

# City of Calistoga

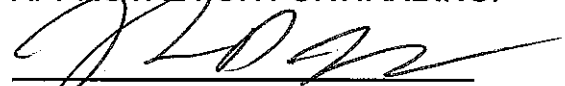
## Staff Report

**TO:** Honorable Mayor and City Council  
**FROM:** Kenneth G. MacNab, Planning and Building Manager  
**DATE:** March 1, 2011  
**SUBJECT:** Municipal Code Amendment to Prohibit the Establishment and Operation of Medical Marijuana Dispensaries

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**APPROVAL FOR FORWARDING:**

  
Richard D. Spitler, City Manager

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**ISSUE:** Consideration of text amendments to the Calistoga Municipal Code, initiated by the City of Calistoga, adding Chapter 8.30 to Title 8 (Health and Safety) and adding Section 17.04.495 and Chapter 17.48 to Title 17 (Zoning) to prohibit the establishment and operation of Medical Marijuana Dispensaries.

**RECOMMENDATION:** Adopt Ordinance No. 676 as submitted.

**BACKGROUND:** On February 15, 2011, the City Council held a public hearing to consider a recommendation to adopt an Ordinance that would prohibit the establishment and operation of medical marijuana dispensaries within city limits. No written or oral comments from the public were received prior to or during the hearing, and the City Council did not direct any changes to the Ordinance. At the conclusion of the hearing, the City Council introduced and waived the first reading of the Ordinance.

**FISCAL IMPACT:** The adoption of this Ordinance will create no direct fiscal impacts.

**ATTACHMENT:**

1. Ordinance No. 676

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

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

6  
7       **WHEREAS**, in 1996, the voters of the State of California approved Proposition 215, known  
8 as the Compassionate Use Act ("CUA") (codified as Health and Safety (H&S) Code Section  
9 11362.5 et seq.);

10  
11       **WHEREAS**, the CUA creates a limited exception from criminal liability for seriously ill  
12 persons who are in need of medical marijuana for specified medical purposes and who obtain and  
13 use medical marijuana under limited, specified circumstances;

14  
15       **WHEREAS**, on January 1, 2004, the "Medical Marijuana Program" (MMPA), codified as  
16 H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope  
17 of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations  
18 consistent with the MMPA;

19  
20       **WHEREAS**, the CUA expressly anticipates the enactment of additional local legislation. It  
21 provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons  
22 from engaging in conduct that endangers others, nor to condone the diversion of marijuana for  
23 nonmedical purposes" (H&S Code Section 11362.5);

24  
25       **WHEREAS**, the City Council takes legislative notice of the fact that several California cities  
26 and counties which have permitted the establishment of medical marijuana dispensaries have  
27 experienced serious adverse impacts associated with and resulting from such uses, and issues and  
28 concerns have arisen related to the establishment of medical marijuana dispensaries in close  
29 proximity to residential properties, schools and day care facilities. According to these communities,  
30 news stories widely reported, and to medical marijuana advocates, medical marijuana dispensaries  
31 have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal  
32 sales of marijuana to, and use of marijuana by, minors and other persons without medical need in  
33 the areas immediately surrounding such medical marijuana distribution facilities. The City Council  
34 reasonably anticipates that the City of Calistoga will experience similar adverse impacts and effects.  
35 A California Police Chiefs Association compilation of police reports, news stories and statistical  
36 research regarding such secondary impacts is contained in a 2009 white paper report located at:  
37 <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>;

38  
39       **WHEREAS**, the City Council further takes legislative notice that, according to at least one  
40 compilation, 103 cities and 14 counties in California have adopted moratoria or interim ordinances  
41 prohibiting medical marijuana dispensaries. The City Council further takes legislative notice that 142  
42 cities and 12 counties have adopted prohibitions against medical marijuana dispensaries. The  
43 compilation is available at: <http://www.safeaccessnow.org/article.php?id=3165> (Exhibit A);  
44

45           **WHEREAS**, the City Council further takes legislative notice that the California Attorney  
46 General has adopted guidelines for the interpretation and implementation of the state's medical  
47 marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF  
48 MARIJUANA GROWN FOR MEDICAL USE (August 2008)"  
49 ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)). The  
50 Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have  
51 been operating in California for years, dispensaries, as such, are not recognized under the law";  
52

