

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: County Counsel

BOARD AGENDA # E-1

Urgent Routine

AGENDA DATE May 22, 2007

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES NO

SUBJECT:

Approval to Introduce and Waive the First Reading of an Ordinance Adding Chapter 9.86 to The Stanislaus County Code to Regulate Medical Marijuana Dispensaries

STAFF RECOMMENDATIONS:

1. Find that the subject ordinance is not subject to the California Environmental Quality Act (Public Resources Code sections 21000 et seq.); and
2. Introduce and waive the first reading of an ordinance adding Chapter 9.86 to the Stanislaus County Code to regulate medical marijuana dispensaries.

FISCAL IMPACT:

This action could result in an impact to the general fund due to regulatory actions by the Sheriff and other County departments, which could be offset through adoption of regulatory fees.

BOARD ACTION AS FOLLOWS:

No. 2007-411

On motion of Supervisor Grover, Seconded by Supervisor Mayfield

and approved by the following vote,

Ayes: Supervisors: Mayfield, Grover, Monteith, DeMartini, and Chairman O'Brien

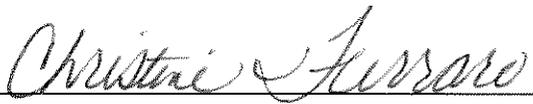
Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

- 1) X Approved as recommended
- 2) _____ Denied
- 3) _____ Approved as amended
- 4) _____ Other:

MOTION: INTRODUCED AND WAIVED THE FIRST READING OF ORDINANCE NO. C.S. 998



ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No. ORD-55-C-2

Approval to Introduce and Waive the First Reading of an Ordinance Adding Chapter 9.86 to The Stanislaus County Code to Regulate Medical Marijuana Dispensaries

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DISCUSSION:

This agenda item for Board consideration is a draft ordinance regulating facilities that may, in the future, be located in the unincorporated area of the County that dispense marijuana for medical purposes. The proposed ordinance is intended to provide a regulatory framework for medical marijuana dispensaries if, and only when, such operations are allowed by both State and federal law.

It is important to first recognize that medical marijuana dispensaries are prohibited under federal law. Further, the California Compassionate Use Act (Health & Saf. Code, § 11362.5) does not legalize or offer immunity for the sale of marijuana. It is the opinion of County Counsel that activities which are prohibited under federal or State law are automatically a prohibited land use in the County.

A strict prohibition of dispensaries, as adopted by several other jurisdictions, ultimately may not be effective if the law should change. As you are aware, the California Attorney General successfully opposed the County of San Diego lawsuit regarding the conflict between the Compassionate Use Act and the federal Controlled Substances Act. In addition, the Attorney General recently has been asked to provide an opinion about whether a medical marijuana dispensary may legally operate under the Compassionate Use Act. If the law changes to allow medical marijuana dispensaries, it is reasonable to expect a number of dispensaries to open in the County. The proposed ordinance is intended to establish a framework so that these facilities are appropriately regulated if the law changes to allow medical marijuana dispensaries. Otherwise, the County may be faced with legal non-conforming located in areas that negatively impact the health, safety and welfare of County residents.

The draft ordinance provides substantial regulation of medical marijuana dispensaries if such activity is allowed by both federal and State law. Some of the key features of the draft ordinance include:

- Dispensaries are prohibited except as specifically allowed under State and federal law. (§ 9.86.010 A)
- A permit must be obtained to operate a dispensary. Only one dispensary is permitted in each of the supervisorial districts; i.e. only five are allowed. And, no person or entity can hold more than one permit. (§ 9.86.030)
- Permits are issued only to government entities or non-profit entities. (§ 9.86.040 D.5.; § 9.86.060 3.; § 0.86.100 B.; § 9.86.110 A.2.)

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- Dispensaries are allowed only in the industrial and commercial zones, and cannot be near special existing uses like schools, parks, etc. (§ 9.86.040 F.)
- The Sheriff administers the ordinance and issuance of permits similar to pawn brokers, gambling establishments and card rooms. (See Chapters 6.52, 10.12, 10.13.)
- Fees for administration are authorized. (§ 9.86.070.)
- Permits have a two-year term and are renewable if operations conform to the ordinance. (§ 9.86.040)

If medical marijuana dispensaries are allowed under State and federal law, the proposed ordinance would allow reasonable services to provide for the legitimate medical needs authorized by statute, and still provide substantial regulation of dispensaries to protect the health, safety and welfare of all County citizens. Staff recommends that the Board of Supervisors introduce and waive the first reading of the proposed ordinance and set the matter for adoption at the following meeting.

POLICY ISSUES:

Approval of this ordinance supports the Board's priority of promoting a safe and healthy community.

STAFFING:

There is no staffing impact associated with this request.

AN ORDINANCE RELATING ADDING CHAPTER 9.86 TO THE STANISLAUS COUNTY CODE TO REGULATE MEDICAL MARIJUANA DISPENSARIES

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS, STATE OF CALIFORNIA, ORDAINS AS FOLLOWS:

Section 1. Chapter 9.86 is added to the Stanislaus County Code to read as set forth in Exhibit A attached to this ordinance and incorporated herein.

Section 2. This ordinance shall take effect thirty (30) days from and after the date of its passage and before the expiration of fifteen (15) days after its passage it shall be published once, with the names of the members voting for and against the same, in the Modesto Bee, a newspaper published in the County of Stanislaus, State of California.

