

ORDINANCE NO. _____

AN ORDINANCE ADDING CHAPTER 11 TO PART V OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO MEDICAL MARIJUANA; AMENDING SECTIONS 6-01-2010 AND 6-01-2020 OF PART VI, CHAPTER 1 OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO BUSINESS LICENSE AND REGULATIONS; AMENDING SECTIONS 6-03-1070 AND 6-03-1090 (i) OF PART VI, CHAPTER 3 OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO ADULT ORIENTED BUSINESSES; ADDING CHAPTER 21 TO PART VI OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO MEDICAL MARIJUANA BUSINESS LICENSE: REGULATION OF POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING.

THE BOARD OF SUPERVISORS OF THE COUNTY OF TULARE ORDAINS AS FOLLOWS:

Section 1. Chapter 11 is hereby added to Part V of the Ordinance Code of Tulare County to read as follows:

PART V. PUBLIC WELFARE

CHAPTER 11. POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING OF MEDICAL MARIJUANA

SECTION 5-11-1000. REGULATIONS APPLICABLE TO MEDICAL MARIJUANA:

(a) The possession, consumption, distribution, transportation, cultivation and growing of medical marijuana in the unincorporated areas of the County of Tulare shall comply with federal law, state law and local ordinances and regulations, including County ordinances and regulations. Upon such compliance, this Chapter shall apply and shall require continued compliance.

(b) The definitions set forth in Part VI of the Ordinance Code of the County of Tulare, Chapter 21, pertaining to medical marijuana collectives and cooperatives, shall apply to this Chapter.

(c) No person shall smoke, ingest, or otherwise consume medical marijuana in the County of Tulare unless such smoking, ingesting or consumption occurs entirely within a private residence or on the premises of a private residence but out of public view. "Out of public view" shall mean out of view from public rights-of-way where members of the public are lawfully entitled to be. "Within a private residence" shall mean inside habitable

areas and shall not include garages, whether attached or detached, and other accessory buildings. Marijuana related smoke shall not invade adjacent properties or public areas.

(d) Cultivation, growing or distribution standards: The cultivation, growing or distribution of medical marijuana within the County shall at all times occur within a secure, locked, and fully enclosed structure, including a ceiling, roof or top and shall meet the following requirements:

1. That the exterior appearance of the structure is compatible with the exterior appearance of structures already constructed or under construction within the immediate area, and shall be maintained so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the immediate area; and
2. Exterior signage is limited to site addressing only; and
3. An alarm system that is monitored at all times for security purposes; and
4. Interior building lighting, exterior building lighting and parking area lighting will be of sufficient foot-candles and color rendition, so as to allow the ready identification of any individual committing a crime on site at a distance of no less than forty feet; and
5. Windows and roof hatches will be secured with bars on the windows so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency; and
6. No cultivated marijuana or dried marijuana product may be visible from the building exterior; and
7. The building must be secured from public access, and not be visible to the public domain. All cultivated marijuana must be secured in structures consisting of at least four walls and a roof, and conform to specific Security Standards, as to locks, deadbolts and additional security measures; and
8. The structure shall be designed to restrict smell, odor, smoke, or other air borne odors and smells related to marijuana from being transmitted to an adjoining property or public areas.
9. Maximum of ninety-nine (99) plants. The individual, collective or cooperative cultivation of more than ninety-nine (99) marijuana plants, whether mature or immature, is a prohibited use in all zones of the County.
10. Maximum of twenty-four (24) plants except where collective or cooperative is allowed. The individual, collective or cooperative cultivation of more than twenty-four (24) marijuana plants, whether mature or immature, shall occur only in zones where collective or cooperative cultivation is permitted pursuant to Tulare County Ordinance Code No. 352, the Zoning Ordinance of Tulare County.

11. Distribution of medical marijuana to two (2) or more qualified patients, persons with an identification card or primary caregivers, combined, is unlawful in the unincorporated areas of the County of Tulare unless the distribution is from and within a collective or cooperative pursuant to Part VI, Chapter 21, pertaining to medical marijuana collective and cooperative business licenses.

12. Patient cultivation. For qualified patients and persons with an identification card, the following shall apply: each qualified patient or person with an identification card may maintain up to six (6) mature or twelve (12) immature marijuana plants, and possess no more than eight (8) ounces of dried marijuana, or as otherwise recommended by a doctor in accordance with Section 11362.77, subject to the limits specified in this Chapter. Cultivation of plants shall be within the main structure, shall not be visible from the public domain, shall be secured, and plants shall not be transported in or out of the main structure. Consumption shall be limited to the main structure and shall be prohibited in any accessory structure and residue smoke or smell related to marijuana shall not invade adjacent properties or public areas.