53           **WHEREAS**, the City Council further takes legislative notice that the experience of other  
54 cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate  
55 as true cooperatives or collectives in compliance with the MMPA and the Attorney General  
56 Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana  
57 in a manner that remains illegal under both California and federal law; as a result, the city would be  
58 obligated to commit substantial resources to regulating and overseeing the operation of medical  
59 marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for  
60 illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of  
61 significant resources to the problem, the city would be able to prevent illegal conduct associated  
62 with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana  
63 and the distribution of marijuana between persons who are not qualified patients or caregivers  
64 under the CUA and MMPA;  
65

66           **WHEREAS**, the City Council further takes legislative notice that concerns about nonmedical  
67 marijuana use arising in connection with the CUA and the MMPA also have been recognized by  
68 state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th  
69 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v.*  
70 *Raich* (2005) 545 U.S. 1);  
71

72           **WHEREAS**, the City Council further takes legislative notice that the use, possession,  
73 distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.*  
74 (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA  
75 and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1;  
76 *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical  
77 necessity has been ruled not to be a defense to prosecution under the CSA (*United States v.*  
78 *Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly  
79 may enforce the CSA despite the CUA and MMP (*Gonzales v. Raich*, 545 U.S. 1);  
80

81           **WHEREAS**, the City Council further takes legislative notice that the United States Attorney  
82 General in 2008 announced its intention to ease enforcement of federal laws as applied to medical  
83 marijuana dispensaries which otherwise comply with state law. There is no certainty how long this  
84 uncodified policy will remain in effect, and the underlying conflict between federal and state statutes  
85 still remains;  
86

87           **WHEREAS**, the Calistoga General Plan does not contain a goal or policy or textual  
88 discussion regarding the potential use of medical marijuana dispensaries;  
89

90           **WHEREAS**, the Calistoga Municipal Code does not specifically address or regulate the  
91 existence or location of medical marijuana dispensaries, operator licensing, or cultivation of  
92 marijuana plants;  
93



144 qualified patients, as defined in California Health and Safety Code section 11362.5  
145 et. seq., or any facility where qualified patients, persons with identification cards and  
146 primary caregivers meet or congregate collectively and cooperatively to cultivate or  
147 distribute marijuana for medical purposes under the purported authority of California  
148 Health and Safety Code section 11362.5 et. seq.

149  
150 B. "Medical marijuana dispensary" shall not include the following uses,  
151 so long as such uses comply with this Code, Health and Safety Code Section  
152 11362.5 et seq., and other applicable law:

- 153  
154 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and  
155 Safety Code.
- 156  
157 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of  
158 the Health and Safety Code.
- 159  
160 3. A residential care facility for persons with chronic life-threatening  
161 illness licensed pursuant to Chapter 3.01 of Division 2 of the Health  
162 and Safety Code.
- 163  
164 4. A residential care facility for the elderly licensed pursuant to Chapter  
165 3.2 of Division 2 of the Health and Safety Code.
- 166  
167 5. A hospice or a home health agency, licensed pursuant to Chapter 8 of  
168 Division 2 of the Health and Safety Code.

169  
170 **8.30.020 Establishment and operation of medical marijuana dispensaries**  
171 **prohibited.**

172  
173 Medical marijuana dispensaries, as defined in this chapter, are prohibited uses in all  
174 zoning districts within the City of Calistoga.

175  
176 **8.30.030 Violation - penalty.**

177  
178 A. It shall be a violation to establish and/or operate a medical marijuana  
179 dispensary in any zoning district with the City of Calistoga.

180  
181 B. The City may, in its sole discretion, enforce any violation of this Chapter by  
182 any remedy available to it, including without limitation, pursuit of a civil injunction and  
183 imposition of civil fines and penalties.

184  
185 C. The remedies set forth in this Section are cumulative and shall not preclude  
186 the City from any other remedy or relief to which it may be entitled under law or equity.  
187 Notwithstanding the foregoing or any other provision of this Code to the contrary, any  
188 person found to be in violation of this Chapter shall not be subject to any criminal penalties.

189  
190 **8.30.040 Public nuisance.**  
191

192 Any use or condition caused or permitted to exist in violation of any of the provisions  
193 of this chapter shall be and is hereby declared a public nuisance and may be abated by the  
194 City pursuant to the procedures set forth in Chapter 1.12 of this Code.

