency: Effective Date and Publication

The City Council finds, in addition to the findings above, that the potential adverse secondary effects of the providing of medical marijuana present a clear and present danger to the immediate preservation of the public peace, health or safety such that this Ordinance shall take effect immediately upon its adoption by a 4/5ths majority of this City Council. The City Council also intends that the public hearing, City Council consideration and vote on this ordinance on April 7, 2004 also constitute the introduction of a regular ordinance, to be followed by a second reading no sooner than five days after the introduction with the regular ordinance becoming effective on the 31st day after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five 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).

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 7th day of April 2004.


SOPHIA SCHERMAN, MAYOR of the
CITY OF ELK GROVE

ATTEST:


PEGGY E. JACKSON, CITY CLERK

APPROVED AS TO FORM:


ANTHONY B. MANZANETTI,
CITY ATTORNEY

Effective Date: April 7, 2004

AYES: Scherman, Soares, Briggs, Leary
NOES: Cooper
ABSTAIN: None
ABSENT: None