ARTICLE 9: MEDICAL MARIJUANA: CULTIVATION AND DISPENSING

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SECTION 3-0901 PURPOSE

The purpose and intent of this section is to regulate the cultivation and dispensing of medical marijuana in a manner that protects the health, safety and welfare of the community. This section is not intended to interfere with a patient's right to medical marijuana, as provided for in California Health & Safety Code Section 11362, nor does it criminalize medical marijuana possession or cultivation by specifically defined classifications of persons, pursuant to state law.

SECTION 3-0902 APPLICABILITY

No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. §800 et seq., nor to otherwise permit any activity that is prohibited under that Act or any other local, state or federal law, statute, rule or regulation. The cultivation, processing and dispensing of medical marijuana in the City of Arcata is controlled by the provisions of this section of the Land Use Code. Accessory uses and home occupations, where medical marijuana is involved shall be governed by the provisions of this section.

SECTION 3-0903 RELEASE OF LIABILITY AND HOLD HARMLESS

The owner and permittee of a medical marijuana cooperative, collective or cultivation facility shall release the City of Arcata, and its agents, officers, elected officials, and employees from any injuries, damages, or liabilities of any kind that result from any arrest or prosecution of cooperative or collective or cultivation owners, operators, employees, or clients for violation of state or federal laws in a form satisfactory to the Director. In addition, the owner and permittee of each medical marijuana cooperative, collective or cultivation facility shall indemnify and hold harmless the City of Arcata and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by adjacent or nearby property owners or other third parties due to the operations at the cooperative, collective or cultivation facility, and for any claims brought by any of their clients for problems, injuries, damages, or liabilities of any kind that may arise out of the distribution, cultivation and/or on- or off-site use of medical marijuana provided at the cooperative, collective or cultivation facility in a form satisfactory to the Director.

SECTION 3-0904 MEDICAL MARIJUANA FOR PERSONAL USE

An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence. A primary caregiver shall only cultivate medical marijuana at the residence of a qualified patient for whom he/she is the primary caregiver. Medical marijuana for personal use shall be in conformance with the following standards:

1. The medical marijuana cultivation area shall not exceed 50 square feet and ten feet (10') in height per residence;

    a) Medical marijuana cultivation lighting shall not exceed 1200 watts;

    b) The use of gas products (CO_2, butane, etc.) for medical marijuana cultivation or processing is prohibited;

    c) Medical marijuana cultivation and sale is prohibited as a Home Occupation. Accessory Uses, medical marijuana cultivation and sales is not considered an accessory use. No sale or dispensing of medical marijuana for personal use is allowed;

    d) From a public right of way, there shall be no exterior evidence of medical marijuana cultivation either within or outside the residence;

    e) The qualified patient shall reside in the residence where the medical marijuana cultivation occurs;

    f) The qualified patient shall not participate in medical marijuana cultivation in any other residential location within the City of Arcata.

    g) The residence shall maintain kitchen, bathrooms, and primary bedrooms for their intended use and not be used primarily for medical marijuana cultivation;

    h) The medical marijuana cultivation area shall be in compliance with the current, adopted edition of the California Building Code §1203.4 Natural Ventilation or §402.3 Mechanical Ventilation (or its equivalent(s)); and

    i) The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes.

2. Any proposed medical marijuana cultivation by an individual qualified patient or primary caregiver that does not meet the grow area standard of Section 3-0904.1 shall require a Zoning Administrator Interpretation of the need for additional cultivation area. Documentation, such as a physician's recommendation or verification of more than one qualified patient living in the residence, shall be submitted with the request showing why the cultivation area standard is not feasible. The request for Interpretation shall include written permission from the property owner. The Zoning Administrator shall review the submitted information and make an interpretation. The Building Official may require additional specific standards to meet the California Building Code and Fire Code, including but not limited to installation of fire suppression sprinklers.

Approved medical marijuana cultivation for personal use that exceeds 50 square feet shall conform to the following standards:

a) Shall be in compliance with Section 3-0904.1.a-i above; and

b) The medical marijuana cultivation area shall not exceed an additional 50 square feet for the total of 100 square feet and not exceed ten feet (10') in height per residence; and

c) At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board; and

d) Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

SECTION 3-0905 PERMIT REQUIREMENTS FOR MEDICAL MARIJUANA COOPERATIVES OR COLLECTIVES

Medical marijuana cooperatives or collectives may be established only in those zoning districts listed in this Section (3-0905.3). Medical marijuana cooperatives or collectives shall only be allowed with an approved Use Permit. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate a medical marijuana cooperative or collective. A medical marijuana cooperative or collective shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical marijuana.

