Agenda Item No._____

File Code No. 120.03

CITY OF SANTA BARBARA

ORDINANCE COMMITTEE REPORT

AGENDA DATE: September 15, 2009

TO: Ordinance Committee

FROM: Planning Division, Community Development Department

SUBJECT: Medical Cannabis Dispensary Ordinance Revision

RECOMMENDATION:

That the Ordinance Committee review the existing Medical Cannabis Dispensary Ordinance, discuss options, and provide direction to staff on potential revisions.

EXECUTIVE SUMMARY:

On July 28, 2009, the City Council referred the Medical Cannabis Dispensary Ordinance, SBMC Chapter 28.80, to the Ordinance Committee, with direction to review the ordinance, discuss options, and make recommendations to Council. Several subject areas were specifically mentioned by the Council, and others have been added by staff, based on experience processing recent applications. Each subject area is discussed briefly in this Ordinance Committee report.

BACKGROUND:

On July 28, 2009, the City Council referred the Medical Cannabis Dispensary Ordinance to the Ordinance Committee, with direction to review the following nine subject areas, discuss options, and make recommendations to Council on revisions to the ordinance.

1. Police Department statistics surrounding the existing dispensaries in order to tighten up the ordinance;
2. Cap on the number of dispensaries per area or citywide;
3. Security requirements;
4. Milpas Street recovery zone and how it interacts with the dispensaries;
5. Locational requirements of dispensaries in proximity of schools and educational enterprises;
6. Reducing the amortization period for nonconforming dispensaries;
7. Impacts on neighborhoods;
8. Re-establishing a moratorium or interim ordinance, and the applicability of new regulations to existing and pending dispensaries; and
9. Information about neighboring jurisdictions' medical cannabis regulations.

Additionally, based on recent experience processing Medical Cannabis Dispensary Permits (MCDPs) and recent public input, staff suggests that the Ordinance Committee also discuss the following subject areas:

10. Criteria for Issuance;
11. Permit discretion given to the Staff Hearing Officer;
12. Whether permit decisions should be appealable to the City Council;
13. Allowing Dispensaries in the C-O and/or C-1 Zones.
14. Full cost recovery for application review.

Known Medical Cannabis Dispensaries

The following is a summary of known medical cannabis dispensaries by category:

PERMITTED BY CITY AND OPERATING

331 N. Milpas St. (compliance with approved permit is under investigation)

PERMIT APPROVED APPLICATIONS

500 N. Milpas St.

PENDING APPLICATIONS

631 Olive St.	Approved by Staff Hearing Officer, on appeal to Planning Commission
741 Chapala St	Pending
2 W. Mission	Pending
234 E. Haley	Pending
302 E. Haley	Pending
826 De la Vina	Pending

NONCONFORMING

These dispensaries were found to be legal under the City's Interim Ordinance, and are allowed to remain in their current locations for three years from the effective date of the current ordinance (until April 25, 2011). If they meet the locational requirements of the current ordinance, they can apply for a Medical Cannabis Dispensary Permit, otherwise they must close or obtain a City Zoning Variance. See Subject #6 below. A nonconforming status under investigation means that at the time of application, they were found to be nonconforming, but it is uncertain whether those conditions still exist.

3128 State	Does not meet locational requirements, too close to MacKenzie Park

3516 State	Meets locational requirements (continuing legal Nonconforming status under investigation).
27 Parker Way	Does not meet locational requirements, but may qualify for a variance. Too close to Moreton Bay Fig Tree Park, which is across US101. (Nonconforming status under investigation)
100 E. Haley	Does not meet locational requirements, too close to Vera Cruz Park. (continuing legal Nonconforming status under investigation).

ILLEGALY OPERATING – The following are under investigation and enforcement:

2915 De la Vina	(Currently the subject of a City Zoning Enforcement Action)
336 Anacapa	(Currently the subject of a City Zoning Enforcement Action)

There are other dispensaries that are currently under investigation by the Police Department.

DISCUSSION:
The current Medical Marijuana Dispensary ordinance includes locational requirements for permitted dispensaries. They are allowed in the C-2 and C-M zones, as well as on Upper State Street, Milpas Street, and the Mesa, but not within 500 feet of schools, parks or another dispensary. The ordinance's operational requirements include: a security plan, cameras, floor plan, consumption prohibition within 200 feet, etc. The existing ordinance does not place a cap on the number of dispensaries within the City or a limit on the hours of operation.

1. Police Department Statistics

The Police Department staff will be present at the Ordinance Committee meeting to present crime statistics concerning existing dispensaries.

2. Cap on the Number of Dispensaries per Area

The Council discussed both a citywide cap and a cap per geographic area. Currently, the areas (Downtown, Upper State, Milpas, Mesa) are not delineated by boundaries within the ordinance. If the Ordinance Committee would like geographic area caps, staff will return with boundaries, to facilitate the discussion. An alternative to a cap would be to increase the minimum distance between dispensaries from 500 feet (1 block).

3. Security Requirements

The existing ordinance, SBMC Chapter 28.80, has quite a number of security requirements, which seem adequate to staff; however, it may be appropriate to consider adding two additional requirements: 1) a limitation on the hours of operation, such as from 10 am to 7pm; and 2) a requirement that the security personnel be licensed by the State (Department of Consumer Affairs, Bureau of Security and Investigative Services). Both of

these requirements have been added as conditions of approval of recently approved dispensaries.

The current ordinance requires a separate, secure area designated for dispensing cannabis. A pending dispensary at 741 Chapala Street originally proposed a very open floor plan, with cannabis dispensing taking place at a counter in the general retail area, rather than a separate dispensing area. The operator of this proposed dispensary operates several dispensaries of a similar configuration in the Los Angeles area, and according to them, has had no problems with security. Staff would like the Ordinance Committee's confirmation that a separate, secure dispensing area is appropriate.

4. Milpas Recovery Zone

The Milpas Recovery Zone is a proposal by the Milpas Action Task Force to create a space where those seeking recovery from substance abuse, mental illness and physical ailments can be free from negative illegal influences. The area suggested by the Milpas Action Task Force is bounded by Milpas Street, the beach, Garden Street, and Gutierrez Street. Although the City has agreed on the implementation of a Recovery Zone concept, definitive boundaries have not yet been determined. Medical Cannabis Dispensaries could be excluded from the Recovery Zone.

5. Siting Requirements of Dispensary in Proximity to Schools and Parks

The current ordinance prohibits dispensaries within 500 feet of parks and schools (pre-schools, day care centers, colleges, universities, trade schools, and vocational schools are not considered "schools" under the existing ordinance). This 500-foot radius could be increased, which would reduce the number of viable locations, perhaps severely, if the radius is much larger. Pre-schools and day care centers were specifically excluded from this radius requirement since most attendees are in parental control during pick-up and drop-off. At a Downtown Organization meeting, a representative of the SB School Board requested a limitation on dispensaries on or near safe routes to schools or around bus stops where school age children congregate. One concern with more siting restrictions around private schools and day care centers is that such operations come and go, so a dispensary may start up, and later, a child care center is proposed. Does the dispensary become nonconforming?

Additionally, the current ordinance does not contain a prohibition of dispensaries within a certain distance of residential zones. Such a prohibition was discussed, but not recommended. In recent hearings, concern was raised by the public about the proximity of dispensaries to residential zones. Depending on the distance, this requirement could eliminate large portions of Milpas Street and Outer State Street from the areas where dispensaries are allowed.

6. Reducing the Amortization Period for Nonconforming Dispensaries

SBMC Chapter 28.80 allows dispensaries that were in compliance with the Interim Ordinance to continue operation for three years from the effective date of the current ordinance (April 25, 2008), under certain conditions. Three years was considered reasonable by the Council in 2008, as it gave operators time to amortize their tenant improvement expenses. Additionally, for those dispensaries that could be legalized, the three years gave adequate time to do so. The nonconforming dispensaries must either get a Medical Cannabis Dispensary Permit or relocate before April 25, 2011 (about 19 months). The Ordinance Committee could recommend a shorter amortization period.

