

AGENDA SUMMARY

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.:
---------------------------------------	--

RECOMMENDATION:

1. Hold a Public Hearing
2. Waive reading and introduce, read by Title only, Bill No. 822-C.S., AN ORDINANCE OF THE CITY OF EUREKA ADDING TITLE 15 CHAPTER 158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION, as modified by Staff.

SUMMARY:
The City Council drafted a Medical Cannabis Ordinance and directed that it be forwarded to the Planning Commission for review and recommendation back to the City Council. The Medical Cannabis Ordinance provides regulations for the personal cultivation and processing of medical cannabis by a qualified patient, and regulations for the cultivation, processing and distribution of medical cannabis by collectives and cooperatives.

ATTACHMENTS:

Attachment 1 Medical Cannabis Ordinancepage 5
Attachment 2 Staff suggested modifications to the Medical Cannabis Ordinance.....page 19
Attachment 3 Draft Request for Qualificationspage 21

Continued page 2

FISCAL IMPACT: Adoption of the Medical Cannabis Ordinance will require additional Community Development Department staff time and resources to implement and enforce the new Ordinance. The cost for processing exceptions and conditional use permits will generally be covered by the application fees set by resolution of the City Council. Enforcement of the Ordinance will require expenditure of general fund monies not fully reimbursed unless and until the city prevails on any legal action necessary to enforce the regulations and only if such cost recovery is included in the court order. Further, if caps are established in the Ordinance, staff time and resources needed for facilitating the RFQ selection committee will require expenditure of general fund monies.

DEPARTMENT HEAD SIGNATURE:  _____ <i>Sidnie L. Olson</i> Director of Community Development	CITY MANAGER SIGNATURE: _____ <i>David W. Tyson</i> City Manager
--	--

REVIEWED BY:	DATE:	INITIALS:
Assistant City Manager	<u>7-7-10</u>	<u>MK</u>
City Attorney	<u>7-6-10</u>	<u>SS</u>
Finance Director	_____	_____

Council Action:

Ordinance No. _____ Resolution No. _____

DISCUSSION:

On May 10, 2010 and again on June 1, 2010, the Planning Commission held public hearings to receive public testimony on and to consider the draft Medical Cannabis Ordinance. Following the close of the public hearing on June 1, 2010, the Planning Commission took action to direct staff to make certain modifications to the Ordinance and, further, the Commission took action to direct staff to forward the modified Ordinance back to the City Council with a recommendation that the City Council introduce and adopt Medical Cannabis Ordinance (Attachment 1).

The Planning Commission seriously and studiedly considered the public testimony received on the draft Medical Cannabis Ordinance. They discussed and debated the provisions of the Ordinance, including the question posed by the City Council of whether caps should be established to limit the number of cultivation, processing and distribution facilities within the city. The Planning Commission, after much deliberation, added caps as follows:

A maximum of four cultivation/production facilities would be allowed within city limits; each of the four cultivation/production facilities would be allowed a maximum of two distribution facilities. Only one of the two allowed distribution facilities for each cultivation/production facility could be off-site of the cultivation/production facility. A maximum of two distribution facilities not associated with any of the four allowed cultivation/production facilities would be allowed within city limits.

To determine which collectives or cooperatives would be invited to submit an application for a conditional use permit, Staff recommends that the City Council establish a procedure that uses a Request For Qualifications (RFQ) process to solicit proposals from collectives or cooperatives desiring to locate facilities within city limits. Staff proposes that a five member selection committee be appointed by a subcommittee of the City Council, plus one City Council Member and the Director of Community Development, to review the proposals and rank them based on business experience, business plan, and ability to operate a clean, professional and safe facility. Because the proposals are ranked on the business model, a specific location is not needed in order for a collective or cooperative to respond to the RFQ. The top ranked respondents would be invited to apply for a conditional use permit; because a conditional use permit is a discretionary permit, there is no guarantee that the use permit application will be approved. For the Council's consideration, Staff has drafted a sample RFQ which is attached hereto as Attachment 3.

The Planning Commission made modifications to the Medical Cannabis Ordinance drafted by the City Council which include changing the rights of the conditional use permit to run with the permittee at the specific location identified in the use permit, and that the rights cannot be transferred to another permittee or another location; instead of the rights running with the land.

In addition, the Commission modified section 158.022(G)(3) to prohibit distribution facilities

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 3</i>
---------------------------------------	---

within 1000 feet of a park, playground, day care facility, school or similar facility. And finally, the Commission directed staff to draft language for the Council’s review that would provide regulation on, at a minimum, toxicology testing, third-party inspection, and product labeling. Staff made those modifications and additions and they are included in Attachment 1, an Ordinance adding Title 15 Chapter 158 Medical Cannabis: Cultivation, Processing and Distribution to the Municipal Code.

