

CITY OF HEALDSBURG

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF HEALDSBURG
BANNING THE ESTABLISHMENT AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES WITHIN THE CITY**

WHEREAS, in 1996, California voters enacted the Compassionate Use Act (CUA), which permits qualified patients and their primary caregivers to possess and cultivate marijuana for medical purposes where the medical use has been recommended by a physician; and

WHEREAS, the State enacted Senate Bill 420 to clarify the terms of the CUA, extend the scope of the CUA, and permit cities to adopt rules and regulations consistent with the CUA and Senate Bill 420; and

WHEREAS, SB 420 permits qualified patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes; it does not, however, address the role of dispensaries, nor does it require municipalities to provide for medical marijuana dispensaries; and

WHEREAS, although an initial goal of the CUA was to encourage cooperation between state and federal officials, the federal Drug Enforcement Agency has enforced the Controlled Substances Act against dispensary operators and others who help supply patients in California with medical marijuana; and

WHEREAS, under the Controlled Substances Act, marijuana is a “Schedule I Drug,” which is defined as a drug or other substance that has a high potential for abuse, with no currently accepted medical use, and Section 841 of the Controlled Substances Act prohibits the manufacture, distribution or dispensing of marijuana; and

WHEREAS, the United States Supreme Court has held that the federal government has the authority to prohibit the manufacture, distribution and dispensing of marijuana under the Controlled Substances Act, regardless of whether these acts are done pursuant to the CUA; and

WHEREAS, on August 15, 2005, the City Council adopted an urgency ordinance imposing a 45-day moratorium on the establishment and operation of medical marijuana dispensaries (“MMDS”) within the City; and

WHEREAS, on September 26, 2005, the City Council voted to extend the 45-day moratorium on MMDS for an additional 10 months and 15 days to August 15, 2006; and

WHEREAS, the City Council extended the moratorium for an additional year, until August

16, 2007, to allow City staff to monitor local, state, and national developments with respect to MMDS; and

WHEREAS, during the period of the moratorium, City staff and the City Attorney have consulted with other jurisdictions, including those within Sonoma County, regarding issues relating to the establishment and operation of MMDS; and

WHEREAS, the City currently has no regulations or procedures addressing the establishment or operation of MMDS nor any specific guidelines to control such dispensaries; and

WHEREAS, some communities with MMDS have reported adverse impacts on the health, safety, and welfare of the community such as criminal activity in and around the dispensaries, loitering, noise, traffic, complaints from neighbors regarding the smell, and inadequate property maintenance; and

WHEREAS, the operation of MMDS results in increased demands for police patrols and responses, which the City's police department is not adequately staffed to handle; and

WHEREAS, the City of Santa Rosa currently has two MMDS, the County of Sonoma currently has two MMDS, and there is a local medical marijuana delivery service that services Healdsburg, all of which can meet the needs of the qualified patients in the City; and

WHEREAS, this Ordinance will not conflict with the CUA or SB 420 because it will not impact a qualified patient or primary caregiver's right to cultivate and possess medical marijuana under State law; and

WHEREAS, at the May 7, 2007, meeting, the City Council heard and considered a staff presentation by the Healdsburg Police Chief, as well as testimony and arguments of all persons desiring to be heard; and

WHEREAS, on May 7, 2007, the City Council accepted the recommendations of the Healdsburg Police Chief and directed staff to draft an ordinance banning MMDS in the City;

NOW, THEREFORE, the City Council of the City of Healdsburg does ordain as follows:

Section 1. Findings

In adopting this Ordinance, the City Council finds as follows:

1. Section 841 of the Controlled Substances Act prohibits the manufacture, distribution or dispensing of marijuana, and the United States Supreme Court has held that the federal government has the authority to prohibit the manufacture, distribution and dispensing of marijuana under the Controlled Substances Act, regardless of whether these acts are done pursuant to the Compassionate Use Act.

2. State law permits qualified patients and their primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes, but neither the CUA nor SB 420 addresses the legality of medical marijuana dispensaries.

3. The City’s prohibition of medical marijuana dispensaries is consistent with federal law because federal law expressly prohibits dispensing marijuana

4. The City’s prohibition of medical marijuana dispensaries is also consistent with State law because State law does not specifically permit MMDS, and the Ordinance will not impact a qualified patient or primary caregiver’s right to cultivate and possess medical marijuana pursuant under State law.

5. The secondary impacts associated with MMDS, such as increased crime in and around the dispensaries, loitering, excessive noise, noxious odors, and increased traffic, adversely impact the health, safety, and welfare of the community and will require increased police patrols that will place a heavy burden on the City’s limited law enforcement resources.

6. Other facilities exist that can serve the needs of Healdsburg’s medical marijuana patients, so there currently exists no need for MMDS in the City.

