ORDINANCE NO. 5715

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SONOMA, STATE OF CALIFORNIA, AMENDING CHAPTER 26 OF THE SONOMA COUNTY CODE TO ESTABLISH USE PERMIT REQUIREMENTS AND STANDARDS FOR MEDICAL CANNABIS DISPENSARY USES IN THE C1, C2 AND LC ZONING DISTRICTS, AND REPEALING ORDINANCE NO. 5665.

The Board of Supervisors of the County of Sonoma, State of California, ordains as follows:

SECTION 1. Findings.

(a) The voters of the State of California approved proposition 215 (codified as Health and Safety Code Section 11362.5 *et seq*.) entitled "The Compassionate Use Act of 1996" (Act).

(b) The intent of Proposition 215 was to enable persons residing in the State of California, inclusive of Sonoma County, who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

(c) The State enacted SB 420 in 2004, Health and Safety Code sections 11362, *et seq*., ("Medical Cannabis Program"), to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

(d) To protect the public health, safety, and welfare, it is the desire of the Board of Supervisors to modify the Zoning Code regarding the location and operation of Medical Cannabis Dispensary uses.

(e) It is the intent of the Board of Supervisors that nothing in this ordinance shall be deemed to conflict with federal law as contained in the Controlled Substances Act, 21 U.S.C. Section 841, nor to permit or license any activity that is lawfully and constitutionally prohibited under that Act.

(f) It is the intent of the Board of Supervisors that nothing in this ordinance shall be construed to (1) allow persons to engage in conduct that endangers others or causes a public nuisance, (2) allow the use of cannabis for non-medical purposes, or (3) allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal.

(g) The Board of Supervisors finds and determines that this ordinance is exempt from environmental review pursuant to State CEQA Guidelines Section 15061(b)(3) in that there is nothing in this ordinance or its implementation that could foreseeably have a significant effect on the environment.

SECTION II. Chapter 26 of the Sonoma County Code is amended as follows:

(a) Section 26-02-140 [Definitions] is amended to add the definition of "Drug paraphernalia," to read as follows:

> **Drug paraphernalia** shall have the same definition as Health and Safety Code § 11364.5 (d) (12), and as may be amended.

(b) Section 26-02-140 [Definitions] is amended to add the definition for "Medical Cannabis Dispensary" to read as follows:

> **Medical Cannabis Dispensary** includes any association, cooperative, affiliation, or collective of 4 or more persons where the primary purpose is to provide the lawful distribution of medical cannabis that has been recommended by a licensed physician, in strict accordance with Health and Safety Code Section 11362.5 *et seq.*
>
> A Medical Cannabis Dispensary does not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law:
>
> - a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code Section 1200 *et sec*;
> - a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code Section 1250 *et sec*;
> - a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code Section 1568.01 *et sec*;
> - residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code Section 1569 *et sec*;
> - a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code Section 1725 *et sec*.;
> - a qualified patient's primary place of residence.

(c) Section 26-02-140 [Definitions] is amended to add the definition for "Medical Cannabis Dispensary, Level 1" to read as follows:

> **Medical Cannabis Dispensary, Level 1** means a dispensary of not more than 1,000

square feet, which has less than 300 patients, where no more than 20 patients per business day are served.

(d) Section 26-02-140 [Definitions] is amended to add the definition for "Medical Cannabis Dispensary, Level 2" to read as follows:

Medical Cannabis Dispensary, Level 2 means a dispensary which has over 299 patients, and/or which is located in a facility of greater than 1,000 square feet, and/or which serves more than 20 patients per business day.

(e) Section 26-02-140 [Definitions] is amended to add the definition of "Primary caregiver," to read as follows:

Primary caregiver has the same meaning as Health and Safety Code § 11362.7 (d), as may be amended.

(f) Section 26-02-140 [Definitions] is amended to add the definition of "Qualified patient," to read as follows:

Qualified patient has the same meaning as Health and Safety Code § 11362.7 (f), as may be amended.

(g) Section 26-30-020 [Uses Permitted with a Use Permit - C1 Zoning District] is amended to add a new subsection (y) to read:

(y) Level 1 Medical Cannabis Dispensaries, subject to the criteria in Section 26-88-126.

(h) Section 26-32-020 [Uses Permitted with a Use Permit - C2 Zoning District] is amended to add new subsections (x) and (y) to read:

(x) Level 1 Medical Cannabis Dispensaries, subject to the criteria in Section 26-88-126.

(y) Within designated Urban Service Areas, Level 2 Medical Cannabis Dispensaries, subject to the criteria in Section 26-88-126.