13. Primary caregiver cultivation. For primary caregivers, of two (2) more patients, the following shall apply: each primary caregiver may maintain up to six (6) mature or twelve (12) immature marijuana plants, and possess no more than eight (8) ounces of dried marijuana, or as otherwise recommended by a doctor, for each qualified patient or person with an identification card in accordance with Section 11362.77, subject to the limits specified in this section and this Chapter. The primary caregiver must not maintain marijuana plants or possess dried marijuana in amounts that exceed the limits for each qualified patient or person with an identification card, factoring in the amounts already maintained or possessed by the qualified patients or persons with an identification card. Cultivation of plants shall be within the main structure and plants shall not be transported in or out of the main structure and said structure shall meet the requirements of subparagraph (f) of this section.

14. Any requirements set forth in local or state laws, ordinances, resolutions or regulations.

15. Cultivation: No employees, independent contractors, or other persons may be utilized for the cultivation except pursuant to Health and Safety Code Section 11362.765, as amended.

SECTION 5-11-1010. RECOVERY OF COSTS:

(a) The Board of Supervisors of the County of Tulare may set fees by resolution from time to time as necessary to recover the County's costs for processing violations of section 5-11-1000, including administrative, investigative and code enforcement costs.

(b) All other procedures including the establishment of a hearing officer and procedures for the hearings and other administrative steps herein may be established by resolution of the Board of Supervisors of the County of Tulare.

(c) The remedy in this section is cumulative and does not preclude other remedies under the Tulare County Ordinance Code or other state, federal and local laws. Nothing herein shall preclude the county from seeking other legal or equitable remedies available to it by law.

(d) The provisions of this section shall be considered cumulative to all other laws, rules and regulations regulating medical marijuana.

SECTION 5-11-1020. PUBLIC NUISANCE:

Any violation of this Chapter, after appeal as provided in this Chapter, is hereby declared to be a public nuisance, and is subject to abatement as provided in Article 11 of Chapter 1 of Part IV of this Code.

SECTION 5-11-1030. VIOLATIONS:

Any person violating any of the provisions of section 5-11-1000 shall be guilty of a misdemeanor and shall be punishable as provided in section 125 of this Ordinance Code.

SECTION 5-11-1040. SEPARATE AND DISTINCT PROVISIONS:

If any section, subdivision, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion of this Chapter thereof.

Section 2. SECTION 6-01-2010, INVESTIGATION OF APPLICANT AND BUSINESS PREMISES, of Chapter 1 of Part VI of the Ordinance Code of Tulare County, is hereby amended to read as follows:

SECTION 6-01-2010. INVESTIGATION OF APPLICANT AND BUSINESS PREMISES:

(a) For the purpose of investigating applications filed under this Part, the Director of the Resource Management Agency, the Health Officer, the Sheriff, and the Fire Chief, or their respective designees, shall serve as the investigating officers. The license collector shall file copies of the application with the investigating officers who shall, within sixty (60) days after receipt thereof, investigate and report their findings to the license collector concerning the following matters:

(1) The Director of the Resource Management Agency shall determine whether any proposed construction, alteration, or change in use of a building or other structure will comply with the applicable building laws, ordinances, and regulations, and/or whether the

use of the business premises for the proposed business will comply with the applicable planning, land use, and zoning laws and ordinances.

(2) The Health Officer shall determine whether operation of the proposed business will comply with the applicable food, health, safety and sanitation laws, ordinances, and regulations.

(3) If the application is subject to review by the Sheriff, the Sheriff shall investigate the integrity of the applicant and shall determine whether operation of the proposed business by the applicant will hamper proper law enforcement. If the applicant for a license has a valid license issued under this Part for which an investigation of the integrity of the applicant has been previously conducted by the Sheriff, such investigation shall not be required in a subsequent application for a different license.

(4) The Fire Chief shall determine whether the use of the business premises for the proposed business and/or any proposed construction, alternation or change in use of a building or other structure will comply with the Uniform Fire Code and all other applicable fire protection or fire prevention related laws, ordinances, and regulations.

(b) By filing an application, the applicant shall be deemed to have waived any and all objections to, and to have thereby authorized, any and all investigations concerning their criminal records, business history, past employment, property ownership, and character, as well as reproduction, publication, circulation, and other use of the fingerprints and other information gained from or about them which the investigating officers may deem necessary in conducting their investigation.

Section 3. SECTION 6-01-2020, SHERIFF INVESTIGATIONS, of Part VI, Chapter 1 of the Ordinance Code of Tulare County, is hereby amended to read as follows:

SECTION 6-01-2020. SHERIFF INVESTIGATIONS:

(a) The Sheriff shall review the business license application for the following types of businesses:

(1) Distribution and Display of Drug Paraphernalia, Chapter 13.

(2) Fortune-Tellers, Chapter 15.

(3) Junk Dealers, Chapter 19.

(4) Public Dances and Dance Halls, Chapter 27.

(5) Any other type of business for which this investigation is required pursuant to the particular Chapter in this Part addressing that type of business.

(b) To assist in the investigation of the applicant and any of the persons referred to in subdivision (b) of section 6-01-2000, the Sheriff may require any or all of said persons to be fingerprinted and/or photographed by the Sheriff. The applicant shall pay to the Sheriff the service fees prescribed in Part 1 of this Code for each person to be fingerprinted. These fees shall be in addition to the application fee prescribed in this

Chapter. The Board of Supervisors of the County of Tulare may set by resolution, fees to recover the costs of Sheriff investigations pursuant to this Chapter.

