

# CITY OF CALISTOGA

## STAFF REPORT

**TO:** CHAIRMAN MANFREDI AND MEMBERS OF THE  
PLANNING COMMISSION

**FROM:** KEN MACNAB, SENIOR PLANNER

**MEETING DATE:** JANUARY 26, 2011

**SUBJECT:** MUNICIPAL CODE AMENDMENT (CMC 2010-03) TO  
PROHIBIT THE ESTABLISHMENT AND OPERATION OF  
MEDICAL MARIJUANA DISPENSARIES

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1 **REQUEST:**

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3 **CMC 2010-03:** Consideration of text amendments to the Calistoga Municipal  
4 Code, initiated by the City of Calistoga, adding Chapter 8.30 to Title 8 (Health  
5 and Safety) and adding Section 17.04.495 and Chapter 17.48 to Title 17 (Zoning)  
6 to prohibit the establishment and operation of Medical Marijuana Dispensaries.  
7 The proposed amendments are exempt from the California Environmental  
8 Quality Act (CEQA) under Section 15061(b)(3) of the CEQA Guidelines.

9

10 **BACKGROUND:**

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12 On March 30, 2009, the City received a business license application for a  
13 medical marijuana dispensary within the Community Commercial Zoning District  
14 (the application has since been withdrawn at the request of the applicant).

15

16 On April 21, 2009, the City Council adopted an interim urgency ordinance  
17 (Ordinance No. 658) that established a 45-day temporary moratorium on the  
18 establishment and operation of medical marijuana dispensaries within the City.  
19 The urgency ordinance was adopted in recognition that allowing medical  
20 marijuana dispensaries to locate within the City without appropriate review of  
21 location, operational criteria, and standards could conflict with the requirements  
22 of the General Plan, the City's Zoning Ordinance, and current local regulations  
23 and state law. In addition, allowing dispensaries could result in irreversible  
24 incompatibility of land uses and in adverse impacts on residents, businesses and  
25 neighborhoods because dispensaries have been shown to potentially cause an  
26 immediate danger to the public health, safety and welfare.

27

28 On May 19, 2009, the City Council passed a second ordinance that extended the  
29 45-day moratorium (Ordinance No. 658) on the establishment and operation of  
30 medical marijuana dispensaries for the immediate preservation of the public  
31 health, safety and welfare for an additional ten (10) months and fifteen (15) days  
32 (Ordinance No. 659).

33

34 On January 5, 2010, staff provided an update to the City Council on its activities  
35 related to preparation of a medical marijuana dispensary ordinance. These  
36 activities included monitoring regulatory and policy developments at the local,  
37 state and federal levels and assessing the consistency of allowing medical  
38 marijuana dispensaries with the City's General Plan and Zoning Ordinance. The  
39 staff report identified a court case (Qualified Patients Ass'n v. City of Anaheim)  
40 that was anticipated to provide a definitive opinion regarding regulation and  
41 banning of medical marijuana dispensaries.

42

43 On April 6, 2010, staff reported to the City Council that the anticipated decision in  
44 Qualified Patients Ass'n v. City of Anaheim case would not likely be rendered  
45 before expiration of the temporary moratorium that was in effect at the time.  
46 Upon the advice of the City Attorney, the Council deferred providing any direction  
47 to staff on preparation of a permanent ordinance until a decision in this case has  
48 been rendered by the court. The City Council took action to extend the  
49 temporary moratorium on the establishment and operation of medical marijuana  
50 dispensaries within the City for an additional twelve months. The current  
51 moratorium expires on April 21, 2011. No further extensions of the temporary  
52 moratorium are permitted under state law.

53

54 On August 18, 2010, the court issued its decision in the Qualified Patients Ass'n  
55 v. City of Anaheim case. Unfortunately, the court did not provide a definitive  
56 opinion regarding regulation and banning of medical marijuana dispensaries.

57

58 On November 2, 2010, the State of California held a General Election. On the  
59 ballot for statewide vote was Proposition 19, a measure that would legalize  
60 marijuana under California (but not Federal) law and allow local governments to  
61 regulate and tax sales of marijuana. Proposition 19 failed with 59.5% of the  
62 votes cast going against the measure.

