

ORDINANCE NO. 31-10 N.S.

AN ORDINANCE OF THE CITY OF RICHMOND CITY COUNCIL AMENDING RICHMOND MUNICIPAL CODE CHAPTER 7.102 (MEDICAL MARIJUANA COLLECTIVES)

THE CITY COUNCIL OF THE CITY OF RICHMOND does ordain that Richmond Municipal Code Chapter 7.102 is hereby amended to read as follows:

SECTION 1. Richmond Municipal Code Chapter 7.102 Table of contents is hereby amended to read as follows:

- 7.102.010 Purpose and Intent
- 7.102.020 Definitions
- 7.102.030. Permit required.
- 7.102.040 Location and number.
- 7.102.050 Permit application process.
- 7.102.055 Appeals from decisions to grant or deny a Permit.
- 7.102.060 Permit approval and operating conditions.
- 7.102.070 Permit Non-transferable.
- 7.102.080 Maintenance of records.
- 7.102.090 Inspection authority.
- 7.102.100 Existing Medical Marijuana operations.
- 7.102.110 Prohibited activity.
- 7.102.120 Violation and enforcement.
- 7.102.130 Appeals from revocation or suspension decisions.

SECTION 2. Richmond Municipal Code Section 7.102.040 (Location and number) is hereby amended to read as follows:

A. All Medical Marijuana Collectives shall be located in the Regional Commercial (C-3) Zoning District.

B. All Medical Marijuana Collectives shall be a minimum of one thousand five hundred feet (1,500') from any public or private high school and a minimum of five hundred feet (500') from any park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school, unless, following a public hearing, the Chief of Police makes all of the following findings based on specific facts, stated in writing:

- i. The location, design and proposed operating characteristics of the Collective are such that it is highly improbable persons on, in or travelling to or from nearby schools, parks, community centers, youth centers, or child-care centers would be able to view persons in, entering, or leaving the Collective.
- ii. Allowing the Collective to locate within one thousand five hundred feet (1,500') of a public or private high school or within five hundred feet (500') of a park, community center, youth center, public or private child-care center, nursery school, kindergarten, elementary, middle or junior high school will not grant the Collective a special privilege not available to other Medical Marijuana Collectives within the City of Richmond.
- iii. The Collective has demonstrated that it considered other locations and selected the location that would have the minimum negative impact on the surrounding community while providing necessary services to its Members.

C. The Chief of Police shall permit no more than three (3) Medical Marijuana Collectives to operate in the City of Richmond. When there are fewer than three (3) permitted Collectives operating within the City, the Chief of Police shall publish an Invitation for Applications on the City's website, stating the period during which applications will be accepted.

SECTION 3. Richmond Municipal Code Section 7.102.050 (Permit application process) is hereby amended to read as follows:

Any Medical Marijuana Collective desiring a Permit required by this Chapter shall complete and

file an application on a form supplied by the Chief of Police, and shall submit with the completed application payment of a nonrefundable processing and notification fee, as established by the City Council by resolution. The Medical Marijuana Collective Permit application is established to provide a review process for each proposed Medical Marijuana Collective operation within the City.

A. Filing. The Medical Marijuana Collective shall provide the following information:

1. The address of the Property where the proposed Medical Marijuana Collective will operate.
2. A site plan describing the Property with fully dimensioned interior and exterior floor plans including electrical, mechanical, plumbing, and disabled access compliance pursuant to Title 24 of the State of California Code of Regulations and the federally mandated Americans with Disabilities Act. The site plan shall demonstrate that there are separate rooms or partitioned areas within the Collective for the receipt of supplies and for the distribution of Medical Marijuana to Qualified Patients and/or Primary Caregivers.
3. Exterior photographs of the entrance(s), exit(s), street frontage(s), parking, front, rear and side(s) of the proposed Property.
4. Photographs depicting the entire interior of the proposed Property.
5. A security plan including procedures for verifying identification of Qualified Patients and Primary Caregivers both before entering the Collective and again before receiving Medical Marijuana; the number, location and hours of security guards; and a theft prevention plan.
6. If the Property is being rented or leased or is being purchased under contract, a copy of such lease or contract. If the Property is not being rented or leased, written proof that the Property owner has been notified that the Property will be used as a Medical Marijuana Collective.
7. If the Property is being rented or leased, written proof that the Property owner, and landlord if applicable, were given notice that the Property will be used as a Medical Marijuana Collective, and that the Property owner, and landlord if applicable, agree(s) to said operations. If the Collective is to be a subtenant, then "landlord" shall mean the primary tenant.
8. The name, address, telephone number, title and function(s) of each Management Member.
9. For each Management Member, a fully legible copy of one (1) valid government-issued form of photo identification, such as a driver's license.
10. For each Management Member, a summary criminal history ("LiveScan") prepared by the Richmond Police Department not more than two weeks prior to the date of application and demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.
11. Written confirmation as to whether the Medical Marijuana Collective, or a collective with one or more Management Members in common with the applicant, previously operated in this or any other county, city or state under a similar license/permit, and whether the Collective applicant ever had such a license/permit revoked or suspended and the reason(s) therefore.
12. Either (a) if the Collective is incorporated, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's Bylaws demonstrating that the Collective is organized as a non-profit entity, or (b) if the Collective is unincorporated, a copy of the Collective's notarized creating document demonstrating that the Collective is organized as a non-profit entity. A creating document may include articles of association, bylaws, constitution, or other documents that set forth how the Collective will operate.
13. A Seller's Permit from the California Board of Equalization.
14. The name and address of the applicant's current Agent for Service of Process.
15. A copy of the Medical Marijuana Collective operating conditions, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure compliance with all ~~the aforementioned~~ operating conditions.
16. A copy of the Prohibited Activity Checklist, available from the Richmond Police Department, containing a statement dated and signed by each Management Member, under penalty of perjury, that they read, understand and shall ensure that neither the Collective nor its members and Management Members shall engage in the aforementioned prohibited activity.

17. A statement dated and signed by each Management Member, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the Management Member(s).

18. A statement of whether Edible Medical Marijuana will be prepared at the proposed Property and, if so, a certificate from the Contra Costa County Department of Health Services demonstrating compliance with the Food Services Facilities Inspection program.

19. Evidence of a computerized or telephonic system for communicating with all other permitted Collectives within the City of Richmond in order to ensure that a Qualified Patient, directly or through his or her Primary Caregiver(s), does not purchase, obtain, or otherwise receive a total of more than one ounce of Medical Marijuana per day.

B. After the closing of the application period, the Chief of Police will evaluate all applications for completeness. The Chief of Police shall ensure that applications are complete as follows:

1. Within twenty (20) business days of the close of the application period, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall determine whether the applications are ~~is~~ complete. If it is determined an application is incomplete, the applicant shall be notified in writing that the application is not complete and the reasons therefore, including any additional information necessary to render the application complete.

2. The applicant shall have thirty (30) calendar days from the date of a notice of incomplete application to complete the application. Failure to do so within the thirty (30) day period shall render the application null and void. The determination that an application is null and void is not an appealable decision.

3. Within ten (10) business days following the receipt of an amended application or supplemental information, except where circumstances beyond the control of the City justifiably delay such response, the Chief of Police shall again determine whether the application is complete and shall inform the applicant whether additional materials are required to complete the application. Evaluation and notification shall occur as provided above up to three times until such time as the application is found to be complete or in the alternative null and void. If, after three opportunities to complete an application, the applicant fails to provide all necessary information, the application shall be null and void. The determination that an application is null and void is not an appealable decision.

4. All notices required by this Chapter shall be deemed issued upon the date they are either deposited in the United States Postal Service mail or the date upon which personal service of such notice is provided.

C. All complete applications will be circulated to the Planning and Building Services, Fire and Code Enforcement Departments with a rating matrix and directions for evaluating and scoring applications based on criteria to be adopted by separate Resolution of the Council.

D. Except where circumstances justify delay, not later than sixty (60) days from the date the completed Permit applications are circulated for staff review, all complete applications will be considered at a noticed public hearing or series of noticed public hearings conducted by the Chief of Police. Prior to publication of notice of the public hearing(s), the City Council may choose to have the hearing(s) conducted by the Council or a subcommittee thereof. If the Council does not choose to have the hearing(s) conducted by the Council or a subcommittee thereof, then the Chief of Police shall cause the public hearing(s) to be conducted before a rating body consisting of the Chief of Police and representatives of the Planning and Building Services Fire and Code Enforcement Departments. In reviewing and scoring Permit applications, the rating body, City Council, or subcommittee thereof shall consider those criteria to be adopted by separate Resolution of the Council.

E. The Chief of Police shall cause the applicants and the owners of property located within seven-hundred-and-fifty-feet (750') of every proposed Collective location to be sent notice of the date, time, and place of the hearing(s) at least ten (10) business days in advance of the opening of such hearing(s).

F. The Chief of Police or City Council/Subcommittee shall open the public hearing(s) at the date, time, and place specified in the notice, but may continue the hearing(s), and may change the place of any or all hearing(s), as necessary to accommodate all interested parties.

G. The Chief of Police or City Council/Subcommittee shall issue a written report of the decision

on all Permit applications not later than fifteen (15) business days after the hearing or series of hearings is closed. The report shall be in writing and shall include findings of fact, a summary of the relevant evidence, a statement of the issues, and a decision regarding whether each applicant is eligible to receive a Permit. The report will also include any conditions to be imposed on a Permit in addition to the conditions established in Section 7.102.060 and the facts supporting imposition of those conditions. A copy of the report shall be mailed or delivered to every applicant, and to any person who has requested notice of the decision and has paid the required fees for copying and mailing.

SECTION 4. Richmond Municipal Code Section 7.102.055 (Appeals from decisions to grant or deny a Permit) is hereby added to read as follows:

A. If the decision on one or more Permit applications is made by the City Council or a subcommittee thereof, the decision is final.

B If the decision on one or more Permit applications is made by a rating body empanelled by the Chief of Police, it may be appealed to the Public Safety/Public Services Committee within fourteen (14) days from the date the written notice of Permit decision was mailed or delivered by personal service. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police along with an appeal deposit in an amount determined by the City Council by resolution.

C. The Public Safety/Public Services Committee shall conduct a hearing on all appeals at its next regularly scheduled meeting after the close of the appeal period, except where good cause exists to extend this period. Notice of the hearing shall be given in accordance with Section 7.102.050(E) The hearing and rules of evidence shall be conducted pursuant to Chapter 2.62.105 of this Code. The determination of the Public Safety/Public Services Committee on the appeal(s) shall be final.

D. No Permits shall be issued prior to the expiration of the appeals period without the filing of an appeal or, in the event of one or more appeals, the final decision of the Public Safety/Services Committee on all appeals.

SECTION 5. Richmond Municipal Code Section 7.102.060 (Permit approval and operating conditions) is hereby amended to read as follows:

Any permit issued pursuant to this chapter shall include, and each permittee shall continually comply with, all of the following conditions of operation, provided that additional conditions may be imposed as necessary to preserve the public health, safety, and welfare.

A. The Property satisfies all locational and zoning criteria.

B. Exterior building and parking area lighting at the Property are in compliance with all applicable provisions of this Code, as determined by the Planning Division.

C. Windows and roof hatches at the Property shall be secured so as to prevent unauthorized entry; equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and comply with all applicable Building and Fire Code provisions.

D. The Property provides a sufficient odor absorbing ventilation and exhaust system so that odor generated inside the Property is not detected outside the Property, anywhere on adjacent property or public rights-of-way, or within any other unit located within the same building as the Medical Marijuana Collective.

E. The Property is monitored at all times by closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the Property. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

F. The Property has a centrally-monitored fire and burglar alarm system.

G. A sign is posted in a conspicuous location inside the Property advising:

1. The diversion of marijuana for non-medical purposes is a violation of State law.

2. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

3. Loitering at the location of a Medical Marijuana Collective for an illegal purpose is prohibited by California Penal Code Section 647(h).

4. This Medical Marijuana Collective is permitted in accordance with the laws of the City of

Richmond.

H. Each Collective distributing Edible Medical Marijuana or other manufactured infused products for the sole consumption by Qualified Patient members and Qualified Patient Management Members of the Collective shall ensure that the products are manufactured, packaged and labeled in compliance with all applicable state and local laws.

I. The Medical Marijuana Collective meets all applicable state and local laws to ensure that the operations of the Collective are consistent with the protection of the health, safety and welfare of the community, Qualified Patients and their Primary Caregivers, and will not adversely affect surrounding uses.

J. No Collective shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation provided by Management Members and members towards the Collective's actual expenses of the growth, cultivation, and provision of Medical Marijuana shall be allowed provided that they are in strict compliance with State Law. All such cash and in-kind amounts and items shall be fully documented. The site of cultivation for all in-kind contributions shall be noted and addresses shall be made available to Fire and Building inspectors upon request.