Upon motion of Supervisor _____, seconded by Supervisor _____, the foregoing resolution was passed and adopted at a regular meeting of the Board of Supervisors of the County of Stanislaus, State of California, the _____ day of _____, 2007, by the following called vote:

AYES: Supervisors:

NOES: Supervisors:

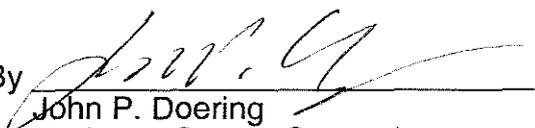
ABSENT: Supervisors:

William O'Brien, Chair of the Board of Supervisors of the County of Stanislaus, State of California

ATTEST:
CHRISTINE FERRARO TALLMAN
CLERK OF THE BOARD OF SUPERVISORS OF THE
COUNTY OF STANISLAUS, STATE OF CALIFORNIA

By _____
Deputy

APPROVED AS TO FORM:
MICHAEL H. KRAUSNICK
COUNTY COUNSEL

By 
John P. Doering
Assistant County Counsel

**TITLE 9
HEALTH AND SAFETY**

**CHAPTER 9.86
MEDICAL MARIJUANA DISPENSARIES**

SECTIONS:

- 9.86.010 General Prohibition, Purpose and Intent**
- 9.86.020 Definitions**
- 9.86.030 Permit Required**
- 9.86.040 Term of Permits and Renewals**
- 9.86.050 Application, Renewal and Revocation Procedures**
- 9.86.060 Contents of Application**
- 9.86.070 Fees**
- 9.86.080 Initial Review of Application**
- 9.86.090 Action upon Completion of Initial Review**
- 9.86.100 Final Selection of Medical Marijuana Dispensaries**
- 9.86.110 Standard Conditions**
- 9.86.120 Appeal from Administrative Determinations**
- 9.86.130 Administrative Review of Appeal**
- 9.86.140 Hearing by the Board of Supervisors**
- 9.86.150 Suspension and Revocation**
- 9.86.160 Transfer of the Permit**
- 9.86.170 Prohibited Operations**
- 9.86.180 Nonconforming Uses**
- 9.86.190 Misdemeanor Violation**
- 9.86.200 Civil Injunction**
- 9.86.210 Severability**
- 9.86.220 Judicial Review**

9.86.010 General Prohibition, Purpose and Intent

A. Dispensing of medical marijuana in the unincorporated area of Stanislaus County is prohibited except as specifically allowed or authorized under State and federal law. No use that is illegal under local, State or federal law shall be allowed in any zoning district within the unincorporated area of the County.

B. The purpose and intent of the Chapter is to provide a means for regulating the operation of medical marijuana dispensaries in the unincorporated portions of the County if such activity or business is authorized by State and federal law in a manner that is consistent with applicable law and which promotes the health, safety and general welfare of the residents and businesses in the County.

C. This ordinance shall be effective only to the extent the uses permitted in this Chapter are otherwise authorized or allowed by State and federal laws, regulations and rules. This ordinance does not provide separate authority for allowing an otherwise illegal activity to occur on the permitted property.

9.86.020 Definitions

The following words and phrases shall have the following meanings when used in this Chapter:

A. "Applicant" means a person who shall seek a permit under this Chapter by filing an application as provided for in this Chapter. "Application" means that form provided by the Sheriff in accordance with this Chapter for the purpose of seeking a permit.

B. "County" means the County of Stanislaus. "State" means the State of California.

C. "Eligible application" means an application that complies with the requirements of the initial review and is submitted for final selection, as provided for in Section 9.86.100.

D. "Identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

E. "Marijuana" has the same definition as in Section 802 (16) of Title 21 of the United States Code, and generally means all parts or psychoactive products of plants of the Genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; every compound, manufacture, salt, derivative mixture, or preparation of such plant, its seeds or resin; and any compound that contains THC (delta-9-tetrahydrocannabinol) including both natural and synthetic variations in any form.

F. "Medical marijuana dispensary" or "dispensary" means any facility where marijuana is made available and/or distributed under the authority of California Compassionate Use Act, as amended, and as regulated by this Chapter for medically approved uses; provided, however, that the following facilities are exempt from the requirement of a permit:

1. A clinic that is licensed under Chapter 1 of Division 2 of the California Health and Safety Code.

2. A health care facility that is licensed under Chapter 2 of Division 2 of the California Health and Safety Code.

3. A residential care facility for persons with chronic life-threatening illness that is licensed under Chapter 3.01 of Division 2 of the California Health and Safety Code.

4. A residential care facility for the elderly that is licensed under Chapter 3.2 of Division 2 of the California Health and Safety Code.

5. A residential hospice or a home health agency that is licensed under Chapter 8 of Division 2 of the California Health and Safety Code.

G. "Non-profit Entity" means a person that has applied for and obtained recognition by the Internal Revenue Service of tax-exempt status under section 501(c) of the Internal Revenue Code, and that has applied for and obtained tax-exempt status under Article 2 (commencing with section 23701) of Chapter 4, Part 11, Division 2 of the California Revenue and Taxation Code.

G. "Permit" means a permit issued by the County to a medical marijuana dispensary under this Chapter. "Permittee" means a person or legally recognized entity that holds an effective and current permit under this Chapter.

H. "Person" means any human being or an incorporated or unincorporated business entity or association established under the laws of the State.