7. Impacts on Neighborhoods

Staff has heard about the following types of neighborhood impacts from the public in meetings and correspondence: loitering, such that passers-by or nearby business owners or residents are uncomfortable or fearful; smoking near dispensaries, either in public or in cars; marijuana odors (both from smoking and from the raw material); dispensary patients selling marijuana to non-patients (including children) outside the dispensary; robberies and violence. The Police Department staff will discuss this issue at the Ordinance Committee hearing.

8. Re-establishing an Interim Ordinance, and the applicability of new regulations to existing and pending dispensaries

After the issue of Medical Cannabis Dispensaries first arose in August 2007, the City passed an Interim Ordinance which prohibited the opening of new dispensaries for one year, while the permanent ordinance was being drafted. We have a request to do this again, and depending on the extent of changes that the Council may be considering, it may be appropriate to impose a new moratorium/interim ordinance.

The subject of applicability of new regulations to existing and pending dispensaries must be addressed in the ordinance revision. Normally, new regulations do not apply to existing, legal land uses, at least not without an appropriate amortization period. For example, if a land use zone changes from industrial to residential, the industrial use is allowed to remain as long as certain criteria are met for not expanding the non-conforming use. Another methodology is to allow an amortization period, similar to the current Medical Cannabis Dispensary Ordinance, which allows pre-existing, nonconforming dispensaries three years to seek approval of a MCDP under the current code, relocate, or close operations. For pending dispensaries, any number of points in the process (building occupancy, building permit issuance, project approval, application completeness, etc.), could be the point at which the revised regulations would apply.

9. Information about Neighboring Jurisdictions' Medical Cannabis Regulations

Staff has researched neighboring jurisdictions on the South Coast, and found that virtually all jurisdictions (Lompoc, Santa Maria, Buellton, Solvang, Goleta, Carpinteria, Ventura, Oxnard, Camarillo and Guadalupe) have either an outright ban on dispensaries or a temporary moratorium on new dispensaries. Both Goleta's and Ventura's moratoriums are to consider allowing dispensaries pursuant to an ordinance in the future. It appears that the city and County of Santa Barbara are the only local jurisdictions that currently allow medical cannabis dispensaries.

10. Criteria for Issuance

SBMC Chapter 28.80 establishes 13 criteria for issuance that must be considered by the decision making body in determining whether to grant or deny a dispensary permit. After processing several dispensary permit applications, Staff believes that it is appropriate to revise or eliminate some of these criteria.

A. Criterion #2 requires that the location of the dispensary is not identified by the City Chief of Police as an area of high crime activity. The Police Department has not currently identified any areas of high crime activity in the City, so the value of this criterion is questionable. Staff recommends changing the language so that it can better reflect when the Police Department has concerns over criminal activity at the potential location of a dispensary.

B. Criterion #4 refers to "reporting requirements." This is a remnant from when the Ordinance contained language requiring periodic reporting or permit renewal. Staff proposes to delete this phrase.

11. Amount of discretion given to the Staff Hearing Officer

The Medical Cannabis Dispensary Permit is set up as a Performance Standard Permit (PSP), which is a discretionary action partway between a ministerial action (no discretion) and a Conditional Use Permit (total discretion). A PSP allows the decision making body only a limited amount of discretion, and if the Criteria for Issuance are met, then the permit is approved. This was done because it seemed that the location and operational requirements would prevent the type of neighborhood concerns that caused the drafting of the current ordinance. It was to be the Staff Hearing Officer's responsibility to review the project to ensure that the requirements were met, and to give the public a forum to speak to the project.

Of the current 13 criteria for issuance, there are two criteria for issuance that give the decision making bodies some discretion: #7 and #10. Criterion #7 states, "…no significant nuisance issues or problems are anticipated…" Criterion #10 states, "That the

dispensary would not adversely affect the health, peace, or safety of persons living or working in the surrounding area…"

A question that has arisen from the Staff Hearing Officer is: how much discretion does the Staff Hearing Officer have to deny a dispensary permit, if all locational and operational requirements are met. Staff would like to discuss this issue with the Ordinance Committee for possible amendments to these criteria.

12. Lack of Appeal to City Council

The current ordinance allows the Staff Hearing Officer's decision to be appealed to the Planning Commission, but the Planning Commission is the final review body. The Planning Commission's decision cannot be appealed to City Council. Planning Commissioners, appellants and some interested parties have questioned this lack of appeal rights, and Staff would appreciate a discussion of this subject by the Ordinance Committee.

13. Allowing Dispensaries in the C-O and/or C-1 Zones

During the City Council meeting on July 28, 2009, several public speakers commented that Medical Cannabis Dispensaries should be located hear hospitals or in doctors' offices, and that the current ordinance targets certain areas of the City for dispensaries. Hospitals and doctors' offices are located, for the most part, in the C-O Zone, which is centered around Cottage Hospital and the old St. Francis Hospital on East Micheltorena Street. Staff does not believe that dispensaries should be located in the East Micheltorena C-O Zone, as it's very small, is surrounded by residential uses, and the hospital is no longer in operation. However, dispensaries could be found to be appropriate in the C-O Zone surrounding Cottage Hospital. Additionally, perhaps dispensaries should be allowed in the C-1 zone (Coast Village Road), in order to have a more even distribution of dispensaries in the city.

14. Full Cost Recovery for Application Processing

The City Council directed the Finance Committee to review a cost recovery fee, and staff would like the Ordinance Committee's input on this issue as well. Although several Councilmembers have expressed interest in fees that would recover the cost of all aspects of City involvement with dispensaries, including policing, staff does not believe that all such fees are lawful. However, it would be appropriate to charge full cost for application processing. Currently, Planning Staff charges its hourly rate for application processing. The current rate is $200/hr. Planning Staff collects $2000 as a deposit (10 hrs) and charges additionally if the processing takes more than 10 hours of the case planner's time. There are several issues we would like the Ordinance Committee to discuss:

A. The other major participants in the review of Medical Cannabis Dispensaries are the Police Department and the Building & Safety Division. We have not been charging the

applicants for the time spent by these participants, but will do so from this point forward. Another issue here is that we will be re-examining whether $200/hr represents the full hourly rate (including overhead), of the Community Development Department and Police Departments.

B. The appeal fees in the City are very low and only cover a small percentage of the costs involved with appeals. Currently, appellants (usually neighbors) pay the appeal fee of $300.00, but we do not charge applicants the hourly fee. Should the applicants be charged hourly for the time spent on an appeal?

ATTACHMENTS:
1. Current Medical Marijuana Dispensary Ordinance
2. Maps of Allowed Locations for Medical Marijuana Dispensaries

PREPARED BY: Danny Kato, Senior Planner

SUBMITTED BY: Paul Casey, Community Development Director

APPROVED BY: City Administrator's Office

ORDINANCE NO. 5449

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING THE MUNICIPAL CODE BY ADDING CHAPTER 28.80 ESTABLISHING REGULATIONS AND PROCEDURES FOR MEDICAL CANNABIS DISPENSARIES

THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION ONE. The City Council adopts the ordinance codified in this chapter based upon the following findings and determinations:

A. The voters of the State of California approved Proposition 215 (codified as Health and Safety Code Section 11362.5 et seq.) entitled "The Compassionate Use Act of 1996" (Act).

B. The intent of Proposition 215 was to enable persons residing in the State of California who are in need of cannabis for medical purposes to be able to obtain and use it without fear of criminal prosecution under limited, specified circumstances.

C. The State enacted SB 420 in 2004, being Sections 11362.7 et seq., of the Health and Safety Code, being identified as the Medical Cannabis Program (Program), to clarify the scope of the Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the Program.

D. To protect the public health, safety, and welfare, it is the desire of the City Council to modify the City Code consistent with the Program, regarding the location and operation of medical cannabis dispensaries.

E. It is the City Council's intention that nothing in this chapter shall be construed to do any of the following: 1. to allow persons to engage in conduct that endangers others or causes a public nuisance; 2. to allow the use of cannabis for non-medical purposes; or 3. to allow any activity relating to the cultivation, distribution, or consumption of cannabis that is otherwise illegal and not permitted by state law.

