

Prepared by: Susan Jones, Chief of Police

TITLE: INTRODUCE FOR FIRST READING AN ORDINANCE ADDING CHAPTER 8.32 ENTITLED “MEDICAL MARIJUANA DISPENSARIES” TO THE MUNICIPAL CODE BANNING MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY.

INTRODUCTION: On August 15, 2005, the City Council adopted an urgency ordinance to prohibit the establishment of medical marijuana dispensaries (“MMDS”) in the City, and on September 26, 2005, the Council voted to extend the moratorium for an additional 10 months and 15 days beyond the initial 45-day period. Based on staff’s request for additional time to study the City’s options with respect to MMDS, the Council extended the moratorium for an additional year. That moratorium is set to expire on August 16, 2007, and no further extensions are permitted under the law. At the May 7, 2007, regular meeting, the City Council heard and considered a staff presentation, as well as testimony from the public. The Council directed staff to draft an ordinance banning MMDS in the City. Staff has drafted the ordinance, and this item is before the Council for consideration of introduction of an ordinance adding a new Chapter 8.32 entitled “Medical Marijuana Dispensaries” to the City of Healdsburg Municipal Code.

BACKGROUND:

The Compassionate Use Act (CUA)¹ was enacted by voter initiative in 1996 (Proposition 215). It permits patients and their primary caregivers to possess and cultivate marijuana for medical purposes where medical use has been recommended by a physician. Although an initial goal of the CUA was to encourage cooperation between state and federal officials, the federal Drug Enforcement Agency (DEA) has enforced the Controlled Substances Act² against dispensary operators and others who help supply patients in California with medical marijuana. The Controlled Substances Act states that the manufacture (including cultivation), distribution and dispensing of marijuana are illegal for any purposes, including medical use. Moreover, the U.S. Supreme Court and lower federal courts have upheld these enforcement actions, thus placing California state and local officials in the difficult position of implementing the CUA in direct opposition to federal law.

Additionally, from the time of its enactment, enforcement has been a challenge for municipalities throughout the state. As enacted, the CUA did not define how much a patient could legally possess or cultivate. And the definition of “primary caregiver” was vague, resulting in the creation of numerous marijuana dispensaries operating with no standards or local control. In response to these issues, the California legislature enacted SB 420, known as the Medical Marijuana Program or MMP, which did the following (among other things):

- Refined the definition of “primary caregiver”;
- Clarified the expenses for which a primary caregiver could be reimbursed;

¹ Health and Safety (H&S) Code § 11362.5.

² 21U.S.C. § 841.

- Set out a maximum amount of marijuana a patient or caregiver could possess and cultivate (8 oz. of marijuana plus 6 mature or 12 immature plants);
- Extended protection from criminal prosecution beyond possession and cultivation to related activities (e.g., transportation, delivery, storage for qualified patients and their primary caregivers);
- Permitted patients and primary caregivers to collectively or cooperatively cultivate marijuana for medical purposes;
- Prohibited the use of marijuana near schools or recreation centers, on school buses, while in an operating car, or while operating a boat; and
- Allowed cities to adopt and enforce laws consistent with the MMP.

The MMP requires that the primary caregiver and the patient live in the same city or county if the primary caregiver has more than one patient. Conversely, if the primary caregiver and patient do not live in the same city or county, the primary caregiver may only have one qualified patient.

Although qualified patients and their primary caregivers may collectively or cooperatively cultivate marijuana for medical purposes, the MMP is silent as to dispensaries, neither permitting nor forbidding them. Healdsburg currently has no regulations or procedures addressing the establishment or operation of MMDS.

Secondary Impacts from Medical Marijuana Dispensaries

Law enforcement agencies in Sonoma County, specifically including Santa Rosa and Petaluma police departments, have identified certain secondary impacts from medical marijuana dispensaries, such as:

- People openly smoking marijuana in public;
- Marijuana DUI by persons who have obtained marijuana from a dispensary;
- Resale of marijuana obtained in the dispensary;
- Loitering;
- Vandalism;
- Inadequate property maintenance;
- Robbery (of persons obtaining marijuana, employees of the dispensary);
- Complaints from surrounding businesses regarding the operation; and
- Complaints from residential neighbors regarding the smell, late-night hours, and increased traffic.

Where medical marijuana dispensaries are permitted, the law enforcement agencies typically experience an increase in patrols of the property and increased crime. This presents a particular difficulty for Healdsburg because the Police Department is not sufficiently staffed to handle increased patrols that a medical marijuana dispensary would require. Moreover, the Santa Rosa City Police Chief indicated that containing the dispensaries in and around Santa Rosa will make enforcement easier on a regional basis.

Lack of Need for Medical Marijuana Dispensary in Healdsburg

Santa Rosa currently has two medical marijuana dispensaries, one on Dutton Avenue, and the other at Summerfield and Montgomery. Both of these facilities are approximately 20 miles from Healdsburg and are accessible via public transportation.

The County has two dispensaries as well. One is in Guerneville, which is approximately 18 miles from Healdsburg, and the other is at the south end of Cotati, which is approximately 23 miles away. Public transportation accesses both sites.

For medical marijuana patients who are too ill to travel, there is a medical marijuana delivery service that serves much of Sonoma County, including Healdsburg. They guarantee delivery within two hours and are open every day. Because there are other viable options for medical marijuana patients to obtain medical marijuana, there is no current need for medical marijuana dispensaries in Healdsburg.

Ban on Dispensaries

Given the lack of State direction on a city's role in regulating the dispensing of marijuana, the potential conflict between federal and state law, and concerns regarding the secondary impacts of dispensaries on communities, staff believes the best course of action would be a prohibition on City-permitted dispensaries within the City. This prohibition is intended to act as a placeholder until such time as associated issues are resolved and the promised direction from the State regarding the dispensaries of medical marijuana is forthcoming. The proposed ordinance is in keeping with the intent of the CUA, as it would not restrict a qualified patient's right to use medical marijuana for the purposes stated in the CUA, which permit personal cultivation and possession. The ordinance would also not restrict the collective, cooperative cultivation projects envisioned by SB 420, nor would it prohibit state-licensed clinics and healthcare facilities that address the needs of individuals with serious and terminal illnesses.

The City Council has chosen to prohibit MMDS within the City limits. Several other cities have also done so, including Rohnert Park and Windsor. Petaluma appears poised to do the same. Municipalities justify banning the MMDS based on the prohibitions of federal law and because of the secondary effects of dispensaries.

It should be noted that Americans for Safe Access, a medical marijuana advocacy group, has sued some of the cities that have banned MMDS. In all of the suits, the Americans for Safe Access has alleged that MMDS are a matter of "pressing statewide concern," and that state law preempts local law regarding medical marijuana. The suits seek a declaration that the ordinances are unlawful and unconstitutional, as well as preliminary and permanent injunctions against the ordinances and attorneys' fees. Of the currently-pending cases, none has been brought to trial. Two were dismissed when the city sought a demurrer; one is pending but no parties have been served; and one is still "live."

FISCAL ANALYSIS: There is no budget impact from this item.

RECOMMENDATION: Waive full reading of the text, and introduce by title only, an ordinance adding a new Chapter 8.32 entitled, "Medical Marijuana Dispensaries" to the City of Healdsburg Municipal Code.

ATTACHMENTS: **Proposed Ordinance**

Approved for Transmittal:

Chet Wystepek, City Manager

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