63

64 **DISCUSSION:**

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66 For the purposes of this discussion, a "medical marijuana dispensary" (MMD) is  
67 any facility or location, whether fixed or mobile, where a primary caregiver makes  
68 available, sells, transmits, gives or otherwise provides marijuana to two or more  
69 persons with identification cards or qualified patients, as defined in California  
70 Health and Safety Code section 11362.5 et. seq., or any facility where qualified  
71 patients, persons with identification cards and primary caregivers meet or

72 congregate collectively and cooperatively to cultivate or distribute marijuana for  
73 medical purposes under the purported authority of California Health and Safety  
74 Code section 11362.5 et. seq.

75  
76 Staff's analysis regarding MMDs within Calistoga has considered the following  
77 issues:

- 78  
79 • Current laws and enforcement;
- 80  
81 • The intent of the State Compassionate Use Act (CUA) and the Medical  
82 Marijuana Program Act (MMPA);
- 83  
84 • The role of a local agency in implementing the CUA and MMPA;
- 85  
86 • The negative impacts of marijuana and its use on the community, and  
87 the possible increase of those impacts if MMD's are allowed to locate in  
88 the city;
- 89  
90 • Public safety concerns, including a possible increase in violent crime;
- 91  
92 • Land use compatibility concerns regarding MMD's in the city; and
- 93  
94 • Balancing the concerns that easier access to marijuana could increase  
95 usage in undesirable ways versus the desire to provide this  
96 compassionate care alternative to Calistoga residents.

97

## 98 **Current Laws and Enforcement**

99

### 100 Federal

101

102 In general, the Federal Drug Enforcement Agency sets the guidelines and  
103 standards for drug policy in the country and the U.S. Attorney General decides  
104 what laws to enforce. The following is a brief description of those federal  
105 parameters:

106

- 107 • The Federal Controlled Substance Act (CSA) was adopted in 1970. It  
108 states that it is unlawful to manufacture, distribute, dispense, or possess  
109 any controlled substance. The Federal Government's view is that  
110 marijuana is a Schedule I substance, which is classified as having a high  
111 potential for abuse. Further, the federal view is that use of marijuana for  
112 medicinal purposes is not an accepted treatment method in the United  
113 States, and it has not been accepted that marijuana is safe to prescribe as  
114 a drug or other substance under medical supervision. Because of this  
115 position, marijuana cannot be prescribed or dispensed in the same way as

116 legal drugs, which is why marijuana is not available from doctors or  
117 pharmacies.

118  
119 • In March 2009, U.S. Attorney General Eric Holder Jr. announced that he  
120 would scale back enforcement of federal laws prohibiting distribution or  
121 possession of marijuana for medicinal purposes in states that allow such  
122 uses. It was also stated that dispensaries that use medical marijuana as a  
123 storefront for dealers of illegal drugs would be prosecuted. In a more  
124 recent announcement, Attorney General Holder's office stated they will  
125 prosecute people for growing, selling, and possessing marijuana in  
126 California if they are not in compliance with state law.

127  
128 State

129  
130 California has passed laws and general regulations allowing the cultivation,  
131 distribution, possession, and use of marijuana for specific medical purposes, as  
132 detailed below:

133  
134 • In 1996, the voters of California passed Proposition 215, known as the  
135 Compassionate Use Act (CUA). The purpose of the CUA was to give  
136 individuals the right to obtain and use medical marijuana as deemed  
137 appropriate and as recommended by a physician.

138  
139 • The CUA ensures patients and primary caregivers will not be subject to  
140 state or local criminal prosecution for the possession or cultivation of  
141 marijuana for medical purposes.

142  
143 • In 2003, the State Senate passed and the Governor signed into law SB  
144 420, the Medical Marijuana Program Act (MMPA), which codified the  
145 regulations for the possession, distribution, and use of marijuana for  
146 medical purposes, as described in the CUA.

147  
148 • In 2008, California Attorney General Jerry Brown published guidelines for  
149 the security and non-diversion of marijuana grown for medical use. These  
150 guidelines are a helpful tool for law enforcement to perform duties  
151 effectively and in accordance with California law. It assists patients and  
152 caregivers on how they may cultivate, transport, possess, and use medical  
153 marijuana under California law. In addition, it provides the framework for  
154 "collective/cooperatives" and provides greater direction to ensure  
155 marijuana used for medical purposes is secure and does not find its way  
156 to non-patients or illicit markets.