Notwithstanding the provisions of Section 1-0310 (Nonconforming Uses, Structures, and Lots), an existing cooperative or collective in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. Specific Regulations. The following specific regulations apply to medical marijuana cooperatives or collectives.

   a) The total number of medical marijuana cooperatives or collectives within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the four (4) cooperatives or collectives ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2).

b) The review authority should give special consideration to approving cooperatives or collectives located: within a 300 foot radius from any existing residential zoning district, within 500 feet of any other medical marijuana cooperative or collective as defined in the glossary which is located either inside or outside the jurisdiction of the City, or within 500 feet from any existing public park, playground, day care, or school.

c) Source of medical marijuana. A medical marijuana cooperative or collective shall only dispense marijuana from the following sources:

(1) Permitted Cooperative or Collective. If the Use Permit authorizes limited, on-site medical marijuana cultivation at the cooperative or collective, a permitted medical marijuana cooperatives' or collectives' on-site cultivation shall not exceed twenty-five (25) percent of the cooperatives' or collectives' total floor area, but in no case greater than 1,500 square feet of floor area and not exceed ten feet (10') in height.

(2) Off-site Permitted Cultivation. The cooperative or collective cultivates medical marijuana in an off-site location in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually.

(3) Qualified Patients. In the case of a medical marijuana cooperative or collective, the medical marijuana is acquired from an individual qualified patient who cultivated the medical marijuana in accordance with the standards in Section 3-0904, the qualified patient received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Pursuant to California Health and Safety Code §11362.765 (c) a collective or cooperative my credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.

d) A medical marijuana cooperative or collective application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) A description of the staff screening process including appropriate background checks;

(3) The hours and days of the week the medical marijuana cooperative or collective will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cooperative or collective. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) A description of the screening, registration and validation process for qualified patients;

(7) A description of qualified patient records acquisition and retention procedures;

(8) The process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources;

(9) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana;

(10) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(11) Other information required by the Community Development Director.

2. Operating Standards. Medical marijuana cooperatives or collectives shall comply with all of the following standards.

a) No dispensing medical marijuana to an individual qualified patient or primary caregiver more than twice a day;

b) Medical marijuana cooperatives or collectives shall only dispense medical marijuana to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid;

c) Medical cooperatives or collectives shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the cooperative or collective. The client rules and/or regulations shall include, but not limited to:

(1) Each building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical marijuana on the premises or in the vicinity of the cooperative or collective is prohibited unless specifically authorized with the Use Permit.

(2) The building entrance to a medical marijuana cooperative or collective shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are qualified patients and/or they are under the supervision of their parent or legal guardian.

d) The hours of operation for an approved medical marijuana cooperative or collective shall be limited to between 8:00 a.m. to 8:00 p.m. or as specified within the Use Permit;

e) Medical marijuana cooperatives or collectives shall not permit the use of medical marijuana on-site unless specifically authorized under the Use Permit;

f) Medical marijuana cooperatives or collectives shall not permit the on-site display of marijuana plants except for approved signs according to Section 1-0305 (Signs);

g) Medical marijuana cooperatives or collectives shall only permit the distribution of live plants, starts and clones as allowed by the approved Use Permit. Such distribution shall be limited to qualified patients or primary caregivers;

h) Medical marijuana cooperatives or collectives shall only permit the on-site display or sale of marijuana paraphernalia used for the consumption of medical marijuana as allowed by the approved Use Permit;

i) Medical marijuana cooperatives or collectives shall comply with other conditions as outlined in the Use Permit;

j) Medical marijuana cooperatives or collectives shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;

k) Medical marijuana cooperatives or collectives shall implement procedures as outlined in their approved Operations Manual;

l) Medical marijuana cooperatives or collectives shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and dispensing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

3. Allowable Land Uses & Permit Requirements. Medical marijuana cooperatives or collectives require a use permit reviewable by the Planning Commission in Coastal General Commercial (C-C-G) and Coastal Central Business District (C-CBD) commercial districts and are not allowed in all other districts.

4. Permit Revocation or Modification. A use permit may be revoked or modified. Use Permit revocation proceedings may occur for non-compliance with one or more of the items 2.a. through l. above.

5. Transfer of Use Permit. The rights of an approved Use Permit to operate a medical marijuana cooperative or collective may be transferred to another cooperative or collective as a Use Permit modification.

SECTION 3-0906 MEDICAL MARIJUANA CULTIVATION FOR COOPERATIVE OR COLLECTIVE

Except as permitted in Section 3-0905.1.c.(1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only in those zoning districts listed in this Section (3-0906.2). Medical marijuana cultivation and processing for a medical marijuana cooperative or collective shall only be allowed with an approved Use Permit reviewable by the Planning Commission. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a Use Permit to operate medical marijuana cultivation or processing facility.

Notwithstanding the provisions of Section 1-0310 (Nonconforming Uses, Structures, and Lots), an existing medical marijuana cultivation and processing structure or use in operation as of the effective date of this ordinance shall be brought into full compliance with the provisions of this section within one year of the effective date of the ordinance establishing this section.

