

(4) The vending locations will not cause evident traffic congestion; and

(5) There are no previous convictions under state law concerning theft, possession of stolen property, or the sale of narcotics.

(e) The Police Chief may deny the application if it is inaccurate, incomplete or unable to meet the requirements of subsection (d) of this Section 5-27.05.

(f) The Police Chief may revoke a vending permit if it is determined and found thereafter that the application was inaccurate or that the vendor failed to meet requirements of this chapter.

(g) Any revocation or application denial may be appealed to the City Council pursuant to the provisions of Article 4 of Title 1 of this Code.

(Sec. 2 (part) (9-4.2005), Ord. 88-012, eff. Nov. 5, 1988)

5-27.06. Vending Locations.

Vending shall be permitted on public streets and sidewalks from the hours of 7:00 a.m. until 4:00 p.m. daily, subject to the conditions set forth below:

(a) No vendor shall vend within three hundred (300) feet of the grounds of any elementary or secondary school on any school day;

(b) No vendor shall locate within five hundred (500) feet of a freeway entrance or exit;

(c) No vendor shall locate within fifty (50) feet of any street or roadway intersection;

(d) No vendor shall locate his vehicle in a manner in such a way that would restrict the ingress to or egress from the adjoining property;

(e) No vendor shall locate within two hundred (200) feet of a fixed place of business selling the same commodity.

(Sec. 2 (part) (9-4.2006), Ord. 88-012, eff. Nov. 5, 1988)

5-27.07. Cleanliness.

The vendor shall not leave any location without first picking up, removing and disposing of all trash or refuse from his sales that remain within twenty (20) feet of his vehicle.

(Sec. 2 (part) (9-4.2008), Ord. 88-012, eff. Nov. 5, 1988)

5-27.08. Penalties.

Any person who violates any provision of this chapter shall be punished by a fine not exceeding five hundred dollars (\$500.00), by imprisonment not exceeding six (6) months, or by both fine and imprisonment.

(Sec. 2 (part) (9-4.2009), Ord. 88-012, eff. Nov. 5, 1988)

CHAPTER 28.

MEDICAL MARIJUANA DISPENSARIES

Sections:

- 5-28.01 Findings
- 5-28.02 Purpose and Intent
- 5-28.03 Definitions
- 5-28.04 Medical Marijuana Dispensaries Prohibited; Penalties

5-28.01. Findings.

The City Council adopts this chapter based upon the following findings:

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

(b) The intent of Proposition 215 was to enable persons who are in need of marijuana for medical purposes to obtain and use it without fear of state criminal prosecution under limited, specific circumstances;

(c) The State enacted SB 420 (codified as Health and Safety Code section 11362.7 *et seq.*) in 2004 to clarify the scope of the Compassionate Use Act of 1996 to allow local jurisdictions to adopt and enforce rules and regulations consistent with SB 420;

(d) Neither Proposition 215 nor SB 420 authorizes medical marijuana dispensaries;

(e) The federal Controlled Substances Act (21 U.S.C. section 841 *et seq.*) makes it unlawful to manufacture, distribute, dispense or possess marijuana, and accordingly, medical

marijuana dispensaries are illegal under federal law;

(f) In May 2001 the United States Supreme Court issued its decision in *United States v. Oakland Buyers' Cooperative et al.*, (2001) 532 U.S. 483, holding that distribution of medical marijuana is illegal under the Controlled Substances Act, and there is no medical necessity defense under federal law; and

(g) The United States Supreme Court in *Gonzales v. Raich*, (2005) 125 S. Ct. 2201, ruled that pursuant to the Commerce Clause of the United States Constitution, Congress has the authority, through the Controlled Substances Act, to prohibit local cultivation and use of marijuana even though that cultivation and use would be in compliance with California law;

(h) In light of the two United States Supreme Court decisions, above, the City Council of the City of Emeryville finds it would be inconsistent with and contrary to the public health, safety, and welfare to permit the establishment of medical marijuana dispensaries, as defined herein, within the City insofar as to permit such uses may subject the City and/or its officials and employees to prosecution under federal law and would otherwise constitute illegal activity under federal law;

(i) The City of Emeryville recognizes secondary effects associated with the cultivation and distribution of medical marijuana may adversely impact the health, safety, and welfare of its residents and businesses. Problems associated with cultivation include offensive odors, trespassing, theft, and violent encounters between growers and persons attempting to steal plants, and fire hazards. Problems associated with medical marijuana dispensaries include increased crime in and about the dispensary, robberies of customers, negative impacts on nearby businesses, nuisance problems, and increased DUI incidents.