195  
196 **SECTION THREE:**

197  
198 A new Section 17.04.495 entitled "Medical marijuana dispensary" is hereby added to  
199 Chapter 17.04 (Definitions) of Title 17 (Zoning) of the Calistoga Municipal Code to read and provide  
200 as follows:

201  
202 "Section 17.04.495 Medical marijuana dispensary.

203  
204 "Medical marijuana dispensary" shall have the meaning as set forth in Section 8.30.010.A of this  
205 Code."

206  
207 **SECTION FOUR:**

208  
209 A new Chapter 17.48 entitled "Medical Marijuana Dispensaries" is hereby added to Title 17  
210 (Zoning) of the Calistoga Municipal Code to read and provide as follows:

211  
212 **"Chapter 17.48**

213  
214 **Medical Marijuana Dispensaries**

215  
216 **17.48.010 Medical marijuana dispensaries.**

217  
218  
219 **17.48.010 Medical marijuana dispensaries.**

220  
221 Medical marijuana dispensaries, as defined in Chapter 8.30, are prohibited uses in  
222 all zoning districts within the City of Calistoga."

223  
224 **SECTION FIVE:**

225  
226 Environmental Clearance.

227  
228 This action has been reviewed in accordance with the California Environmental Quality Act.  
229 CEQA Guidelines Section 15061(b)(3), the "general rule" exemption, states that where it can be  
230 seen with certainty that there is no possibility that the activity in question may have a significant  
231 effect on the environment, the activity is not subject to CEQA. The City has determined that the  
232 activity in question, a Municipal Code amendment to prohibit the establishment and operation of  
233 medical marijuana dispensaries, will not have any impact on the environment and therefore is  
234 exempt from CEQA under the general rule.

235  
236 **SECTION SIX:**

237  
238 Severability.

239  
240 If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this  
241 ordinance or any part thereof is for any reason held to be unconstitutional or invalid or

242 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or  
243 effectiveness of the remaining portions of this ordinance or any part thereof. The City  
244 Council hereby declares that it would have passed each section, subsection, subdivision,  
245 paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more  
246 subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared  
247 unconstitutional, or invalid, or ineffective.”  
248

249 **SECTION SEVEN:**

250 Effective Date.

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252  
253 **THIS ORDINANCE** shall take effect thirty (30) days after its passage and before the  
254 expiration of fifteen (15) days after its passage, shall be published in accordance with law, in a  
255 newspaper of general circulation published and circulated in the City of Calistoga.  
256

257 **THIS ORDINANCE** was introduced with the first reading waived at the City of Calistoga City  
258 of Council meeting of the 15<sup>th</sup> day of February, 2011, and was passed and adopted at a regular  
259 meeting of the Calistoga City Council on the 1<sup>st</sup> day of March, 2011, by the following vote:  
260

261  
262 **AYES:**

263  
264 **NOES:**

265  
266 **ABSENT/ABSTAIN:**  
267

268  
269 \_\_\_\_\_  
270 **JACK GINGLES, Mayor**

271  
272 **ATTEST:**

273  
274 \_\_\_\_\_  
275  
276 **SUSAN SNEDDON, City Clerk**  
277

**City Ordinances (41)**

Albany  
Angels Camp  
Berkeley  
Citrus Heights  
Cotati  
Diamond Bar  
Dunsmuir  
Eureka  
Fort Bragg  
Jackson  
La Puente  
Laguna Woods  
Long Beach  
Los Angeles  
Malibu  
Mammoth Lakes  
Martinez  
Napa  
Oakland  
Palm Springs  
Placerville  
Plymouth  
Redding  
Richmond  
Ripon  
San Carlos  
San Francisco  
San Jose  
San Mateo  
Santa Barbara  
Santa Cruz  
Santa Rosa  
Sebastopol  
Selma  
South El Monte  
Stockton  
Tulare  
Visalia  
West Hollywood  
Whittier  
Yucca Valley

**County Ordinances (9)**

Alameda  
Calaveras  
Kern  
San Diego  
San Luis Obispo  
San Mateo  
Santa Barbara  
Santa Clara  
Sonoma