(i) Section 26-36-020 [Uses Permitted with a Use Permit - LC Zoning District) is amended add new subsections (hh) and (ii) to read:

(hh) Level 1 Medical Cannabis Dispensaries, subject to the criteria in Section 26-88-126.

(ii) Within designated Urban Service Areas, Level 2 Medical Cannabis Dispensaries,

subject to the criteria in Section 26-88-126.

(j) Section 26-88-126, Medical Cannabis Dispensary Uses, is added to read:

"**26-88-126 - Medical Cannabis Dispensary Uses.**

(a) **Purpose.** This Section provides the location and operational standards for any Medical Cannabis Dispensary ~~use~~ within the unincorporated County in order to promote the health, safety, and general welfare of its residents and businesses.

(b) **Applicability**. Medical Cannabis Dispensaries shall be permitted only in compliance with the requirements of this Section, and all other applicable requirements of the underlying zoning district.

(c) **Permit Requirements**. A Use Permit in compliance with Sections 26-92-070 and 26-92-080 shall be required for any Medical Cannabis Dispensary. Additionally, Medical Cannabis Dispensaries must comply with all other applicable Building Codes and requirements, including accessibility requirements.

(d) **Compliance with Operating Plan and Conditions Required**. A Medical Cannabis Dispensary shall submit, as a part of the Use Permit application, an Operating Plan that specifies the manner in which operations will be handled and security provided, and which details the number of employees, number of patients, hours and days of operation allowed and approved. The Operating Plan shall provide that the dispensary shall require, at a minimum, a doctor's written recommendation in compliance with state law, as well as a photo identification for any person entering the site. Any Medical Cannabis Dispensary approved under this Section shall be operated in conformance with the approved Operating Plan and shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval to ensure that the operation of the Dispensary is consistent with protection of the health, safety and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

(e) **Limited Term.** Use permits for Medical Cannabis Dispensaries shall be limited-term, and shall be issued for a maximum period of one year. All Use Permits issued for a Medical Cannabis Dispensary shall contain the following provision: "This permit shall be a limited term permit and shall be subject to revocation or modification following a public hearing if the approving body finds that there has been a violation or noncompliance with the Operating Plan or any of the Use Permit conditions, or if the use for which this permit is hereby granted constitutes a nuisance.

(f) **Exercise and Renewal of Permit**. Use permits for Medical Cannabis Dispensaries shall be exercised only by the applicant, who must be a qualified patient or primary caregiver, and shall expire upon termination of the business for which it was issued, or upon sale or transfer of ownership of the Medical Cannabis Dispensary. All Use Permits issued for a Medical Cannabis Dispensary shall include the following provision: "This Use Permit shall expire upon change of tenancy or sale or transfer of the business or property." Any Use Permit that is abandoned for a period of 6 months shall automatically expire, and shall become null and void with no further action required on the part of the County. A Use Permit Renewal may be administratively approved by the Planning Director only if all of the following findings are made:

(1) The use has been conducted in accordance with this Section, with the dispensary's approved Operating Plan, and with all applicable Use Permit conditions of approval.

(2) The business for which the Use Permit was approved has not been transferred to another owner or operator.

(3) There are no outstanding Code Enforcement violations.

Notwithstanding, a Use Permit approved under this Section may be revoked or modified at any time following public hearing in accordance with Section 26-92-120.

(g) **Signed Affidavit.** The property owner and applicant, if other than the property owner, shall sign the application for the Use Permit, and shall include affidavits agreeing to abide by and conform to the conditions of the Use Permit and all provisions of the Sonoma County Code pertaining to the establishment and operation of the Medical Cannabis Dispensary use, including, but not limited to, the provisions of this Section. The affidavit(s) shall acknowledge that the approval of the Medical Cannabis Dispensary Use Permit shall in no way permit any activity contrary to the Sonoma County Code, or any activity which is in violation of any applicable laws.

(h) **Location Requirements.**

(1) A Medical Cannabis Dispensary shall not be established on any parcel containing a dwelling unit used as a residence, nor within 100 feet of a residential zoning district.

(2) A Medical Cannabis Dispensary shall not be established within 1,000 feet of any other Medical Cannabis Dispensary, nor within 500 feet from a smoke shop or similar facility selling drug paraphernalia.

(3) A Medical Cannabis Dispensary shall not be established within 1,000 feet from any public school, park, or an establishment, public or private, that caters to or provides services primarily to persons under eighteen (18) years of age.

(4) Notwithstanding, the above provisions (h) (1) - (2) may be waived by the decision-maker when the applicant can show that an actual physical separation exists between land uses or parcels such that no off-site impacts could occur.