I. "Person with an identification card" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended. Until such time as the State implements a program for issuance of identification cards under Section 11362.7 of the California Health and Safety Code throughout California, any identification card issued under the authority of the State or a local agency in California shall be deemed to comply with this Section.

J. "Premises" means the building in which a medical marijuana dispensary is operated and, in addition, any accessory structures and appurtenant areas.

K. "Sheriff" means the Sheriff of the County of Stanislaus and his or her authorized representatives.

L. "Primary caregiver" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

M. "Qualified patient" has the same definition as in Section 11362.7 of the California Health and Safety Code, as it may be amended.

N. "School" means an institution of learning for minors, whether public or private, that offers a regular course of instruction and any child or day care facility.

9.86.030 Permit Required

A. It shall be unlawful for any person to conduct, engage in or allow to be conducted or engaged in the operation of a medical marijuana dispensary in the unincorporated portion of Stanislaus County, unless such medical marijuana dispensary has been granted a legally effective permit issued under this Chapter. Notwithstanding the above, the permits issued under this Chapter do not provide any protection or immunity for any person from State or federal laws, or from prosecution pursuant to any applicable State or federal laws.

B. The owner, managing partner, officer of a corporation or such other person who shall be primarily responsible for the operation of a proposed medical marijuana dispensary shall apply for a permit under this Chapter and, if granted, shall

maintain the operation of the medical marijuana dispensary in conformity with the terms of this Chapter and of the permit.

C. The fact that an applicant possesses other types of State or county permits or licenses, other than those identified in Subdivision F of Section 9.86.020, shall not exempt the applicant from obtaining a permit under this Chapter, nor shall the terms and conditions of any other such permit or license modify the requirements of a permit granted under this Chapter.

D. At no time shall the County have in effect more than five permits, consisting of a maximum of one permit in each of the Supervisorial Districts as set forth in Chapter 1.08 of this Code.

E. No person or entity shall be granted a permit to operate a dispensary in more than one Supervisorial District. Each permittee shall be entirely independent of every other permittee. Permittees shall be independent as to ownership, operational capability and financial support. Prior to the granting of a permit, and on July 1 of each year after issuance of a permit, each permittee shall file a statement of ownership, operational capability and financial support and shall verify the same as being true and correct under the penalty of perjury. The statement shall be in such form as may be prescribed therefore by the department issuing the permit.

F. Notwithstanding subsection D of this Section, each medical marijuana dispensary shall also meet all of the following locational standards:

1. No dispensary may be closer than one thousand (1,000) feet from any other dispensary.

2. No dispensary may be closer than one thousand (1,000) feet from any school, public park or playground, recreation area, amusement park, sports facility, drug recovery facility, adult business as defined in Chapter 21.68 of this Code, or any church, chapel or other place of worship.

3. Each dispensary shall be located in a "C-2" General Commercial or "M" Industrial zone. Dispensaries are not permitted to be located or operate in any other zoning district. Nothing in this Chapter eliminates the need for obtaining any other permits or authorizations required by the County, or any permit, approval or entitlement required by any other government jurisdiction, agency or special district.

G. In accordance with Health and Safety Code section 11362.765, a permit to operate a dispensary shall be issued only to government entities, public corporations, and any person who holds an approved application for recognition of tax exemption as a non-profit entity from the State and federal governments.

9.86.040 Term of Permits and Renewals

A. Each permit shall expire two years after the date of its issuance. Any permit may be renewed by the Sheriff for successive two-year periods upon the submission of an application by the permittee. At the time of consideration of a renewal

application, the Sheriff shall consider compliance with conditions in the prior term and, in addition, the County Health Services Agency may review and revise the mission statement of the dispensary in accordance with the requirements of Sections 9.86.080 and 9.86.090.

B. Notwithstanding subsection A of this Section, all permits issued pursuant to this Chapter shall expire upon the effective date of an ordinance that provides for the operation of a medical marijuana dispensary by the County, whether as a County facility or under contract with the County.

C. Any application for renewal shall be filed at least forty-five (45) calendar days before expiration of the permit.

D. Any application for renewal shall be rejected if:

1. The application is filed less than forty-five (45) calendar days before its expiration.

2. The permit is suspended or revoked at the time of the application; provided, however, that an application for renewal may be filed within ten days after the granting of a permittee's appeal of the suspension or revocation of a permit.

3. The dispensary authorized by the permit has not been in regular operation in the four months prior to the renewal application.

4. The dispensary fails to conform to the criteria set forth in Subdivision A of Section 9.86.090.

5. The applicant or holder of a permit is not a qualified non-profit entity. This provision does not apply to government entities or public corporations.

9.86.050 Application, Renewal and Revocation Procedures

A. The Sheriff shall initiate a review process upon receipt of an application for the establishment of a dispensary within an area where a dispensary could be established based upon the provisions of subsection D of Section 9.86.030. Applications will not be accepted for establishment of a dispensary in any Supervisorial District where a valid permit already has been issued by the Sheriff.

B. Each application for the establishment of a dispensary or renewal of an existing permit shall be filed with the Sheriff and the Sheriff shall be responsible for administering the application process as set forth in this Chapter.

C. The Board of Supervisors shall, by resolution or ordinance, adopt such forms, fees and procedures as are necessary to implement this Chapter with respect to the initial selection, future selection, renewal, revocation and suspension of permits.

