PJC

ORDINANCE NO. 2007-217

AN ORDINANCE OF THE TOWN OF WINDSOR AMENDING ARTICLE 1 AND ARTICLE 6 OF CHAPTER 27, TITLE XVII (ZONING ORDINANCE) OF THE CODE OF THE TOWN OF WINDSOR REGARDING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, on November 5, 1996, California voters adopted the Compassionate Use Act (Proposition 215, hereinafter referred to as "CUA") authorizing the cultivation and possession of marijuana for limited medical purposes; and

WHEREAS, the CUA added Health and Safety Code Section 11362.5 to exempt eligible persons who possess and/or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession and/or cultivation of marijuana; and

WHEREAS, despite voter approval of the CUA, certain problems and uncertainties in the CUA impeded the ability of law enforcement to interpret and enforce the law and prevented persons eligible to use marijuana for medical marijuana from doing so; and

WHEREAS, the California Legislature enacted Sections 11362.7 through 11362.83 ("Medical Marijuana Program," hereinafter referred to as "MMP"), effective January 1, 2004, which created a state-approved *voluntary* medical marijuana identification card program, established the quantity of marijuana that a qualified patient or primary caregiver may possess, and provided for additional immunities from state marijuana laws, among other provisions; and

WHEREAS, the CUA and MMP neither authorizes medical marijuana dispensaries nor requires that local governments authorize medical marijuana dispensaries; and

WHEREAS, the Code of the Town of Windsor and Zoning Ordinance are silent with respect to the regulations and location of medical marijuana dispensaries; and

WHEREAS, in order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, the Town of Windsor needed time to study the potential impact medical marijuana dispensaries may have on the public health, safety and welfare; and

WHEREAS, on August 3, 2005 the Town Council adopted an interim ordinance (Ordinance No. 2005-193) on an urgency basis imposing a moratorium on the establishment and operation of medical marijuana dispensaries; and,

WHEREAS, on September 14, 2005 the Town Council adopted an ordinance extending the interim ordinance (Ordinance No. 2005-195); and

WHEREAS, in accordance with California Government Code Section 65858, Ordinance No. 2005-195 was for twenty-two (22) months and fifteen (15) days and will expire on July 29, 2007; and

WHEREAS, Town staff has followed local, state, and national activities regarding medical marijuana in order to determine an appropriate response by the Town; and

WHEREAS, at the April 18th, 2007 Town Council meeting Town staff updated the Town on local, state, and national activities and the Town Council considered public testimony from persons desiring to be heard about the course of action the Town should take; and

WHEREAS, upon hearing and considering public testimony and arguments and hearing from Town staff about the advantages and disadvantages of different regulatory options available, the Council directed Town staff to prepare an ordinance amending the Town's Zoning Ordinance to prohibit the establishment of medical marijuana dispensaries within the Town; and

WHEREAS, the federal Controlled Substances Act (21 U.S.C. § 800 *et seq.*, hereinafter referred to as "CSA") classifies marijuana as 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

WHEREAS, section 841(a)(1) of the CSA makes it "unlawful to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance," except as otherwise provided in the statute; and

WHEREAS, the CSA contains no exemption for marijuana used for medical purposes; and

WHEREAS, the United States Supreme Court has held that there is no implied medical necessity defense in the CSA for persons working together to cultivate and possess marijuana for medical purposes (*U.S. v. Oakland Cannabis Buyers' Club* (2001) 532 U.S. 483 (*Oakland Cannabis*)); and

WHEREAS, the United States Supreme Court has held that the United States Congress has the power under the Commerce Clause of the United States Constitution to prohibit the manufacture, distribution and possession of marijuana pursuant to the Controlled Substances Act, even as such prohibitions apply to marijuana manufactured, distributed or possessed within the state of California (*Gonzalez v. Raich* (2005) 545 U.S. 1 (*Raich*)); and

WHEREAS, in light of *Oakland Cannabis* and *Raich*, to permit the establishment of medical marijuana dispensaries, as defined herein, within the Town may subject the Town and/or its officials and employees to prosecution under federal law and/or would otherwise constitute illegal activity under federal law; and

WHEREAS, at the April 18th, 2007 Town Council meeting the Town Council heard and considered testimony from the public and Town staff about how permitting medical

marijuana dispensaries will negatively impact the health, safety, and welfare of the community because medical marijuana dispensaries experience increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, and other increases in criminal activity; and

WHEREAS, prohibiting medical marijuana dispensaries is consistent with the Town's General Plan, Municipal Code, and Zoning Ordinance; and

WHEREAS, prohibiting medical marijuana dispensaries will promote and protect the health, safety, and welfare of the Town's residents; and

WHEREAS, medical marijuana dispensaries exist within Sonoma County and can satisfy the needs of eligible persons within the Town; and

WHEREAS, Town staff has drafted amendments to the Town of Windsor Zoning Ordinance to add a definition of "Medical Marijuana Dispensary" to Section 27.60.020(M) and to add a new Section 27.06.050, "Prohibited Land Uses," collectively these amendments would prohibit the establishment of medical marijuana dispensaries within the Town; and