157  
158 • In October, 2010, California Governor Arnold Schwarzenegger signed  
159 Senate Bill 1449 into law, which effectively decriminalizes minor marijuana

160 possession. Persons caught with less than one ounce of marijuana will be  
161 cited with infraction (like a parking ticket) rather than a misdemeanor  
162 (which requires a court appearance) and subject to a fine of up to \$100.  
163

164 Attachment 3 lists several “frequently asked questions” (FAQ’s) regarding the  
165 provisions of the CUA and MMPA.  
166

### 167 Calistoga

168  
169 The Calistoga Municipal Code contains no provisions specifically addressing the  
170 establishment and operation of MMD’s. As noted above, the City Council has  
171 enacted a temporary moratorium specifically prohibiting the establishment of  
172 MMD’s on April 6, 2009. The moratorium is in effect until April 21, 2011.  
173

### 174 Other Communities

175  
176 Locally, the City of American Canyon and Town of Yountville have adopted  
177 ordinances that prohibit the establishment of MMD’s. The City of Napa adopted  
178 an ordinance on August 6, 2010, that would initially allow one dispensary in the  
179 City with the possibility of a second. The County of Napa and City of St. Helena  
180 currently do not have land use regulations in place specifically addressing  
181 medical marijuana dispensaries.  
182

### 183 **Recent Court Cases**

184  
185 There have been several important court cases regarding medical marijuana that  
186 have bearing for the City. A recent court case, Qualified Patients Ass’n v. City of  
187 Anaheim, was closely watched by local public agencies and medical marijuana  
188 proponents. In general, the case involved a legal challenge to the City of  
189 Anaheim’s ordinance banning medical marijuana facilities. The plaintiffs,  
190 Qualified Patients Association, sought to overturn the ordinance on the ground  
191 that it was preempted by the CUA and MMPA. The court failed to reach the  
192 ultimate issue, leaving local agencies without definitive direction.  
193

### 194 **Availability and Alternatives**

#### 196 Dispensaries

197  
198 Convenience is one likely interest of city residents who may use marijuana for  
199 medical purposes. Currently, the closest known permitted medical marijuana  
200 dispensary is located in Santa Rosa. Like many other medical services that are  
201 not available locally, medical marijuana patients must travel to Santa Rosa – a 20  
202 mile drive – to obtain services. At least one dispensary in Santa Rosa (Green  
203 Flower Wellness) provides home delivery service to Calistoga for a fee.

204 Legal Alternatives to Marijuana

205

206 The ingredient in marijuana that provides relief for those with serious medical  
207 conditions is THC. According to the U.S. Drug Enforcement Administration, a  
208 pharmaceutically-available, FDA approved product called "Marinol" is available,  
209 which contains synthetic THC as the active ingredient. Marinol comes in the form  
210 of a pill, and is available at pharmacies.

211

212 Although proponents of medical marijuana claim that Marinol does not help all  
213 medical conditions, and may not be as effective as marijuana, it does have value  
214 in that it can be distributed through existing, legally operating pharmacies,  
215 meaning separate MMD's would not be necessary for its distribution. This is  
216 important because pharmacies are allowed locally and are required to store,  
217 distribute and track what is dispensed.

218

219 **Public Safety Concerns**

220

221 Public Safety staff is concerned with the secondary effects and adverse impacts  
222 related to medical marijuana. These impacts have been documented in a report  
223 written by the California Police Chiefs Association, White Paper (Attachment 4).  
224 Media reports throughout the state document negative impacts that have been  
225 directly linked to marijuana dispensaries and marijuana growers, including armed  
226 robberies and homicide (at dispensary sites and at residential grow houses).

227

228 The U.S. Drug Enforcement Agency and other federal, state, and local law  
229 enforcement agencies enforcement efforts have shown medical marijuana  
230 dispensaries routinely underreport revenues, resulting in the need to  
231 aggressively regulate their businesses. It is anticipated that public safety will be  
232 asked to provide assistance to regulatory agencies to investigate marijuana  
233 dispensaries. In order to provide minimum regulation, it would be necessary to  
234 make regular unscheduled inspections of its facilities to ensure compliance with  
235 the city's municipal code, the State's Penal Code, fire code, and the health and  
236 safety code. Regulation would also likely require random audits to ensure  
237 accurate record keeping and compliance.

238

239 Efforts to investigate and enforce crimes associated with marijuana dispensaries  
240 will vary depending upon crime type. Marijuana dispensaries have been linked to  
241 a variety of crimes that range in severity from loitering and disturbing the peace,  
242 to robbery and homicide. If crime occurs as a direct result of MMD's, the cost to  
243 the city in terms of hours spent on investigation and enforcement by public safety  
244 staff could be significant.