On June 21, 2010, the Director of Community Development attended a conference sponsored by CLE International on the current legal issues surrounding Medical Marijuana. Based upon the discussion and recommendations coming out of the conference, Staff has made some suggested modifications to the Medical Cannabis Ordinance which are included in Attachment 2. At the conference there was discussion that in jurisdictions that prohibit ‘store front’ distribution of medical cannabis, that some collectives and cooperatives are using vehicles to operate mobile distribution facilities or “roach coaches” to circumvent the prohibition. It was suggested that city’s address this issue in their Medical Marijuana Ordinances.

Staff understands that it is voluntary for medical cannabis users to obtain a State or County Identification Card. At the conference it was suggested that Medical Cannabis Ordinances require that collectives or cooperatives provide medical cannabis only to persons holding a current and valid State or County issued identification card. By requiring identification cards, it shifts the burden of verifying whether a person has a valid Doctor recommendation from the collective or cooperative to the State or County office issuing the identification card.

In addition, there was discussion of the expected ballot measures that will be placed before the voters at the November election. The ballot measures, if passed, would decriminalize certain recreational use of marijuana. It was put forward that if the ballot measure(s) pass that businesses catering to recreational users of marijuana, such as smoking clubs, would attempt to establish in many jurisdictions. It was recommended that cities may want to address the issue in anticipation of the passage of the ballot measure(s).

Staff has made the suggested modifications discussed at the CLE conference and described above, and included them herein as Attachment 2. Staff recommends that the City Council incorporate the suggested modifications into the Medical Cannabis Ordinance.

FINDINGS:

In order to amend the text of the Eureka Municipal Code the Planning Commission must determine that the proposed amendment is consistent with the objectives of the zoning regulations as prescribed in § 155.002 of Eureka Municipal Code, which are adopted to protect the public health, safety, peace, comfort, convenience, prosperity, and general welfare.

The purpose and intent of Chapter 158 is to regulate the cultivation, processing and distribution

of medical cannabis within city limits specifically to protect the public health, safety and welfare of the community. Of serious and growing concern within the city is the increasing number of “grow houses” and the concomitant increase in personal and property crimes that go along with grow houses. This Ordinance will provide an opportunity not currently available to the City to regulate grow houses as a land use. By limiting the floor area allowed for cultivating medical cannabis within each residence in which a qualified patient resides, the Ordinance will prohibit the conversion of residences to “grow houses.”

The Planning Commission did take action to find and determine that the Medical Cannabis Ordinance as modified by the Commission consistent with the objectives of the zoning regulations found in section 155.002.

ENVIRONMENTAL REVIEW:

Amending the text of the Eureka Municipal Code is a “project” for the purposes of the California Environmental Quality Act (CEQA). However, pursuant to the CEQA Guidelines, section 15061, there is a general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

One of the primary purposes of the Medical Cannabis Ordinance is to reduce negative impacts to the community from grow houses. This and the fact that the text amendment requires a conditional use permit for all non-personal cultivation, processing and distribution facilities, and because each conditional use permit is subject to CEQA review thus assuring that on an application-by-application bases that all potential adverse environmental impacts are analyzed, it is certain that the text amendment will not result in a significant effect on the environment. And, therefore, pursuant to section 15061 adoption of the Medical Cannabis Ordinance is exempt from CEQA.

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM No.: <i>Page 5</i>
---------------------------------------	---

**ATTACHMENT 1
Medical Cannabis Ordinance**

BILL NO. 822-C.S.
ORDINANCE NO. -C.S.

**AN ORDINANCE OF THE CITY OF EUREKA ADDING TITLE 15 CHAPTER
158 MEDICAL CANNABIS: CULTIVATION, PROCESSING AND
DISTRIBUTION**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EUREKA AS FOLLOWS:

Section 1.

The following chapter is hereby added to Title 15:

CHAPTER 158 TITLE MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Section

General Provisions

- 158.001 Findings and Purpose
- 158.002 Interpretation and Applicability
- 158.003 Release of Liability and Hold Harmless
- 158.004 Definitions
- 158.005 Severability

Personal Use - Requirements & Regulations

- 158.010 Cultivation
- 158.011 Processing
- 158.012 Distributing

Cooperatives & Collectives - Requirements & Regulations

- 158.020 Offices
- 158.021 Number of Facilities
- 158.022 Cultivation or processing
- 158.023 Distributing
- 158.024 Delivery Services

Permits

- 158.030 Fees and taxes
- 158.040 Enforcement

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 6</i>
---------------------------------------	---

GENERAL PROVISIONS

§ 158.001 FINDINGS AND PURPOSE.

(A) The City Council of the City of Eureka, based on evidence presented to it in the proceedings leading to the adoption of this ordinance hereby finds that the cultivation, processing and distribution of medical cannabis in the City of Eureka has caused and is causing ongoing impacts to the community. These impacts include damage to buildings containing indoor grows, including improper and dangerous electrical alterations and use, inadequate ventilation leading to mold and mildew, increased frequency of home-invasion robberies and similar crimes, and that many of these impacts have fallen disproportionately on residential neighborhoods. These impacts have also created an increase in response costs, including code enforcement, building, land use, fire, and police staff time and expenses.