WHEREAS, the proposed amendments are consistent with the CUA and MMP to the extent it would not impede eligible persons rights to cultivate and possess medical marijuana; and

WHEREAS, the proposed amendments prohibiting medical marijuana dispensaries will promote and protect the health, safety, and welfare of the Town's residents and is in accordance with the Town's police power, authorized in Article XI, Section 7 of the California Constitution; and

WHEREAS, at a duly noticed public hearing and public meeting in accordance with California Government Code Section 65854 on May 22, 2007, the Planning Commission reviewed the proposed amendments to the Town's Zoning Ordinance and recommended the proposed amendments to the Town Council; and

WHEREAS, on May 22, 2007, the Planning Commission found that the proposed ordinance is not subject to the California Environmental Quality Act ("CEQA") because the ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) for it has no potential for resulting in physical change in the environment, directly or ultimately, the ordinance is categorically exempt from CEQA under Section 15308 as a regulatory action taken by the City pursuant to its police power authorized in Article XI, Section 7 of the California Constitution to assure the health, safety, and welfare of the City, and the ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment ; and

WHEREAS, at a duly noticed public hearing and public meeting, in accordance with California Government Code Section 65856, on June 6, 2007 the Town Council, 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 the proposed amendments to the Town of Windsor Zoning Code.

NOW, THEREFORE, the Town Council of the Town of Windsor does ordain as follows:

Section 1. The above recitations are true and correct.

Section 2. Findings.

The Town Council finds that:

A. A duly noticed public hearing, in accordance with California Government Code Section 65856, regarding the proposed amendments to the Zoning Ordinance was held by the Town Council on June 6, 2007.
B. Medical marijuana dispensaries are facilities which are not expressly authorized under California law and there is a lack of direction as to how cities are to treat medical marijuana dispensaries under the law.
C. Therefore, the Town's prohibition of medical marijuana dispensaries is consistent with the CSA and MMP and the prohibition of medical marijuana dispensaries will not impact an eligible person's right to cultivate and possess medical marijuana in compliance with the CSA and MMP.
D. The Town's prohibition of medical marijuana dispensaries is consistent with federal law because federal law prohibits the cultivation, possession, or distribution of marijuana.
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, and burglaries at dispensaries.

Section 3. Section 27.60.020(M), "Definitions, M," of the Town of Windsor's Zoning Ordinance is hereby amended to add the definition "Medical Marijuana Dispensary" and to read and provide as follows:

> **Medical Marijuana Dispensary**. Any facility or location where medical marijuana is made available to, and/or distributed by or distributed to two (2) or more of the following: any person, including a qualified patient, a person with an identification card, or a primary caregiver. The terms "qualified patient," "person with an identification card," and "primary caregiver" are 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 any facility or location that is

otherwise permitted and licensed under all applicable laws to make marijuana available to qualified patients and/or persons with an identification card and such use complies strictly with all applicable laws.

Section 4. Chapter 27.06 of the Zoning Ordinance is hereby amended to add a new Section 27.06.050, "Prohibited Land Uses," to read and provide as follows:

27.06.050 -- Prohibited Land Uses

A. Medical Marijuana Dispensary. A Medical Marijuana Dispensary, as defined in Section 27.60.020(M), is a prohibited land use in the Town of Windsor. No conditional use permit, temporary permit, or permit of any nature shall be issued for a prohibited land use.

Section 5. California Environmental Quality Act ("CEQA").

The Town Council finds that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") because the Ordinance is not a "project" within the meaning of Section 15378 of the State CEQA Guidelines (Title 14, Chapter 3 of the California Code of Regulations) for it has no potential for resulting in physical change in the environment, directly or ultimately, the Ordinance is categorically exempt from CEQA under Section 15308 as a regulatory action taken by the City pursuant to its police power authorized in Article XI, Section 7 of the California Constitution to assure the health, safety, and welfare of the City, and the Ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment, either directly or indirectly.

Section 6. Statutory Severability.

If any section, subsection, sentence, clause or phrase or word in this Ordinance is for any reason held to be unconstitutional, unlawful or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed and adopted this Ordinance and each and all provisions thereof irrespective of the fact that any one or more of said provisions may be declared unconstitutional, unlawful or otherwise invalid.

Section 7. Effective Date and Publication.

This Ordinance shall take effect thirty (30) days from its passage. Before the expiration of fifteen (15) days after its passage, this Ordinance, or a summary thereof, as provided in California Government Code Section 36933, shall be published at least once in a newspaper of general circulation published and circulated in the Town of Windsor.

PASSED, APPROVED AND ADOPTED this 20th day of June 2007, by the following vote:

AYES:	**COUNCILMEMBERS ALLEN, GOBLE, SALMON AND MAYOR PRO TEM FUDGE**
NOES:	**NONE**
ABSTAIN:	**NONE**
ABSENT:	**MAYOR PARKER**

DEBORA FUDGE, MAYOR PRO TEM

ATTEST:

MARIA DE LA O, TOWN CLERK