**City Moratoriums (103)**

Adelanto  
Aliso Viejo  
American Canyon  
Anderson  
Arcata  
Baldwin Park  
Banning  
Barstow  
Beaumont  
Benicia  
Beverly Hills  
Brea  
Calexico  
Calimesa  
Calistoga  
Carpinteria  
Carson  
Clearlake  
Coachella  
Colton  
Corning  
Corte Madera  
Chula Vista  
Daly City  
Danville  
Downey  
Dunsmuir  
El Centro  
Etna  
Fairfax  
Farmington Hills  
Fillmore

Fountain Valley  
Galt  
Glendale  
Greenfield  
Half Moon Bay  
Hemet  
Imperial Beach  
La Habra  
Lafayette  
Laguna Beach  
Laguna Niguel  
Lake Elsinore  
Livingston  
Lodi  
Loma Linda  
Loomis  
Los Altos  
Los Gatos  
Marin City  
Menifee  
Mill Valley  
Monterey  
Moreno Valley  
Morgan Hill  
Morro Bay  
Mount Shasta  
Mountain View  
National City  
Novato  
Oakdale  
Oceanside  
Orange  
Orinda  
Orland  
Paradise  
Perris  
Porterville  
Rancho Cordova  
Rancho Cucamonga  
Rancho Mirage  
Red Bluff  
Redlands  
Redwood City  
Rio Dell

**Headquarters**

1322 Webster St, Suite 402, Oakland, CA 94612  
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**National Office**

1730 M Street NW, Washington DC 20036  
PHONE: 202.857.4272 FAX: 202.857.4273

**General Information**

WEB: [www.AmericansForSafeAccess.org](http://www.AmericansForSafeAccess.org)  
TOLL FREE: 1.888.939.4367



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Salinas  
San Bruno  
San Dimas  
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San Juan Bautista  
San Ramon  
Santee  
Sausalito  
Shasta Lake  
Signal Hill  
Soledad  
Sonora  
South Gate  
South Lake Tahoe  
South San Francisco  
Tehachapi  
Temple City  
Vacaville  
Ventura  
Victorville  
Walnut Creek  
Watsonville  
West Sacramento  
Westlake Village  
Yreka

**County Moratoriums (14)**

Butte  
Colusa  
Fresno  
Glenn  
Lake  
Madera  
Nevada  
San Bernardino  
San Joaquin  
Santa Cruz  
Shasta  
Solano  
Tehama  
Tulare

**City Bans (142)**

Alameda  
Anaheim

Antioch  
Arroyo Grande  
Atascadero  
Auburn  
Azusa  
Blythe  
Brawley  
Brentwood  
Buellton  
Buena Park  
Camarillo  
Ceres  
Chino  
Claremont  
Cloverdale  
Clovis  
Colma  
Concord  
Corona  
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Cypress  
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Gardena  
Gilroy  
Goleta  
Grand Terrace  
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Hermosa Beach  
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Hollister  
Huntington Beach  
Indian Wells  
Indio  
Inglewood  
La Mirada  
La Palma  
La Quinta  
Laguna Hills  
Lake Elsinore  
Lake Forest  
Lawndale  
Livermore  
Lincoln  
Lompoc  
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Manhattan Beach  
Manteca  
Marina  
Merced  
Millbrae  
Mission Viejo  
Modesto  
Montclair  
Monterey Park  
Moorpark  
Murrieta  
Nevada City  
Newark  
Norco  
Oakdale  
Oakley  
Ontario  
Pacific Grove  
Palm Desert  
Palos Verdes Estates\*  
Pasadena  
Paso Robles  
Patterson  
Petaluma  
Pico Rivera  
Pinole

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San Marcos  
San Pablo  
San Rafael  
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Santa Clarita  
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Seal Beach  
Seaside  
Simi Valley  
Solvang  
Sunnyvale  
Susanville  
Sutter Creek  
Temecula  
Torrance  
Turlock  
Tustin  
Ukiah  
Union City  
Upland  
Vista  
Wildomar  
Willits  
Windsor  
Woodland  
Yountville  
Yuba City  
Yucaipa

### **County Bans (12)**

Amador  
Contra Costa\*  
El Dorado  
Lassen  
Los Angeles  
Madera  
Merced  
Orange  
Placer  
Riverside  
Stanislaus  
Sutter

\*Ban ordinance allows for one dispensary.

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