(B) The City Council of the City of Eureka also acknowledges that the voters of the State of California have provided a criminal defense to the cultivation, possession and use of cannabis for medical purposes under the Compassionate Use Act, but that the Compassionate Use Act does not address land use or building code impacts or issues arising from the resulting increase in cannabis cultivation within the City.

(C) The purpose and intent of this chapter is to regulate the cultivation, processing and distribution of medical cannabis in a manner that protects the public health, safety and welfare of the community and mitigates for the costs to the community of the oversight of these activities.

§ 158.002 INTERPRETATION AND APPLICABILITY.

(A) No part of this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 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 distribution of medical cannabis in the City of Eureka is controlled by the provisions of this chapter of the Eureka Municipal Code. Accessory uses and home occupations, where medical cannabis is involved shall be governed by the provisions of this chapter.

(B) Nothing in this ordinance is intended, nor shall it be construed, to burden any defense to criminal prosecution otherwise afforded by California law.

(C) Nothing in this ordinance is intended, nor shall it be construed, to preclude a landlord from limiting or prohibiting cannabis cultivation, smoking or other related activities by tenants.

(D) Nothing in this ordinance is intended, nor shall it be construed, to exempt any cannabis related activity from any and all applicable local and state construction, electrical, plumbing, land use, or any other building or land use standards or permitting requirements.

(E) Nothing in this ordinance is intended, nor shall it be construed, to make legal any cultivation, transportation, sale, or other use of cannabis that is otherwise prohibited under California law.

(F) All cultivation, processing and distribution of medical cannabis within city limits shall be subject to the provisions of this chapter, regardless if the cultivation, processing or distribution existed or

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 7</i>
---------------------------------------	---

occurred prior to adoption of this chapter.

§ 158.003 RELEASE OF LIABILITY AND HOLD HARMLESS.

As a condition of approval of any conditional use permit approved for a medical cannabis cultivation, processing, and/or distribution facility, the owner or permittee of each medical cannabis collective, cooperative, cultivation, processing or distribution facility shall indemnify and hold harmless the City of Eureka 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 collective, cooperative, cultivation, processing or distribution 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 cultivation, processing or distribution of medical cannabis.

§ 158.004 DEFINITIONS.

DWELLING UNIT. A room or group of rooms (including sleeping, eating, cooking, and sanitation facilities, but not more than one kitchen), which constitutes an independent housekeeping unit, occupied or intended for occupancy by one household on a long-term basis.

MEDICAL CANNABIS. (also known as *medical marijuana*) Cannabis, including constituents of cannabis, THC and other cannabinoids, used as a physician-recommended form of medicine or herbal therapy.

MEDICAL CANNABIS COOPERATIVE OR COLLECTIVE. Any person, association, cooperative, affiliation, or collective of persons who provide education, referral, or network services, and/or facilitation or assistance in the cultivation, processing or distribution of medical cannabis.

MEDICAL CANNABIS CULTIVATION FACILITY. A facility at which medical cannabis is grown and harvested for supply to a **MEDICAL CANNABIS PROCESSING FACILITY** and/or a **MEDICAL CANNABIS DISTRIBUTION FACILITY**. **MEDICAL CANNABIS CULTIVATION FACILITY** includes **MEDICAL CANNABIS** nursery and/or research facilities.

MEDICAL CANNABIS CULTIVATION AREA. The maximum dimensions allowed for the growing and processing of medical cannabis. For the purpose of this chapter, the allowable cultivation area shall apply to the outward edge of the vegetative canopy.

MEDICAL CANNABIS DISTRIBUTION. The supply to a qualified patient by any person, including a primary caregiver, cooperative or collective, of medical cannabis that is not grown in the qualified patient's residence.

MEDICAL CANNABIS DISTRIBUTION FACILITY. Any facility or location where the primary purpose is to distribute medical cannabis as a medication upon recommendation by a physician and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5 et seq.).

MEDICAL CANNABIS PROCESSING. Medical cannabis processing includes, but is not limited

to: manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling, vaporizing.

MEDICAL CANNABIS PROCESSING FACILITY. A facility at which medical cannabis is processed for supply to a ***MEDICAL CANNABIS DISTRIBUTION FACILITY.***

QUALIFIED PATIENT. As defined in California Health and Safety Code Section 11362.7 et seq., and as it may be amended from time to time

RESIDENCE. A legal dwelling unit.

§ 158.005 SEVERABILITY

If any part of this ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PERSONAL USE - REQUIREMENTS & REGULATIONS

§ 158.010 CULTIVATION.

