RESOLUTION NO. 10-051

A RESOLUTION OF THE COUNCIL OF THE CITY OF SANTA BARBARA CALLING AND GIVING NOTICE OF THE HOLDING OF A SPECIAL MUNICIPAL ELECTION TO BE HELD IN THE CITY ON TUESDAY, NOVEMBER 2, 2010, FOR THE SUBMISSION OF A PROPOSED ORDINANCE TO THE VOTERS TO AMEND THE CITY ZONING ORDINANCE TO PROHIBIT THE OPERATION OR MAINTENANCE OF STOREFRONT MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF SANTA BARBARA.

WHEREAS, pursuant to authority provided by state Elections Code section 9222 and Article XI, Section 5 of the California Constitution, the City Council of the City of Santa Barbara hereby elects to submit a proposed City of Santa Barbara ordinance to amend the City's Zoning Ordinance (Santa Barbara Municipal Code Title 28) in order to prohibit the use of property within the City to operate or maintain a Storefront Medical Marijuana Dispensary (as such ordinance is attached hereto and dated as of June 29, 2010) to the electorate of the City for possible voter enactment pursuant to the requirements of the state Elections Code and the state Constitution; and

WHEREAS, the City Council is authorized by section 10400 of the state Elections Code to consolidate this special City election with the statewide State and Federal General Election to be conducted on November 2, 2010, by the County of Santa Barbara, and the Council will be acting concurrently with the adoption of this resolution to effectuate such a consolidation.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SANTA BARBARA AS FOLLOWS:

SECTION 1. That pursuant to the requirements of the City Charter and the laws of the state of California, there is called and ordered to be held in the City of Santa Barbara on Tuesday, November 2, 2010, a special municipal election for the purpose of submitting a proposed ordinance to amend Santa Barbara Municipal Code Title 28 by enacting an ordinance to prohibit the operation or maintenance of storefront medical marijuana dispensaries within the City of Santa Barbara (as such ordinance is attached hereto as Exhibit A and dated as of June 29, 2010) to the voters of the City for their due approval or rejection with a ballot label (as authorized by Elections Code section 13247) as follows:

CITY OF SANTA BARBARA		
MEASURE __ 2010 Shall an ordinance to amend the City's Zoning Ordinance to prohibit the operation or maintenance of storefront medical marijuana dispensaries within the City of Santa Barbara be adopted?	YES	
	NO	

SECTION 2. That the text of the ordinance submitted to the voters is attached as Exhibit A and dated as of June 29, 2010.

SECTION 3. That the ballots to be used at the election shall be in the form and content as required by law.

SECTION 4. That the City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter and all supplies and equipment that may be necessary in order to properly and lawfully conduct the election.

SECTION 5. That the polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until 8 o'clock p.m. of the same day when the polls shall be closed, pursuant to Section 10242 of the Elections Code, except as provided in Section 14401 of the Elections Code of the State of California.

SECTION 6. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

SECTION 7. That notice of the time and place of holding the election is given and the City Clerk is authorized, instructed and directed to give further or additional notice of the election in the time, form and manner as required by law.

EXHIBIT A

AN ORDINANCE OF THE CITY OF SANTA BARBARA AMENDING THE MUNICIPAL CODE BY REPEALING THE EXISTING CHAPTER 28.80 AND TO PROHIBIT THE OPERATION OR MAINTENANCE OF STOREFRONT MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF SANTA BARBARA.

WHEREAS, it has been the purpose and intent of Chapter 28.80 of the Santa Barbara Municipal Code to regulate the storefront distribution of medical marijuana in a manner which ensures the health, safety, and welfare of the residents of the City of Santa Barbara and which, at the same time, makes certain that all storefront medical marijuana dispensaries comply with the requirements of state law at all times;

WHEREAS, the regulations of Santa Barbra Municipal Code Chapter 28.80, in compliance with the statutory requirements established by the state Compassionate Use Act of 1996 and the State Medical Marijuana Program Act enacted in 2003 (state Health and Safety Code sections 11362.7 through 11362.9 - "the MMP Act"), are not intended to interfere in any way with a patient's right to obtain or use medical marijuana as allowed by state law nor do the City's regulations in any way criminalize the possession or cultivation or transfer of medical marijuana by "primary caregivers" as such possession, cultivation, or transfer may be authorized under the specific circumstances permitted in the Compassionate Use Act;