(c) The State Department of Justice charges a processing fee for each set of fingerprints which the Sheriff sends to said Department. The applicant shall deliver to the Sheriff a money order, certified check, or cashier's check, payable to the State Department of Justice, for the total amount of fees required by the Department of Justice to process all of the sets of fingerprints that are required by the Sheriff pursuant to subdivision (b) above.

(d) The Sheriff shall not be required to begin the investigation of the applicant until the fees required under subdivisions (b) and (c) above have been received by the Sheriff and, regardless of the provisions of subdivision (a) of section 6-01-2010 of this Article, the Sheriff shall have a period of sixty (60) days after the receipt of said fees in which to file the report.

Section 4. SECTION 6-03-1070, LICENSE RENEWAL, of Part VI, Chapter 3 of the Ordinance Code of Tulare County, pertaining to adult oriented businesses, is hereby amended to read as follows:

SECTION 6-03-1070. LICENSE RENEWAL:

An adult-oriented business license shall be renewed on a year-to-year basis, provided that the licensee continues to meet all applicable requirements. A request for license renewal must be accompanied by an adult-oriented business license application, completed in full detail with current information. The application and appropriate fee must be received by the license collector at least sixty (60) calendar days prior to the expiration of the existing license. A request for license renewal shall be processed in the same manner as the original application.

Section 5. SECTION 6-03-1090, subsection (i), pertaining to ADULT-ORIENTED BUSINESS PERFORMER PERMIT, of Part VI, Chapter 3 of the Ordinance Code of Tulare County, is hereby amended to read as follows:

(i) Each permit shall be non-transferable, and shall expire one year from the date of issuance and may be renewed only by filing an application for renewal with the Licensing Agency at least sixty (60) days prior to the expiration date. The application for renewal shall be processed in the same manner as provided in this chapter for applications for permits.

Section 6. Chapter 21 is hereby added to Part VI of the Ordinance Code of Tulare County to read as follows:

PART VI. BUSINESS REGULATIONS AND LICENSES

CHAPTER 21. MEDICAL MARIJUANA BUSINESS LICENSE: REGULATION OF POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING

SECTION 6-21-1000. COMPLIANCE WITH LAWS, PURPOSE AND INTENT:

(a) The possession, consumption, distribution, transportation, cultivation and growing of medical marijuana in the unincorporated areas of the County of Tulare must comply with federal law, state law and local ordinances and regulations, including County ordinances and regulations. Upon such compliance, this Chapter shall apply and shall require continued compliance. It is the purpose and intent of this chapter to promote the health, safety, morals, and general welfare of the residents and businesses within Tulare County by regulating the possession, consumption, distribution, transportation, cultivation, criteria and growing of medical marijuana.

(b) Federal law currently does not recognize a medical use of marijuana.

(c) The Board of Supervisors, in adopting this section, takes legislative notice of the existence and content of the studies concerning potential adverse effects of medical marijuana in other counties and cities. The Board of Supervisors relies upon these studies, believes them to be true, and finds that certain potential adverse effects can be associated with medical marijuana, including: increases in crimes, specifically theft of marijuana from individual patients, caregivers or places of distribution of medical marijuana, and the sale of medical marijuana for non-medical purposes; and a negative effect on the general quality of life for areas surrounding such facilities that distribute medical marijuana.

(d) In 1996, the voters of the State of California approved Proposition 215, “the Compassionate Use Act” which was intended to permit cultivation and possession of medical marijuana by single patient, or the patient’s caregiver, for the patient’s personal use, and to create a limited defense to the crimes of possessing or cultivating marijuana; and

(e) In 2004, the State Legislature enacted Senate Bill 420, “the Medical Marijuana Program Act” to clarify the scope of the Compassionate Use Act and to provide qualifying patients and primary caregivers who collectively or cooperatively cultivate marijuana for medical purposes with a limited defense to the crimes of possession for sale, transportation or furnishing marijuana, maintaining a location for unlawfully selling, giving away, or using controlled substances, managing a location for the storage or distribution of any controlled substance for sale, and the laws declaring the use of property for these purposes a nuisance; and

(f) The Medical Marijuana Program Act defines a “primary caregiver” as an individual who is designated by a qualified patient or by a person with an identification card, and

who has consistently assumed responsibility for the housing, health, or safety of that patient or person; and

(g) The Medical Marijuana Program Act allows cities and counties to adopt and enforce rules consistent with the Medical Marijuana Program Act; and

(h) In August 2008, the California Attorney General issued guidelines that clarify the state's laws governing medical marijuana, and provide guidelines for patients and law enforcement to ensure that medical marijuana is not diverted to illicit markets; and

(i) This Chapter is enacted, pursuant to the Compassionate Use Act (Health and Safety Code §11362.5); the Medical Marijuana Program Act (Health and Safety Code §11362.7 et seq.); the Guidelines issued by the California Attorney General pursuant to Health and Safety Code §11362.81; as amended and herein incorporated by reference; and the County's constitutional police power to protect the health, safety and welfare of the residents of the County of Tulare; and