(A) A qualified patient shall be allowed to cultivate medical cannabis for their own personal use in an area not to cumulatively exceed 50 square feet per residence. Cultivation of medical cannabis for personal use shall be in conformance with the following standards:

(1) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis cultivation shall remain at all times secondary to the residential use of the property;

(2) The qualified patient shall reside in the residence where the medical cannabis cultivation occurs;

(3) Cultivation of medical cannabis for personal use shall occur only on the parcel either within the residence occupied by the qualified patient, or in a self-contained accessory building that is secured, locked, and fully enclosed and which is for the exclusive use of the qualified patient. Cultivation of medical cannabis for personal use shall not displace required off-street parking;

(4) The medical cannabis cultivation area shall not exceed 50 square feet and shall not exceed 10 feet in height per residence, regardless if cultivated within the residence or in an accessory building unless an exception request is obtained per section 158.010(B);

(5) If required by Building or Fire Code, the wall(s) adjacent to the cultivation area shall be constructed with 5/8" Type X moisture resistant drywall;

(6) The medical cannabis cultivation area shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(7) The cultivation of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is cultivated, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(8) Medical cannabis cultivation lighting shall not exceed 1200 watts unless an exception request is obtained per section 158.010(B);

(9) All electrical equipment used in the cultivation of medical cannabis, (e.g., lighting and ventilation) shall be plugged directly into a wall outlet or otherwise hardwired; the use of extension cords to supply power to electrical equipment used in the cultivation of medical cannabis is prohibited;

(10) Any electrical wiring/rewiring shall first require an electrical permit from the Building Department;

(11) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis cultivation is prohibited unless an exception request is obtained per section 158.010(B); and

(12) From a public right of way, there shall be no exterior evidence of medical cannabis cultivation occurring at the property.

(B) The medical cannabis cultivation area may exceed the 50 square foot maximum per residence, up to a total of 100 square feet of cultivation area, or the standards in section 158.010(A)(4)(8) or (11) above may be modified, upon approval of an Exception Request issued by the Director of Community Development. An Exception Request shall not allow more than a total of 100 square feet per residence regardless if cultivated within the residence or an accessory building.

(1) An application for an Exception Request shall include the following information

(a) Written permission from the property owner;

(b) An application fee set by resolution of the City Council;

(c) Adequate information and documentation, such as a physician's recommendation, or verification of more than one qualified patient living in the residence, to demonstrate why the cultivation area should be allowed to exceed 50 square feet;

(d) The specified location and size of the requested cannabis cultivation area not to exceed 100 square feet and not to exceed 10 feet in height;

(e) A materials storage, handling and disposal plan; and

(f) If the Exception Request includes a request to modify the standards prescribed in section 158.010(A)(4)(8) or (11), documentation and information shall be provided identifying which standards are proposed to be modified and why such modification would not detrimentally affect the use of the dwelling unit for its intended residential occupancy.

(2) If required by Building or Fire Code, the applicant shall make specified improvements to the residence with a Building Permit, if one is needed. Such improvements may include, but are not limited to, electrical system upgrades.

(3) The Director of Community Development in consultation with the Chief Building Official and Fire Marshal shall review the submitted application and determine if the specific circumstances warrant granting an Exception Request.

(4) The Exception Request shall become void, and the cannabis cultivation area in excess of 50 square feet shall be removed one year following the date on which the Exception Request was issued unless the Exception Request is renewed prior to expiration.

(C) Medical cannabis cultivation is prohibited as a Home Occupation. Medical cannabis cultivation shall not be considered a residential accessory use. No distribution of medical cannabis cultivated for personal use shall be allowed.

§ 158.011 PROCESSING.

(A) A qualified patient shall be allowed to process medical cannabis cultivated within his/her private residence. Processing of medical cannabis cultivated at the residence shall be in conformance with the following standards:

(1) Only medical cannabis cultivated at the residence in conformance with this chapter shall be allowed to be processed at the residence;

(2) The residence shall remain at all times a residence with legal and functioning cooking, sleeping and sanitation facilities. Medical cannabis processing shall remain at all times secondary to the residential use of the property;

(3) The medical cannabis processing shall be in compliance with the current adopted edition of the California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(4) The use of gas products (e.g., CO₂, butane, etc.) for medical cannabis processing is prohibited; and

(5) The processing of medical cannabis shall not adversely affect the health or safety of the residents, the residence or accessory building in which it is processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, surface runoff, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes.

(B) Medical cannabis processing is prohibited as a Home Occupation. Medical cannabis processing shall not be considered a residential accessory use. No sale or distributing of medical cannabis processed for personal use shall be allowed.

§ 158.012 DISTRIBUTING.

Medical cannabis cultivated or processed for personal use as provided for in this chapter shall not

be distributed to any person, cooperative or collective unless specifically allowed under this chapter.

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.020 OFFICES.

Offices for a cooperative or collective at which no cultivation, processing, storage, handling or distributing of cannabis, in any form, occurs shall be allowed in any zoning district in which offices are allowed. Such offices shall be subject to all regulations and standards applicable to offices as prescribed in the Zoning Regulations of the Eureka Municipal Code.

§ 158.021 NUMBER OF FACILITIES.