D. Wherever this Chapter requires the County to give notice to an applicant, appellant or permittee, such notice shall be given by the Sheriff, in writing, and shall be

delivered either by personal delivery or by certified U.S. mail, postage prepaid, return receipt requested. In addition, any such notice may be posted at the address of the dispensary on the date of the mailing of notice.

9.86.060 Contents of Application

A. Each application shall set forth or incorporate by reference the following information in a standard form adopted by the Sheriff:

1. Address of the proposed dispensary and the name and address of the owner of any building where the dispensary will be located and, if different, the owner of the land on which the dispensary is intended to be located.

2. If the applicant is an individual, the full name, date of birth, social security number, present mailing address and telephone number of the applicant. If the applicant is not an individual, the name and address of the applicant's agent who is authorized to receive notice of actions pertaining to the proposal, and an applicant in one of the following categories must furnish the information specified for that category:

(a) If the applicant is a State or local government agency: a copy of the authorization under which the proposal is made;

(b) If the applicant is a public corporation: the statute or other authority under which it was organized;

(c) If the applicant is a Federal Government agency: the title of the agency official delegated the authority to file the proposal;

(d) If the applicant is a private corporation:

(1) Evidence of incorporation and its current good standing;

(2) If reasonably obtainable by the applicant, the name and address of each shareholder owning three percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(3) The name and address of each affiliate entity of the corporation;

(4) In the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the entity owns either directly or indirectly, or, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(e) If the applicant is a partnership, association, or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

3. Evidence that the applicant has obtained federal and State recognition that it is a tax-exempt non-profit organization, together with all supporting documents. This provision shall not apply to government or public corporation applicants.

4. The address to which notice of action on the application is to be mailed.

5. All residential addresses of the applicant for the five years immediately prior to the date of the application.

6. If the applicant is an individual, written proof that the applicant is eighteen (18) years of age or older (i.e., California driver's license, California identification card or certified birth certificate).

7. The names and addresses of all businesses operated by and, if an individual, the employment of the applicant for the five years immediately prior to the date of the application.

8. The address of any dispensaries that had previously been operated by the applicant and a statement of whether the authorization for any such operation had been revoked or suspended and, if so, the reason therefor.

9. The names and telephone numbers of the person or persons to be regularly engaged in the operation of the proposed dispensary, whether an employee, volunteer or contractor. The application shall also identify those persons, including telephone numbers (i.e., emergency contact), having management and supervisory responsibilities for the proposed dispensary. Every person listed as owner, manager, supervisor or employee must submit fingerprints and other necessary information, (including height, weight, eye color, and hair color) for a background check to the Stanislaus County Sheriff's office, and be photographed for identification purposes. In addition, any new employees, independent contractors, other persons and/or volunteers who will work at the proposed medical marijuana dispensary must submit their information to the Sheriff's office within five days prior to their employment.

10. A description of the proposed security arrangements for insuring the safety of persons and protection of the premises from theft that will meet the minimum requirements set forth in subsection A.12 of Section 9.86.110.

11. A sketch or diagram showing the interior configuration of the premises, including a statement of the total floor area occupied by the dispensary. The sketch or diagram need not be professionally prepared, but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus twelve (12) inches.

12. A description of external appearance of the dispensary, including a precise depiction of any signage.

13. A description of products to be sold or dispensed by the dispensary.
14. The mission statement of the dispensary with respect to meeting the medical needs of patients in its area.
15. A description of the methods by which the applicant will mitigate any potentially adverse impacts, such as loitering, odors or noise, on surrounding property owners.
16. Authorization for the County, its agents and employees to seek verification of the information contained in the application.
17. Written certification that the applicant has reviewed and understands and accepts the standard conditions that are set forth in Section 9.86.110. If the applicant does not own the premises where the dispensary is located, the application shall include the signature(s) of all landowners where the use will occur and all owners of buildings where the dispensary will be located, indicating such owners knowledge and consent to such use of the premises.
18. Certification, under penalty of perjury, that all the information contained in the application is true and correct.
19. A statement by the applicant that it has the ability to comply with all laws regulating businesses in the State of California and that it shall maintain compliance during the term of the permit.
20. Additional information as needed to conduct an environmental assessment of the proposed permit as may be required to comply with the California Environmental Quality Act.

B. The filing of an application shall be deemed complete upon the submission of an application in conformance with this Section and payment of the application fees required by Section 9.86.070.

C. An application may be reviewed and copied by any member of the public in accordance with the California Public Records Act; provided, however, the Sheriff shall keep confidential, to the extent reasonable and authorized by law, any information revealed during the application process that is (1) protected under privacy laws of the State, (2) information that, if disclosed, would pose a substantial risk to the safety or welfare of the community, or (3) when requested by the applicant, any proprietary project and program information.

9.86.070 Fees

A. Every application or renewal of a permit shall be accompanied by a nonrefundable fee, as adopted by the Board of Supervisors, in order to reimburse the County for the cost of reviewing and acting upon the application.

B. In addition to any application or renewal fee, each dispensary shall pay an annual fee, as adopted by the Board of Supervisors, for the administration of the permit, including monitoring and enforcing compliance with terms of the permit.

C. The Board of Supervisors may enact such other fees as may be necessary to recover the County's costs of inspection and corrective actions in relation to dispensaries.

D. The Board of Supervisors may enact fees to be paid to schools located in the areas where dispensaries are permitted for reimbursement for drug and alcohol treatment and education for students.

9.86.080 Initial Review of Application

A. The Sheriff shall commence review of any application immediately upon its filing. In conducting this review, the following County agencies shall comment on specific portions of the application:

1. The Sheriff shall be responsible for verifying factual information in the application, including names, addresses and other information on the applicant operator and its employees of the proposed dispensary.

2. The Sheriff shall comment upon the adequacy of security measures that are described in the application.

3. The Department of Planning and Community Development shall comment upon the proposed location's compliance with the requirements of subsections D and E of Section 9.86.030 and shall recommend conditions that are needed to mitigate adverse impacts on surrounding uses. The Department of Planning and Community Development shall also provide assistance and advice to the Sheriff regarding compliance with the California Environmental Quality Act.

4. The Health Services Agency shall comment upon the services to be provided and the mission statement set forth in the application.

B. Within ten business days after the filing of an application, the Sheriff shall reject any application and so notify the applicant, if the application has been improperly completed or if it is incomplete. The applicant may amend and refile the application within ten days after such rejection.

C. At the conclusion of the initial review, the Sheriff shall notify the applicant of the results of the initial review of the application.

D. The Sheriff shall keep confidential, to the extent reasonable and authorized by law, any information revealed during the application process that is (1) protected under privacy laws of the State, (2) information that, if disclosed, would pose a substantial risk to the safety or welfare of the community, or (3) when requested by the applicant, any proprietary project and program information.

9.86.090 Action upon Completion of Initial Review

A. Upon completion of the initial review, the Sheriff shall reject any permit that meets any of the following criteria:

1. The proposed dispensary does not comply with requirements of this Chapter.
2. The applicant has knowingly made a false statement of material fact or has knowingly omitted a material fact from the application.
3. The operation of the proposed dispensary at the proposed location is prohibited by any State, federal or local law or regulation.
4. Any person who is listed on the application pursuant to subsection (A)(10) of Section 9.86.060 has been convicted of a felony within the past ten years. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
5. The applicant or the operator listed in the application is less than eighteen (18) years of age.
6. The Health Services Agency has determined that the application has failed to state a health care purpose that fulfills the purposes of Section 11362.5 et seq. of the California Health and Safety Code.

B. Any application that is not rejected upon completion of the initial review shall be deemed an eligible application and submitted to the final selection process.

C. The Sheriff shall mail notice of each eligible application to surrounding landowners within 1,000 feet of the property where the proposed dispensary will be located. The Sheriff may consider any comments received from landowners, or any other person, in setting operating conditions of approval pursuant to subsection C of Section 9.86.100 of this Code.

9.86.100 Final Selection of Medical Marijuana Dispensaries

A. The Sheriff shall make a final selection of eligible applications in accordance with subsection B of this Section, and, pursuant to subsection C of this Section, may establish operating conditions for any permits issued under this Chapter. The final selection process shall not exceed thirty (30) days in the absence of an appeal.

B. The final selection process shall commence with the separation of all eligible applications into the areas that are delineated in subsection D of Section 9.86.030. If an area has a number of eligible applications that is the same as or less than the allowable number of medical marijuana dispensaries for such area, then all applications for that area shall be submitted for establishment of operating conditions as set forth in subsection C of this Section. If any area has a number of eligible

applications that exceeds the maximum number of dispensaries for such area, the eligible applications to be submitted for final selection shall be designated by drawing or other method that ensures that each eligible application has an equal chance of being selected for the area; provided, however, priority shall be given first to governmental agencies of any kind, and second to non-profit entities.

C. The Sheriff, the Department of Planning and Community Development and the Health Services Agency may establish operating conditions, in addition to the standard conditions contained in Section 9.86.110, for each eligible application that has been submitted for final review. The operating conditions shall be limited to those that are necessary to carry out the purposes of this Chapter, to mitigate specific and foreseeable adverse impacts on properties in the vicinity and to achieve the mission statement in the application.

D. At the conclusion of the final selection, the Sheriff shall give notice to the applicant of the operating conditions that would attach to the permit. Within ten days after notice, the applicant shall either:

1. Certify acceptance of the operating conditions and the standard conditions of the permit, and the permit shall thereupon issue immediately.

2. If the applicant refuses or fails to certify agreement with any operating condition or standard condition, the application shall be denied. The applicant may appeal any condition within ten days after notice of the conditions. Upon either the failure to file a timely appeal or the rejection of the appeal, the application shall be deemed denied.

E. No application for a permit which has been denied wholly or in part by the Sheriff, or by the Board of Supervisors on appeal, shall be resubmitted for a period of one year from the date the order of denial became final, except on grounds of new evidence or proof of changed conditions found to be valid by the Sheriff or the Board of Supervisors, whichever issued the order of denial.

F. No building permit shall be issued in any case where a dispensary permit is required by the terms of this Chapter unless and until the dispensary permit has been granted by the Sheriff or Board of Supervisors and then only in accordance with the terms and conditions of the dispensary permit.

9.86.110 Standard Conditions

A. Throughout the term of the permit, each permittee shall not violate this Chapter and shall comply with the following standard conditions:

1. It shall be a violation of this Chapter for a dispensary to distribute, provide or allow to be provided marijuana to any person except those persons who are primary caregivers or qualified patients who are in possession of an identification card which is in compliance with the regulations established by the California Department of Health or Health Services Agency. All distribution that does not strictly comply with Section 11362.5 of the California Health and Safety Code and the terms of the permit

and this Chapter is prohibited. It shall be the responsibility of the permittee to ensure that a good faith effort be made to verify the validity of any identification card provided to the dispensary.

