

ORDINANCE NO. 676

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CALISTOGA, COUNTY OF NAPA, STATE OF CALIFORNIA ADDING CHAPTER 8.30 TO TITLE 8 (HEALTH AND SAFETY), AND SECTION 17.04.495 AND CHAPTER 17.48 TO TITLE 17 (ZONING) OF THE CALISTOGA MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA DISPENSARIES

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;

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.);

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;

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;

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);

WHEREAS, the City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such uses, and issues and concerns have arisen related to the establishment of medical marijuana dispensaries in close proximity to residential properties, schools and day care facilities. According to these communities, news stories widely reported, and 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 Calistoga 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>;

WHEREAS, the City Council further takes legislative notice that, according to at least one compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that 142 cities and 12 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165> (Exhibit A);

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). 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";

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;

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);

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);

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;

WHEREAS, the Calistoga General Plan does not contain a goal or policy or textual discussion regarding the potential use of medical marijuana dispensaries;

WHEREAS, the Calistoga Municipal Code does not specifically address or regulate the existence or location of medical marijuana dispensaries, operator licensing, or cultivation of marijuana plants;

WHEREAS, an ordinance prohibiting medical marijuana dispensaries, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana dispensaries, is necessary

and appropriate to maintain and protect the public health, safety and welfare of the citizens of Calistoga;

WHEREAS, the Planning Commission considered the proposed ordinance at its regular meeting on January 26, 2011. Prior to taking action on the application, the Planning Commission received written and oral reports by the staff, and received public testimony;

WHEREAS, the Planning Commission held a duly noticed public hearing on the ordinance on January 26, 2011, and adopted Resolution PC 2011-05 forwarding a recommendation that the City Council approve the ordinance;

WHEREAS, the City Council of the City of Calistoga has reviewed and considered this ordinance at regular meetings on February 15, 2011, and March 1, 2011, noticed in accordance with state and local law, and which included the written and oral staff report, proposed findings and comments received from the general public and interested agencies and parties; and

WHEREAS, this action has been determined to not be subject to the California Environmental Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines.

NOW, THEREFORE, THE CALISTOGA CITY COUNCIL DOES HEREBY ORDAIN AS FOLLOWS:

SECTION ONE:

Findings. The above recitals are incorporated herein as if set forth herein in full and each is relied upon independently by the City Council for its adoption of this ordinance.

SECTION TWO:

A new Chapter 8.30 entitled "Medical Marijuana Dispensaries" is hereby added to Title 8 (Health and Safety) of the Calistoga Municipal Code to read and provide as follows:

"Chapter 8.30

Medical Marijuana Dispensaries

- 8.30.010** **Definitions.**
- 8.30.020** **Establishment and operation of medical marijuana dispensaries prohibited.**
- 8.30.030** **Violation – penalty.**
- 8.30.040** **Public nuisance**

8.30.010 **Definitions.**

A. A "medical marijuana dispensary" 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 dispensary" 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.

8.30.020 Establishment and operation of medical marijuana dispensaries prohibited.

Medical marijuana dispensaries, as defined in this chapter, are prohibited uses in all zoning districts within the City of Calistoga.

8.30.030 Violation - penalty.

A. It shall be a violation to establish and/or operate a medical marijuana dispensary in any zoning district with the City of Calistoga.

B. The City may, in its sole discretion, enforce any violation of this Chapter by any remedy available to it, including without limitation, pursuit of a civil injunction and imposition of civil fines and penalties.

C. The remedies set forth in this Section are cumulative and shall not preclude the City from any other remedy or relief to which it may be entitled under law or equity. Notwithstanding the foregoing or any other provision of this Code to the contrary, any person found to be in violation of this Chapter shall not be subject to any criminal penalties.

8.30.040 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 1.12 of this Code.

SECTION THREE:

Section 17.04.495 entitled "Medical marijuana dispensary" is hereby added to Chapter 17.A new 04 (Definitions) of Title 17 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

"Section 17.04.495 Medical marijuana dispensary.

"Medical marijuana dispensary" shall have the meaning as set forth in Section 8.30.010.A of this Code."

SECTION FOUR:

A new Chapter 17.48 entitled "Medical Marijuana Dispensaries" is hereby added to Title 17 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

"Chapter 17.48

Medical Marijuana Dispensaries

17.48.010 Medical marijuana dispensaries.

17.48.010 Medical marijuana dispensaries.

Medical marijuana dispensaries, as defined in Chapter 8.30, are prohibited uses in all zoning districts within the City of Calistoga."

SECTION FIVE:

Environmental Clearance.

This action has been reviewed in accordance with the California Environmental Quality Act. CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA. The City has determined that the activity in question, a Municipal Code amendment to prohibit the establishment and operation of medical marijuana dispensaries, will not have any impact on the environment and therefore is exempt from CEQA under the general rule.

SECTION SIX:

Severability.

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this ordinance 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 ordinance 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 SEVEN:

Effective Date.

THIS ORDINANCE shall take effect thirty (30) days after its passage and before the expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a newspaper of general circulation published and circulated in the City of Calistoga.

THIS ORDINANCE was introduced with the first reading waived at the City of Calistoga City of Council meeting of the **15th day of February, 2011**, and was passed and adopted at a regular meeting of the Calistoga City Council on the **1st day of March, 2011**, by the following vote:

**AYES: Mayor Gingles, Councilmembers Slusser, Canning, Kraus,
and Vice Mayor Dunsford**

NOES: None

ABSTAIN/ABSENT: None


JACK GINGLES, Mayor

ATTEST:


SUSAN SNEDDON, City Clerk