(j) Since the sale of medical marijuana for profit is unlawful, it is necessary to place restrictions on the exterior appearance of medical marijuana collectives or cooperatives in order to prevent the misunderstanding that collectives or cooperatives are places where marijuana may be purchased; and

(k) Since marijuana is a controlled substance, it is necessary to place restrictions limiting the cultivation through the establishment of development criteria that will secure visibility, secure access, limit potential unauthorized removal, and to prevent intrusion of the consumption of medical marijuana by limiting smoke and other airborne odors related to marijuana from intruding on adjacent residents, businesses, properties, or public areas and

(l) It is the purpose and intent of this chapter to adopt and enforce rules consistent with the Compassionate Use Act, the Medical Marijuana Program Act, and the Guidelines issued by the California Attorney General, as amended, which will provide for the health, safety and welfare of the public by regulating the collective cultivation and possession of medical marijuana with the unincorporated area of the County of Tulare, consistent with state and federal law; and

(m) Nothing in this Chapter is intended to authorize, legalize or license the establishment, operation or maintenance of any facility distributing medical marijuana, building or use which violates any other county ordinance or any statute of the State of California, including those relating to public nuisances or unlawful use of marijuana.

SECTION 6-21-1010. DEFINITIONS:

For purposes of this chapter, the following definitions shall apply:

- (a) "Medical marijuana" is marijuana as defined in Health and Safety Code §11018 as amended, used for personal medical purposes of a patient upon the written or oral recommendation or approval of a physician, in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended.
- (b) "Medical marijuana collective" or "collective" means an entity, facility or location, at a fixed, immobile location, at which two (2) or more qualified patients, persons with an identification card, and the designated primary care givers of qualified patients and persons with an identification card, combined, associate within the unincorporated area of the County of Tulare in order to jointly own and operate the business, facility or location and to collectively cultivate marijuana for medical purposes, as provided in Health & Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.
- (c) "Medical marijuana cooperative" or "cooperative" means an entity at a fixed, immobile location, properly organized, registered and operated as such a corporation pursuant to Corporations Code Section 12200 et seq. or Food and Agricultural Code Section 54001 et. seq., as amended, so that qualified patients, persons with an identification card, and the designated primary caregivers of qualified patients and persons with an identification card may cultivate marijuana for medical purposes pursuant to Health and Safety Code Section 11362.775 and the Attorney General Guidelines issued pursuant to Health and Safety Code §11362.81, as amended.
- (d) "Cultivation of medical marijuana" means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended
- (e) "Collective or cooperative cultivation" means a collective or cooperative that engages in the "cultivation of medical marijuana."
- (f) "Qualified patient(s)" and "Person(s) with an Identification Card" are defined in strict accordance with California Health and Safety Code Section 11362.7, as amended.
- (g) "Primary Caregiver(s)" are defined in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended. Further, a "Primary Caregiver" must comply with the 2008 decision in *People v. Mentch* (45 Cal.4th 274), unless subsequently superceded or overturned, and be able to prove, in addition to other requirements by law, that he or she (1) consistently assumed responsibility for the housing, health, or safety of that patient, (2) independent of any assistance in taking medical marijuana, and (3) at or before the time he or she assumed responsibility for assisting with medical marijuana.
- (h) The following uses are allowed in the unincorporated areas of the County of Tulare as long as these uses comply strictly with Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended, and all other State and local laws pertaining to the uses, including zoning, permitting, and licensing requirements:

- (1) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the Health and Safety Code;
 - (2) A health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code;
 - (3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the Health and Safety Code;
 - (4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the Health and Safety Code;
 - (5) A residential hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.
- (i) "License Requirements and Application" are requirements for a collective or cooperative and shall be subject to the fees as set by the Board of Supervisors by resolution and requirements of the Tulare County Code, and shall consist of an application, receipt of, and maintenance of a Business License in compliance with this Chapter and Chapter 1 of Part VI of the Tulare County Ordinance Code regarding "Business License and Regulation".
 - (j) "Development criteria" shall be the location criteria, exterior restrictions, interior improvements, and signage requirements for collectives and cooperatives.

SECTION 6-21-1020. GENERAL BUSINESS LICENSE REGULATIONS:

Unless the provisions of this Chapter provide otherwise or conflict, all of the provisions of Chapter 1 of this Part are applicable to the licenses referred to in this Chapter.

SECTION 6-21-1030. REQUIREMENT OF AND APPLICATION FOR COUNTY LICENSE:

(a) Medical marijuana collectives, and cooperatives are required to obtain a business license to operate within the unincorporated area of the County of Tulare. The license procedure shall be as set forth in Part VI. Business Regulations and Licenses, Chapter 1. Licensing and Regulation of Business Operations, of this Code and in addition, shall be subject to the specific requirements as set forth in this Chapter and as may be established by State and Federal regulations and the Attorney General of the State of California guidelines issued pursuant to Health and Safety Code Section 11362.81, as amended.