K. Prior to distributing any crop, batch or bundle of Medical Marijuana that it cultivates or acquires for distribution or any Edible Medical Marijuana or other manufactured infused products, a Collective shall submit samples of that crop, batch or bundle to an independent laboratory to be tested using standard analytical methodology for the presence of mold, pesticides, and other additives or adulterants that could be harmful if ingested or applied topically. The Medical Marijuana or manufactured infused product shall not be distributed or consumed before laboratory results demonstrate that it is safe for consumption.

L. Prior to hiring any prospective employee or Management Member, the Richmond Police Department shall prepare a summary criminal history ("LiveScan") demonstrating that there are no pending charges nor convictions for crimes of moral turpitude (such as theft, fraud, or assault) within the previous ten years, and that the subject is not currently on parole or probation for the sale or distribution of a controlled substance.

SECTION 6. Richmond Municipal Code Section 7.102.080 (Maintenance of records), Subparagraphs A.10 and B, are hereby amended to read as follows:

10. Evidence of (a) verification that all Edible Medical Marijuana and other manufactured infused products are manufactured, packaged, and labeled in compliance with all applicable state and local laws, and (b) laboratory testing as required by Section 7.102.060.

B. These records shall be maintained by the Medical Marijuana Collective for a period of five (5) years and shall be made available by the Collective to the City upon request, subject to the authority set forth in Section 7.102.090.

SECTION 7. Richmond Municipal Code Section 7.102.100 (Existing Medical Marijuana operations) is hereby amended to read as follows:

Any existing Medical Marijuana Collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this Chapter must immediately cease operation until such time, if any, when it complies fully with the requirements of this Chapter. No Medical Marijuana Collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this Chapter shall be deemed to be a legally established use or a legal non-conforming use under the provisions of this Chapter or the Code. Any medical marijuana collective, dispensary, operator, establishment or provider that operates without a Permit after December 31, 2010 shall be ineligible to apply for a Permit.

SECTION 8. Richmond Municipal Code Section 7.102.120 (Violation and enforcement), Subparagraph B, is hereby amended to read as follows:

B. Any person who engages in any Medical Marijuana Collective operations after a Medical Marijuana Collective Permit application has been denied, or a Medical Marijuana Collective Permit has been suspended or revoked, and before a new permit is issued, shall be subject to civil prosecution and fines of up to one thousand dollars (\$1,000) per day for each day of unpermitted operation.

SECTION 9. Richmond Municipal Code Section 7.102.130 (Appeals process), is hereby amended to read as follows:

7.102.130 Appeals from revocation or suspension decisions.

A. If a City department determines that the permittee failed to comply with any provision of this Chapter, or with any other provision or requirement of law, the Chief of Police shall revoke or suspend the Medical Marijuana Collective Permit.

B. The Chief of Police shall notify the permittee of the permit revocation or suspension by dated written notice. Said notice shall advise the permittee of the right to appeal the decision to the Public Safety/Public Services Committee within fourteen (14) days from the date the notice. The request for appeal shall be in writing, shall set forth the specific ground(s) on which it is based and shall be submitted to the Chief of Police.

C. The appeal shall be considered by the Public Safety/Public Services Committee in accordance with Section 7.102.055(C). The decision of the Public Safety/Public Services Committee shall be final.

D. Whenever a Medical Marijuana Collective Permit has been revoked or suspended, no permit application by any of the Managing Members of that Collective shall be considered for a period of three (3) years from either the date notice of the revocation or suspension was mailed, or the date of the final decision of the Public Safety/Public Services Committee, whichever is later.

SECTION 10. Severability.

If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 11. Effective Date.

This Ordinance becomes effective thirty (30) days following its passage and adoption.

First reading at a regular meeting of the Council of the City of Richmond held October 19, 2010 and finally passed and adopted at a joint meeting thereof held November 16, 2010 by the following vote:

AYES: Councilmembers Bates, Butt, Lopez, Rogers, Viramontes, Vice Mayor Ritterman, and Mayor McLaughlin

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

DIANE HOLMES
Clerk of the City of Richmond

(SEAL)

Approved:

GAYLE MCLAUGHLIN
Mayor

Approved as to form:

RANDY RIDDLE
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 31-10, finally passed and adopted by the City Council of the City of Richmond at a joint meeting held on November 16, 2010.