

**ORDINANCE NO. 1084**

**AN ORDINANCE OF THE CITY COUNCIL OF THE  
CITY OF COACHELLA, CALIFORNIA ADDING  
CHAPTER 5.68 TO THE COACHELLA MUNICIPAL  
CODE REGARDING MEDICAL CANNABIS  
CULTIVATION REGULATORY PERMITS. (2<sup>nd</sup>  
Reading)**

**WHEREAS**, in 1996, the voters of the State of California approved Proposition 215 (codified as Health & Safety Code Section 11362.5 *et seq.* and entitled “The Compassionate Use Act of 1996”); and,

**WHEREAS**, the intent of Proposition 215 was to enable seriously ill Californians to legally possess, use, and cultivate marijuana for medical use under state law; and,

**WHEREAS**, in 2003, the California Legislature adopted SB 420, the Medical Marijuana Program (“MMP”), codified as Health and Safety Code Section 11362.7 *et seq.*, which permits qualified patients and their primary caregivers to associate collectively or cooperatively to cultivate marijuana for medical purposes without being subject to criminal prosecution under the Penal Code; and,

**WHEREAS**, neither the Compassionate Use Act (“CUA”) nor the MMP require nor impose an affirmative duty or mandate upon local governments to allow, authorize, or sanction the establishment of facilities that cultivate or process medical marijuana within its jurisdiction; and,

**WHEREAS**, in May 2013, the California Supreme Court issued its decision in *City of Riverside v Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal. 4th 729, holding that cities have the authority to regulate or ban outright medical marijuana land uses; and,

**WHEREAS**, under the Federal Controlled Substances Act, codified in 21 U.S.C. Section 801 *et seq.*, the use, possession, and cultivation of marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and,

**WHEREAS**, on October 9, 2015, Governor Jerry Brown signed the “Medical Marijuana Regulation and Safety Act” (“Act”) into law; and,

**WHEREAS**, the Act becomes effective January 1, 2016 and contains provisions which allow for local governments to regulate licenses and certain activities thereunder; and,

**WHEREAS**, the Act contains a provision which sets forth that the State shall become the sole authority for regulation under certain parts of the Act, unless local governments have “land use regulations or ordinances regulating or prohibiting the cultivation of marijuana...” (Health and Safety Code §11362.777(c)(4); and,

**WHEREAS**, outdoor cultivation of marijuana plants can produce a strong odor, and detectable far beyond property boundaries; and,

**WHEREAS**, without regulation, the indoor cultivation and manufacturing of marijuana and subsequent testing, distribution, and transportation has potential adverse effects to the health and safety of the occupants; including structural damage to the building due to increased moisture and excessive mold growth which can occur and can pose a risk of fire and electrocution; additionally, the use of pesticides and fertilizers can lead to chemical contamination within the structure, and adequate security is necessary; and,

**WHEREAS**, based on the experiences of other cities, these negative effects on the public health, safety, and welfare are likely to occur, and continue to occur, in the City due to the establishment and operation of marijuana distribution uses and unregulated medical marijuana cultivation facilities; and,

**WHEREAS**, based on the findings above, the potential establishment unregulated medical marijuana cultivation facilities in the City and poses a current and immediate threat to the public health, safety and welfare in the City due to the negative land use and other impacts of such uses as described above; and,

**WHEREAS**, the regulatory requirements imposed upon issuance of regulatory permits for medical marijuana cultivation, manufacturing, distribution, testing, and transportation facilities will combat any potential threat to public health, safety, or welfare; and,

**WHEREAS**, the City intends, by this Ordinance, to establish a regulatory permit scheme for medical cannabis cultivation, manufacturing, distribution, testing, and transportation facilities; and,

**WHEREAS**, the City Council conducted a properly noticed public hearing on January 13, 2016 at which members of the public were afforded an opportunity to comment on this Ordinance, the recommendations of staff, and public testimony.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COACHELLA, CALIFORNIA, DOES ORDAIN AS FOLLOWS:**

**SECTION 1. Incorporation of Recitals.** The City Council hereby adopts the foregoing recitals as its findings in support of the following regulations and further finds that the following regulations are necessary and appropriate to protect the health, safety and welfare of the residents and businesses of Coachella from the identified adverse impacts of cannabis cultivation, manufacturing, testing, distribution, or transportation of medical cannabis within the City limits.

**SECTION 2. Amendment to the Coachella Municipal Code.** Chapter 5.68 of the Coachella Municipal Code is hereby added as follows:

**“Chapter 5.68 - MEDICAL CANNABIS FACILITIES REGULATORY PERMIT**

**5.68.010 Purpose and intent.**

Medical cannabis cultivation, manufacturing, distribution, testing, or transportation facilities shall be permitted, in accordance with the criteria and procedures set forth in this code, upon application and approval of a regulatory permit pertaining to the operation of the facility. Prior to obtaining a regulatory permit under this Chapter, all applicants must obtain and maintain a conditional use permit pertaining to the location of the facility, which has been validly issued by the City per the code.

**5.68.020 Medical cannabis cultivation facilities.**

Medical cannabis cultivation facilities permitted under this Chapter include facilities where medical cannabis is planted, grown, harvested, dried, cured, graded, trimmed, manufactured into cannabis products, tested, distributed, or transported, or that does all or any combination of those activities, that holds a valid conditional use permit pursuant to this Code and a regulatory permit pursuant to this Chapter, subject to the provisions of the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5), the Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83), the California Attorney General’s Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008, the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), and any other State laws pertaining to cultivating medical cannabis.

**5.68.030 Number of permitted medical cannabis cultivation, manufacturing, distribution, transportation, and testing facilities.**

The number of permitted medical cannabis cultivation, manufacturing, distribution, transportation, and testing facilities permitted in the City shall be determined by resolution of the City Council.

**5.68.040 Application period.**

Applications may be submitted during those application periods designated from time to time by resolution of the City Council and the applications will be prioritized for processing based on the number of points assigned to each application that has been submitted and deemed complete by the City during the application period.

**5.68.050 Priority point system.**

Each application submitted and deemed complete by the City during the application period will be evaluated for priority of processing based on certain criteria set forth in a Priority Point System approved by resolution of the City Council.

**5.68.060 Regulatory permit required.**

A. Prior to initiating operations and as a continuing requisite to operating a medical cannabis cultivation, manufacturing, distribution, testing, or transportation facility, the legal representative of the persons wishing to operate a medical cannabis facility shall first obtain a conditional use permit pursuant to the applicable provisions of this Code and then obtain a regulatory permit from the City Manager or designee under the terms and conditions set forth in this Chapter. The legal representative shall file an application with the City Manager or designee upon a form provided by the City and shall pay an application fee as established by resolution adopted by the City Council as amended from time to time. An application for a regulatory permit shall include, but shall not be limited to, the following information:

1. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the medical cannabis facility.
2. Whether delivery service of medical cannabis to any location outside the medical cannabis facility will be provided and the extent of such service.
3. The address of the location of the medical cannabis facility.
4. A site plan and floor plan of the medical cannabis facility denoting all the use of areas of the medical cannabis facility, including storage, cultivation, exterior lighting and dispensing.

5. A security plan that addresses how the following measures shall be implemented or complied with:

a. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 240 concurrent hours of digitally recorded documentation in a format approved by the City Manager or designee. The cameras shall be in use 24 hours per day, seven days per week. The areas to be covered by the security cameras shall include, but are not limited to, the public areas, storage areas, employee areas, all doors and windows, and any other areas as determined to be necessary by the City Manager or designee.

b. The medical cannabis facility shall be alarmed with an audible interior and exterior alarm system, unless waived for extenuating circumstances by the City Manager or designee that is operated and monitored by a recognized security company, deemed acceptable by the City Manager or designee. Any change in the security company shall be subject to the approval of the City Manager or designee. All current contact information regarding the medical cannabis facility's security company shall be provided to the City Manager or designee.

c. Entrance to the cultivation areas and any storage areas shall be locked at all times, and under the control of medical cannabis facility staff.

d. All medical cannabis shall be securely stored, and a reliable, commercial alarm system shall be installed and maintained where the medical cannabis is secured.

e. A licensed security guard, licensed by the California Department of Consumer Affairs, shall be present at the medical cannabis facility during all hours of operation. If the security guard is to be armed, then the security guard shall possess at all times a valid Security Guard Card and Firearms Permit issued by the California Department of Consumer Affairs.

6. The name and address of the owner and lessor of the real property upon which the medical cannabis facility is to be operated. In the event the applicant is not the legal owner of the property, the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical cannabis collective or cooperative medical cannabis facility will be operated on his or her property.

7. Authorization for the City Manager or designee to seek verification of the information contained within the application.

8. A statement in writing by the applicant that he or she certifies under penalty of perjury that all the information contained in the application is true and correct.

9. Any such additional and further information as is deemed necessary by the City Manager or designee to administer this section.

B. The initial regulatory permit application period for medical cannabis cultivation, manufacturing, distribution, testing, or transportation facilities will not begin until either the City Council approves a Development Agreement for the site or until after the effective date of an approved ballot measure authorizing the taxation of commercial cannabis cultivation, manufacturing, distribution, testing, or transportation facilities in the City.

**5.68.070 Background check.**

All applicants for a regulatory permit for a medical cannabis facility, including any management personnel who are responsible for the day-to-day operations and activities of the medical cannabis facility shall be required to submit to a Fingerprint-Based Criminal History Records Check conducted by the Coachella Police Department.