Section 3. Addition of a New Chapter 8.32 to Title 8 of the Municipal Code

A new Chapter 8.32 entitled “Medical Marijuana Dispensaries” is hereby added to the City of Healdsburg Municipal Code to read and provide as follows:

“Chapter 8.32 – Medical Marijuana Dispensaries

- 8.32.010 Purpose
- 8.32.020 Relationship to Other Laws
- 8.32.030 Definitions
- 8.32.040 Medical Marijuana Dispensaries Prohibited
- 8.32.050 Establishment or Maintenance of Medical Marijuana Dispensaries Declared a Public Nuisance
- 8.32.060 Penalties for Violation

8.32.010 Purpose.

The purpose of Chapter 8.32 is to prohibit medical marijuana dispensaries from locating in the City of Healdsburg. The City Council may adopt by resolution any regulations or policies that will further the purpose of this chapter, and that do not conflict with the provisions herein.

8.32.020 Relationship to Other Laws

This chapter is not intended to, nor shall it be construed or given effect in a manner that causes it to apply to any activity that is regulated by federal or state law to the extent that

application of this chapter would conflict with such law or would unduly interfere with the achievement of federal or state regulatory purposes. It is the intention of the City Council that this chapter shall be interpreted to be compatible with federal, county, and state enactments, and in furtherance of the public purposes which those enactments express. Nothing in this chapter is intended to supersede any other provisions of this code.

8.32.030 Definitions

For the purpose of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

City means the City of Healdsburg.

Compassionate Use Act of 1996 means California Health and Safety Code sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time, including, without limitation, those amendments contained in SB 420.

Medical Marijuana Dispensary means any facility or location where medical marijuana is made available to and/or distributed by or to two or more of the following: a qualified patient, a person with an identification card, and/or a primary caregiver. A “medical marijuana dispensary” shall not include qualified patients, persons with an identification card and/or primary caregivers who associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes. A primary caregiver of a qualified patient or person with an identification card may deliver, administer or provide medical marijuana at the primary residence of the qualified patient or person with an identification card without violating this Chapter.

Person with an Identification Card shall have the same meaning as defined in the Compassionate Use Act of 1996, California Health and Safety Code sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

Primary Caregiver shall have the same meaning as defined in the Compassionate Use Act of 1996, California Health and Safety Code sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

Qualified Patient means a person who is entitled to use medical marijuana pursuant to the California Compassionate Use Act of 1996, California Health and Safety Code sections 11362.5 and 11362.7, et seq., as those sections are amended from time to time.

8.32.040 Medical Marijuana Dispensaries Prohibited

The establishment and/or operation of medical marijuana dispensaries shall be prohibited in all areas of the City of Healdsburg. No permit or any other applicable license or entitlement for use, including but not limited to the issuance of a business license, shall be approved or issued for the establishment or operation of a medical marijuana dispensary within the city limits of the City of Healdsburg.

8.32.050 Establishment or Maintenance of Medical Marijuana Dispensaries

Declared a Public Nuisance

The establishment, maintenance, or operation of a medical marijuana dispensary as defined in this chapter within the city limits of the City of Healdsburg is declared to be a public nuisance.

8.32.060 Penalties for Violation

- A. Any person violating any of the provisions of this article shall be guilty of a misdemeanor and shall be punishable therefor by a fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a period of not more than six (6) months or by both such fine and imprisonment. In the event any civil suit or action is brought by the City to enforce the provisions of this chapter, the person responsible for such violation shall be liable to the City for the City's costs of the suit, including, but not limited to attorneys' fees, expert fees, and other costs of the suit.
- B. In addition to any other enforcement remedies available to the City under any applicable state or federal statute or pursuant to any other lawful power the City may possess, any violation of this chapter may be prosecuted or enforced as a nuisance pursuant to Healdsburg Ordinance No. 985 as that ordinance may be amended from time to time. The City may also prosecute or enforce violations of this article as a criminal offense or by a civil court action, prosecuted by the City Attorney in the name of the City or in the name of the people of the State of California, by seeking the appointment of a receiver, or in any other manner provided by law."

Section 4. Compliance with California Environmental Quality Act

The City Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly, and it prevents changes in the environment pending the completion of the contemplated study.

Section 5. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

Section 6. Effective Date and Publication

This Ordinance of the City of Healdsburg shall be effective thirty (30) days after the date of its passage. Before expiration of fifteen (15) days after its passage, this Ordinance or a summary thereof as provided in Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the City of Healdsburg, along with the names of the City Council voting for and against its passage.

INTRODUCED by the City Council of the City of Healdsburg on the 21st day of May, 2007 and PASSED and APPROVED on the ____ day of June 2007 by the following vote:

AYES:	Councilmembers:
NOES:	Councilmembers:
ABSENT:	Councilmembers:
ABSTAINING:	Councilmembers:

SO ORDERED

ATTEST

Gary Plass, Mayor

Maria Curiel, City Clerk

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