

**ORDINANCE NO. 2947-10**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 9.86 TO TITLE 9 (PUBLIC PEACE, SAFETY OR WELFARE) AND CHAPTER 19.62 TO TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA DISTRIBUTION FACILITIES; AND AMENDING TABLE 19.18.030, TABLE 19.20.030, TABLE 19.22.030, TABLE 19.24.030, TABLE 19.28.070, TABLE 19.28.080, AND TABLE 19.29.050 OF TITLE 19 (ZONING) OF THE SUNNYVALE MUNICIPAL CODE RELATED TO PERMITTED, CONDITIONALLY PERMITTED AND PROHIBITED USES IN CITY ZONING DISTRICTS**

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act (“CUA”) (codified as Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" (MMPA), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes" (H&S Code Section 11362.5); and

WHEREAS, the city council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or “dispensaries” have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The city council reasonably anticipates that the City of Sunnyvale will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at:

<http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and

WHEREAS, the City Council further takes legislative notice that as of February 2010, according to at least one compilation, 85 cities and 8 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The city council further takes legislative notice that 121 cities and 8 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org>; and

WHEREAS, the City Council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)" ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)). The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the City Council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the city would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the city would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMPA; and

WHEREAS, the City Council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMPA also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1); and

WHEREAS, the City Council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty

how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

WHEREAS, an ordinance prohibiting medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana distribution facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Sunnyvale.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 9.86 ADDED. Chapter 9.86 (Medical Marijuana Distribution Facilities) is hereby added to Title 9 (Public Peace, Safety or Welfare) of the Sunnyvale Municipal Code as follows:

**Chapter 9.86.**

**MEDICAL MARIJUANA DISTRIBUTION FACILITIES**

- 9.86.010. Definitions.**
- 9.86.020. Operation of medical marijuana distribution facilities prohibited.**
- 9.86.030. Violation – penalty.**
- 9.86.040. Public nuisance**
- 9.86.050. Severability.**

**9.86.010. Definitions.**

(a) A “medical marijuana distribution facility” is any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 et. seq., or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code section 11362.5 et. seq.

(b) “Medical marijuana distribution facility” shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

(2) A health care facility licensed pursuant to Chapter 2 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 of Division 2 of the Health and Safety Code.

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**9.86.020. Operation of medical marijuana distribution facilities prohibited.**

Medical marijuana distribution facilities, as defined in this chapter, are prohibited uses in all zoning districts in the City of Sunnyvale.

**9.86.030. Violation–penalty.**

(a) Any person found to be in violation of any provision of this chapter shall be subject to the enforcement remedies set forth in Title 1, at the discretion of the city, including, but not limited to, prosecution as a misdemeanor violation punishable as set forth in Chapter 1.04.

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation.

**9.86.040. Public nuisance.**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Chapter 9.26.

**9.86.050. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 2. CHAPTER 19.62 ADDED. Chapter 19.62 (Distribution of Medical Marijuana) is hereby added to Title 19 (Zoning) of the Sunnyvale Municipal Code as follows:

**Chapter 19.62.**

**Distribution of Medical Marijuana**

**19.62.10. Medical marijuana distribution facilities.**

**19.62.10. Medical marijuana distribution facilities.**

Medical marijuana distribution facilities, as defined in Chapter 9.86, are prohibited uses in all zoning districts in the City of Sunnyvale.

**SECTION 3. TABLE 19.18.030 AMENDED.** Table 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.18.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Residential Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- MPP** = Miscellaneous plan permit required
- UP** = Use Permit required
- SDP** = Special Development permit required
- N** = Not permitted, prohibited

<b>RESIDENTIAL ZONING DISTRICTS</b>	<b>R-0/R-1</b>	<b>R-1.5</b>	<b>R-1.7/ PD</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>	<b>R-MH</b>
1. - 6.	[text unchanged]							
7. Other Uses A. – M.	[text unchanged]							
N. Medical Marijuana Distribution Facility	N	N	N	N	N	N	N	N

**Footnotes:**  
[Text unchanged]

**SECTION 4. TABLE 19.20.030 AMENDED.** Table 19.20.030 of Chapter 19.20 (Commercial Zoning Districts) of Title 19 (Zoning) the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.20.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Commercial Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- UP** = Use Permit required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