**5.68.080 Grounds for denial.**

The City Manager or designee shall reject an application upon making any of the following findings:

A. The applicant made one or more false or misleading statements or omissions on the application or during the application process;

B. The medical cannabis facility's related cooperative or collective is not properly organized in strict compliance pursuant to the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), and any other applicable law, rules and regulations;

C. The applicant is not a primary caregiver or qualified patient or the legal representative of the medical cannabis facility;

D. The medical cannabis facility is not permitted in the proposed area; or

E. The applicant, or any person who is managing or is otherwise responsible for the activities of the medical cannabis facility has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined in the Federal Controlled Substances Act, with the exception of medical cannabis related offenses for which the conviction occurred after the passage of the Compassionate Use Act of 1996.

#### **5.68.090 Limitations on City's liability.**

To the fullest extent permitted by law, the City shall not assume any liability whatsoever, with respect to approving any regulatory permit pursuant to this Chapter or the operation of any medical cannabis facility approved pursuant to this Chapter. As a condition of approval a regulatory permit as provided in this Chapter, the applicant or its legal representative shall:

- A. Execute an agreement indemnifying the City from any claims, damages, etc., associated with the operation of the medical cannabis facility;
- B. Maintain insurance in the amounts and of the types that are acceptable to the City Manager or designee;
- C. Name the City as an additionally insured on all City required insurance policies;
- D. Agree to defend, at its sole expense, any action against the City, its agents, officers, and employees related to the approval of a regulatory permit; and
- E. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to the City's approval of a regulatory permit. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

#### **5.68.100 Additional terms and conditions.**

Based on the information set forth in the application, the City Manager or designee may impose reasonable terms and conditions on the proposed operations of the medical cannabis facility in addition to those specified in this Chapter.

#### **5.68.110 Compliance with State law.**

All medical cannabis facilities shall comply fully with all of the applicable restrictions and mandates set forth in State law and Federal law, including without limitation the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, and the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643).

#### **5.68.120 Hours.**

All medical cannabis facilities may only be open between the hours of 8:00 a.m. and 10:00 p.m. and may operate as many as seven days per week.

#### **5.68.130 Cannabis secured.**

All cannabis and cannabis products shall be kept in a secured manner during business and non-business hours.

#### **5.68.140 Consumable cannabis products.**

If consumable medical cannabis products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on-site or offered for distribution, then the medical cannabis facility shall secure any approval from the County of Riverside Department of Health Services required for handling food products.

#### **5.68.150 Sales taxes.**

All medical cannabis facilities must pay any applicable sales tax pursuant to Federal, State, and local law.

#### **5.68.160 Point of sale system.**

Medical cannabis facilities shall have an electronic point of sale system that produces historical transactional data for review by the City Manager or designee for auditing purposes.

#### **5.68.170 Odor control.**

Medical cannabis facilities shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the medical cannabis facility that is distinctive to its operation is not detected outside the medical cannabis facility, anywhere on adjacent property or public rights-of-way, on or about any exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for common use by tenants or the visiting public, or within any other unit located within the same building as the medical cannabis facility. As such, medical cannabis facilities must install and maintain the following equipment or any other equipment which the City Manager or designee determines has the same or better effectiveness:

A. An exhaust air filtration system with odor control that prevents internal odors from being emitted externally; or

B. An air system that creates negative air pressure between the medical cannabis facility's interior and exterior so that the odors generated inside the medical cannabis facility are not detectable outside the medical cannabis facility.



#### **5.68.180 Records.**

All medical cannabis facilities shall perform an inventory on the first business day of each month and shall record the total quantity of each form of cannabis on the premises. These records shall be maintained for two years from the date created and shall be made available to the City Manager or designee upon request.

#### **5.68.190 Community relations.**

Each medical cannabis facility shall provide the City Manager or designee with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom the City can provide notice if there are operating problems associated with the medical cannabis facility or refer members of the public who may have any concerns or complaints regarding the operation of the medical cannabis facility. Each medical cannabis facility shall also provide the above information to its business neighbors located within 100 feet of the medical cannabis facility as measured in a straight line without regard to intervening structures, between the front doors of each establishment.

#### **5.68.200 Compliance.**

All medical cannabis facilities and their related collectives or cooperatives shall fully comply with all the provisions of the Compassionate Use Act of 1996, the Medical Marijuana Program Act, the 2008 Attorney General Guidelines, the Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643), all applicable provisions of this code, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit.

#### **5.68.210 Inspections and enforcement.**

A. Recordings made by security cameras at any medical cannabis facility shall be made immediately available to the City Manager or designee upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

B. The City Manager or designee shall have the right to enter all medical cannabis facilities from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Chapter.

C. Operation of the medical cannabis facility in non-compliance with any conditions of approval or the provisions of this Chapter shall constitute a violation of the municipal code and shall be enforced pursuant to the provisions of this code.