(i) **Development Standards and Operational Criteria in General**. The following are the minimum development standards and operational criteria applicable to any Medical Cannabis Dispensary use (Level 1 and Level 2):

(**1**) The building in which the Dispensary is located shall comply with all applicable local, state and federal rules, regulations, and laws including, but not limited to, building codes and accessability requirements.

(**2**) The Dispensary shall provide adequate security on the premises, including lighting and alarms, to insure the safety of persons and to protect the premises from theft. The Operational Plan shall include the approved security measures.

(3) The site plan, circulation, parking, lighting, facility exterior, and any signage shall be subject to design review committee review and approval. The Planning Director may waive this requirement where the applicant can demonstrate that existing facilities, including parking, lighting and landscaping, already meet the requirements of this Section.

(4) No exterior signage or symbols shall be displayed which advertises the availability of cannabis, nor shall any such signage or symbols be displayed on the interior of the facility in such a way as to be visible from the exterior.

(5) A Dispensary shall have no operators or employees who are not qualified patients or primary caregivers meeting all terms and conditions of applicable law.

(6) A Dispensary may possess cannabis at its facility only in the collective amount that each qualified patient or primary caregiver served is allowed to possess under Health and Safety Code section 11362.77, as may be amended from time to time.

(**7**) No person shall be allowed onto the premises unless they are a primary

caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. No person under the age of 18 shall be allowed on the dispensary site. All persons entering the site shall present a photo identification and shall establish proof of doctor's recommendation. The Operating Plan submitted as a part of the Use Permit application shall specify how this provision will be complied with and enforced.

(**8**) No Dispensary shall hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

(**9**) An exhaust and ventilation system shall be utilized to prevent off-site odors.

(**10**) No Dispensary shall conduct or engage in the commercial sale of any product, good or service unless otherwise approved by the Use Permit.

(**11**) No cannabis shall be smoked, ingested or otherwise consumed on the premises. The term "premises" includes the actual building, as well as any accessory structures, parking areas, or other immediate surroundings.

(**j**) **Level 1 Medical Cannabis Dispensary additional criteria**. The following additional criteria shall apply to a Level 1 Medical Cannabis Dispensary:

(**1**) A Level 1Medical Cannabis Dispensary shall have to more than 300 total patients at any one time, and shall serve an average of 20 or less patients per day.

(2) The size of a Level 1 Medical Cannabis Dispensary shall be limited, and shall not exceed 1,000 square feet unless specifically approved by the Use Permit. No dispensary may increase in size without amending the Use Permit. The size limitation shall be included in the Operational Plan required by 26-88-126 (e), above.

(**3**) Operating days and hours shall be limited to Monday through Saturday from 8:00 a.m. to 5:00 p.m., or as otherwise approved by the Use Permit. Operating hours may be further restricted through the Use Permit process where needed to provide land use compatibility.

(k) **Level 2 Medical Cannabis Dispensary Additional Criteria**. The following additional criteria shall apply to any Level 2 Medical Cannabis Dispensary:

(1) Parking must meet the requirements of Section 26-86-010. Additionally, parking requirements may be further increased through the Use Permit process for any Medical Cannabis Dispensary where on-site consumption is allowed.

(2) Operating days and hours shall be limited to Monday through Saturday from 7:00 a.m. to 7:00 p.m., or as otherwise allowed by the Use Permit. Operating hours may be further restricted through the Use Permit process where needed to provide land use compatibility."

(k) Section 26-86-010 (Required Parking) shall be amended to add the following, in alphabetical order:

(Use:)	(Parking Spaces:)
"Medical Cannabis Dispensary	Two (2) spaces, including at least one (1) van-accessible space; plus one (1) additional space for every 200 square feet of gross floor area, plus one (1) additional space for each employee on maximum shift; but in no case less than 5 off-street parking spaces."

SECTION III. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason declared to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV. This ordinance shall be and the same is hereby declared to be in full force and effect from and after 30 days after the date of its passage.

SECTION V. Ordinance No. 5665 is hereby repealed.

SECTION VI. This ordinance shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in The Press Democrat, a newspaper of general circulation in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma, passed and adopted this 20th day of March, 2007, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Kerns: Aye Smith: Aye Kelley: Absent Reilly: Aye Brown: Aye

Ayes: 4 Noes: 0 Absent: 1 Abstain: 0

WHEREUPON, the Chair declared the above and foregoing ordinance duly adopted and

SO ORDERED.

_____
Chair, Board of Supervisors
County of Sonoma

ATTEST:

_____
Clerk of the Board of Supervisors