F. Pursuant to California Health and Safety Code Section 11362.71 et seq., the State Department of Health, acting by and through the state's counties, is to be responsible for establishing and maintaining a voluntary medical cannabis identification card program for qualified patients and primary caregivers.

G. California Health and Safety Code Section 11362.71(b) requires every county health department, or its designee, to implement a procedure to accept and process applications from those seeking to join the identification program in the matters set forth in Section 11362.71 et seq.

H. This chapter is found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b) (3) in that the Council finds and determines that there is nothing in this chapter or its implementation that could foreseeably have any significant effect on the environment.

I. This chapter is compatible with the general objectives of the general plan and any applicable specific plan, in that this use would be conditionally permitted in commercial and industrial districts, being similar to other permitted and conditionally permitted uses, such as pharmacies and medical clinics, and in that the use will be subject to strict review and conditions.

J. This chapter is compatible with the public convenience, general welfare and good land use practice, in that medical marijuana dispensaries address a medical need in the community, and in that the use will be subject to rigorous review and conditions.

K. This chapter will not adversely affect the orderly development of property, in that dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

SECTION TWO. Title 28 of the Santa Barbara Municipal Code is amended by adding a new chapter, Chapter 28.80 entitled "Medical Cannabis Dispensaries," which reads as follows:

28.80.010 Purpose and Intent.

It is the purpose and intent of this chapter to regulate the locations of medical cannabis dispensaries in order to promote the health, safety, and general welfare of residents and businesses within the City. It is neither the intent nor the effect of this chapter to condone or legitimize the use or possession of cannabis except as allowed by California law.

28.80.020 Definitions.

For the purpose of this chapter, the following words and phrases shall have the following meanings:

A. Applicant. A person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a dispensary.

B. Drug Paraphernalia. As defined in California Health and Safety Code Section 11362.5, and as may be amended from time to time.

C. Identification Card. As defined in California Health and Safety Code Section 11362.5 et seq., and as may be amended from time to time.

D. Medical Cannabis Dispensing Collective or Dispensary. Any association, cooperative, affiliation, or collective of persons where multiple qualified patients or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful retail distribution of medical cannabis. "Dispensary" shall include any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician, and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient in strict accordance with California Health and Safety Code Section 11362.5 et seq. A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations, so long as the location of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code or by applicable state laws:

1. a clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code;

2. a health care facility licensed pursuant to Chapter Two of Division 2 of the state Health and Safety Code;

3. a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the state Health and Safety Code;

4. a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code;

5. a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code;

provided that any such clinic, health care facility, hospice or residential care facility complies with applicable laws, including, but not limited to, Health and Safety Code Section 11362.5.

E. Permittee. The person to whom either a dispensary permit is issued by the City and who is identified in California Health and Safety Code Section 11362.7, subdivision (c) or (d), or (e) or (f).

F. **Person**. An individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company, or combination of the above in whatever form or character.

G. **Person with an Identification Card.** As set forth in California Health and Safety Code Section 11362.5 et seq., and as amended from time to time.

H. **Physician.** A licensed medical doctor, including a doctor of osteopathic medicine as defined in the California Business and Professions Code.

I. **Primary Caregiver.** As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended.

J. **Qualified Patient**. As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time.

K. **School.** An institution of learning for minors, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes an elementary school, middle or junior high school, senior high school, or any special institution of education for persons under the age of eighteen years, whether public or private.

28.80.030 Dispensary Permit Required to Operate.

It is unlawful for any person to engage in, conduct or carry on, or to permit to be engaged in, conducted or carried on, in or upon any premises in the City, the operation of a dispensary, unless the person first obtains and continues to maintain in full force and effect a Dispensary Use Permit issued by the City Staff Hearing Officer pursuant to this Chapter, or by the Planning Commission on an appeal from a decision by the Staff Hearing Officer.

28.80.040 Business License Tax Liability.

An operator of a dispensary shall be required to apply for and obtain a Business Tax Certificate pursuant to Chapter 5.04 as a prerequisite to obtaining a permit pursuant to the terms of this Chapter, as required by the State Board of Equalization. Dispensary sales shall be subject to sales tax in a manner required by state law.

28.80.050 Imposition of Dispensary Permit Fees.

Every application for a dispensary permit or renewal shall be accompanied by an application fee, in an amount established by resolution of the City Council from time to time. This application or renewal fee shall not include the standard City fees for

fingerprinting, photographing, and background check costs and shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies.

28.80.060 Limitations on the Permitted Location of a Dispensary.

A. Permissible Zoning for Dispensaries. A dispensary may only be located within the C-2 or C-M zoned areas of the City as so designated in the General Plan, Title 28 of the Municipal Code, and City Zoning map, provided, however, that dispensaries may also be located on parcels situated as follows:

1. any parcel fronting on State Street between Calle Laureles and the westerly boundary of the City at the intersection of State Street and Calle Real;

2. any parcel fronting on Milpas between Canon Perdido Street and Carpinteria Street;

3. any C-P zoned parcel fronting on Cliff Drive within 1000 feet of the intersection of Cliff Drive and Meigs Road;

B. Storefront Locations. A dispensary shall only be located in a visible store-front type location which provides good public views of the dispensary entrance, its windows, and the entrance to the dispensary premises from a public street.

C. Areas and Zones Where Dispensaries Not Permitted. Notwithstanding subparagraph (A) above, a dispensary shall not be allowed or permitted in the following locations or zones:

1. On a parcel located within 500 feet of a school or a park; or

2. On a parcel located within 500 feet of a permitted dispensary; or

3. On a parcel fronting on State Street between Cabrillo Boulevard and Arrellaga Street; or

4. On a parcel zoned R-O or zoned for residential use.

D. Locational Measurements. The distance between a dispensary and the above-listed uses shall be made in a straight line from any parcel line of the real property on which the dispensary is located to the parcel line of the real property on which the facility, building, or structure, or portion of the building or structure, in which the above-listed use occurs or is located.

28.80.070 Operating Requirements for Dispensaries.

Dispensary operations shall be permitted and maintained only in compliance with the following day-to-day operational standards:

A. Criminal History. A dispensary permit applicant, his or her agent or employees, volunteer workers, or any person exercising managerial authority over a dispensary on behalf of the applicant shall not have been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance.

B. Minors. It is unlawful for any dispensary permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age. Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian. The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of 18 are precluded from entering the premises unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian.

C. Dispensary Size and Access. The following dispensary and access restrictions shall apply to all dispensaries permitted by the Chapter:

1. A dispensary shall not be enlarged in size (i.e., increased floor area) without a prior approval from the Staff Hearing Officer amending the existing dispensary permit pursuant to the requirements of this Chapter.

2. The entrance area of the dispensary building shall be strictly controlled. A viewer or video camera shall be installed in the door that allows maximum angle of view of the exterior entrance.

3. Dispensary personnel shall be responsible for monitoring the real property of the dispensary site activity (including the adjacent public sidewalk and rights-of-way) for the purposes of controlling loitering.

4. Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted within a dispensary.

5. Potential patients or caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

6. Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area along with dispensary personnel.

7. Restrooms shall remain locked and under the control of Dispensary management at all times.

D. Dispensing Operations. The following restrictions shall apply to all dispensing operations by a dispensary:

1. A dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physician's approval or recommendation in compliance with the criteria in California Health and Safety Code Section 11362.5 et seq. Dispensaries shall require such persons to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card.

2. Prior to dispensing medical cannabis, the dispensary shall obtain a verification from the recommending physician's office personnel that the individual requesting medical cannabis is or remains a qualified patient pursuant to state Health & Safety Code Section 11362.5.

3. A dispensary shall not have a physician on-site to evaluate patients and provide a recommendation or prescription for the use of medical cannabis.