245

246 Several secondary effects are associated with the distribution and use of  
247 marijuana. These include criminal acts, driving under the influence, white collar

248 crimes, and negative impacts on our youth. This issue is discussed in greater  
249 detail in Attachment 5.

250

251 **Public Health Concerns**

252

253 All medicines distributed by pharmacies are regulated by the United States Food  
254 and Drug Administration (FDA). FDA approval is required in order for a specific,  
255 finished medication to be marketed and distributed to patients. Scientific testing  
256 of marijuana for medical use is not performed at professionally recognized and  
257 regulated laboratories. The FDA is responsible for protecting and promoting  
258 public health. They have a safety protocol in place to alert and protect consumers  
259 of possible product contamination. This program results in the ability to recall  
260 products should they present health or safety concerns for the consumer.  
261 Marijuana growers and dispensary operators have no oversight and cannot  
262 validate the safety of their product.

263

264 **Land Use Concerns**

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266 Land use comparisons for MMD's range from a facility similar to a retail outlet  
267 with frequent customer turnaround, to facilities similar to a place of assembly  
268 where people go to socialize, take classes, etc, to large warehouses with  
269 ancillary retail outlet. The land use considerations would vary depending on the  
270 characteristics of the use and its location. Calistoga has no experience with  
271 MMD's. To gain a better understanding of operational impacts and land use  
272 compatibility issues, City staff contacted officials in other communities that allow  
273 MMD's and also reviewed published articles and reports.

274

275 The land use concerns for MMD's are briefly discussed below:

276

277 • Activity. MMD's have been reported to generate high levels of  
278 "storefront" activity. This includes people congregating at the entrance,  
279 loitering, waiting in parked cars, and high vehicle turnover.

280

281 • Odors. Marijuana has a distinctive smell: as a plant, a bud and while  
282 smoked. It is staff's understanding that MMD's often install ventilation  
283 systems to remove odors from the premises. Even with such systems,  
284 odors can still be pervasive.

285

286 • Traffic and parking. Traffic and parking impacts are dependent on the  
287 number of members of the MMD facility. However, determining the  
288 frequency of member visits to the MMD (e.g., daily, weekly or monthly)  
289 would likely be difficult. If the MMD has a high turnover rate where clients  
290 spend little time on site and pick up what they need and leave, then  
291 parking impacts may be less of a concern (but may have greater traffic

292 and circulation impacts depending on whether the members use the MMD  
293 during peak periods).

294  
295 Staff has also assessed current General Plan directives and zoning regulations in  
296 its evaluation of how medical marijuana dispensaries fit into the City's current  
297 land use scheme. Noteworthy directives in the General Plan include:

- 298
- 299 • Ensure that new economic development fits within and maintains "small  
300 town" character.
  - 301
  - 302 • Develop Calistoga's economy so that it responds to the skills and  
303 economic needs of the resident population, builds long term community  
304 capacity and integrates economic, social and environmental objectives.
  - 305
  - 306 • Promote coordination between land use planning and law enforcement.
  - 307

308 With regard to the City's Municipal Code, there are no provisions that address  
309 the regulation or location of MMD's nor are MMD's specifically listed as a  
310 permitted or prohibited use in any zoning district. Section 17.02.240 of the  
311 Municipal Code states that "any uses not discussed in this title [Zoning], or any  
312 use that lacks clear definition, shall be subject to the provisions of Municipal  
313 Code Section 17.190 (Determination of Similar Use). This section requires that  
314 the Planning Commission make the following findings prior to determining  
315 whether a use a similar in nature and should be permitted or conditionally  
316 permitted within a zoning district.

- 317
- 318 • The use is consistent with the purpose of subject zoning district.
  - 319
  - 320 • The operational aspects of the use are compatible with other permitted  
321 uses in the subject zoning district.
  - 322
  - 323 • The use is similar to other permitted uses in zoning district.
  - 324
  - 325 • The use will not be injurious to the public health, safety and welfare.
  - 326

327 **Conclusion**

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329 Based on the information presented in this staff report, staff has concluded that  
330 MMD's have the potential to result in community impacts that would not be  
331 consistent with the desired economic or social character of the community and  
332 that could be injurious to the public health, safety and welfare. Specific concerns  
333 include:  
334



