

Model Local Cultivation Licensing Ordinance - CA

This simple draft ordinance authorizes commercial medical cannabis cultivation using the existing city or county business license process and sets some basic security standards for indoor and outdoor cultivation. The ordinance protects staff, operators, and landlords at licensed grows; allows cultivation in commercial and agricultural zones; and exempts individual patients and caregivers from licensing requirements.

___ Purposes.

The purposes and intents of this Chapter are to:

- a) Regulate commercial medical cannabis cultivation in a manner that is consistent with State law and which promotes the health, safety, and general welfare of the residents and businesses in *<name of local jurisdiction>*;
- b) Provide clear guidance to law enforcement, regulators, license holders, and the community at large as to what is legally permitted in *<name of local jurisdiction>* in relation to commercial medical cannabis cultivation; and
- c) Protect the rights and welfare of Qualified Patients or their designated Primary Caregivers who cultivate medical cannabis for the personal medical use of the Qualified Patient in accordance with the Compassionate Use Act and the Medical Marijuana Program Act.

Nothing in this Chapter shall be construed to allow:

- a) Persons to engage in conduct that endangers others or causes a public nuisance;
- b) The use or diversion of marijuana for nonmedical purposes; or
- c) Any activity relating to the cultivation, distribution or consumption of marijuana that is otherwise illegal under State law.

___ Findings.

- a) There is a legitimate need for medical cannabis in California. A study published in 2014 shows that 1.4 million Californians have used medical cannabis and an overwhelming majority of those users (92%) believe cannabis helped treat the symptoms of a serious medical condition (“Prevalence of medical marijuana use in California, 2012”, *Drug and Alcohol Review* (2014), DOI 10.1111/dar. 12207).
- b) According to that research, more than 30% used medical cannabis to treat chronic pain, 11% used it for arthritis, 8% for migraines, and 7% for cancer. Participants also reported using medical cannabis to treat the symptoms of AIDS, glaucoma, muscle spasms, nausea, stress, and depression. Researchers found that medical cannabis was used at similar rates by men and women, the young and the old, patients with high and low levels of education, and in various regions of the state.
- c) The voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 (codified as Health and Safety Code Section 11362.5), in 1996. That Act calls on “federal and state governments to implement a plan to provide for the safe and affordable distribution of

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- marijuana to all patients in medical need of marijuana.”
- d) The State enacted the Medical Marijuana Program Act (codified as Health and Safety Code Section 11362.7 et seq.) in 2004 to clarify the scope of The Compassionate Use Act of 1996, facilitate the prompt identification of qualified patients and primary caregivers, avoid unnecessary arrest and prosecution of these individuals, provide needed guidance to law enforcement officers, promote uniform and consistent application of the Act, and to allow local governing bodies to adopt and enforce rules and regulations consistent with the Act.
 - e) The State enacted three bills, which comprise the Medical Marijuana Regulation and Safety Act (MMRSA), in 2015. AB 243, AB 266, and SB 643, create statewide licensing and regulations for the lawful cultivation, manufacturing, distribution, transportation, sales, and testing of medical cannabis in the state.
 - f) The MMRSA requires local governments to license, permit, or approve commercial medical cannabis as a prerequisite for state licensing, including the commercial cultivation of medical cannabis. Therefore, local licensing of medical cannabis cultivation is an essential part of ensuring an adequate supply of safe and legal medicine for legitimate patients to use.
 - g) Local governments retain broad discretion in regulating the time, place, and manner of commercial medical cannabis cultivation within their jurisdiction under the MMRSA.
 - h) The American Herbal Products Association (AHPA), the leading voice in herbal products industry, published recommendations for regulators regarding medical cannabis cultivation and other activity in 2014. These recommendations show that the indoor and outdoor commercial cultivation of medical cannabis can be conducted in a manner that is safe, secure, and sustainable.
 - i) Research conducted by Americans for Safe Access (ASA), the nation’s leading medical cannabis patient advocacy organization, show that sensible regulations for medical cannabis preserve safe and legal access for legitimate patients, while reducing crime and complaints in neighborhoods.

Definitions.

- a) “Commercial Medical Cannabis Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis for medical use, including nurseries, that is intended to be transported, processed, manufactured, distributed, dispensed, delivered, or sold in accordance with the Medical Marijuana Regulation and Safety Act (MMRSA) for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (California Health and Safety Code Section 11362.5).
- b) “Commercial Medical Cannabis Cultivators License” means a business license for Commercial Medical Cannabis Cultivation in <name of jurisdiction> issued pursuant to the Chapter

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- c) “Indoor Cultivation” means Commercial Medical Cannabis Cultivation inside a building using exclusively artificial light.
- d) “Mix Light Cultivation” means Commercial Medical Cannabis Cultivation indoors or outdoors using a combination of artificial and natural light.
- e) “Outdoor Cultivation” means Commercial Medical Cannabis Cultivation outdoors using exclusively sunlight.
- f) “Primary Caregiver” has the same definition as in Section 11362.7 of the California Health and Safety Code.
- g) “Qualified Patient” has the same definition as in Section 11362.5 of the California Health and Safety Code.