2. Each dispensary shall maintain records of persons who have received marijuana from the dispensary. These records shall set forth only the identification card number issued pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders or a copy of such documentation that authorizes such distribution under this Chapter.

3. Dispensary hours of operation are limited to and shall be between 9:00 a.m. and 9:00 p.m., and no activities that are undertaken in the operation of the dispensary shall be conducted outside the interior premises of the dispensary.

4. Marijuana may not be grown or cultivated on the premises. It shall be a violation of this Chapter if at any time the amount of marijuana on the premises exceeds the lesser of:

(a) An amount of marijuana equal to eight ounces per qualified patient, primary caregiver and person with an identification card who has received marijuana from the dispensary during the previous thirty (30) calendar days, or

(b) A total of twenty (20) pounds of marijuana.

5. No marijuana shall be smoked, ingested or otherwise consumed on the premises of a dispensary.

6. A dispensary shall label its products by stating the name of the dispensary and the weight of cannabis. Any food products must be contained in a package that is labeled to indicate the ingredients, including the amount of cannabis contained in the package, and such other information as may be required by State or local law. The sale of food products shall comply with the California Uniform Retail Food Facilities Law.

7. No person who is less than eighteen (18) years of age may be employed or otherwise engaged in the operation of the dispensary. No person under the age of eighteen (18) shall be allowed on the premises.

8. The entrance to a dispensary shall be posted with a notice that states the restrictions on the presence of persons under the age of eighteen (18) and that smoking, ingesting or consuming marijuana on the premises is prohibited. In addition, each dispensary shall conspicuously display the permit.

9. No dispensary may hold a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, nor may it include a business that sells alcoholic beverages. No alcohol may be stored, sold, dispensed or used on the premises.

10. No dispensary may hold or conduct gaming or cardroom operations, or hold a permit issued under Chapters 10.12 or 10.13 of this Code.

11. No dispensary may hold or conduct an "Adult business" as defined in Section 21.69.020, or hold a permit issued under Chapter 21.69 of this Code.

12. Each permittee shall maintain a current registry of persons, including, but not limited to, employees, contractors and volunteers, who are engaged in the operation of the dispensary. The registry shall be provided to the Sheriff at any time upon request. The registry shall include the name, current residential address, telephone number, date of birth and the height, weight and color of eyes and hair of each such person.

13. No person who has been convicted of a felony within the past ten years may be actively engaged in the operation of any dispensary. A conviction within the meaning of this Section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

14. Each dispensary permittee shall be responsible and liable for its patrons' safety and security in and around the dispensary, and shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. Before it shall be allowed to operate, each dispensary shall adopt a plan to provide for the safety and security of patrons, and after the plan has been approved by the Sheriff or his representative, shall operate in conformance with the approved plan. As part of the plan, dispensaries shall install and maintain in proper working order, video monitoring equipment capable of providing surveillance of both interior and exterior areas of the licensed establishment. Dispensaries shall maintain such surveillance video tapes for a period of at least thirty (30) days and shall make such video tapes available to the Sheriff or his representative upon demand. When reasonably required to protect the safety of persons or protect the premises from theft, as determined by the Sheriff, dispensaries shall employ security officers that meet all applicable state laws and regulations. Dispensaries shall not permit any person or persons to loiter either inside or outside of the licensed premises.

15. The permittee shall provide the Sheriff with the name, telephone number and facsimile number of a community relations contact to whom one can provide notice of problems associated with the dispensary. The permittee shall make a good faith effort to resolve problems without the need for intervention by the County.

16. A dispensary shall comply with all applicable federal, State and local laws, ordinances and regulations, including without limitation, County building, zoning and health codes, and shall allow inspections to ensure conformance with such regulations.

17. A dispensary shall not be delinquent in the payment of fees required by this Chapter.

18. All activities of the dispensary must take place within the interior of the building and not be visible from the street. A dispensary may not cover or alter the windows or building doors to comply with this requirement.

19. A dispensary must have appropriate restroom facilities that will accommodate both male and female customers.

20. The sale of drug paraphernalia, as that term is defined in Section 10.20.010, shall comply with the provisions of Chapter 10.20 of this Code. For purposes of this Section, a Primary Care Provider is not exempt from Chapter 10.20 pursuant to subdivision A.1 of Section 10.20.060.

21. The holder of a dispensary permit shall maintain during the term of the permit its status as a non-profit entity.

B. In order to minimize any adverse impacts on surrounding properties or residents, the standard operating conditions that are set forth in this Section may be modified upon the issuance of the permit or upon ten days' notice during the term of the permit.

C. During the term of each permit, the County shall require the permittee to comply with the standard operating conditions that are set forth in this Section or as they may be modified in accordance with subsection B of this Section and, in addition, any such operating conditions that may be established pursuant to subsections C and D of Section 9.86.100.

D. At any time during the operation of a dispensary and without notice, the Sheriff, acting in conjunction with other appropriate County officials, may enter the premises for the purpose of observing compliance of the dispensary with the conditions of its permit.

