

ORDINANCE NO. 781

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, AMENDING SECTIONS 17.04.030, 17.06.060 AND 17.06.130 OF THE ROHNERT PARK MUNICIPAL CODE (LAND USE REGULATIONS) REGARDING MEDICAL MARIJUANA DISPENSARIES

WHEREAS, the voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 and following, and entitled "The Compassionate Use Act of 1996" (the "Act");

WHEREAS, the State enacted Senate Bill 420 to clarify the scope of the Act and to allow cities to adopt rules and regulations consistent with Senate Bill 420;

WHEREAS, existing City regulations do not provide for the location and regulation of medical marijuana dispensaries;

WHEREAS, on April 26, 2005, the City Council adopted an interim ordinance establishing a 45-day moratorium on such facilities to allow Staff time to determine how best to address applications for medical marijuana dispensaries;

WHEREAS, the moratorium was subsequently extended on May 24, 2005 for another 10 months and 15 days and again on April 25, 2006 for an additional year;

WHEREAS, Staff has continued to monitor local, state, and national activities regarding medical marijuana in order to determine an appropriate course of action for the City;

WHEREAS, the Act does not legalize marijuana per se; rather it is intended to allow individuals with serious and terminal illnesses to possess and cultivate marijuana for their own medical needs based upon a doctor's recommendation;

WHEREAS, the Act notes that one of its purposes is "To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana,"

WHEREAS, neither the federal nor state government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," thus leaving cities with a lack of direction as to how the Act is intended to be implemented, particularly as it concerns the distribution of medical marijuana through dispensaries, which are not explicitly authorized by the Act;

WHEREAS, SB 420 provides additional statutory guidance for medical marijuana use and cultivation; however, it does not address the role of dispensaries in implementing the Act, nor does it require that communities provide for medical marijuana dispensaries;

WHEREAS, federal law considers marijuana to be a "Schedule I Drug," which is defined as a drug or other substance that has a high potential for abuse, that has no currently accepted medical use in treatment in the United States, and that does not have an accepted safety for its use under medical supervision, and under Section 841 of the Controlled Substances Act, the manufacture and distribution of marijuana is prohibited by the federal government,

WHEREAS, the allowance of medical marijuana dispensaries negatively impacts the health, safety, and welfare of the community, due to the associated potential for increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and other increases in criminal activity;

WHEREAS, the operation of medical marijuana results in increased demands for police response, thereby compromising the Department of Public Safety's ability to respond to other calls for service;

WHEREAS, the City of Santa Rosa currently has an ordinance in place that allows medical marijuana dispensaries within that City, and the Cities of Sebastopol and Cotati are currently considering similar ordinances. The allowance of dispensaries within these nearby cities, as well as the existing services within Sonoma County that provide medical marijuana deliveries to patients, would meet the needs of qualified patients in the Rohnert Park area;

WHEREAS, Staff has drafted amendments to the Rohnert Park Municipal Code to add a definition of Medical Marijuana Dispensary to Section 17.04.030 and to revise the land use tables for the Commercial Districts (Section 17.06.060) and Mixed-Use District (Section 17.06.130) by adding a side note to the "Pharmacy" entry in each table to clarify that a "Pharmacy" does not include a Medical Marijuana Dispensary, which is a prohibited use within the City;

WHEREAS, these proposed amendments would not preempt the Act, as they would not impact qualified patients' rights to cultivate and possess medical marijuana for their own use, provided it is done in compliance with the Act;

WHEREAS, on January 25, 2007 the Planning Commission found that pursuant to Section 15061(b)(3) of the CEQA Guidelines, the project is exempt under the General Rule which states, "[t]hat CEQA applies only to projects, which have the potential for causing a significant effect on the environment. 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;"

WHEREAS, on February 8, 2007, the Planning Commission reviewed Planning Application No. PL2005-025MC, the proposed amendments to Sections 17.04.030, 17.06.060 and 17.06.130 of the Rohnert Park Municipal Code, and recommended approval of the proposed amendments to the City Council; and

WHEREAS, at the February 27, 2007 City Council meeting, upon hearing and considering all testimony and arguments, if any, of all persons desiring to be heard, the Council considered all the facts relating to Planning Application No. PL2005-025MC, the proposed amendments to Sections 17.04.030, 17.06.060 and 17.06.130 of the Rohnert Park Municipal Code.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ROHNERT PARK, CALIFORNIA, does hereby ordain as follows:

SECTION 1. That the above recitations are true and correct.