___ **Local Licenses and Approvals Required.**

- a) Beginning *<effective date of local licensing requirement>*, no person shall engage in Commercial Medical Cannabis Cultivation in *<name of jurisdiction>* without first obtaining a Commercial Medical Cannabis Cultivators License.
- b) A Commercial Medical Cannabis Cultivators License shall be issued by the *<name of city/county agency issuing license>* pursuant to the provisions of *<city/county code section specifying ordinary licensing process>*.
- c) A Commercial Medical Cannabis Cultivators License shall be valid for one year and renewable annually thereafter.
- d) The *<name of city/county agency issuing license>* may revoke a Commercial Medical Cannabis Cultivators License for violations of state and local law, including the provisions of the Chapter, pursuant to the procedures in *<city/county code section specifying ordinary process for suspending business licenses>*.
- e) A Commercial Medical Cannabis Cultivators License holder shall also obtain all ordinary building permits, licenses, clearances, and approvals required for manufacturing or agricultural use at the address or parcel where medical cannabis cultivation is lawfully permitted pursuant to this Chapter.
- f) The actions of a Commercial Medical Cannabis Cultivators License holder, its employees, and its agents that are permitted pursuant to the Chapter and conducted in accordance with the requirements of this Chapter are not unlawful and shall not be an offense subject to arrest, prosecution, or other sanction.
- g) The actions of a person who, in good faith, allows his or her property to be used by a Commercial Medical Cannabis Cultivators License holder, its employees, and its agents, as permitted pursuant to the Chapter, are not unlawful and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine.

___ **State License Required.**

- a) A Commercial Medical Cannabis Cultivators License holder shall obtain all state licenses and permits required under the Medical Marijuana Regulation and Safety Act (MMRSA), as amended from time to time, and any subsequent

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state licensing or regulations duly adopted and enacted by the State or an authorized regulatory body.

- b) Notwithstanding the provisions of Section (a), no state license or permit shall be required if state licenses are not yet available pursuant to the Medical Marijuana Regulation and Safety Act or the availability or validity of state licenses pursuant to the Medical Marijuana Regulation and Safety Act is interrupted, suspended, or revoked for any reason.

___ **Approved Zones.**

- a) A Commercial Medical Cannabis Cultivators License may be issued in any zoning district approved for manufacturing or agriculture.
- b) No Commercial Medical Cannabis Cultivators License shall be issued for any property that is located within six hundred feet of a public or private school (K-12).

___ **Security.**

- a) Licensed Indoor Cultivation shall be conducted in a secured facility that is monitored at all times. Security equipment shall include, but not necessarily be limited to:
 - 1) Locking doors and windows,
 - 2) A remotely monitored alarm system that is operational at any time that the structure is not occupied by authorized persons,
 - 3) Video recording equipment and lighting that is sufficient to recognize an individual's face in the facility, and
 - 4) Video recording equipment that can store video recordings for up to seventy-two hours and download recordings onto a permanent storage device, as needed.
- b) Parcels on Outdoor Cultivation or Mixed Light Cultivation are conducted must be secure. Security equipment shall include, but not necessarily be limited to, a fence surrounding the plants of not less than six feet in height with a locking gate.
- c) No medical cannabis shall be cultivated in any structure or on any parcel if the medical cannabis plants are visible from any public place.
- d) A Commercial Medical Cannabis Cultivators License holder shall maintain adequate security at all times to prevent burglary, robbery, diversion of medical cannabis for unlawful use, and nuisance activity in the immediate vicinity.
- e) Any security personnel employed by or contracted by at Commercial Medical Cannabis Cultivators License holder shall, at a minimum, possess a valid Guard Card issued by the California Department of Consumer Affairs.

___ **Qualified Patients and Primary Caregivers Exempted.**

A Qualified Patient or Primary Caregiver cultivating medical cannabis for five or

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fewer Qualified Patients shall not be subject to the provisions of this Chapter, provided that (1) all of the medical cannabis cultivated is for the personal medical use of the patient for whom it is cultivated, and (2) the Primary Caregiver only receives compensation for actual expenses, including reasonable compensation for services provided to a Qualified Patient to enable that person to lawfully use medical cannabis pursuant to State law, or for payment for out-of-pocket expenses incurred in providing those services in full compliance with Section 11362.765 of the California Health and Safety Code.

___ **Severability.**

The provisions of this Chapter are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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