D. The City Manager or designee may summarily suspend or revoke a medical cannabis regulatory permit if any of the following, singularly or in combination, occur:

1. The City Manager or designee determines that the medical cannabis facility has failed to comply with this Chapter or any condition of approval or a circumstance or situation has been created that would have permitted the City Manager or designee to deny the permit under Section 5.68.090;

2. Operations cease for more than 90 calendar days, including during change of ownership proceedings;

3. Ownership is changed without securing a regulatory permit;

4. The medical cannabis facility fails to maintain 240 continuous hours of security recordings; or

5. The medical cannabis facility fails to allow inspection of the security recordings, the activity logs, or the premises by authorized City officials.

#### **5.68.220 Appeals.**

Any decision regarding the denial, suspension or revocation of a regulatory permit may be appealed to a hearing officer pursuant to the provisions set forth in Chapter 3.28. The procedures governing suspension and revocation in Chapter 3.52 shall apply equally to the denial of a regulatory permit. Said appeal shall be made by a notice of appeal from the person appealing within 30 days from the date of the decision.

#### **5.68.230 Cessation of operations.**

In the event a qualified medical cannabis facility that receives a regulatory permit ceases to operate for any reason, the City Manager or designee shall consider the next qualified applicant on the waiting list placed in order of application and provide an opportunity for new applicants to be considered for a permit.

#### **5.68.240 Permits not transferable.**

Regulatory permits issued pursuant to this Chapter are not transferable.

#### **5.68.250 Violations.**

A. Any violation of any of the provisions of this Chapter is unlawful and a public nuisance.

B. Any violation of any of the provisions of this Chapter shall constitute a misdemeanor violation and upon conviction thereof any violation shall be punishable by

a fine not to exceed \$1,000, or by imprisonment in the County Jail for a period of not more than six months, or by both such fine and imprisonment. Each day a violation is committed or permitted to continue shall constitute a separate offense.

C. In lieu of issuing a misdemeanor citation, the City may issue an administrative citation, and/or assess an administrative fine of up to \$1,000 for each violation of this Chapter pursuant to the procedures set forth in Title 3.

D. A separate offense occurs for each day any violation of this Chapter is continued and/or maintained.

E. The remedies provided herein are not to be construed as exclusive remedies, and in the event of violation, the City may pursue any proceedings or remedies otherwise provided by law.

#### **5.68.260 Definitions.**

Words and phrases not specifically defined in this code shall have the meaning ascribed to them as defined in the following sources:

A. The Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5);

B. The Medical Marijuana Program Act (California Health and Safety Code Sections 11362.7 through 11362.83); and

C. The California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use issued in August, 2008.

D. The Medical Marijuana Regulation and Safety Act (AB 243, AB 266, and SB 643)."

**SECTION 3. Effective Date.** This Ordinance shall take effect thirty (30) days after its adoption, and is contingent upon City Council adoption of Ordinance 1083 establishing zoning regulations and development standards for Medical Cannabis Cultivation.

**SECTION 4. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsection, subdivision, paragraph, sentence, clause or phrase be declared unconstitutional.

If for any reason any portion of this Ordinance is found to be invalid by a court of competent jurisdiction, the balance of this Ordinance shall not be affected.

**SECTION 5. Certification.** The City Clerk shall certify the passage of this Ordinance and shall cause the same to be entered in the book of original ordinances of said City; shall make a minute passage and adoption thereof in the records of the meeting at which time the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published as required by law, in a local newspaper of general circulation and which is hereby designated for that purpose.

**SECTION 6. CEQA.** The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

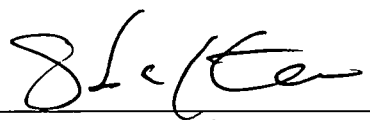
**ORDINANCE PASSED AND APPROVED** at a regular meeting of the City Council of the City of Coachella this 27<sup>th</sup> day of January 2016 by the following vote:

AYES: Councilmember Bautista, Councilmember Sanchez and Mayor Hernandez.


NOES: None.

ABSENT: Councilmember Perez and Mayor Pro Tem Martinez.


ABSTAIN: None.

  
Steven A. Hernandez, Mayor

ATTEST:


  
Angela M. Zepeda, City Clerk

APPROVED AS TO FORM:

  
Carlos Campos, City Attorney

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss  
CITY OF COACHELLA )

I, Angela M. Zepeda, City Clerk of the City of Coachella, California, hereby certify that Ordinance No. 1084 was duly and regularly introduced at a meeting of the City Council on the 27<sup>th</sup> day of January, 2016 and that thereafter the said ordinance was duly and regularly adopted duly passed and adopted at a regular meeting of the City Council on the 27<sup>th</sup> day of January, 2016.

  
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Angela M. Zepeda, City Clerk