9.86.120 Appeal from Administrative Determinations

A. The applicant, permittee or any other interested person or entity may appeal an administrative determination that is made in relation to any of the following actions:

1. Finding that an application is complete or incomplete;
2. Determination that an application does not comply with the requirements of Section 9.86.090;
3. Establishment or modification of operating conditions;
4. Grant or denial of permit; or
5. Suspension or revocation of a permit.

C. Any appeal shall be filed with the Sheriff within ten days after the date of the notice of any such administrative determination, and shall be accompanied by an appeal fee established by the Board of Supervisors. When the last day of the appeal period would fall upon a non-workday or a holiday, the appeal period shall be extended to include the next subsequent regular working day.

D. Within ten days after the filing of an appeal, notice shall be given in accordance with Section 9.86.050 and to all landowners within 1,000 feet of the dispensary premises. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the County regarding the appeal and the date and location of the hearing of the appeal.

E. Any appeal that is not timely filed will be deemed ineffective and the administrative determination that is being appealed will become final.

9.86.130 Administrative Review of Appeal

A. Within thirty (30) days after the filing of an appeal of an administrative determination, the Sheriff shall convene a panel consisting of a representative of the County Chief Executive Office, Department of Planning and Community Development, Community Services Agency, Health Services Agency and the Sheriff at which the appeal shall be heard in public session. The appellant and any interested parties will be allowed to address the panel regarding the appeal.

B. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the Sheriff shall give notice of the decision of the panel.

C. Any appellant may file with the Clerk of the Board of Supervisors an appeal of the determination of the administrative panel within ten days after the date of the notice of the decision of the administrative panel, and shall be accompanied by an appeal fee established by the Board of Supervisors. When the last day of the appeal period would fall upon a non-workday or a holiday, the appeal period shall be extended to include the next subsequent regular working day.

9.86.140 Hearing by the Board of Supervisors

A. Decisions appealed to the Board of Supervisors shall be set for specific time and place of public hearing at the next regular meeting and considered not later than forty-five days from the date on which the appeal is filed. The hearing date may be extended beyond forty-five days upon request or consent of the applicant or permittee.

B. At least ten days prior to the hearing of the appeal by the Board of Supervisors, notice shall be given in accordance with Section 9.86.050 and to all landowners within 1,000 feet of the dispensary premises. Such notice shall set forth the grounds for the appeal, the method of submitting comments to the County regarding the appeal and the date and location of the hearing of the appeal by the Board of Supervisors. The Board of Supervisors may give such additional notice of hearing as it deems appropriate in a particular case.

C. The Board of Supervisors may take any appropriate action upon the original administrative action that was appealed pursuant to Section 9.86.120, including granting or denying the appeal or imposing, deleting or modifying operating conditions of the permit. The decision of the Board of Supervisors shall be final.

9.86.150 Suspension and Revocation

A. The Sheriff may initiate the revocation or suspension of a permit when it shall appear that the permittee has committed any of the following actions:

1. Violates the operating or standard conditions of the permit or the requirements of State, federal or local laws, ordinances or regulations.
2. Fails to take reasonable measures to control disturbances, loitering or such other problems on the premises.

B. No permit shall be revoked or suspended by virtue of this Section until a hearing has been held in the same manner as described in Sections 9.86.130 and 9.86.140. Notice of the hearing shall contain a brief statement of the grounds for revoking or suspending the permit and the time and date for the hearing.

C. The decision of the administrative panel may include suspension, revocation or the modification of the permit by adding conditions that are designed to reduce or remove the problems that caused the proposed revocation or suspension of the permit.

D. Within ten days after conclusion of the hearing of the appeal by the administrative panel, the Sheriff shall give notice of the decision of the panel.

E. Any interested party may appeal the determination of the administrative panel to the Board of Supervisors within ten days after the date of the notice of the decision of the administrative panel. The Board of Supervisors shall act upon the appeal in accordance with Section 9.86.140.

9.86.160 Transfer of the Permit

A. A dispensary permit issued under this Chapter does not grant any interest in real property or create any interest of value. A dispensary permit is not transferable, and automatically terminates upon transfer of ownership of the property or improvements subject to a dispensary permit. The County does not require holders of permits issued under this Chapter to obtain its consent to the sale of improvements. However, there is no obligation on the part of the County to issue a new permit to the persons acquiring the improvements.

B. A new owner or proposed new owner of the property or facilities authorized by a dispensary permit may apply for a new dispensary permit by submitting an application that complies with Section 9.86.060. The Sheriff shall verify information in the application and shall approve the new permit unless it fails to comply with the standards set forth in Section 9.86.090. The new holder must qualify and agree to

comply with and be bound by the terms and conditions of the authorization, and the new authorization shall contain any new conditions or stipulations, which circumstances may warrant. A new permit issued pursuant to this Section 9.86.160 shall be effective on either the date of transfer of ownership of the property or facilities subject to the permit, or the date of approval and issuance of a permit by the Sheriff, whichever occurs last.

9.86.170 Prohibited Operations

The permittee and or his or her agents shall at all times comply with Section 11326.5 et seq. of the California Health and Safety Code and this Chapter in the operation of the dispensary. This includes, but is not limited to, the prohibition of sales, transportation and delivery of medicinal marijuana off the site of the dispensary premises.