In addition to all other provisions of this chapter, there shall be a maximum of four cultivation/production facilities permitted within city limits; each of the four cultivation/production facilities shall be allowed a maximum of two distribution facilities located within city limits. Only one of the two permitted distribution facilities for each cultivation/production facility may be located off-site of the cultivation/production facility. A maximum of two distribution facilities not associated with any of the four permitted cultivation/production facilities shall be allowed within city limits. The selection process for determining which cultivation/production facilities and which distribution facilities may apply for permits shall be by procedure established by the City Council.

§ 158.022 CULTIVATION OR PROCESSING.

(A) Cultivation or processing facilities for distribution shall be allowed only in the Agriculture (A), Coastal Agriculture (AC), Service Commercial (CS), Limited Industrial (ML) or General Industrial (MG) zone districts.

(B) Cultivation or processing facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. 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 conditional use permit to operate a cultivation or processing facility for distribution.

(C) Research, testing, or other similar facilities shall be considered, for the purpose of this chapter, a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

(D) In addition to the conditional use permit required under section 158.022(B), a cultivation or processing facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in the Eureka Municipal Code.

(E) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a cultivation or processing facility shall include the following information:

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

(2) Text and graphic materials showing the site and floor plan for the medical cannabis cultivation or processing facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;

(3) The equipment and methods employed in the cultivation or processing of the medical cannabis;

(4) How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients;

(5) The hours and days of the week the medical cannabis cultivation or processing facility will be open;

(6) The number of persons, per shift, who will be working at the cultivation or processing facility;

(7) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;

(8) The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis;

(9) The chemicals stored or used at the premises;

(10) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;

(11) The name, location and operator of the distribution facility(ies) for which the medical cannabis is being cultivated or processed; and

(12) Any other information required by the Director of Community Development relevant to the ordinance.

(F) Cultivation or processing facilities shall be subject to the following specific regulations:

(1) The cultivation area shall occur only within a self-contained structure that is in compliance with California Building Code section 1203.4 Natural Ventilation or section 402.3 Mechanical Ventilation (or its equivalent(s));

(2) The cultivation or processing facility shall comply with stormwater, wastewater, and other applicable requirements of the City;

(3) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(4) The on-site display of cannabis plants, except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the cultivation or processing facility;

(5) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the cultivation or processing facility;

(6) Cultivation or processing facilities shall maintain all necessary permits, and pay all appropriate taxes;

(7) Cultivation or processing facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(8) A cultivation or processing facility located off-site from the associated medical cannabis distribution facility shall not distribute medical cannabis from the cultivation or processing site;

(9) The cultivation or processing of medical cannabis shall not adversely affect the health or safety of the employees, or the facility in which it is cultivated or processed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(10) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(11) Medical cannabis cultivation or processing facilities shall comply with other conditions prescribed in the approved conditional use permit.

(G) The conditional use permit approved for a cultivation or processing facility may be suspended or revoked as prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a cultivation or processing facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a cultivation or processing facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified cultivation or processing facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.023 DISTRIBUTING.

(A) Medical cannabis distributing facilities shall be allowed only in the Service Commercial (CS), Hospital Medical (HM), Limited Industrial (ML) or General Industrial (MG) zoning districts.

(B) Medical cannabis distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in the Eureka Municipal Code. 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 conditional use permit to operate a medical cannabis distribution facility.

(C) In addition to the conditional use permit required under section 158.023(B), a distribution facility located in the coastal zone shall only be allowed upon the granting of a coastal development permit as prescribed in of the Eureka Municipal Code.

(D) In addition to the application requirements specified for a conditional use permit, an application for a conditional use permit for a distribution facility shall include the following information:

- (1) Authorization for the City, its agents and employees, to seek verification of the information contained within the application;
- (2) Text and graphic materials showing the site and floor plan for the distribution facility including the use of each room or building on the premises. The material shall also describe or illustrate the location and uses of adjacent structures and properties;
- (3) The hours and days of the week the distribution facility will be open;
- (4) The number of persons, per shift, who will be working at the distribution facility;
- (5) The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification;
- (6) The chemicals stored or used at the premises;
- (7) The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system;
- (8) The name, location and operator of the cultivation or processing facility(ies) supplying the medical cannabis to the distribution facility;
- (9) A detailed Operations Manual containing, at a minimum,
 - (a) The staff screening process including appropriate background checks;
 - (b) The process for tracking medical cannabis quantities and inventory controls;
 - (c) A description of the screening, registration and validation process for qualified patients;
 - (d) A description of qualified patient records acquisition and retention procedures; and
 - (e) The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources;