E. Consumption Restrictions. The following medical marijuana consumption restrictions shall apply to all permitted dispensaries:

1. Cannabis shall not be consumed by patients on the premises of the dispensary.

The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the dispensary's entrance. Dispensary employees who are qualified patients may consume cannabis within the enclosed building area of the premises, provided such consumption occurs only via oral consumption (i.e., eating only) but not by means of smoking or vaporization.

2. Dispensary operations shall not result in illegal re-distribution of medical cannabis obtained from the dispensary, or use or distribution in any manner which violates state law.

F. Retail Sales of Other Items by a Dispensary. The retail sales of dispensary-related or marijuana use items may be allowed under the following circumstances:

1. With the approval of the Staff Hearing Officer, a dispensary may conduct or engage in the commercial sale of specific products, goods, or services in addition to the provision of medical cannabis on terms and conditions consistent with this chapter and applicable law.

2. No dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical cannabis.

3. A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5 et seq.

G. Operating Plans. In connection with a permit application under this Chapter, the applicant shall provide, as part of the permit application, a detailed Operations Plan and, upon issuance of the dispensary permit, shall operate the dispensary in accordance with the Operations Plan, as such plan is approved by the Staff Hearing Officer.

1. Floor Plan. A dispensary shall have a lobby waiting area at the entrance to the dispensary to receive clients, and a separate and secure designated area for dispensing medical cannabis to qualified patients or designated caregivers. The primary entrance shall be located and maintained clear of barriers, landscaping and similar obstructions so that it is clearly visible from public streets, sidewalks or site driveways.

2. Storage. A dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

3. Security Plans. A dispensary shall provide adequate security on the premises, in accordance with a security plan approved by the Chief of Police and as reviewed by the Staff Hearing Officer, including provisions for adequate lighting and alarms, in order to ensure the safety of persons and to protect the premises from theft.

4. Security Cameras. Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage and to report loitering, crime, illegal or nuisance activities. Security video shall be maintained for a period of not less than 72 hours.

5. Alarm System. Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the dispensary at all times.

6. Emergency Contact. A dispensary shall provide the Chief of Police with the name, cell phone number, and facsimile number of an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the dispensary.

H. Dispensary Signage and Notices.

1. A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

2. Signs on the premises shall not obstruct the entrance or windows.

3. Address identification shall comply with Fire Department illuminated address sign requirements.

4. Business identification signage shall comply with the City's Sign Ordinance (SBMC Chapter 22.70) and be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less.

I. Employee Records. Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary, and shall disclose such registration for inspection by any City officer or official, but only for the purposes of determining compliance with the requirements of this chapter.

J. Patient Records. A dispensary shall maintain confidential health care records of all patients and primary caregivers using only the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.71 et seq., as a protection of the confidentiality of the cardholders, or a copy of the written recommendation from a physician or doctor of osteopathy stating the need for medical cannabis under state Health & Safety Code Section 11362.5.

K. Staff Training. Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law, and properly trained or professionally-hired security personnel.

L. Site Management.

1. The operator of the establishment shall take all reasonable steps to discourage and correct objectionable conditions that constitute a nuisance in parking areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours, if directly related to the patrons of the subject dispensary.

2. The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

3. The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible cannabis etiquette.

M. Trash, Litter, Graffiti.

1. The operator shall clear the sidewalks adjoining the premises plus 10 feet beyond property lines along the street, as well as any parking lots under the control of the operator, as needed to control litter, debris and trash.

2. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application.

N. Compliance with Other Requirements. The dispensary operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

O. Display of Permit. Every dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

P. Alcoholic Beverages. No dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

Q. Parking Requirements. Dispensaries shall be considered office uses relative to the parking requirements imposed by Section 28.90.100(I).

28.80.080 Dispensary Permit Application – Preparation and Filing.

A. Application Filing. A complete Performance Standard Permit use permit application submittal packet shall be submitted, including all necessary fees and all other information and materials required by the City and this chapter. All applications for permits shall be filed with the Community Development Department, using forms provided by the City, and accompanied by the applicable filing fee. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

B. Eligibility for Filing. Applications may only be filed by the owner of the subject property, or by a person with a lease signed by the owner or duly authorized agent of the owner allowing them the right to occupy the property for the intended use.

C. Filing Date. The filing date of any application shall be the date when the City receives the last submission of information or materials required in compliance with the submittal requirements specified herein.

D. Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the applicant shall be granted an extension of time to submit all materials required to complete the application within 30 days. If the application remains incomplete in excess of 30 days, the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject.request. The

time period for granting or denying a permit shall be stayed during the period in which the applicant is granted an extension of time.

E. Effect of Other Permits or Licenses. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a dispensary permit.

28.80.090 Criteria for Review of Dispensary Applications by Staff Hearing Officer.

A. Decision on Application. Upon an application for a Dispensary permit being deemed complete, the Staff Hearing Officer, or the Planning Commission on appeal of a decision of the Staff Hearing Officer, shall either issue a Dispensary permit, issue a Dispensary permit with conditions in accordance with this chapter, or deny a Dispensary permit.

B. Criteria for Issuance. The Staff Hearing Officer, or the Planning Commission on appeal, shall consider the following criteria in determining whether to grant or deny a dispensary permit:

1. That the dispensary permit is consistent with the intent of the state Health & Safety Code for providing medical marijuana to qualified patients and primary caregivers, and the provisions of this Chapter and the Municipal Code, including the application submittal and operating requirements herein.

2. That the proposed location of the Dispensary is not identified by the City Chief of Police as an area of high crime activity (e.g., based upon crime reporting district/statistics as maintained by the Police Department).

3. For those applicants operating other Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area, or to the applicant's existing dispensary location.

4. That all required application fees have been paid and reporting requirements have been satisfied in a timely manner.

5. That issuance of a dispensary permit for the dispensary size requested is justified to meet needs of community.

6. That issuance of the dispensary permit would serve needs of City residents within a proximity to this location.

7. That the location is not prohibited by the provisions of this chapter or any local or state law, statute, rule or regulation, and no significant nuisance issues or

problems are anticipated or resulted, and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.

8. That the site plan, floor plan, and security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises, the perimeter, and surrounding properties; reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

9. That all reasonable measures have been incorporated into the security plan or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, cannabis use in public, or creation of a public or private nuisance, or interference with the operation of another business.

10. That the dispensary would not adversely affect the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance; or that the dispensary will generally not result in repeated nuisance activities, including disturbances of the peace, illegal drug activity, cannabis use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

11. That any provision of the Municipal Code or condition imposed by a City-issued permit, or any provision of any other local or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws, will not be violated.

12. That the applicant has not knowingly made a false statement of material fact or has knowingly omitted to state a material fact in the application for a permit.

13. That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City.

28.80.100 Appeal from Staff Hearing Officer Determination.

A. Appeal to the Planning Commission. An applicant or any interested party who disagrees with the Staff Hearing Officer's decision to issue, issue with conditions, or to deny a dispensary permit may appeal such decision to the City Planning Commission by filing an appeal pursuant to the requirements of subparagraph (B) of Section 28.05.020 of the Municipal Code.

B. Notice of Planning Commission Appeal Hearing. Upon the filing of an appeal pursuant to subparagraph (A) above, the Community Development Director shall provide public notice in accordance with the notice provisions of SBMC Section 28.87.380.

C. Planning Commission Appeal. Notwithstanding subparagraph (C) of Section 28.05.020, Section 28.87.360, and Section 1.30.050, a decision by the Planning Commission on appeal of the Staff Hearing Officer pursuant to this Chapter shall be final and may not be appealed to the City Council.

28.80.110 Suspension and Revocation by Planning Commission.

A. Authority to Suspend or Revoke a Dispensary Permit. Consistent with Section 28.87.360, any dispensary permit issued under the terms of this chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this chapter, or the dispensary is operated in a manner that violates the provisions of this chapter, including the operational requirements of this Chapter, or in a manner which conflicts with state law.