1. Specific Regulations. The following specific regulations apply to medical marijuana cultivation and processing.

    a. The total number of medical marijuana cultivation and processing facilities within the City of Arcata shall be limited to four (4) until which time one (1) or two (2) of the cultivation and processing facilities ceases to operate, then the total number shall be reduced to three (3) and ultimately two (2). If a medical marijuana cooperative or collective allows for marijuana cultivation and processing pursuant to Section 3-0905.1.c.(1), the cooperative or collective shall be counted as one of the four (4) (or three (3), or two (2) as noted above) allowed marijuana cultivation and processing facilities.

    b. The grow area shall be within a self-contained structure, with a 1-hour firewall assembly made of green board, shall be ventilated with odor control, and shall not create a humidity or mold problem;

c. The medical marijuana cultivation and processing facility shall not adversely affect the health or safety of the nearby residents or businesses by creating dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous due to use or storage of materials, processes, products or wastes;

d. The medical marijuana cultivation and processing facility must be permitted in conjunction with an associated medical marijuana cooperative or collective in accordance with applicable zoning regulations from the jurisdiction in which it is located. Zoning compliance documentation from the applicable jurisdiction shall accompany the Use Permit application and be updated annually;

e. The medical marijuana cultivation and processing facility shall comply with stormwater, wastewater, and applicable greenhouse gas reduction requirements;

f. The size and scale of the cultivation shall be proportional to the qualified patient load of an associated medical marijuana cooperative or collective with permits from the jurisdiction in which it is located;

g. Medical marijuana cultivation and processing facilities shall not permit the on-site display of marijuana plants except for approved signs according to Chapter 9.38 (Signs);

h. Medical marijuana cultivation and processing facilities shall not permit the on-site display or sale of paraphernalia used for the use or consumption of medical marijuana;

i. Medical marijuana cultivation and processing facilities shall comply with other conditions as outlined in the Use Permit;

j. Medical marijuana cultivation and processing facilities shall maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cultivation and processing facilities shall also provide invoices to vendors to ensure vendor’s tax liability responsibility;

k. A medical marijuana cultivation and processing application for a Use Permit shall include a detailed Operations Manual including but not necessarily limited to the following information:

(1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;

(2) A description of the staff screening process including appropriate background checks;

(3) The hours and days of the week the medical marijuana cultivation and processing facility will be open;

(4) Text and graphic materials showing the site, floor plan and facilities of the medical marijuana cultivation and processing facility. The material shall also show adjacent structures and land uses;

(5) A description of the security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification;

(6) The process for tracking medical marijuana quantities and inventory controls;

(7) Description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.

(8) Description of chemicals stored, used and any effluent discharged into the City's wastewater and/or stormwater system; and

(9) Other information required by the Community Development Director.

n. Medical marijuana cultivation and processing facilities shall implement procedures as outlined in their approved Operations Manual;

o. Medical marijuana cultivation and processing facilities shall submit an "Annual Performance Review Report" for review and approval by the Community Development Director. The "Annual Performance Review Report" is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary. The Community Development Director may review and approve amendments to the approved "Operations Manual"; and the frequency of the "Annual Performance Review Report". Medical marijuana cultivation and processing monitoring review fees pursuant to the current Planning and Zoning Fee Resolution shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.

2. Except as permitted in Section 3-0905.1.c.(1) medical marijuana cultivation and processing for medical marijuana cooperatives or collectives is considered an agricultural use and may be established only with a Use Permit reviewable by the Planning Commission in Coastal – Industrial Commercial (C-I-C), Coastal – Heavy Industrial (C-I-H) and Coastal - Agricultural Exclusive (C-A-E) districts and is not allowed in all other districts.

SECTION 3-0907 DEFINITIONS

1. **Marijuana**. "Marijuana" means 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, cake, or the sterilized seed of the plant which is incapable of germination.

2. **Medical Marijuana.** Means marijuana used in strict accordance with the Compassionate Use Act of 1996 (Health and Safety Code §11362.5 et seq) and The Medical Marijuana Program (Health and Safety Code §11362.7 et seq.).

3. **Medical Marijuana Identification Card**. A document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any as per California Health and Safety Code §11362.7, and as may be amended.

4. **Medical Marijuana Cooperative or Collective.** "Medical Marijuana Cooperative or Collective" means an affiliation or association of individuals whose collective intent is to provide education, referral or network services and to assist in the lawful acquisition and distribution of medical marijuana in a safe and affordable manner between primary caregivers and qualified patients as permitted in accordance with the Compassionate Use Act of 1996.

5. **Person with an Identification Card**. Means an individual who is a qualified patient who has applied for and received a valid identification card as per the California Health and Safety Code §11362.7, and as may be amended.

6. **Primary caregiver**. Means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, as more particularly as set forth in California Health and Safety Code §11362.7, and as may be amended.

7. **Qualified patient**. Means a person who has a physician's recommendation and is entitled to the protections of Section 11362.5 of the California Health and Safety Code, but who does not have an identification card issued as set forth in California Health and Safety Code §11362.7, and as may be amended.