WHEREAS, under the Compassionate Use Act of 1996 and the MMP Act, only "qualified patients," "persons with identification cards," and "primary caregivers" may cultivate medical marijuana, whether individually or collectively, and only "primary caregivers" may provide it to "qualified patients" or "persons with identifications cards" without fear of state criminal sanctions;

WHEREAS, those medical marijuana collectives within the City which choose to provide medical marijuana to their collective members (as "qualified patients" or "persons with identification cards") do not necessarily need to operate or maintain a storefront location in order to do so in a manner consistent with intent and purposes of the state Compassionate Use Act;

WHEREAS, in recent years, the residents of the City have experienced health, safety, and welfare problems involving the use of marijuana and many of these problems raise public

nuisance concerns relating directly to the on-going operation of some storefront medical marijuana dispensaries under circumstances where the dispensaries purport to comply with the Compassionate Use Act but which, in fact, do not comply with either the Compassionate Use Act and the MMP Act, especially with respect to the illegal distribution or for-profit sale of marijuana to those persons who do not qualify to use or possess medical marijuana;

WHEREAS, Article XI, Sections 5 and 7 of the state Constitution grants the City of Santa Barbara, as a charter city, the plenary police power authority with respect to its own local municipal affairs, particularly with respect to local zoning, land use, and public nuisance concerns so long as Santa Barbara's local police power authority is used in such a way that does not conflict with general state laws which are intended to be of preemptive statewide effect and application; and

WHEREAS, nothing in either the Compassionate Use Act or the MMP Act expressly allows or permits or requires a city to allow or permit the use of real property for the distribution of medical marijuana at storefront locations and, consequently, nothing in state law precludes a charter city from regulating or prohibiting, where necessary and advisable, the use of storefront locations when those locations are being used to distribute medical marijuana.

NOW THEREFORE, THE PEOPLE OF THE CITY OF SANTA BARBARA DO ORDAIN AS FOLLOWS:

SECTION ONE. Chapter 28.80 of Title 28 of the Santa Barbara Municipal Code (a portion of the Zoning Ordinance of the City of Santa Barbara), entitled "Medical Marijuana Storefront Dispensaries," is hereby repealed in its entirety and Santa Barbara Municipal Code Title 28 is amended to enact a new Santa Barbara Municipal Code Chapter, Chapter 28.80, which shall read as follows:

Section 28.80.010 Prohibition on the Use of Real Property to Operate or Maintain a Storefront Medical Marijuana Dispensary.

A. Prohibition on the Use of Storefronts. It shall be unlawful to use any real property within the City to operate or maintain a storefront for the purposes of using

that real property to distribute or transfer medical marijuana to any person.

B. Consistency with the State Compassionate Use Act. Nothing herein shall be interpreted or applied to deny any person the right to possess or use medical marijuana, or the ability to assist another person in obtaining the lawful possession of medical marijuana, as such rights and abilities may be granted by the state Compassionate Use Act of 1996 or by state Health and Safety Code sections 11362.7 through 11362.9.

RESOLUTION NO. 10-051

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

I HEREBY CERTIFY that the foregoing resolution was adopted by the Council of the City of Santa Barbara at a meeting held on June 29, 2010, by the following roll call vote:

AYES: Councilmembers Dale Francisco, Frank Hotchkiss, Michael Self, Bendy White, Das Williams; Mayor Helene Schneider

NOES: Councilmember Grant House

ABSENT: None

ABSTENTIONS: None

IN WITNESS WHEREOF, I have hereto set my hand and affixed the official seal of the City of Santa Barbara on June 30, 2010.

Cynthia M. Rodriguez, CMC
City Clerk Services Manager

I HEREBY APPROVE the foregoing resolution on June 30, 2010.

Helene Schneider
Mayor