(b) Investigations: The Licensing Agency shall conduct an investigation upon receipt of the completed application in accordance with the provisions of Section 6-01-2010, 6-01-2020 and 6-01-2030 of Article 2 of Chapter 1 of this Part VI.

(c) An application for a license under this Chapter shall include information that will enable the License Collector to make a finding that the collective or cooperative meets the criteria that are included in this Chapter and complies with the law.

(d) In addition to the requirements of Part VI. Business Regulations and Licenses, Chapter 1. Licensing and Regulation of Business Operations, the applicant shall also include on the application for a medical marijuana collective or cooperative business license:

(1) a statement acknowledging that members of facilities where medical marijuana is cooperatively or collectively cultivated may be subject to prosecution under federal or state laws, and

(2) the applicant's agreement to waive, release, indemnify and defend the County from any and all legal liability related to or arising from the application for a license, the issuance of the license, or the enforcement of the conditions of the license, and/or the operation of any facility at which medical marijuana is cooperatively or collectively cultivated.

(e) In addition to the findings ordinarily required for a County business license pursuant to Chapter 1 of this Part, the approval of a County business license for a collective or cooperative shall require the following specific findings by the License Collector:

(1) That the requested use at the proposed location will not adversely affect the economic welfare of the nearby community or the health safety or general welfare of the County or the people of the County.

(2) That the requested use at the proposed location will not adversely affect the use of any property used for school, playground, park, youth facility, child care facility, place of religious worship, or library. The Tulare County Resources Management Agency (RMA) shall conduct a location review to ensure that the proposed use location meets the standards of this Chapter. A fee as may be adopted by the County Board of Supervisors by resolution shall be paid prior to a location review is conducted. Pending the payment of required fees, the RMA shall not release its findings to the License Collector.

(3) That the requested use at the proposed location and structure meets the requirements as established in Chapter 21 of Part VI of the Ordinance Code of Tulare County. The Tulare County Resources Management Agency shall conduct a site plan review to ensure that the proposed use location meets the standards of this Chapter. A fee as may be adopted by the County Board of Supervisors by resolution shall be paid prior to when site plan review is conducted. Pending the payment of required fees, the RMA shall not release its findings to the License Collector.

(4) That the requested use at the proposed location and its proposed operation meets the requirements as established in Chapter 21 of Part VI of the Ordinance Code of Tulare

County. The Tulare County Sheriff Department shall conduct a review to ensure that the proposed use location and operation meets the standards of this Chapter. A fee as may be adopted by the County Board of Supervisors by resolution shall be paid prior to the review is conducted. Pending the payment of required fees, the Sheriff's Department shall not release its findings to the License Collector.

(5) No persons under the age of eighteen (18) are allowed on site, unless such individual is a qualified patient and accompanied by their licensed attending physician, parent or documented legal guardian.

(6) No individual, group or entity may cultivate or distribute marijuana for profit.

(7) No money or any other thing of value shall be exchanged for medical marijuana, with the sole exception that a primary caregiver who pursuant to Health and Safety Code §11362.765(c), as amended, receives compensation of actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use medical marijuana pursuant to California law, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to a violation, prosecution or punishment under this Part.

(8) The primary caregiver shall provide a procedural process that identifies and establishes a plan of transport or delivery of a medical marijuana product to a qualified patient and shall receive the Sheriff's written clearance prior to transportation or delivery for the possession of the medical marijuana.

(9) The Sheriff reserves the right to require additional security and safety conditions, if necessary, upon investigation or receipt of new or revised building plans.

SECTION 6-21-1040. REGULATIONS APPLICABLE TO THE POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING OF MEDICAL MARIJUANA:

To the extent that the County is required to allow the possession, consumption, distribution, transportation, cultivation and growing of medical marijuana under State law, the rules set forth in this Chapter shall apply.

(a) "Sheriff Investigation and Monitoring" the County of Tulare Sheriff shall have the primary responsibility for the investigation, monitoring, and enforcement of this Chapter as well as State and Federal laws.

(b) Distribution of medical marijuana to two (2) or more qualified patients, persons with an identification card or primary caregivers, combined, is unlawful in the unincorporated areas of the County of Tulare unless the distribution is from and within a collective or cooperative pursuant to this Chapter.