B. Suspension or Revocation – Written Notice. Except as otherwise provided in this chapter, no permit shall be revoked or suspended by virtue of this chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least ten (10) days prior to the date set for such review hearing, and the reasons for the proposed suspension or revocation have been provided to the permittee in writing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the permittee, or by depositing such notice in the U.S. mail in a sealed envelope, postage prepaid (via regular mail and return receipt requested), addressed to the person to be notified at his or her address as it appears in his or her application for a dispensary permit.

C. Appeal of Planning Commission Decision. Notwithstanding subparagraph (C) of Section 28.05.020, Section 28.87.360, and Section 1.30.050, a decision by the Planning Commission to suspend or revoke a permit issued pursuant to this Chapter shall be final and may not be appealed to the City Council.

28.80.120 Transfer of Dispensary Permits.

A. Permit – Site Specific. A permittee shall not operate a dispensary under the authority of a dispensary permit at any place other than the address of the dispensary stated in the application for the permit. All dispensary permits issued by the City pursuant to this chapter shall be non-transferable.

B. Transfer of a Permitted Dispensary. A permittee shall not transfer ownership or control of a dispensary or attempt to transfer a dispensary permit to another person, unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this chapter, stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with all provisions of this chapter accompanied by the required application fee.

C. Request for Transfer with a Revocation or Suspension Pending. No dispensary permit may be transferred (and no permission for a transfer may be issued) when the Community Development Department has notified the permittee in writing that the permit has been or may be suspended or revoked, and a notice of such suspension or revocation has been provided.

D. Transfer Without Permission. Any attempt to transfer a permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

28.80.130 Medical Marijuana Vending Machines.

No person shall maintain, use, or operate a vending machine which dispenses marijuana to a qualified patient or primary caregiver unless such machine is located within the interior of a duly permitted dispensary.

SECTION THREE. Those Dispensaries which were authorized pursuant to the Santa Barbara Municipal Code Chapter 28.80 prior to the date of the adoption of the ordinance enacting this Chapter shall be deemed pre-existing legal uses of real property upon which they are situated for a period of three (3) years from the date of the adoption of this Ordinance, provided the following operational conditions are complied with:

1. the dispensary shall not be relocated nor shall it be discontinued for a period of time in excess of thirty (30) days without obtaining a dispensary permit pursuant to this Chapter;

2. the dispensary shall comply with all portions of Chapter 28.80 (as enacted by this Ordinance) except for the locational provisions of Section 28.80.060; and

3. the dispensary shall be subject to the requirements for nonconforming uses of SBMC Section 28.87.030 until such time that they have been permitted under this Ordinance.

Prior to the expiration of the three (3) year nonconforming period, all medical marijuana dispensaries operating as allowed dispensaries which pre-date the adoption

of this Ordinance shall either obtain a dispensary permit (as required by and in full accord with this Ordinance) or shall discontinue such use not later than the end of the three (3) year amortization period. No such pre-existing legal dispensary shall be assigned or otherwise transferred to a new owner or owners, whether voluntarily or by operation of law, without having obtained a permit pursuant to this ordinance.

SECTION FOUR. The requirements of this Chapter shall apply to all dispensaries which are not permitted or authorized by the Municipal Code prior to the date of the adoption of the ordinance enacting this chapter.

ORDINANCE NO. 5449

STATE OF CALIFORNIA)
)
COUNTY OF SANTA BARBARA) ss.
)
CITY OF SANTA BARBARA)

I HEREBY CERTIFY that the foregoing ordinance was introduced on March 18, 2008, and was adopted by the Council of the City of Santa Barbara at a meeting held on March 25, 2008, by the following roll call vote:

AYES: Councilmembers Iya G. Falcone, Dale Francisco, Roger L. Horton, Grant House, Helene Schneider

NOES: Mayor Marty Blum

ABSENT: Councilmember Das Williams

ABSTENTIONS: None

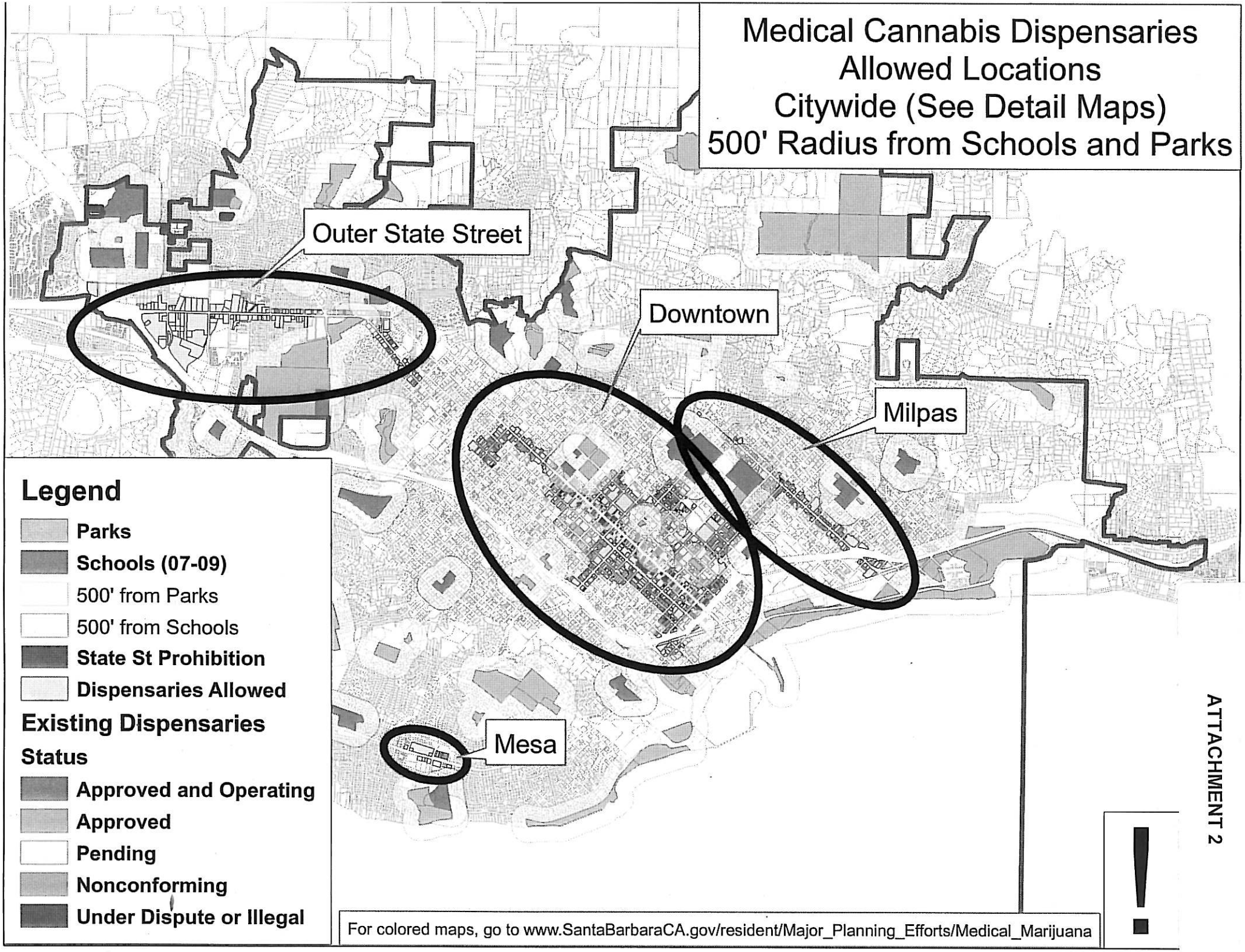
IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on March 26, 2008.

Cynthia M. Rodriguez, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on March 26, 2008.