9.86.180 Nonconforming Uses

A. Notwithstanding any conflicting provision in Chapter 21.80 of this Code, any use of real property existing on the effective date of this ordinance, which does not conform to the provisions of this Chapter, but which was constructed, operated, and maintained in compliance with all previous regulations, shall be regarded as a nonconforming use which may be continued in compliance with this Chapter and other provisions of this Code for a period of one year after the effective date of this ordinance. On or before such date, all such nonconforming uses shall be terminated unless an extension of time has been approved in accordance with the provisions of this Section.

B. Notwithstanding the above, any discontinuance or abandonment of the use of any lot or structure as a marijuana dispensary for a period of 30 consecutive calendar days shall result in a loss of legal nonconforming status of such use.

C. The owner or operator of a nonconforming use as described in this Section may apply to the Chief Executive Officer for an extension of time within which to terminate the nonconforming use. An application for an extension of time within which to terminate a use made nonconforming by the provisions of this Chapter, may be filed by the owner of the real property upon which such use is operated, or by the operator of the use, with the Chief Executive Officer at least ninety (90) prior to the time established in this Section for termination of such use. The application shall state the grounds for requesting an extension of time. The filing fee for such application shall be the same as that for a land use variance as is set forth in the schedule of fees established from time to time by the Board of Supervisors.

D. The Chief Executive Officer shall appoint a hearing officer to hear the application. The hearing officer shall set the matter for hearing within forty five (45) days of receipt of the application. All parties involved shall have the right to offer testimonial, documentary and tangible evidence bearing on the issues; may be represented by counsel; and shall have the right to confront and cross-examine witnesses. Any relevant evidence may be admitted that is the sort of evidence upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Any

hearing under this subsection may be continued for a reasonable time for the convenience of a party or a witness. The decision of the hearing officer shall be final and subject to judicial review pursuant to Section 9.108.220.

E. Any extension under the provisions of this Section shall be for a reasonable period of time commensurate with the investment involved, and shall be approved only if the hearing officer makes all of the following findings and such other findings as are required by law:

1. The applicant has made a substantial investment (including, but not limited to, lease obligations) in the property or structure on or in which the nonconforming use is conducted, and such property or structure cannot be readily converted to another legally conforming use; and

2. The applicant will be unable to recoup said investment as of the date established for termination of the use; and

3. The applicant has made good faith efforts to recoup the investment and to relocate the use to a location in conformance with this Chapter.

9.86.190 Misdemeanor Violation

Any person violating any of the provisions or failing to comply with Section 9.86.110(A)(2)--(7) or (9) of this Chapter shall be guilty of a misdemeanor. Each person shall be guilty of a separate offense for each and every day during any portion of which any violation of any provision of this Chapter or the permit is committed, continued or allowed in conjunction with the operation of a dispensary and shall be punishable accordingly.

9.86.200 Civil Injunction

In addition to the penalties provided in this Chapter, any condition caused or allowed to exist in violation of any of the provisions of this Chapter shall be deemed a public nuisance and shall, at the discretion of County, create a cause of action for injunctive relief.

9.86.210 Severability

The provisions of this Chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this Chapter or the application thereof to any person, establishment or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Chapter.

6.108.220 Judicial Review

Judicial review of a final decision made under this Chapter may be had by filing a petition for a writ of mandate with the Superior Court in accordance with the provisions of Section 1094.5 of the California Code of Civil Procedure. Any such petition or any

other action seeking judicial review shall be filed within ninety (90) days after the day the decision becomes final.

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ORDINANCE C.S. 998

NOTICE IS HEREBY GIVEN that on June 5, 2007, at 9:00 a.m., or as soon thereafter as the matter may be heard, the Stanislaus County Board of Supervisors will meet in the Basement Chambers, 1010 10th St., Modesto, CA, to consider the adoption and the waiving of the second reading of Ordinance C.S. 998 adding Chapter 9.86 to the Stanislaus County Code to regulate medical marijuana dispensaries if allowed by state and federal law.

NOTICE IS FURTHER GIVEN that a full copy of the proposed ordinance is available for review in the Clerk of the Board Office, 1010 10th Street, Suite 6700, Modesto, CA. For further information, call the Stanislaus County Counsel's Office at 525-6376.

BY ORDER OF THE BOARD OF SUPERVISORS

DATED: May 22, 2007

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
of the Board of Supervisors
of the County of Stanislaus,
State of California

BY: Elizabeth A. King, Assistant Clerk of the Board

**DECLARATION OF PUBLICATION
(C.C.P. S2015.5)**

**COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

I am a citizen of the United States and a resident Of the County aforesaid; I am over the age of Eighteen years, and not a party to or interested In the above entitle matter. I am a printer and Principal clerk of the publisher of **THE MODESTO BEE**, printed in the City of **MODESTO**, County of **STANISLAUS**, State of California, daily, for which said newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of **STANISLAUS**, State of California, Under the date of **February 25, 1951, Action No. 46453**; that the notice of which the annexed is a printed copy, has been published in each issue there of on the following dates, to wit:

MAY 29, 2007

I certify (or declare) under penalty of perjury That the foregoing is true and correct and that This declaration was executed at **MODESTO, California** on

MAY 29, 2007


(Signature)

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BY ORDER OF THE BOARD OF SUPERVISORS
DATED: May 22, 2007

ATTEST: CHRISTINE FERRARO TALLMAN,
Clerk of the Board of Supervisors of the County of Stanislaus, State of California
BY: Elizabeth A. King, Assistant Clerk of the Board
MAY 29, 2007

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