- (c) There is a limit of three (3) collectives or cooperatives, combined, allowed in the unincorporated areas of the County of Tulare.
- (d) Secure enclosed structure. The cultivation, growing or distribution of medical marijuana shall at all times occur in a secure, locked, and fully enclosed structure, including a ceiling, roof or top.
- (e) Maximum of ninety-nine (99) plants. The individual, collective or cooperative cultivation of more than ninety-nine (99) marijuana plants, whether mature or immature, is a prohibited use in all zones of the County.
- (f) Maximum of twenty-four (24) plants except where collective or cooperative is allowed. The individual, collective or cooperative cultivation of more than twenty-four (24) marijuana plants, whether mature or immature, shall occur only in zones where collective or cooperative cultivation is permitted pursuant to Tulare County Ordinance Code No. 352, the Zoning Ordinance of Tulare County.
- (g) Patient cultivation. For qualified patients and persons with an identification card, the following shall apply: each qualified patient or person with an identification card may maintain up to six (6) mature or twelve (12) immature marijuana plants, and possess no more than eight (8) ounces of dried marijuana, or as otherwise recommended by a doctor in accordance with Section 11362.77, subject to the limits specified in this section and this Chapter. Cultivation of plants shall be within the main structure, shall not be visible from the public domain, shall be secured, and plants shall not be transported in or out of the main structure. Consumption shall be limited to the main structure and shall be prohibited in any accessory structure and residue smoke or smell related to marijuana shall not invade adjacent properties or public areas.
- (h) Primary caregiver cultivation. For primary caregivers, of two (2) more patients, the following shall apply: each primary caregiver may maintain up to six (6) mature or twelve (12) immature marijuana plants, and possess no more than eight (8) ounces of dried marijuana, or as otherwise recommended by a doctor, for each qualified patient or person with an identification card in accordance with Section 11362.77, subject to the limits specified in this section and this Chapter. The primary caregiver must not maintain marijuana plants or possess dried marijuana in amounts that exceed the limits for each qualified patient or person with an identification card, factoring in the amounts already maintained or possessed by the qualified patients or persons with an identification card. Cultivation of plants shall be within the main structure and plants shall not be transported in or out of the main structure and said structure shall meet the requirements of subparagraph (f) of this section.
- (i) Collective or cooperative cultivation and distribution. Collectives and cooperatives shall be confined to the zones indicated in Section 15.3 of Tulare County Ordinance No. 352 and shall comply with the provisions of Tulare County Ordinance No. 352. Collectives and cooperatives shall be subject to the following requirements:

(1) Any requirements set forth in local or state laws, ordinances, resolutions or regulations.

(2) Cultivation of medical marijuana at a collective or cooperative must occur solely by the member qualified patient(s), person(s) with an identification card, or primary caregiver(s). No employees, independent contractors, or other persons may be utilized for the cultivation except pursuant to Health and Safety Code Section 11362.765, as amended. Collectives and cooperatives may not purchase from other entities, and may not sell or distribute medical marijuana to anyone other than a qualified patient, person with an identification card, or their primary caregiver, who is a member of the same collective or cooperative.

(3) No compensation or sales - Distribution only among members. No member of a collective or cooperative may compensate any other member to cultivate on its behalf except pursuant to Health and Safety Code Section 11362.765 (c), as amended. All distribution of the cultivated marijuana shall be solely among members of the association and shall be without compensation except pursuant to Health and Safety Code Section 11362.765 (c). Nothing in this subsection shall be deemed to prevent a primary caregiver from subsequently providing the cultivated marijuana to one of his or her qualified patients who is part of the same collective or cooperative.

(4) No on-site consumption. No on-site consumption, use or smoking of medical marijuana shall occur at collectives or cooperatives. No consumption, use or smoking of marijuana in the parking areas of a collective or cooperative, or in vehicles located at or near or under said collective or cooperative, or under any circumstances in which the consumption, use, or smoking of marijuana is prohibited by law. No cooking, sale, distribution, preparation, manufacturing or consumption of marijuana: enhanced, edible or drinkable products, including but not limited to cookies, candy, drinks, brownies or baked goods is allowed in a collective or cooperative.

(5) Record requirements – Collectives and Cooperatives. The owner or lessee of the property or operator of the collective or cooperative upon which the cultivation and/or distribution occurs shall provide the following information to the Sheriff Department in a form and manner approved by the Sheriff Department:

- a. full name, address, and working telephone number(s) of the owner, lessee and operator of the collective or cooperative at which such person will be reached within a reasonable time, including all alias names used in the previous ten (10) years. Failure to reach the owner/lessee/operator of the collective or cooperative within two weeks of attempted contact by the County shall be a violation of this Chapter.
- b. the address where correspondence is to be mailed;
- c. a list of all qualified patients, Medical Marijuana Program identification card numbers, primary caregivers participating in the cultivation and distribution, and number of qualified patients or primary caregivers without a Medical Marijuana Program identification card to the extent allowed by law;
- d. a copy of all participant physician recommendations, identification cards, and primary caregiver evidence to the extent allowed by law;

- e. a sketch or diagram showing the property with the location of all buildings on the property, including a statement showing the total area occupied within the building for cultivation;
- f. a statement setting forth the number of plants to be cultivated and demonstrating that the cultivation does not exceed the maximums set forth under State law or this Chapter, including patient maximums and the cap of ninety-nine (99) plants;
- g. a statement identifying all persons who will be tending to the cultivation and describing the cultivation process;
- h. such other information as the Sheriff Department determines is necessary to ensure compliance with the law and this Chapter. This information shall be provided prior to the commencement of the collective or cooperative cultivation, except that for existing collective or cooperative cultivation operations, the information shall be provided within ten (10) days of the effective date of the ordinance codified in this Chapter. The information provided shall be updated upon any change within ten (10) days. The Sheriff Department shall keep patient personal information and documentation confidential to the extent required by law.