(j) There is a need to adopt health, safety, and welfare regulations to avoid adverse impacts on the community which may arise from

the cultivation and distribution of medical marijuana.

(k) Absent adoption of local regulations, medical marijuana dispensaries could open in the City and operate without restriction, subject only to state and federal prosecutorial discretion of violations of state and federal drug laws. (Sec. 3 (part), Ord. 06-007, eff. Aug. 17, 2006)

5-28.02. Purpose and Intent.

It is the purpose and intent of this chapter to promote the health, safety, and general welfare of the residents and businesses within the City of Emeryville by regulating the cultivation and distribution of medical marijuana.

(Sec. 3 (part), Ord. 06-007, eff. Aug. 17, 2006)

5-28.03. Definitions.

For the purposes of this chapter, the words and phrases shall have the same meanings respectively ascribed to them by this section:

(a) "Medical marijuana dispensary" or "dispensary" means any facility or location where medical marijuana is grown, made available to and/or distributed by or to two or more of the following: a primary caregiver, a qualified patient, or a person with an identification card.

(b) "Person" means any individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.

(c) "Person with an identification card" shall have the same definition as in California Health and Safety Code Section 11362.5 *et seq.*, and as may be amended.

(d) "Primary caregiver" shall have the same definition as in California Health and Safety Code Section 11362.5 *et seq.*, and as may be amended.

(e) "Qualified patient" shall have the same definition as in California Health and Safety Code Section 11362.5 *et seq.*, and as may be amended.

(Sec. 3 (part), Ord. 06-007, eff. Aug. 17, 2006)

5-28.04. Medical Marijuana Dispensaries Prohibited; Penalties.

(a) It shall be unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City of Emeryville, the operation of a medical marijuana dispensary.

(b) Violations of this section are punishable as misdemeanors. Each day of operation of a medical marijuana dispensary in violation of this section constitutes a separate offense. (Sec. 3 (part), Ord. 06-007, eff. Aug. 17, 2006)

CHAPTER 29.

SMOKING POLLUTION CONTROL

Sections:

- 5-29.01 Title
- 5-29.02 Definitions
- 5-29.03 Application to City Facilities, Areas and Vehicles
- 5-29.04 Prohibition of Smoking in Public Places
- 5-29.05 Prohibition of Smoking in Places of Employment
- 5-29.06 Duty of Employer, Business, or Nonprofit Entity
- 5-29.07 Areas Not Subject to Smoking Regulations
- 5-29.08 Tobacco Vending Machines Prohibited
- 5-29.09 Smoking Lounges, including Hookah and Cigar Bars Prohibited
- 5-29.10 Restriction on Proximity of Tobacco Shops
- 5-29.11 Reasonable Smoking Distance Required – 25 feet
- 5-29.12 Posting of Signs
- 5-29.13 Interpretation
- 5-29.14 Secondhand Smoke – Declaration of Nuisance
- 5-29.15 Enforcement – Administrative Officer Designated
- 5-29.16 Violation – Penalty
- 5-29.17 Appeal Process

5-29.01. Title.

This chapter shall be known as the “Smoking Pollution Control Ordinance.” (Sec. 2 (part), Ord. 06-021, eff. Mar. 1, 2007)

5-29.02. Definitions.

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

(a) “Bar” means an area that is devoted to the serving of alcoholic beverages for consumption by guests on the premises and in which the service of food is incidental to the consumption of beverages and in which persons younger than twenty-one (21) years of age are at all times excluded.

(b) “Business” means any sole proprietorship, partnership, joint venture, corporation or other business entity formed for profit-making purposes or that has an employee.

(c) “Children” means any persons or individuals under eighteen (18) years of age.

(d) “Common area,” “common interest development,” “community apartment project,” “condominium project,” “exclusive use common area,” “planned development,” “separate interest,” and “stock cooperative” shall have the same meaning as set forth in California Civil Code Section 1351 of the Davis-Sterling Common Interest Development Act, and as said provisions may be amended.

(e) “Dining area” means any area containing a counter or table upon which food or beverages are served or any area designed, established, or regularly used for consuming food or beverages.

(f) “Employee” means any person who is employed by any employer or hired as an independent contractor in consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for an employer or a nonprofit entity.

(g) “Employer” means any person, partnership, corporation or nonprofit entity, including a municipal corporation, who employs the services of one or more employees.