

ORDINANCE NO. 09-833

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD CHANGING MEDICAL MARIJUANA COLLECTIVES FROM A CONDITIONALLY PERMITTED USE TO A PERMITTED USE IN CERTAIN COMMERCIAL ZONES SUBJECT TO SPECIFIED RESTRICTIONS, REQUIRING SUCH COLLECTIVES TO OBTAIN A REGULATORY BUSINESS LICENSE, MAINTAINING THE CURRENT MAXIMUM LIMIT OF FOUR COLLECTIVES IN THE CITY AND LOCATIONAL RESTRICTIONS FOR NEW COLLECTIVES AND AMENDING THE WEST HOLLYWOOD MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. Section 19.36.165 of the West Hollywood Municipal Code currently establishes a land use category and regulations for medical marijuana dispensaries, and consolidates the City's regulations for medical marijuana dispensaries in the Zoning Ordinance. The City Council finds that the public interest would be better served by regulating the day-to-day management and operations of medical marijuana collectives through its regulatory business licensing ordinance. This ordinance tightens the operating requirements for dispensaries, changes their nomenclature from "dispensaries" to "collectives," shifts the regulatory provisions from the zoning ordinance to the business license ordinance, maintains the cap of four collectives citywide and retains existing locational restrictions for establishment of new collectives. This ordinance further eliminates the deadline for closure previously established for nonconforming collectives in existence and operating continuously under the same ownership on or before January 16, 2007.

SECTION 2. Purpose. The purposes of this Ordinance are to recognize and protect the rights of qualified patients and primary caregivers through implementation of California Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") (the "Act") and any State regulations adopted in furtherance thereof, and to promote the safe use of and the safe and affordable access to medical marijuana pursuant to the Act. In support of these purposes, the Council recognizes that the assistance of medical marijuana collectives, as defined herein, may in some situations help promote that safe and lawful access to and consistent and affordable distribution of medical marijuana as permitted by the Act. In further support of the stated purposes, the Council additionally recognizes that lawful remuneration consistent with state law may occur between qualified patients and primary caregivers,

including those qualified patients and primary caregivers who associate collectively or cooperatively to produce medical marijuana in accordance with state law. Standards are required to assure that the operations of medical marijuana collectives are in compliance with the Act and any State regulations adopted in furtherance thereof, and to mitigate the adverse secondary effects from operations of collectives. The City Council finds that the numerical limits on medical marijuana collectives provided by this Ordinance are necessitated by the small size of the City and the proximity of these uses to residential zones, schools and parks; and further, that the limit is reasonable and not an obstacle to the implementation of Proposition 215. This Ordinance is enacted as a health and safety measure pursuant to the City's police powers as prescribed in Art. XI, Sec. 7 of the California Constitution. Nothing in this Ordinance shall permit an activity that is prohibited by the Act, nor is it intended to interfere with a patient's right to cultivate, possess or use medical marijuana as provided for in California Health & Safety Code Section 11362. Nothing contained in this Ordinance shall excuse, facilitate or promote a violation of federal law.

SECTION 3. Section 5.08.010 of Title 5, Chapter 5.08 of the West Hollywood Municipal Code is amended by adding in alphabetical order a new category (and renumbering the ensuing categories accordingly) as follows:

17. Medical Marijuana Collective¹³

SECTION 4. Chapter 5.70 is hereby added to Title 5 of the West Hollywood Municipal Code to read as follows:

Chapter 5.70

MEDICAL MARIJUANA COLLECTIVES

5.70.010 Definitions.

For purposes of this chapter, a "medical marijuana collective" means a collective, cooperative, association or similar entity that cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away marijuana in the City for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof, including Health & Safety Code Section 11362.7 *et seq.* (adopted as the "Medical Marijuana Program Act"). The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018. Nothing in this section shall be interpreted to conflict with the foregoing provisions of the Health & Safety Code.

5.70.020 Application Information.

In addition to the information prescribed by the Director pursuant to the authority set forth in Section 5.08.040, all applications for a license to conduct a medical marijuana collective shall contain the following information:

1. In the event the applicant is not the owner of record of the real property upon which the collective is, or is to be, located the application must be accompanied by a notarized statement and consent from the owner of the property acknowledging that a collective is or will be located on the property. In addition to furnishing such notarized statement, the applicant shall furnish the name and address of the owner of record of the property, as well as a copy of the lease or rental agreement pertaining to the premises in which the collective is or will be located.
2. A security plan, including but not limited to lighting, alarms and security guard arrangements.
3. An executed release of liability and hold harmless in the form set forth in the City's application form.
4. A description of the procedure for documenting the source of the marijuana to be dispensed by the collective. If the marijuana is cultivated off-site, documentation that the off-site location is compliant with the zoning regulations of the jurisdiction in which it is located.
5. Text and graphic materials showing the site in the context of the immediate neighborhood and floor plan of the facility.
6. A description of the screening, registration and validation process for qualified patients.
7. A description of qualified patient records acquisition and retention procedures.
8. A description of the process for tracking medical marijuana quantities and inventory controls, including on-site cultivation (if any), processing and medical marijuana products received from outside sources.
9. A description of measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
10. A description of chemicals stored or used on-site and any effluent proposed to be discharged into the City's wastewater or stormwater systems.

11. Authorization for the City to verify the information and representations contained in the application

5.70.030 Criteria for Issuance of a License.

1. The applicant, and any existing or prospective manager, must be at least twenty-one years of age.

2. The applicant, or any existing or prospective manager, must not have had a similar type of license previously revoked or denied for good cause within the immediately preceding two years prior to the license application.

3. The applicant and proposed manager shall undergo a background investigation by the Los Angeles County Sheriff's Department. Neither the applicant nor any proposed or prospective manager or employee shall have been convicted of:

(a) Any offense relating to possession, manufacture, sales, or distribution of a controlled substance, with the exception of marijuana related offenses;

(b) Any offense involving the use of force or violence upon the person of another;

(c) Any offense involving theft, fraud, dishonesty or deceit.

For purposes of this paragraph 3, a conviction includes a plea or verdict of guilty or a conviction following a plea of *nolo contendere*.

4. The location for which the license is sought shall not be located within five hundred feet of a public or private day care center or school, or a public park, and otherwise comply with Section 19.36.165, except the specific operators open and in continuous operation at the same location on or prior to January 16, 2007.

5. The location for which the license is sought is not located within 1,000 feet from any other premises operated by a medical marijuana collective and otherwise comply with Section 19.36.165, except the specific operators open and in continuous operation at the same location on or prior to January 16, 2007.

6. There shall be no more than four collective business licenses issued at any one time. Priority consideration for the first four licenses issued in this category shall be given to the operators that were open and in continuous operation as of January 16, 2007. In the event that fewer than four collectives are operating under valid licenses at any time, consideration for additional

licenses will be given in the order prospective applicants are placed on a wait list to be maintained by the City.

7. The applicant must provide a copy of a valid seller's permit issued by the California Board of Equalization.

5.70.040 Operating Requirements.

All collectives in the City shall operate in conformance with the following operating requirements:

1. Security shall comply with the following minimum standards:
 - i. Collectives shall provide adequate security and lighting on-site to ensure the safety of persons and protect the premises from theft at all times.
 - ii. All security guards employed by collectives shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Collectives shall not employ security guards who possess firearms or tasers.
 - iii. Collectives shall provide a neighborhood security guard patrol for a two-block radius surrounding the collective during all hours of operation.
2. No recommendations for medical marijuana shall be issued on-site.
3. There shall be no on-site sales of alcohol or tobacco, and no on-site consumption of marijuana (including food containing marijuana as an ingredient), alcohol, or tobacco by patrons or employees.
4. Hours of operation shall be limited to: Monday - Saturday, 10.00 a.m. - 8.00 p.m. and Sunday noon - 7.00 p.m.
5. Collectives shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code Section 11362.5 (Proposition 215) and any state regulations adopted in furtherance thereof, including Health & Safety Code Section 11362.7 *et seq.* (adopted as the "Medical Marijuana Program Act") and who are members of the collective. This shall include possession of a valid doctor's recommendation, not more than one-year old, for medical marijuana use by the patient.

6. Collectives shall notify patrons of the following verbally and through posting of a sign in a conspicuous location readily visible to persons entering the premises:

i. Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.

ii. Patrons must immediately leave the site and not consume medical marijuana until at home or in an equivalent private location. Collective staff shall monitor the site and vicinity to ensure compliance.

iii. Forgery of medical documents is a felony crime.

iv. Entry into the premises by persons under the age of 18 is prohibited unless they are a qualified patient and accompanied by a parent or legal guardian.

7. Collectives shall only provide marijuana to an individual in an amount consistent with personal medical use

8. Collectives shall not store more than two hundred dollars (\$200.00) in cash reserves overnight on the premises and shall make at least one daily bank drop that includes all cash collected on that business day.