(6) Primary Care Giver - record requirements. Primary Care Givers at collectives or cooperatives shall obtain and maintain a current documentation showing designation by each qualified patient or person with an identification card, and signatures of all parties, in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq., as amended. The Primary Care Givers shall provide the following information to the Sheriff Department in a form and manner approved by the Sheriff Department, to the extent allowed by law:

- a. full name, address, and telephone number(s) of the Primary Care Giver including all alias names used in the previous ten (10) years;
- b. the address where correspondence is to be mailed;
- c. a list of , Medical Marijuana Program identification card numbers, documentation that designates the individual as a primary caregiver and a list of qualified patients to the extent allowed by law;
- d. a copy of all participant physician recommendations and identification cards for each qualified patient to the extent allowed by law;
- e. a statement setting forth the number of plants to be cultivated and demonstrating that the cultivation does not exceed the maximums set forth under State law or this Chapter;
- f. such other information as the Sheriff Department or license collector determines is necessary to ensure compliance with the law, this Code, and County of Tulare Ordinances or other regulations. This information shall be provided prior to the commencement of the cultivation or cultivation operations, the information shall be provided within ten (10) days of the effective date of the ordinance codified in this Chapter. The information provided shall be updated upon any change within ten (10) days and shall be provided to the Sheriff. The County and Sheriff's Department shall keep patient information confidential to the extent required by law.

(7) Inspections. The cultivation operation shall be open for inspection by any law enforcement officer or county code enforcement officer between the hours of 8:00 a.m.

and 9:00 p.m. seven (7) days a week, or at any time upon responding to a call for service related to the property where the cultivation is occurring.

SECTION 6-21-1050. REGULATIONS APPLICABLE TO PRIMARY CAREGIVERS SERVING MORE THAN ONE QUALIFIED PATIENT:

Primary caregivers who provide medical marijuana to two or more qualified patients or persons with an identification card must reside in the same city or county as the two or more qualified patients as provided in Health & Safety Code section 11362.7(d)(2), as amended, and all such persons must be a part of the same collective or cooperative as defined in this Chapter. In situations other than this, a primary caregiver shall not provide medical marijuana to more than one qualified patient.

SECTION 6-21-1060. LICENSE DURATION:

A medical marijuana business license shall be valid for a period of one year from the date of license approval.

SECTION 6-21-1070. LICENSE REQUIREMENTS: EFFECT OF NONCOMPLIANCE:

In addition to any other penalties and remedies provided by law, including the provisions of this Chapter, the requirements described in this Chapter shall be deemed conditions of license approval, and failure to comply with any such requirements during the term of the license shall be grounds for revocation of any medical marijuana business license issued pursuant to this Chapter.

SECTION 6-21-1080. LICENSE OR PERMIT REVOCATION:

The license collector may revoke or suspend a medical marijuana business license on the grounds stated in and through procedures set forth in Chapter 1, or when:

- (a) Any of the applicable requirements for a license set forth in this Part for a license ceases to be satisfied; or
- (b) The application for license is discovered to contain materially incorrect, false or misleading information.

SECTION 6-21-1090. LICENSE RENEWAL:

A medical marijuana business license shall be renewed on a year-to-year basis, provided that the licensee continues to meet all applicable requirements. A request for license renewal must be accompanied by medical marijuana business license application, completed in full detail with current information. The application and appropriate fee must be received by the license collector at least sixty (60) calendar days prior to the expiration of the existing license. A request for license renewal shall be processed in the same manner as the original application.

SECTION 6-21-2000. EXISTING PLACES WHERE MEDICAL MARIJUANA IS DISTRIBUTED TO TWO OR MORE PERSONS:

Any medical marijuana business lawfully operating on the effective date of this Chapter and serving two or more qualified patients, persons with an identification card or primary caregivers, combined, shall become a nonconforming use by reason of the adoption of this Chapter and shall cease operation, or otherwise be brought into full compliance with the provisions of this Chapter.

SECTION 6-21-2010. LICENSE: NONTRANSFERABLE:

No medical marijuana business license shall be sold, transferred, or assigned by any licensee, or by operation of law, to any other person, group, partnership, corporation or entity, and any such sale, transfer or assignment, or attempted sale, transfer, or assignment shall be deemed to constitute a voluntary surrender of such license, and such license shall thereafter be null and void. A medical marijuana business license held by an individual in a corporation, partnership, limited liability company or limited liability partnership is subject to the same rules of transferability described above, and a transfer of a controlling interest in such entities shall be considered a transfer of the medical marijuana license. Any change in the nature or composition of the medical marijuana business use shall also render the license null and void. A medical marijuana business license shall be valid only for the exact location specified in the license.

SECTION 6-21-2020. PUBLIC NUISANCE:

Any medical marijuana business in violation of this Chapter, operated without a license as required by this Chapter, or determined to be in violation of the conditions of such license after appeal as provided in this Chapter, is hereby declared to be a public nuisance, and is subject to abatement as provided in Article 11 of Chapter 1 of Part IV of this Code.