- (10) A detailed Cannabis Safety Program, which includes at a minimum, the following,
- (a) The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient;
 - (b) The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants); and
 - (c) The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis (e.g., cannabinoids THC, CDB and CBN).
- (11) Any other information required by the Director of Community Development that is relevant to the ordinance.
- (E) Distribution facilities shall be subject to the following specific regulations:
- (1) No distribution facility shall be located within 1000 feet from any existing park, playground, day care facility, school or similar facility, either inside or outside the city limits;
 - (2) The distribution facility shall consist of a business form that satisfies state law to act cooperatively or collectively in the acquisition and distribution of medical cannabis;
 - (3) The distribution facility shall display the client rules and/or regulations in a conspicuous place that is readily seen by all persons entering the distribution facility;
 - (4) Each building entrance to the distribution facility shall be clearly and legibly posted with a notice indicating that smoking, ingesting or consuming medical cannabis on the premises or in the vicinity of the distribution facility is prohibited unless specifically authorized under the conditional use permit;
 - (5) Each building entrance to the distribution facility 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 a qualified patient and/or they are under the supervision of their parent or legal guardian;
 - (6) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid, verified physician's recommendation. The distribution facility shall verify that the physician's recommendation is current and valid;
 - (7) The distribution facility shall not distribute medical cannabis to a qualified patient or primary caregiver more than twice a day;
 - (8) The distribution facility shall only permit the distribution of live plants, starts and clones as allowed by the approved conditional use permit. Such distribution shall be limited to qualified patients or primary caregivers;

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 16</i>
---------------------------------------	--

(9) The on-site display of cannabis plants, except for signs approved in compliance with the sign regulations prescribed in the Eureka Municipal Code, shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(10) The display or sale of paraphernalia employed in the use or consumption of medical cannabis shall not be allowed at the distribution facility unless specifically prescribed in the approved conditional use permit;

(11) The required number of off-street parking spaces shall be determined by the Planning Commission. The location of off-street parking shall be in compliance with the parking regulations prescribed in the Eureka Municipal Code;

(12) Distribution facilities shall maintain all necessary permits, and pay all appropriate taxes;

(13) Distribution facilities shall provide invoices to vendors to ensure vendor's tax liability responsibility;

(14) The distribution of medical cannabis shall not adversely affect the health or safety of the employees or the facility in which it is distributed, or nearby properties through creation of mold, mildew, dust, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibration, or other impacts, or be hazardous because of the use or storage of materials, processes, products or wastes;

(15) Each and every package or unit of medical cannabis, or medical cannabis product, distributed shall have a label or labels that state the following:

- (a) The name of the patient;
- (b) The name and contact information of the distributor;
- (c) An identification and tracking number for the specific package or unit of medical cannabis, or medical cannabis product;
- (d) The species or strain of the medical cannabis;
- (e) Identification of the strength and dosage of the medical cannabis;
- (f) A statement that the medical cannabis or medical cannabis product has been tested for safety and quality assurance and that the testing results, and chain of custody information is available by contacting the distributor;

(16) There shall be no on-site use or consumption of medical cannabis unless specifically authorized in the conditional use permit; and

(17) Distribution facilities shall comply with other conditions prescribed in the approved conditional use permit.

(F) In addition to the findings specified for a conditional use permit, the Planning Commission shall consider the following when deciding to approve a conditional use permit for a distribution facility:

(1) If the proposed distribution facility is within a 300 feet of a residential zoning district either inside or outside the city limits, the potential impacts of the distribution facility on the residents and infrastructure of that district; and

(2) If the proposed distribution facility is within 1000 feet of any other distribution facility, either inside or outside the city limits, the cumulative impacts of the proposed distribution facility on the residents, businesses and infrastructure in the vicinity of the proposed distribution facility.

(G) The conditional use permit approved for a distribution facility may be suspended or revoked based on a finding that the facility has a history of multiple or any serious violations of this ordinance, or as otherwise prescribed for all other conditional use permits in the Eureka Municipal Code.

(H) The rights of an approved conditional use permit for a distribution facility shall be granted to the permittee at the specified location described in the conditional use permit. The conditional use permit for a distribution facility shall not be transferred to another permittee or to another location.

(I) The conditional use permit shall remain in effect as long as the specified distribution facility is in operation. A facility that ceases operation for one month or more shall be deemed abandoned and the conditional use permit shall terminate.

§ 158.024 DELIVERY SERVICES

(A) A medical cannabis delivery or transportation service that is associated with a permitted distribution facility located within city limits and for which delivery originates from the distribution facility shall only be allowed when the delivery service is described and included in the conditional use permit for the distribution facility.

(B) Delivery or transportation services originating from outside city limits and delivering medical cannabis within city limits shall only be allowed upon the granting of a Mobile Business License.

(C) Delivery or transportation services originating from within city limits, but not from a permitted distribution facility shall be prohibited.

(D) No part of this section shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. section 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.