9. Any patient under 18 years of age shall be accompanied by a parent or legal guardian.

10. Collectives shall provide law enforcement and all neighbors within 100 feet of the collective with the name and phone number of an on-site community relations staff person to notify if there are operational problems with the establishment.

11. Collective operator(s) must attend regular meetings with the Los Angeles County Sheriff's Department and City Public Safety Division staff to review public safety issues associated with the operations.

12. Collectives shall dispense marijuana to their members only from the following sources:

i. Limited cultivation of marijuana on-site is permitted. The space devoted to cultivation shall not exceed twenty-five percent (25%) of the total floor area, but in no case more than 1,500 square feet nor greater than ten feet in height.

ii. From an off-site location cultivated by the collective in accordance with applicable zoning regulations in the jurisdiction in which it is cultivated.

iii. From an individual qualified patient who is a member of the collective. The patient may receive monetary compensation only in accordance with Health & Safety Code Section 11362.765(c).

iv. Collectives shall not acquire marijuana from persons who are not constituent members of the collective.

13. West Hollywood City Code Enforcement Officers, West Hollywood Sheriff's Deputies or other agents or employees of the City requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.

14. Collectives shall comply with the provisions of Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof.

15. Collectives shall develop and implement a program subject to approval of the City to provide subsidized medical marijuana to income eligible patients, ("compassion program") in accordance with the following criteria:

- i. Minimum 25% discount to all qualified patients based upon need.
- ii. Collectives shall not be obliged to provide more than 100 grams per month to eligible patients.
- iii. Program administration
 - Social service provider to qualify patients on an annual basis
 - Patients will be provided with a letter as proof of eligibility that expires one year after the date it is issued
 - Collectives will accept eligible patients and keep a record of qualified compassion program patients
- iv. Onsite/Instant Medical and Financial Need Eligibility Criteria
 - SSDI
 - Medi-Cal
 - Unemployed with verification
- v. Social Service Agency Verified Medical/Financial Need Eligibility
 - Section 8 housing verification
 - 200% income below Federal Poverty Level
 - Proof of disability
 - Medical need such as terminal illness, cancer treatment, etc.
- vi. Residency Requirement
 - Program for West Hollywood residents only

16. Collectives shall have a responsible person on the premises to act as manager and supervise employees at all times during business hours. Such manager shall be licensed pursuant to Sections 5.04.050 and 5.08.040.

17. Collectives shall occupy a space not to exceed 4,500 square feet in size.

18. Collectives shall be organized as nonprofit or not-for-profit cooperative, collective or collaborative associations whose constituent members qualify as “primary caregivers” or “qualified patients” within the meaning of California Health & Safety Code Section 11362.7 *et seq.* These associations shall be formed for the benefit of their members and shall require membership applications and verification. The organization shall verify status as a caregiver or qualified patient, maintain membership records, track expiration of recommendations, and refuse membership to those who divert marijuana for non-medical use. Members shall agree not to distribute the marijuana to non-members or to use the marijuana for non-medicinal purposes. Collectives shall only acquire marijuana from constituent members (patients and/or caregivers) and only then allocate it to members of the group.

5.70.050 Duration of Marijuana Collective License – Renewal.

All licenses issued pursuant to this chapter shall expire one year after the date of issuance; provided, however, that a license may be renewed pursuant to Section 5.08.130 for additional one-year periods upon approval of an application for renewal that complies with all provisions of this Title.

5.70.060 Assignment of License Prohibited.

The assignment of or attempt to assign any license issued pursuant to this chapter is unlawful and any such assignment or attempt to assign a license shall render the license null and void.

5.70.070 Noncompliance Prohibited.

No person or entity shall dispense, distribute, sell, convey, exchange or give away medical marijuana in the City except in compliance with the provisions of this chapter and Section 19.36.165 of this Code.

SECTION 5. Section 19.36.165 of Title 19, Chapter 19.36 is amended in its entirety to read as follows:

Section 19.36.165 Medical Marijuana Collectives.

A. *Definitions.* For purposes of this section, a “medical marijuana collective” means a collective, cooperative, association or similar entity that

cultivates, distributes, dispenses, stores, exchanges, processes, delivers, makes available or gives away marijuana in the City for medical purposes to qualified patients, or primary caregivers of qualified patients pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof, including Health & Safety Code Section 11362.7 *et seq.* (adopted as the "Medical Marijuana Program Act"). The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018. Nothing in this section shall be interpreted to conflict with the foregoing provisions of the Health & Safety Code. For purposes of this section, the word "collective" shall refer to the same uses and activities referred to as "dispensaries" in the prior iteration of this section.

B. *Location Criteria.* A proposed medical marijuana collective shall be located in compliance with the following requirements:

1. The use shall not be located within a 1,000-foot radius of any other medical marijuana collective located within or outside the city.
2. The use shall not be located within a 500-foot radius of a church, temple, or other places used exclusively for religious worship, or a playground, park, child day care facility, or school that is located within or outside the city. For the purposes of this requirement, "school" shall mean any property containing a structure which is used for education or instruction, whether public or private, at grade levels preschool and kindergarten through 12.
3. The collective shall have its primary frontage on one of the following commercial streets: Santa Monica Boulevard, Sunset Boulevard, La Cienega Boulevard, Melrose Avenue, Beverly Avenue, La Brea Avenue or Fairfax Avenue. The use shall not have its primary frontage on a local residential street providing local circulation.

C. The exterior appearance of a collective shall be compatible with commercial structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity and shall comply with all other applicable property development and design standards of the Municipal Code.

D. No more than four (4) medical marijuana collectives shall be permitted to operate in the City at any time. Notwithstanding the foregoing, a medical marijuana collective that was (i) open and in operation on January 16, 2007 under the same continuous ownership and at the same location and (ii) does not meet the location requirements of this section, shall be allowed to continue operation in accordance with the regulations for non-conforming land uses in Section 19.72.050 subject to compliance with the standards of Chapter 5.70. Any collective that does not meet the location requirements of this section and is

discontinued or has ceased operations for 30 days or more shall not be re-established on the site and any further use of the site shall comply with all applicable provisions of the Municipal Code. Any collective that was (i) open and in operation on January 16, 2007 under the same continuous ownership and at the same location and (ii) does not meet the location requirements of this section shall not be permitted to change ownership or control without losing the rights afforded by this paragraph D; any such change in ownership or control shall result in the immediate discontinuance of the collective.

SECTION 6. Section 19.10.030, Table 2-5, Allowed Uses and Permit Requirements for Commercial and Public Zoning Districts, of Title 19, Chapter 19.10 of the West Hollywood Municipal Code is amended to read as follows:

LAND USE	PERMIT REQUIRED BY ZONE						Specific Use Regulations
	CN	CC/SSP	CA	CR	PDCS P	PF	
Medical Marijuana Collectives	P	P	P	P	--	--	19.36.165, Chap. 5.70

SECTION 7. The definition of "Plant Nurseries and Garden Supply Stores" in Section 19.90.020 of Title 19, Chapter 19.90 is amended to read as follows:

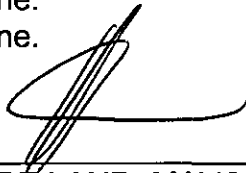
Plant Nurseries and Garden Supply Stores. Commercial agricultural establishments engaged in the production of ornamental plants and other nursery products grown under cover or outdoors. Cultivation of marijuana for medicinal or any other purpose is prohibited. Includes stores selling these products, nursery stock, lawn and garden supplies and commercial scale greenhouses. The sale of house plants or other nursery products entirely within a building is also included under "General Retail Stores." Home greenhouses are addressed under "Residential Accessory Uses and Structures."

SECTION 8. Severability. If any part or provision of this Ordinance or the application to any person or circumstance is held invalid, the remainder of this Ordinance, including the application of such part of provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Ordinance are severable.

SECTION 9. Notwithstanding the provisions of subparagraph 17 of Section 5.08.010 of the Municipal Code, a public hearing shall not be required for the initial business licenses issued pursuant to the provisions of this Ordinance

PASSED, APPROVED AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 16th day of November, 2009 by the following vote:

AYES:	Councilmember:	Duran, Horvath, Prang, Mayor Pro Tempore Heilman, and Mayor Land.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None.



ABBE LAND, MAYOR

ATTEST:



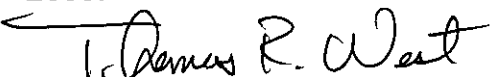
THOMAS R. WEST, CITY CLERK

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF WEST HOLLYWOOD)

I, THOMAS R. WEST, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 09-833 was duly passed, approved and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 16th day of November, 2009, after having its first reading at the regular meeting of said City Council on the 2nd day of November, 2009

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 17th DAY OF NOVEMBER, 2009.



Thomas R. West, City Clerk