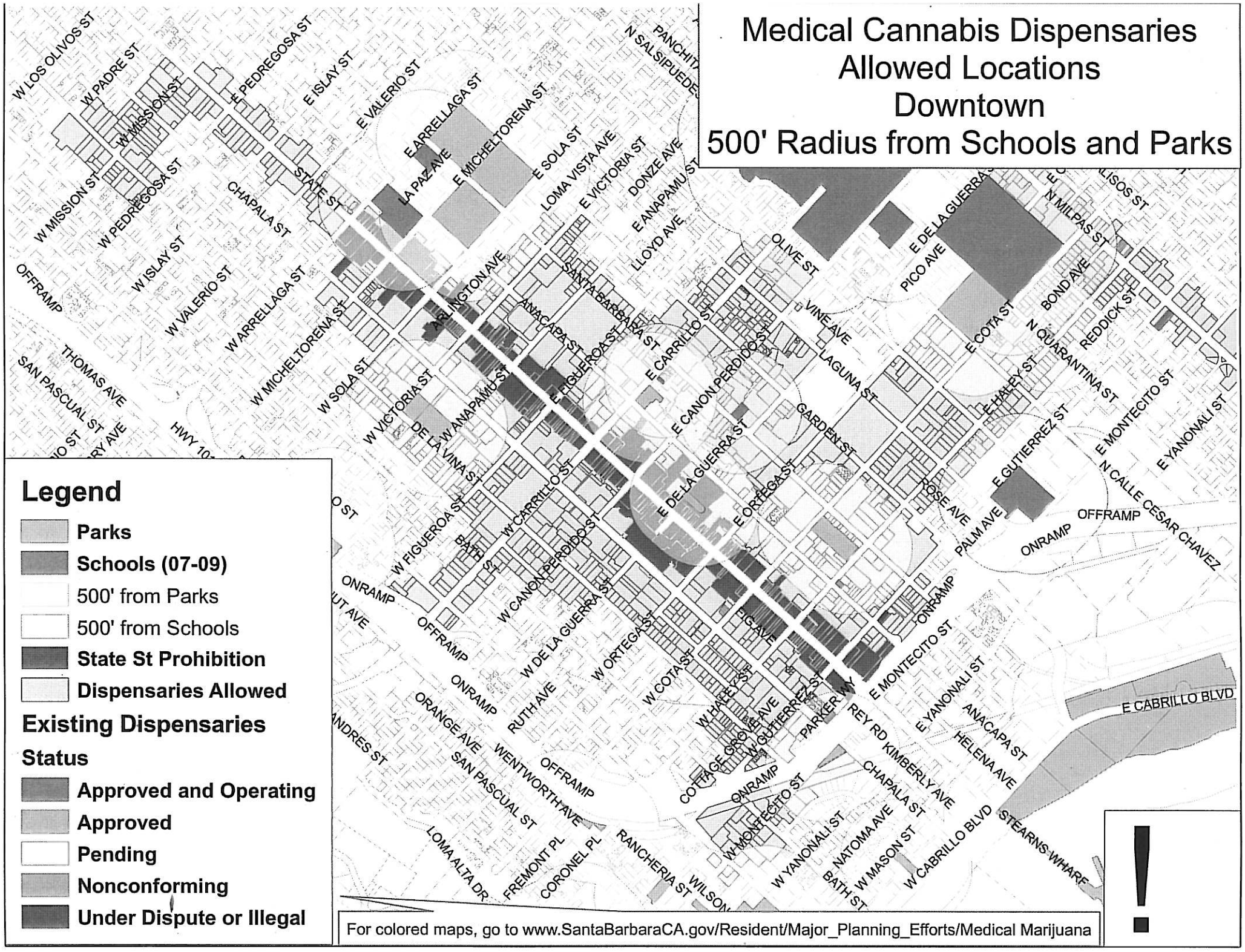
Marty Blum
Mayor

Medical Cannabis Dispensaries
Allowed Locations
Citywide (See Detail Maps)
500' Radius from Schools and Parks



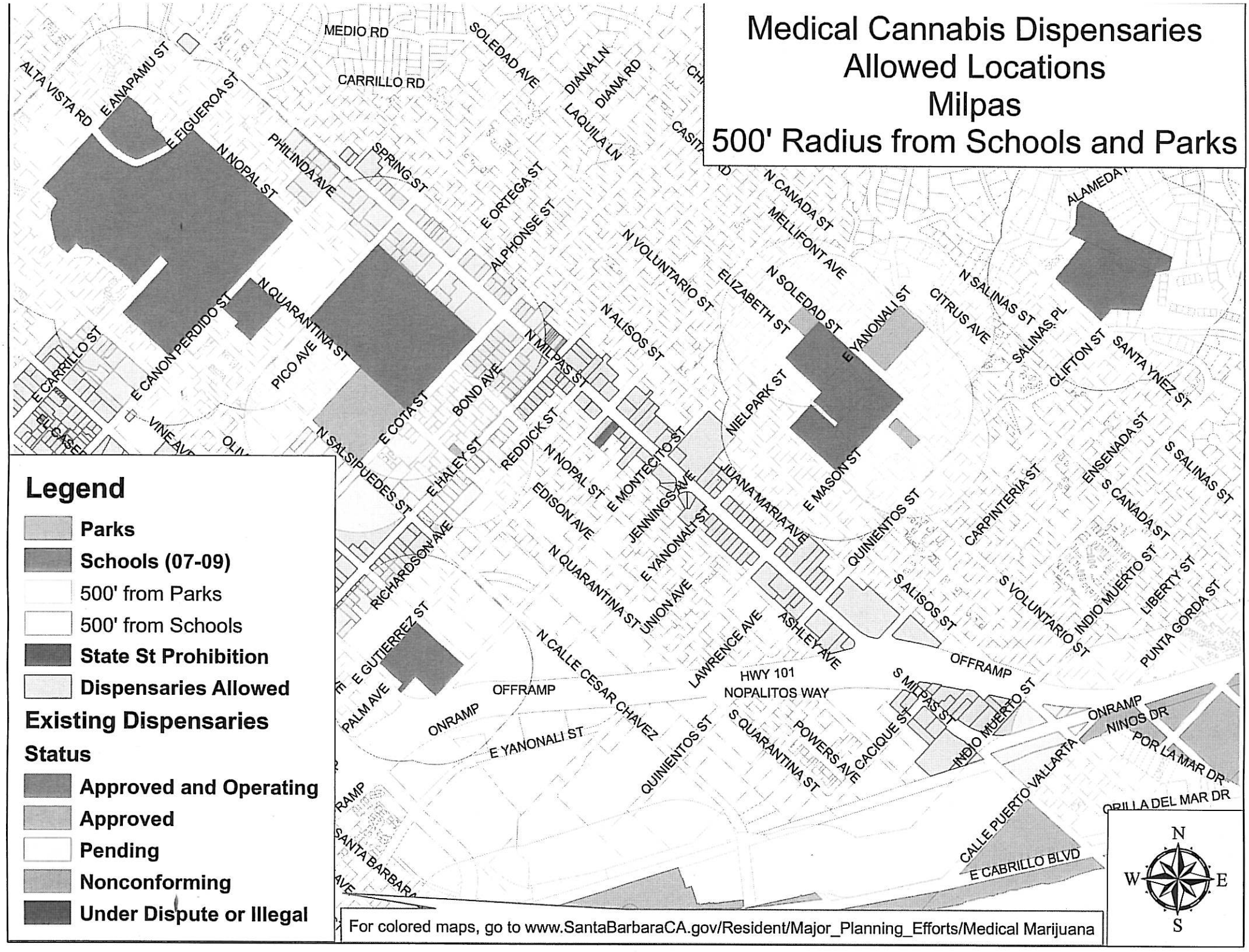
ATTACHMENT 2

Medical Cannabis Dispensaries Allowed Locations Downtown 500' Radius from Schools and Parks



For colored maps, go to www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical Marijuana

Medical Cannabis Dispensaries
Allowed Locations
Milpas
500' Radius from Schools and Parks



Legend

- Parks
- Schools (07-09)
- 500' from Parks
- 500' from Schools
- State St Prohibition
- Dispensaries Allowed

