

ORDINANCE NO. 25378

**AN ORDINANCE OF THE CITY OF SAN JOSE
ADDING A NEW PART 8 TO CHAPTER 20.08 OF
TITLE 20 TO ESTABLISH REGULATIONS AND
CRITERIA FOR MEDICAL MARIJUANA
DISPENSARIES AND AMENDING SECTION
20.08.1230 OF TITLE 20 TO PROHIBIT A MEDICAL
MARIJUANA DISPENSARY AS A HOME
OCCUPATION**

WHEREAS, this ordinance was found to be categorically exempt from environmental review, per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 as amended, on March 21, 1997 under File No. 97-03-079.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1 Part 8 of Chapter 20.08 of Title 20 of the San Jose Municipal Code is amended to read as follows:

Part 8

The Medical Marijuana Dispensary

20.08.800 Purpose of Part.

- A. The voters of the State of California overwhelmingly affirmed the medical use of marijuana by voting for Proposition 215 (codified as Health and Safety Code Section 11362.5). The intent of this Proposition was to enable persons who are in medical need of marijuana to be able to obtain and use it without fear of criminal prosecution. In order for this to occur, there must be places which dispense marijuana to those who qualify for

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its use in accordance with state law. The specific purposes of this Part are to safeguard the urban environment by permitting compliance with state law in a manner consistent with neighborhood concerns.

- B. Due to fact that all distribution of marijuana was previously illegal, it has never been allowed within the provisions of this Title. No use which purports to have distributed marijuana prior to the enactment of this Part 8 shall be deemed to have been a legally established use under the provisions of this Title and such use shall not be entitled to claim legal nonconforming status pursuant to Part 4 of Chapter 20.08 of this Title.

20.08.810 Medical Marijuana Dispensary

A "Medical Marijuana Dispensary" is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).

20.08.820 Special Use Permit Required.

- A. No person shall operate or allow or suffer the operation of a Medical Marijuana Dispensary except in compliance with a Special Use Permit issued pursuant to Part 5 of Chapter 20.44.
- B. The application for such Special Use Permit may be filed by the operator of the Medical Marijuana Dispensary and shall be countersigned by the owner of the subject lot or parcel, or by the authorized agent of the owner, pursuant to the requirements of Section 20.44.1020 of Part 5 of Chapter 20.44.

20.08.830 Special Use Permit Not Applicable.

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Nothing in this Part shall regulate or prohibit the following uses which comply with Proposition 215:

- A. The cultivation or possession of marijuana for medical use by a single patient or caregiver; or
- B. The cultivation or possession of marijuana by a cooperative of three or less patients;

20.08.840 Allowed Districts.

Medical Marijuana Dispensaries may be permitted only in the C, C-1, C-2, C-3, or in those Planned Development (PD) districts which allow C-1, C-2 or C-3 uses.

20.08.850 Standards for Medical Marijuana Dispensaries.

- A. No Dispensary shall be located closer than a minimum of five hundred (500) feet from any school; child daycare center or church which includes a school or child daycare center, or closer than a minimum of three hundred (300) feet from any church which does not include a school or child daycare center or closer than a minimum of one hundred fifty (150) feet from property used for residential purposes.
- B. Distance shall be measured from the building which contains the Dispensary to the property line of the enumerated use using the most direct vehicular or pedestrian access route, whichever is shorter.

20.08.880 Findings.

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- A. The Special Use Permit shall be granted only if the Director or the Planning Commission, on appeal, makes all of the following findings of fact:
1. The Medical Marijuana Dispensary, as proposed and at the location requested, will not create a potentially adverse impact on surrounding uses ; and
 2. The proposed Medical Marijuana Dispensary, and at the location requested, will be compatible with the adjacent uses; and
 3. The proposed Medical Marijuana Dispensary will not result in the substantial aggravation of crime problems or make law enforcement unduly difficult; and
 4. The proposed Medical Marijuana Dispensary will not be detrimental to the public peace, health, safety and welfare.
- B. The Director, or Planning Commission, on appeal, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate each such finding.

20.08.890 Conditions.

- A. The use shall be conducted in compliance with the provisions of Health and Safety Code Section 11362.5.

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- B. No smoking or consumption of medical marijuana shall be allowed on the site of the Dispensary.
- C. No persons under the age of 18 (eighteen) shall be permitted in the Dispensary at any time.
- D. No retail sales of any products other than medical marijuana are permitted at the Dispensary.
- E. The Dispensary shall be operated in strict compliance with the Regulations adopted by the Chief of Police:
 - 1. The Regulations shall address, but are not limited to such issues as, record keeping, proper identification for patients, storage of marijuana on the site, on-site cultivation and maximum amount dispensed in any single transaction; and
 - 2. The Regulations may be amended from time to time by the Chief. The Dispensary shall be operated in strict compliance with the most currently adopted regulations sent by certified mail to the operator of the Dispensary.
- F. All transactions shall occur at the Dispensary and all medical marijuana shall be dispensed directly to the patient or the designated caregiver. No employee, owner or volunteer of the Dispensary may make a delivery of medical marijuana.
- G. Cultivation of medical marijuana on-site is only allowed if specifically authorized by the Special Use Permit.

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- H. Hours of operation shall be limited to the hours between 9:00 a.m. and 9:00 p.m.
- I. The operator and/or property owner shall be required to report any illegal activity occurring on the site or associated with the Dispensary.
- J. Each Dispensary, shall display in a manner legible and visible to its clientele:
 - 1. Notice that Persons under the age of 18 (eighteen) are not allowed in the Dispensary; and
 - 2. Notice that all illegal activity will be reported to the police; and
 - 3. A request that there be no smoking of the medical marijuana in the vicinity of the Dispensary.

SECTION 2. Section 20.08.1230 of Chapter 20.08 of Title 20 of the San Jose Municipal Code is amended to read as follows:

20.08.1230 Prohibited uses.

The following are not permitted as home occupations:

- A. Animal breeding.
- B. Appliance repair, other than the repair of small household appliances.
- C. Firearm sales and service.

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- D. Motorized garden tool repair such as, but not limited to, lawnmowers, chain saws and leaf blowers.

- E. Massage parlor, as provided in Part 2 of Chapter 20.08 of this Title, and the business of massage as provided in Section 6.44.010, subsection A., of Chapter 6.44 of Title 6.

- F. Pest control.

- G. Upholstery and furniture repair.

- H. Food catering.

- I. Vehicle-related uses such as, but not limited to, the following: cleaning, dismantling, embellishment, installation, manufacture, repair or service, sale, lease or rental, and towing, excluding the dispatching of vehicles such as limousines, taxicabs and ambulances.

- J. Welding.

- K. Any use which requires a hazardous materials permit from the Fire Department.

- L. Any other use which does not comply with each of the criteria provided in this Part.

- M. Medical Marijuana Dispensary.

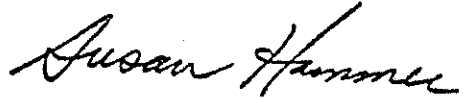
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PASSED FOR PUBLICATION OF TITLE this 17th day of June, 1997
by the following vote:

AYES: DANDO, DIAZ, DIQUISTO, FERNANDES, FISCALINI, JOHNSON,
PANDORI, POWERS, SHIRAKAWA, WOODY; HAMMER

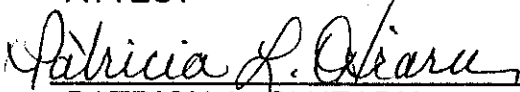
NOES: NONE

ABSENT: NONE



SUSAN HAMMER
Mayor

ATTEST



PATRICIA L. O' HEARN
City Clerk