PERMITS

§ 158.030 FEES AND TAXES

The costs to the City arising from the processing and oversight of Exception Requests under section 158.010, subdivision (B) and permits for Cooperatives and Collectives and Distribution Facilities under sections 158.022 and 158.023, and the costs of monitoring and ensuring compliance with this Ordinance, will be offset through application fees and annual renewal fees, to be adopted by the City

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 18</i>
---------------------------------------	--

Council by Resolution and updated as necessary from time-to-time. In the administration of the permitting requirements under this Ordinance, the City Manager, or his designee, may require as a condition to granting and renewal of the permits any information reasonably necessary to implement the intent of this Ordinance, to ensure that the cannabis handled under the permit is grown, processed or distributed in a manner not in conflict with this Ordinance, and to ensure that any and all related sales taxes are being properly reported and paid.

§ 158.040 ENFORCEMENT

Any violation of this Ordinance is subject to administrative, civil, or criminal penalties, as set out in Eureka Municipal Code section 10.99, in addition to being subject to other remedies provided by law, including but not limited to, injunctive relief, nuisance abatement action, summary abatement of immediately hazardous conditions, and all other applicable fines, penalties and remedies. This is an Ordinance adopted to address public health and safety issues, and as such, carries with it an express legislative intent to be interpreted strictly, enforced with an emphasis on public and community safety, and enforced rigorously in a manner such as to deter further violations.

Section 2.

This ordinance becomes effective thirty (30) days after the date of its enactment.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Eureka in the County of Humboldt, State of California, on the _____ day of August, 2010 by the following vote:

- AYES: COUNCIL MEMBERS:
- NOES: COUNCIL MEMBERS:
- ABSENT: COUNCIL MEMBERS:
- ABSTAIN: COUNCIL MEMBERS:

Mike Jones, Mayor Pro Tem

THE ABOVE ORDINANCE WAS SUBMITTED TO THE MAYOR on the ___ day of August, 2010, and hereby approved.

Virginia Bass, Mayor

Approved as to Administration:

Approved as to form:

David. W. Tyson, City Manager

_____, City Attorney

THE ABOVE ORDINANCE WAS ATTESTED BY THE CITY CLERK OF THE CITY OF EUREKA on the _____ day of August, 2010

Pamela J. Powell, City Clerk

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 19</i>
---------------------------------------	--

ATTACHMENT 2
Staff suggested modifications to the Medical Cannabis Ordinance

CHAPTER 158: MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION

Section

Permits

158.030 Fees and taxes
~~158.040~~ 158.031 Enforcement

Non-medical Marijuana Use – Requirements & Regulations

158.040 Personal Use Cultivation, Processing, and Distributing
158.041 Business Establishments

COOPERATIVES & COLLECTIVES - REQUIREMENTS & REGULATIONS

§ 158.023 DISTRIBUTING.

(A) Medical cannabis distributing facilities shall be allowed only in the Service Commercial (CS), Hospital Medical (HM), Limited Industrial (ML) or General Industrial (MG) zoning districts. Mobile distribution of medical cannabis, other than delivery services described and regulated by section 158.024, is prohibited within city limits.

(E) Distribution facilities shall be subject to the following specific regulations:

(6) The distribution facility shall only distribute medical cannabis to a qualified patient who has a valid and current State or County issued identification card ~~valid, verified physician's recommendation. The distribution facility shall verify that the physician's recommendation is current and valid;~~

PERMITS

§ 158.040 158.031 ENFORCEMENT

NON-MEDICAL USE – REQUIREMENTS & REGULATIONS

§ 158.040 PERSONAL USE CULTIVATION, PROCESSING, AND DISTRIBUTING

The personal cultivation, processing and distributing of cannabis or marijuana for non-medical purposes, to the extent provided by law, shall comply with the Use Requirements and Regulations prescribed in section 158.010 Cultivation, section 158.011 Processing, and section 158.012 Distributing contained in this chapter.

§ 158.041 BUSINESS ESTABLISHMENTS

Business establishments or social clubs whether operated for profit or not-for-profit, whether fixed or mobile, which involve in whole or in part any of the following are prohibited: the cultivation, processing, manicuring, drying, curing, pressing, cooking, baking, infusing, grinding, bagging, packaging, rolling, vaporizing, distributing, sales, storage, use, or consumption of non-medical cannabis/marijuana, and including any other similar use or establishment not specifically listed herein.

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM No.: <i>Page 21</i>
---------------------------------------	--

ATTACHMENT 3
Draft Request for Qualifications

REQUEST FOR QUALIFICATIONS

for

MEDICAL CANNABIS
CULTIVATION, PROCESSING

and/or

DISTRIBUTION FACILITIES

RESPONSES DUE _____, 2010

Contact Person:

Sidnie L. Olson, AICP
City of Eureka
Director of Community Development
531 "K" Street
Eureka, CA 95501
(707) 441-4265
solson@ci.eureka.ca.gov

A. INVITATION

The City of Eureka is inviting submittal of qualifications from collectives or cooperatives interested in applying for permits to establish a medical cannabis cultivation, processing, and/or distribution facility within the city limits of the City of Eureka.

A specific site location where the cultivation, processing, and/or distribution facility would be located is not necessary for submittal of qualifications.

Within the City of Eureka, pursuant to Eureka Municipal Code, Title 15, Chapter 158, MEDICAL CANNABIS: CULTIVATION, PROCESSING AND DISTRIBUTION, a maximum of four cultivation/production facilities shall be permitted within city limits; each of the four

cultivation/production facilities will be allowed a maximum of two distribution facilities located within city limits. Only one of the two permitted distribution facilities for each cultivation/production facility may be located off-site of the cultivation/production facility. A maximum of two distribution facilities not associated with any of the four permitted cultivation/production facilities shall be allowed within city limits.

Research, testing, or other similar facilities are considered a cultivation or processing facility and shall be subject to all applicable regulations and limitations for a cultivation or processing facility.

Cultivation, processing and/or distribution facilities shall only be allowed upon the granting of a conditional use permit as prescribed in Chapter 158. The fact that a collective or cooperative possesses other types of state or City permits or licenses does not exempt them from the requirement of obtaining a conditional use permit.

A conditional use permit is a discretionary permit and an invitation to a collective or cooperative by the City of Eureka to submit an application for a conditional use permit does not guarantee approval of the conditional use permit.

B. SUBMITTAL DEADLINE

Qualifications may be submitted by snailmail (USPS) or by email. The deadline for the city to **receive** the submittals is 5:00 p.m. on _____, 2010.

No late submissions will be accepted.

Submit qualifications to:

Sidnie L. Olson, AICP
City of Eureka
Director of Community Development
531 "K" Street
Eureka, CA 95501

solson@ci.eureka.ca.gov

C. SUBMITTAL REQUIREMENTS

To be considered, the Collective or Cooperative must submit an informative statement of interest to the City, which includes the following information:

1. A list of the Board of Directors and their resumes.
2. The business experience of the principals involved in the collective or cooperative.
3. A business plan.

4. For a Cultivation/Processing Facility.
 - a. The equipment and methods employed in the cultivation or processing of the medical cannabis.
 - b. How the cultivated and/or processed medical cannabis will be transported to the distribution facility and/or to qualified patients.
 - c. The hours and days of the week the medical cannabis cultivation or processing facility will be open.
 - d. The number of persons, per shift, who will be working at the cultivation or processing facility.
 - e. The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification.
 - f. The measures taken to minimize or offset energy use from the cultivation or processing of medical cannabis.
 - g. The chemicals stored or used at the premises.
 - h. The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system
5. For a Distribution Facility.
 - a. The estimated number of members/qualified patients served by the distribution facility.
 - b. The hours and days of the week the distribution facility will be open.
 - c. The number of persons, per shift, who will be working at the distribution facility.
 - d. The security measures that will be employed at the premises, including but not limited to: lighting, alarms, and automatic law enforcement notification.
 - e. The chemicals stored or used at the premises.
 - f. The type and quantity of all effluent discharged into the City's wastewater and/or stormwater system.
 - g. A detailed Operations Manual containing, at a minimum:
 - i. The staff screening process including appropriate background checks.
 - ii. The process for tracking medical cannabis quantities and inventory controls.
 - iii. A description of the screening, registration and validation process for qualified patients.
 - iv. A description of qualified patient records acquisition and retention procedures.

RE: MEDICAL CANNABIS ORDINANCE	FOR AGENDA DATE: JULY 20, 2010 AGENDA ITEM NO.: <i>Page 24</i>
---------------------------------------	--

- v. The process for tracking medical cannabis quantities and inventory controls including on-site cultivation, processing, and/or medical cannabis products received from outside sources.
- h. A detailed Cannabis Safety Program, which includes at a minimum, the following:
 - i. The process for documenting the chain of custody of all cannabis and cannabis products from farm to patient.
 - ii. The procedure and documentation process for assuring the safety and quality of all medical cannabis and medical cannabis products (including, but not limited to, testing for bacteria, mold, pesticides and other contaminants). and
 - iii. The procedure and documentation process for determining patient dosage including testing for the major active agents in the medical cannabis (e.g., cannabinoids THC, CDB and CBN).

D. EVALUATION

A review committee appointed by the City Council will evaluate each response to the Request for Qualifications and may meet with some or all of the respondents. The respondents may be asked to clarify, supplement or modify certain aspects of the information submitted. The review committee will rank the submittals based on the criteria listed below. One or more respondents may be asked to appear before the City Council.

Business Experience

Business Plan

Ability to operate a clean, professional and safe facility

E. RIGHT TO REJECT

This Request for Qualifications is not a contract or commitment of any kind of the City of Eureka and does not commit the City to choosing any respondents, or pay any cost incurred preparing the submission. The City, at its sole discretion, reserves the right to accept or reject, in whole or in part, submittals received in response to this request, or to cancel in whole or in part this Request for Qualifications. All submittals will become the property of the City. Failure to provide any of the requested information within the specified submission period may cause the City, at its sole discretion, to reject the submittal or require additional information.