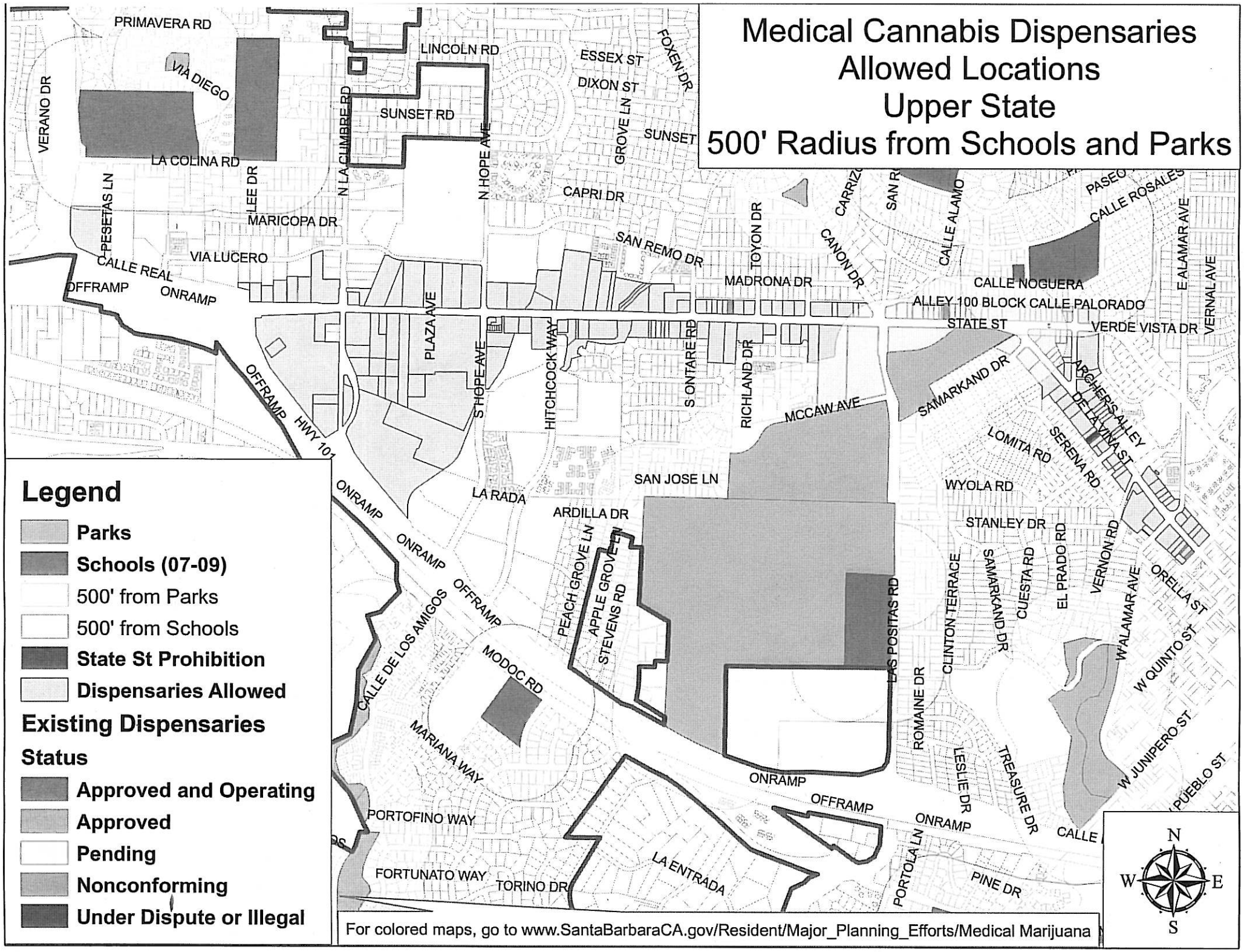
Existing Dispensaries

Status

- Approved and Operating
- Approved
- Pending
- Nonconforming
- Under Dispute or Illegal

For colored maps, go to www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical Marijuana

Medical Cannabis Dispensaries
Allowed Locations
Upper State
500' Radius from Schools and Parks



Legend

- Parks
- Schools (07-09)
- 500' from Parks
- 500' from Schools
- State St Prohibition
- Dispensaries Allowed

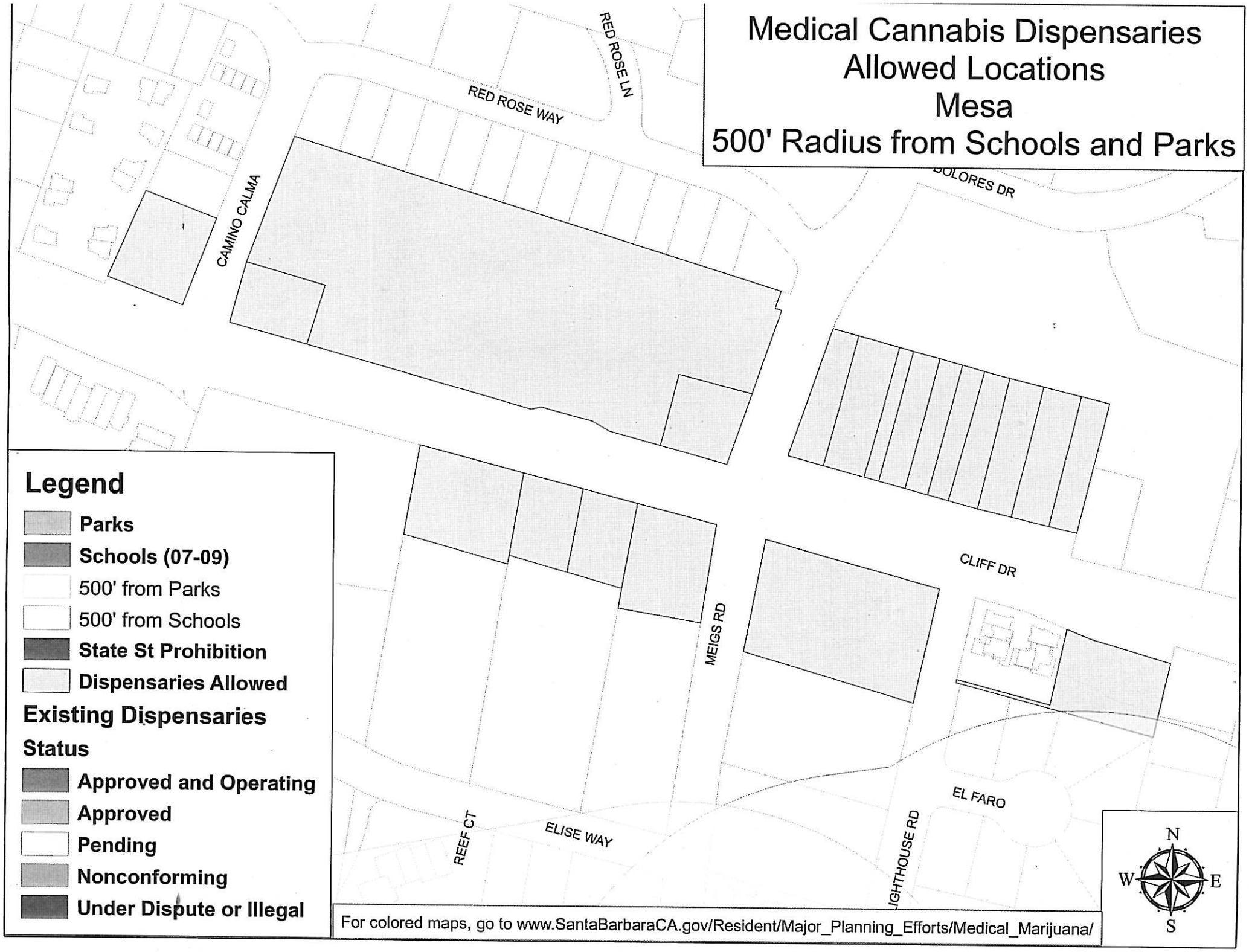
Existing Dispensaries

Status

- Approved and Operating
- Approved
- Pending
- Nonconforming
- Under Dispute or Illegal

For colored maps, go to www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical Marijuana

Medical Cannabis Dispensaries
Allowed Locations
Mesa
500' Radius from Schools and Parks



For colored maps, go to www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana/

RECEIVED
SEP 08 2009
CITY ADMINISTRATOR'S OFFICE
SANTA BARBARA
CITY CLERK'S OFFICE
SANTA BARBARA, CA

To: Santa Barbara City Council
From: David Bearman, M.D.
Re: Marijuana Dispensary Ordinance

• Recommendations

Cannabis should be dispensed from pharmacies under local and state regulations. My study of history reveals little evidence of problems with distribution of cannabis via pharmacies. From 1854 to 1941 cannabis was in the USP (United States Pharmacopeia), produced by well-known pharmaceutical companies and dispensed through pharmacies in both cannabis containing OTC medication and prescription medication. This is why in 1937 the AMA vigorously testified against the Marijuana Tax Act and why in 1944 the New York Academy of Medicine (as part of the LaGuardia Crime Commission Report) endorsed use of recreational marijuana should be legal.