- 335 • The difficulty and expense of ensuring that these facilities comply with  
336 all laws, including those imposed by the City.  
337
- 338 • The possibility of increased criminal activity in the city should MMD's be  
339 allowed.  
340
- 341 • Social and public safety concerns associated with allowing the sale of a  
342 substance that is only legal when used for medical purposes, but is  
343 otherwise illegal to possess, grow or use.  
344
- 345 • The uncertainty between state and federal laws and potential  
346 complications that could impede the effectiveness of local regulation.  
347
- 348 • Time consuming and intrusive controls and regulations would be  
349 required to ensure that MMD's operate as non-profit "compassionate care"  
350 facilities as anticipated in Proposition 215.  
351

352 It should also be noted that the original intent of the CUA was to allow individuals  
353 to grow marijuana individually and collectively for medical purposes, and to  
354 ensure they are safe from prosecution. In 2003, SB 420 expanded that by  
355 allowing distribution outlets of marijuana. By doing so, the State placed the entire  
356 burden on each city to ensure these facilities meet all aspects of state law.  
357 Given current fiscal and economic conditions, needed staff resources to ensure  
358 compliance with state law are not anticipated to be available for the foreseeable  
359 future.  
360

361 Staff is recommending that the City Council prohibit the establishment of MMD's  
362 within the city. This would require that the Council adopt an ordinance that  
363 specifically prohibits MMD's in the city (Attachment 2). The zoning code would  
364 also need to be changed to specify that MMD's are a prohibited use.  
365

366 Positive Effects of Prohibition  
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- 368 • Removes the possibility of illegal activity at MMD's, including profit  
369 oriented dispensaries.  
370
- 371 • Reduces secondary negative social impacts that could arise by  
372 restricting the ability to obtain marijuana in the City.  
373
- 374 • Avoids land use compatibility issues between MMD's and surrounding  
375 uses and businesses.  
376
- 377 • Avoids complicated and potentially-expensive enforcement efforts.  
378

379 Negative Effects of Prohibition

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381 • Does not respond to the “compassionate care” concerns of Prop. 215.

382

383 • Removes the ability for Calistoga patients to obtain medical marijuana  
384 from collectives or cooperatives in their own city (but allows them the  
385 option of delivery service from Santa Rosa).

386

387 • Prevents cooperatives or collectives that could meet state laws from  
388 operating in city and providing assistance to those in need.

389

390 The proposed ordinance would allow a patient to receive medical marijuana from  
391 a primary caregiver in the patient’s home, but would prohibit the distribution to  
392 any other person. In addition, the proposed ordinance would allow patients to  
393 receive medical marijuana at a licensed medical clinic, hospice, or similar facility.

394

395 **ENVIRONMENTAL REVIEW:**

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397 This action has been reviewed pursuant to the California Environmental Quality  
398 Act (CEQA). Section 15061(b)(3), the “general rule” exemption, states that where  
399 it can be seen with certainty that there is no possibility that the activity in question  
400 may have a significant effect on the environment the activity is not subject to  
401 CEQA. It has been determined that the activity in question, a Municipal Code  
402 amendment to prohibit the establishment and operation of medical marijuana  
403 dispensaries, will not have any impact on the environment and therefore is  
404 exempt from CEQA under the general rule.

405

406 **RECOMMENDATION:**

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408 Staff recommends that the Planning Commission adopt Planning Commission  
409 Resolution PC 2011-05 recommending to the City Council approval of text  
410 amendments to the Calistoga Municipal Code, adding Chapter 8.30 to Title 8  
411 (Health and Safety) and adding Section 17.04.495 and Chapter 17.48 to Title 17  
412 (Zoning) to prohibit the establishment and operation of medical marijuana  
413 dispensaries.

414

415 **NOTE:** The applicant or any interested person is reminded that the Calistoga  
416 Municipal Code provides for a ten (10) calendar day appeal period. If there is a  
417 disagreement with the Planning Commission, an appeal to the City Council may be  
418 filed. The appropriate forms and applicable fee must be submitted prior to 5:00  
419 p.m. on or before the tenth calendar day following the Commission’s final  
420 determination.

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**ATTACHMENTS:**

1. PC Resolution No. 2011-05
2. Exhibit A – Draft Ordinance
3. “Frequently Asked Questions” (FAQ’s) regarding the provisions of the CUA and MMPA.
4. California Police Chief’s Association Research
5. Summary of Adverse Secondary Effects