SECTION 06-21-2030. PENALTIES AND ENFORCEMENT:

The Sheriff or the Sheriff's designee shall have the duty and responsibility to investigate and enforce any violations of this Chapter, and to report and enforce against any violations of the conditions of approval attached to licenses required by and obtained pursuant to this Chapter. The Sheriff shall provide a report of all violations of these provisions to the License Collector, for possible revocation of the license obtained pursuant to this Chapter and Chapter 1 of Part VI of the Tulare County Ordinance Code.

Violations of this Chapter shall be considered misdemeanors and are punishable in accordance with Section 125 of the Tulare County Ordinance Code. Each and every day, or portion thereof, a violation exists is a separate offense. The County may also pursue all applicable civil and administrative remedies, including but not limited to injunctive relief and administrative citations and any other remedy provided by law.

In addition to the remedies provided in this Chapter, if the collective or cooperative cultivation or distribution occurs in violation of this Chapter or any other local or State law or regulation, the owner or lessee shall be prohibited from further collective or cooperative cultivation or distribution at any location within the unincorporated areas of the County for a period of one year after notice by the County of the violation unless the violation is successfully appealed. Subsequent violations shall result in a three (3) year prohibition.

SECTION 6-21-2040. DENIAL OF APPLICATION: PROCEDURES:

If the license collector denies an application for a medical marijuana business license, the applicant may request reconsideration and may appeal as provided in Chapter 1 of this Part.

SECTION 06-21-2050. SEPARATE AND DISTINCT PROVISIONS:

If any section, subdivision, sentence, clause, phrase, or portion of this Chapter is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion of this Chapter thereof.

SECTION 06-21-2060. JUDICIAL REVIEW:

Judicial review of a 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 the California Code of Civil Procedure Section 1094.5. Any such petition shall be filed within ninety (90) days after the day the decision becomes final as provided in California Code of Civil Procedure Section 1994.6, which shall be applicable for such actions.

Section 7: The foregoing ordinance shall take effect thirty (30) days from the date of passage hereof, and prior to the expiration of fifteen (15) days from the passage hereof a summary shall be published once in the Visalia Times Delta, a newspaper printed and published in the County of Tulare, State of California, together with the names of the Board of Supervisors voting for and against the same.

THE FOREGOING ORDINANCE was passed and adopted by the Board of Supervisors of the County of Tulare, State of California, on the _____ day of _____, 20__, at a regular meeting of said Board duly and regularly convened on said day by the following vote:

AYES:	_____

NOES:	_____

ABSENT:

Chairman of the Board of
Supervisors

Attest:

JEAN M. ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors

By:

Deputy Clerk

PROPOSED SUMMARY OF ORDINANCE

ORDINANCE NO. _____

PURSUANT TO GOVERNMENT CODE SECTION 25124(B)(1), THE FOLLOWING IS A SUMMARY OF AN ORDINANCE ADDING CHAPTER 11 TO PART V OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO MEDICAL MARIJUANA; AMENDING SECTIONS 6-01-2010 AND 6-01-2020 OF PART VI, CHAPTER 1 OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO BUSINESS LICENSE AND REGULATIONS; AMENDING SECTIONS 6-03-1070 AND 6-03-1090 (i) OF PART VI, CHAPTER 3 OF THE ORDINANCE CODE OF TULARE COUNTY PERTAINING TO ADULT ORIENTED BUSINESSES; ADDING CHAPTER 21 TO PART VI OF THE ORDINANCE CODE OF TULARE COUNTY, PERTAINING TO MEDICAL MARIJUANA BUSINESS LICENSE: REGULATION OF POSSESSION, CONSUMPTION, DISTRIBUTION, TRANSPORTATION, CULTIVATION AND GROWING.

SUMMARY OF ORDINANCE

On January 8, 2008, the Tulare County Board of Supervisors adopted, as an urgency measure pursuant to California Government Code section 65858, Tulare County Ordinance No. 3353, an interim ordinance prohibiting the establishment of Medical Marijuana Dispensary uses within the unincorporated areas of Tulare County, extended to expire on January 5, 2010 pursuant to Ordinance No. 3358 adopted on February 12, 2008 and Ordinance No. 3372 adopted on December 9, 2008. This proposed ordinance provides regulations on medical marijuana concerning public health, safety and welfare, administration and requirements of business licenses, and takes the above-mentioned actions.

The ordinance summarized above was adopted by the Tulare County Board of Supervisors on November 3, 2009 and shall take effect thirty (30) days from the date of adoption.

Ayes:

Noes:

Absent:

Within fifteen (15) days of adoption, a certified copy of the full text of the ordinance shall be posted in the office of the Clerk of the Board of Supervisors and shall be available for public inspection at that location.

COUNTY OF TULARE

By _____
Phillip Cox, Chairman, Board of Supervisors

ATTEST: JEAN ROUSSEAU
County Administrative Officer/
Clerk of the Board of Supervisors
of Tulare County

By _____