At any rate, until the federal government takes its head out of the sand, recognizes science, and places cannabis in the appropriate schedule or even better, recognizes that the Controlled Substances Act of 1970 violates the Constitution, we are not going to have pharmacies dispensing cannabis. The next best thing is to apply similar regulations and zoning ordinances to cannabis dispensaries as those which presently govern pharmacies. In addition a couple of my suggestions are that you consider requiring nurses or pharmacists to dispense cannabis, not allowing anyone under the age of 23 in a cannabis dispensary, and requiring that you must be 25 or over to be allowed to work there. It also strikes me that some small but meaningful special tax would be useful to the City of Santa Barbara.

Background

What follows is some background information on this topic which may prove helpful. There is almost unanimous agreement that California's medical marijuana dispensary system should be regulated. Furthermore if the regulations are reasonable and responsible people in the dispensary field will support closing down any major offenders.

The focus needs to be on the patient. We need to recognize that it is a matter of access. The 1996 Proposition 215 that began California's approval of Medical Marijuana laid out that this was done for the benefit of people who are ill. Prop 215 said in Section (A) that the initiative was *"To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief."* This wide use (e.g., "for any other illness for which marijuana provides relief") is consistent with FDA rules for prescription pharmaceuticals. Under FDA guidelines, any pharmaceutical which has been approved for use for one disease can be prescribed ("off-label") by doctors for "any other illness for which" the doctor thinks it "provides relief." In that key regard, California does treat medical marijuana "like every other drug."

That said, most of the problems in regulating dispensaries have been caused by the federal government and the Supreme Court by ignoring the 9th and 10th Amendments to the Constitution, as well as the 1925 Supreme Court decision in the Lindner case which affirmed that it is the State's sole responsibility to regulate the practice of medicine.

There are two basic reasons why marijuana is not available "through a legitimate pharmacy" and is not "regulated like every other drug." It is not the supporters of medical marijuana who are responsible for keeping cannabis out of the FDA "system". One is the reluctance of the FDA to follow the law, be it the 1938 Food Cosmetic and Drug Act or the Controlled Substances Act of 1970. For decades supporters of medicinal cannabis have attempted to work through the government bureaucracy and been thwarted. For instance in 1972 NORML sued unsuccessfully to get it rescheduled, so it might be prescribed. The government stalled until 1986. In 1988 the FDA's Chief Administrative Law Judge, Francis Young, issued his recommendation based on 15 days of hearings, that marijuana should be rescheduled. This opinion was rejected by George H.W. Bush's head of the FDA, John Lawn.

Secondly, it can cost huge sums to try to get any "drug" through the FDA process which was not set up to analyze a complex plant. In 1993, NORML was told by the Clinton Administration that it would cost $1.5 million to get the FDA to review marijuana and move it from Schedule I to Schedule II. NORML did not have the $1.5 million, and the Clinton Administration did not have the courage to do even what it had promised patients that it would do so. They had also pledged to reopen the so-called "Compassionate IND" program, but in the end these promises came to nothing.

In fact cannabis should be lower than Schedule II. In 1998, after a number of states passed medical marijuana laws, Marinol, synthetic THC, was quickly moved from Schedule II to Schedule III with the full support of the DEA, while marijuana remains absurdly in Schedule I.) Of historical note is a 1971 letter from Dr. Rodger Egeberg, then Under Secretary for Health for HEW and former dean of USC Medical School who pointed out that cannabis was only temporarily in Schedule I until the Report of the Nixon Marijuana Commission came out. The Commission recommended legalization of marijuana for recreational use, yet marijuana still languishes as a Schedule I drug.

- **Discussion**

Feds Have Created the Problem
One justification for the dispensary system is that the federal government has made it difficult for pharmacies to dispense cannabis. Another is that dispensaries keep medical cannabis users from having to go to "street dealers" in order to get their medicine. So while we would be better served by the system which existed from 1854-1941, dispensaries are an improvement over the previous distribution system.

Dispensary System Decreases Substance Abuse
In the broader context of drug policy, the California medical marijuana dispensary system has the same beneficial effect as the Dutch cannabis "coffee shop" system. The Dutch call it the "separation of the markets for soft and hard drugs." The Dutch have a much lower use of hard drugs, especially heroin, among young people than does the U.S. This is very likely a consequence of this "separation of the markets."

Dispensaries Have Some Controls
Dispensaries are not selling to just anyone. Dispensaries do provide some limited controls as well as safe access. They require a special form of identification that establishes the fact that a doctor has approved of the patient's use of cannabis. (That is all that is required by state law, and – critically – all that is allowed by Federal law.)

This zoning issue would disappear if the federal government respected the 9th and 10th Amendments to the Constitution. Then cannabis would be available in a pharmacy by prescription. Since the federal government only grudgingly changing on this matter, the ordinance should look to zoning and licensing requirements of commercial pharmacies.

No control system is perfect. Any "control" system devised by humans will be either "too tight" or "too loose." If it is too tight, then some sick and probably a few dying people will not be able to get their medical marijuana. Second, healthy young people can always find "weed" on the "streets." I am trying to use the AACM to marginalize those physicians who are practicing minimalist medicine.

We need to figure out if there is a way to prevent filling the approval several times. We need to recognize that while this will be very useful it won't be perfect. Even with the laws we have regulating pharmacies the "prescription" drug control system does not keep prescription drugs from all teens or prescription drugs out of the illicit market. The dispensary system also has that deficiency. One of the loopholes in the current system is that people can go to several dispensaries. This needs to be addressed, but we must also recognize that no regulatory system in a free society is perfect.

Diversion of Prescription Drugs
On June 14, 2008 the New York Times reported that the "Florida Medical Examiners Commission found that the rate of deaths caused by prescription drugs was three times the rate of deaths caused by all illicit drugs combined."

Whereas cannabis does not cause death and has relatively benign consequences, there is a big problem with diversion of prescription drugs. Nevertheless we continue to allow the pharmaceutical industry to stay in business.

"The Florida report analyzed 168,000 deaths statewide. Cocaine, heroin and all methamphetamines caused 989 deaths, it found, while legal opioids – strong painkillers in brand-name drugs like Vicodin and OxyContin – caused 2,328.

Drugs with benzodiazepine, mainly depressants (sic) like Valium and Xanax, led to 743 deaths. Alcohol was the most commonly occurring drug, appearing in the bodies of 4,179 of the dead and judged the cause of death of 466 – fewer than cocaine (843) but more than methamphetamine (25) and marijuana ***(0)***." (emphasis added) See Guess Who Said, "The decrease in the abuse of cannabis among youth in the United States may be offset by an increase in the abuse of prescription drugs." Iron Law of Prohibition" & Czar's Strategy 3."

Conclusion:
I am confident that you will craft a good functional ordinance. Your staff should be able to incorporate the best features of the many ordinances that have already been instituted. I think that if you keep in mind that these dispensaries serve some very ill people and that the ordinance won't be perfect, you won't drive yourself to distraction trying to escape the legal straightjacket created by the federal government. You might read Sandra Day O'Connor's dissent in Gonzales v. Raich for a good assessment of state's rights in this matter.