SECTION 2. Findings.

The City Council finds that:

- A. A duly noticed public hearing regarding the proposed amendments to the Municipal Code was held by the City Council on February 27, 2007.
- B. There is a lack of state direction as to how cities are to implement the Compassionate Use Act of 1996, particularly with regards to the distribution of medical marijuana through medical marijuana dispensaries--facilities that are not explicitly authorized by the Act.
- C. The City's prohibition of medical marijuana dispensaries in the City is consistent with state law because such a prohibition would not affect an individual's right to cultivate and possess medical marijuana in compliance with the Act.
- D. Because federal law prohibits the cultivation, possession, or distribution of marijuana, the City's prohibition of medical marijuana dispensaries in the City is consistent with federal law.
- E. The adverse secondary impacts associated with medical marijuana dispensaries are detrimental to the health, safety, and welfare of the community due to the substantial likelihood for increases in criminal activity, including but not limited to, illegal drug activity, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and burglaries at dispensaries.

SECTION 3. Environmental Clearance. In accordance with CEQA Section 15061(b)(3), “[C]EQA applies only to projects, which have the potential for causing a significant effect on the environment. 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 proposed amendments would not impact the environment, and therefore staff has determined that the amendments are exempt from CEQA review.

SECTION 4. The following definition for “Medical Marijuana Dispensary” is hereby added to Section 17.04.030 of the Rohnert Park Municipal Code “Definitions” to read and provide as follows:

“Medical Marijuana Dispensary means any facility where medical marijuana is made available to and/or distributed to one or more of the following: a "primary caregiver," a "qualified patient," or a "person with an identification card." Each of these terms is defined in California Health and Safety Code Section 11362.7 and shall be interpreted in strict accordance with Health and Safety Code Sections 11362.5 and 11362.7 *et seq.* A medical marijuana dispensary shall not include the following uses, so long as the location of such uses is otherwise regulated by the City's municipal code or other applicable law and such uses strictly comply with the City's municipal code or other applicable law, including but not limited to, Health and Safety Code Sections 11362.5 and 11362.7 *et seq.*: A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; A healthcare facility licensed pursuant to Chapter 2 of Divisions 2 of the Health and Safety Code; 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; A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; A residential hospice, or

a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.”

SECTION 5. The following side note is added to the “Pharmacy” listing in the land use table in Section 17.06.060 of the Rohnert Park Municipal Code “Commercial Districts”

to read and provide as follows:

“Does not include a Medical Marijuana Dispensary, which is a prohibited use within the City.”

SECTION 6. The following side note is added to the “Pharmacy” listing in the land use table in Section 17.06.130 the Rohnert Park Municipal Code “Mixed-Use District”

to read and provide as follows:

“Does not include a Medical Marijuana Dispensary, which is a prohibited use within the City.”

SECTION 7. SEVERABILITY

Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared unconstitutional or invalid for any reason, such declaration shall not affect the validity of the remaining portions of this ordinance.

SECTION 8. EFFECTIVE DATE

This ordinance shall be in full force and effective no less than 30 days after its adoption, and shall be published or posted as required by law.

This ordinance was introduced on the 27th day of February, 2007 and
DULY AND REGULARLY ADOPTED this 13th day of March, 2007 by the following vote:

AYES:	Four (4)	Council Members Breeze, Mackenzie, Smith and Stafford
NOES:	None (0)	
ABSENT:	One (1)	Mayor Vidak-Martinez
ABSTAIN:	None (0)	

CITY OF ROHNERT PARK

/s/Mayor ProTempore Jake Mackenzie

ATTEST:

/s/City Clerk Judy Hauff

APPROVED AS TO FORM:

/s/Assistant City Attorney Gabrielle P. Whelan