<b>COMMERCIAL ZONING DISTRICTS</b>	<b>C-1</b>	<b>C-2</b>	<b>C-3</b>	<b>C-4</b>
1. - 9.	[text unchanged]			
10. Other A. – J.	[text unchanged]			
K. Medical Marijuana Distribution Facility	N	N	N	N

**Footnotes:**  
[Text unchanged]

**SECTION 5. TABLE 19.22.030 AMENDED.** Table 19.22.030 of Chapter 19.22 (Industrial Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.22.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Industrial Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- MPP** = Miscellaneous plan permit required
- UP** = Use Permit required
- N** = Not permitted, prohibited
- FAR** = Floor area ratio restrictions
- >** = Greater than
- N/A** = FAR does not apply

Use Regulations by Zoning District USE	M-S Zoning Districts FAR	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR	M-3 Zoning Districts
1. – 5.	[text unchanged]				
6. Other A. – P.	[text unchanged]				
Q. Medical Marijuana Distribution Facility	N/A	N	N	N/A	N

**Footnotes:**  
[Text unchanged]

**SECTION 6. TABLE 19.24.030 AMENDED.** Table 19.24.030 of Chapter 19.24 (Office and Public Facilities Zoning Districts) of Title 19 (Zoning) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.24.030  
Permitted, Conditionally Permitted and  
Prohibited Uses in Office and Public Facilities Zoning Districts**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- UP** = Use Permit required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

OFFICE AND PUBLIC FACILITY ZONING DISTRICTS	O	P-F
1. – 5.	[text unchanged]	
6. Other A. – L.	[text unchanged]	
M. Medical Marijuana Distribution Facilities	N	N

**Footnotes:**  
[Text unchanged]

**SECTION 7. TABLE 19.28.070 AMENDED.** Table 19.28.070 of Chapter 19.28 (Downtown Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.28.070  
Permitted, Conditionally Permitted and Prohibited  
Uses in Mixed Use, Commercial and Office DSP Blocks**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- SDP** = Special Development permit required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

<b>DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS</b>	<b>1</b>	<b>1a</b>	<b>2</b>	<b>3</b>	<b>7</b>	<b>13</b>	<b>18</b>	<b>20</b>
1. – 5.	[text unchanged]							
6. Other A. – N.	[text unchanged]							
O. Medical Marijuana Distribution Facility	N	N	N	N	N	N	N	N

**Footnotes:**  
[Text unchanged]

**SECTION 8. TABLE 19.28.080 AMENDED.** Table 19.28.080 of Chapter 19.28 (Downtown Specific Plan District) of Title 19 (Zoning) the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.28.080  
Permitted, Conditionally Permitted and  
Prohibited Uses in Residential DSP Blocks**

In the table, the letters and symbols are defined as follows:

- P** = Permitted use
- SDP** = Special Development permit required
- MPP** = Miscellaneous plan permit required
- N** = Not permitted, prohibited

<b>DSP RESIDENTIAL BLOCKS</b>	<b>4, 5, 14, 15, 16</b>	<b>6, 10a</b>	<b>8, 9, 10, 11, 12 and 17</b>	<b>8a</b>	<b>8b, 9a</b>
1. – 5.	[text unchanged]				
6. Other Uses A. – K.	[text unchanged]				
L. Medical Marijuana Distribution Facility	N	N	N	N	N

**Footnotes:**  
[Text unchanged]

**SECTION 9. TABLE 19.29.050 AMENDED.** Table 19.29.050 of Chapter 19.29 (Moffett Park Specific Plan District) of Title 19 (Zoning) the Sunnyvale Municipal Code is hereby amended to read, as follows:

**TABLE 19.29.050  
Permitted, Conditionally Permitted and Prohibited Uses  
in MPSP Subdistricts**

In the table, the letters and symbols are defined as follows:

**P** = Permitted use. A Moffett Park Design Review Permit is required pursuant to Section 19.29.050(c). Development exceeding the standard FAR limit must be reviewed through a major permit.

**SDP** = Special Development permit. A Moffett Park Special Development Permit is required.

**MPP** = Miscellaneous Plan Permit. A Miscellaneous Plan Permit is required

**N** = Not permitted, prohibited

Use	Specific Plan Subdistrict		
	MP-TOD	MP-I	MP-C
1. – 7.	[text unchanged]		
8. Other A. – T.	[text unchanged]		
U. Medical Marijuana Distribution Facility	N	N	N

**SECTION 10. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 11. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

**SECTION 12. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

**SECTION 13. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on December 14, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2010, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney