



# City of Santa Barbara California

## PLANNING COMMISSION STAFF REPORT

**REPORT DATE:** January 27, 2011  
**AGENDA DATE:** February 3, 2011  
**PROJECT ADDRESS:** 2915 De la Vina Street (MST2009-00497)  
 "Compassion Center of Santa Barbara County"  
**TO:** Planning Commission  
**FROM:** Planning Division, (805) 564-5470  
 Danny Kato, Senior Planner *DJK*  
 Allison De Busk, Project Planner *AD*  
 Daniel Gullett, Associate Planner

### I. PROJECT DESCRIPTION

The project consists of an application to permit a Storefront Medical Marijuana Dispensary in a commercial building located at 2915 De la Vina Street. This is an appeal of a Staff Hearing Officer denial of the requested Dispensary permit on December 15, 2010. The appellant/applicant, Patrick Fourmy, requests that the Planning Commission approve the project (refer to Exhibit A – Appellant's Letter).

Pursuant to the recently updated SBMC Chapter 28.80 (the "Medical Marijuana Storefront Collective Dispensary Ordinance,") the Planning Commission's decision on this appeal may be appealed to the City Council (SBMC §28.80.110).

### II. REQUIRED APPLICATIONS

The discretionary application required for this project is a Medical Marijuana Storefront Collective Dispensary Permit (SBMC §28.80.030).

### III. RECOMMENDATION

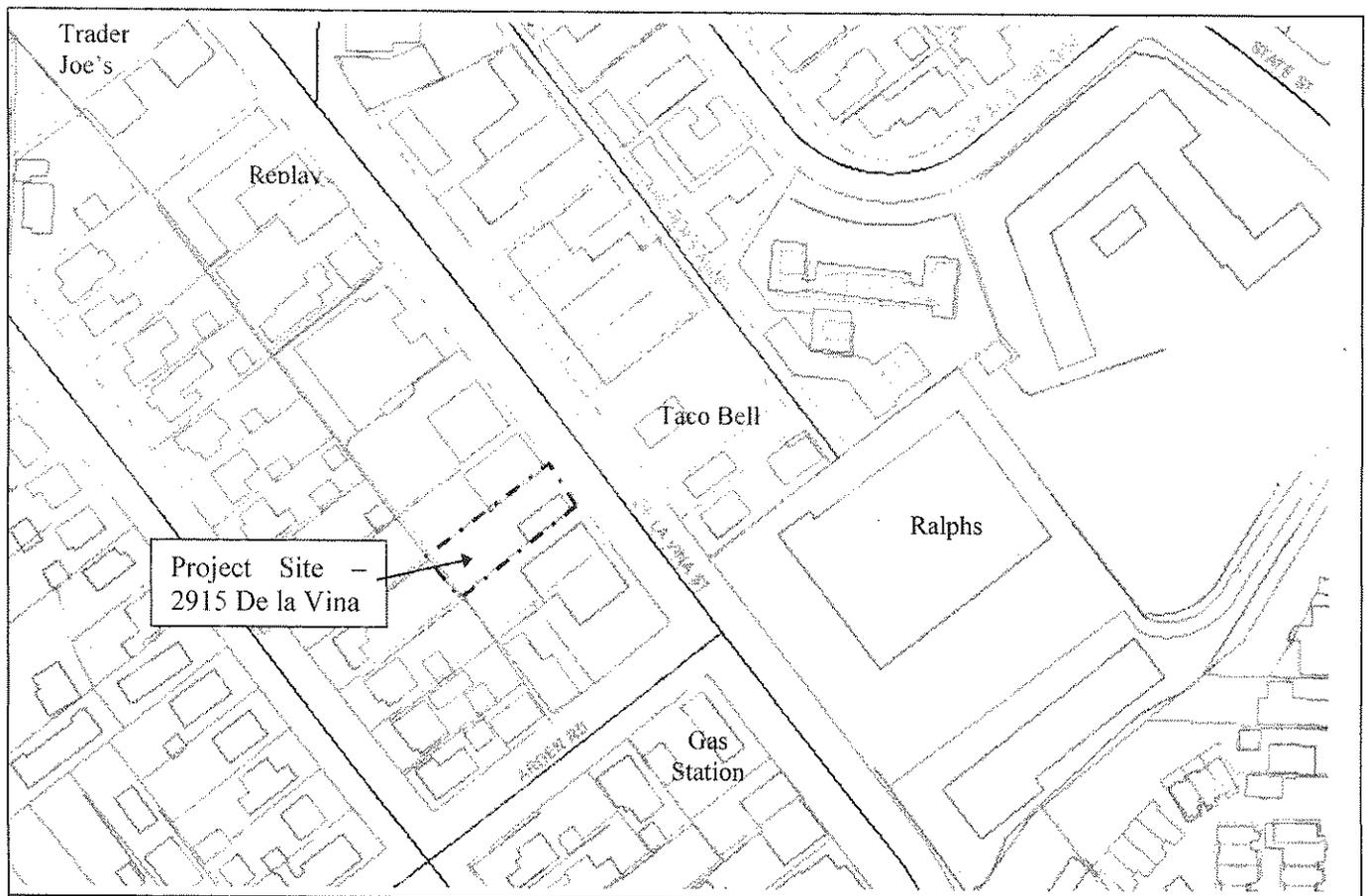
Staff's position is that the findings to support approval of the Dispensary cannot be made because the proposed Dispensary does not meet some of the criteria for granting a Storefront Collective Dispensary permit. Therefore, Staff recommends that the Planning Commission deny the appeal, making the finding contained in Section VIII of this report.

Should the Planning Commission find that the dispensary conforms to the required issuance criteria and vote to approve the Storefront Collective Dispensary Permit, staff has included recommended conditions of approval as Exhibit D.

**IV. SITE INFORMATION**

Applicant: Compassion Center of Santa Barbara County	Property Owner: Bernard Friedman
Parcel Number: 051-202-007	Lot Area: 7,500 sf
General Plan: General Commerce/Buffer	Zoning: C-2/SD-2
Existing Use: Storefront Collective Dispensary	Topography: 6% average slope
Adjacent Land Uses:	
North - Commercial South - Commercial	East - Commercial West - Single Family Residential

**VICINITY MAP**



**V. ENVIRONMENTAL REVIEW**

Should the Planning Commission overturn the Staff Hearing Officer's decision and approve the Dispensary Permit, staff has determined that the project would qualify for a categorical exemption

from environmental review under Section 15301 (Existing Development) of the California Environmental Quality Act (CEQA) Guidelines. The project involves a tenant improvement in an existing commercial building and, as such, will clearly not have a significant effect on the environment.

## **VI. STAFF HEARING OFFICER DECISION**

On December 15, 2010, the Staff Hearing Officer reviewed and denied the appellant's request for a Medical Marijuana Storefront Collective Dispensary Permit. At that hearing, planning staff and the Police Department staff expressed concerns regarding the applicant's past negligence with regard to security, and therefore determined that the Storefront Collective Dispensary could have a potentially adverse affect relative to the safety of persons living in the surrounding area due to crime and nuisance activities (refer to Criterion 9). The Staff Hearing Officer also determined that the appellant's business practices in regards to the legal status of the applicant's existing dispensary meant that the findings for Criterion 12 could not be made. The Staff Hearing Officer Minutes are attached as Exhibit C.

Please refer to the Staff Hearing Officer Staff Report (Exhibit B) for a complete analysis and history of the project. This staff report discusses the issues most relevant to the appeal.

## **VII. APPEAL ISSUES**

The appellant claims that the Staff Hearing Officer's denial of the Permit was erroneous because Criterion 12 of SBMC §28.80.070.B was inappropriately applied to his previous operation of a dispensary since this dispensary began operation prior to the effective date of the City's March 2008 ordinance (the "Original Ordinance.") The appellant also claims that requiring the Dispensary to close now would violate his constitutional rights.

### **A. CRITERION 12**

*SBMC §28.80.070.B.12: 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.*

As identified in the Staff Hearing Officer Staff Report (Exhibit B), the primary concern associated with this criterion relates to whether or not the dispensary discontinued operations for more than 30 days: "If the dispensary discontinued operations for a period of more than 30 days since the adoption of the Medical Cannabis Dispensary Ordinance, it re-opened illegally and this criterion is not met. If the dispensary is currently legal non-conforming, this criterion is met."

The appellant contends that substantial evidence has not been provided by the City to confirm that the Dispensary closed for more that 30 days.

As proof that the dispensary did not close for more than 30 days, the appellant has provided the following:

- The declaration of Patrick Fourmy (attached to Exhibit A - Appellant's Letter), which states that the dispensary operated in its current location continuously from April 2006

through present and that the dispensary operated at the rear of the building with a lower profile from November 2007 until April 2009.

- The declaration of Sol Levitt, the property owner's attorney, corroborating the dispensary's long-term, uninterrupted tenancy for the 2915 De La Vina Street building (attached to Exhibit A - Appellant's Letter).
- Signed statements from 103 patients affirming that "During the period of January, 2007 to October, 2009, I received my medicine from 2915 De La Vina St."
- Evidence of having obtained a City Business License at 2915 De la Vina Street in April 7, 2006.

The City Attorney's office has reviewed the information submitted by the appellant and did not consider it conclusive proof that the Dispensary did not close for a period of more than 30 days. The City Attorney's office, in a letter dated April 7, 2010, indicated the types of evidence which could be considered as potentially sufficient proof that the Dispensary had operated continuously from October 1, 2007 through January 1, 2009. These included the following: 1. patient statements that individual patients purchased marijuana at 2915 De la Vina within a particular month during the specified period 2. dated cash register receipts, dated payroll tax payments, workers compensation payments, utility bills, bank statements, and delivery/shipping receipts. To date, this sort of evidence has not been submitted to the City.

The appellant also claims that because the criterion relates only to the "operation of *another* business within the City" (emphasis added), any allegations against the dispensary itself are not applicable relative to the criterion for the issuance of a new permit to Mr. Fourmy. However, staff believe that the intent of criterion 12 is to determine whether there is a known history of code compliance concerns with a proposed applicant.

#### **B. VIOLATION PRIOR TO ORDINANCE ADOPTION**

The appellant claims that the alleged violation (closing for more than 30 days) took place before the effective date of the Original Ordinance. The City contends that the Dispensary ceased operation as a storefront dispensary for an unknown but extended period of time between October 2007 and January 2009. Ordinance 5449 (Original Ordinance) was adopted by the City Council on March 25, 2008 and became effective 30 days later, on April 24, 2008; however, Ordinance 5436 (the "Interim Ordinance") was adopted on October 2, 2007, and was effectively retroactive to August 14, 2007.

The Interim Ordinance prohibited the establishment, operation or maintenance of a Medical Marijuana Dispensary unless the following was true: 1. it complied with all applicable requirements of state law; 2. it obtained a valid business tax certificate prior to August 14, 2007, and it was actually open and continuously operating prior to August 24, 2007 and was thereafter continuously providing assistance to "qualified patients" in a manner consistent with the requirements of state law. If the dispensary closed and then re-opened between October 2007 and April 24, 2008, it would have lost its nonconforming status under the Interim Ordinance. If it had closed and re-opened after April 24, 2008, it would be in violation of Ordinance 5449 (the Original Ordinance, adopted in March 2008), which stated that if a

nonconforming dispensary was closed for a period of more than 30 days, it then loses its nonconforming status, and must close and obtain a new permit.

### **C. DUE PROCESS**

The appellant also claims that requiring his business to close after the six-month amortization period identified by the Revised (Current) Ordinance is insufficient.<sup>1</sup> However, the applicant was aware that the Original Ordinance provided for a three-year amortization period, which would have ended on March 24, 2011. As a result, the Current Ordinance's six-month amortization period, which requires the dispensary to close on January 24, 2011, really only reduced the previous three year amortization period by a period of 58 days.

From an enforcement standpoint, on October 30, 2009, the subject Dispensary was given notice by Community Development Code Enforcement Staff to cease operating a dispensary without a permit. On April 7, 2010, the City Attorney sent another letter noting that the Dispensary was apparently operating in violation of the Municipal Code and requested that they cease operations or provide adequate written documentation to the City to confirm that it was open and operating throughout the relevant period.

## **VIII. FINDINGS**

The Planning Commission finds the following:

### **A. STOREFRONT COLLECTIVE DISPENSARY PERMIT (SBMC §28.80.070)**

The proposed dispensary applicant does not comply with the criteria set forth in Section 28.80.070 (Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer) of the Zoning Ordinance, in that the applicant has been apparently operating a nonconforming dispensary without the required City permits and in violation of the Municipal Code.

Exhibits:

- A. Appellant's Letter
- B. Staff Hearing Officer Staff Report, December 15, 2010
- C. Staff Hearing Officer Minutes, December 15, 2010
- D. Draft Conditions of Approval
- E. Ordinance 5436 (Interim Ordinance)
- F. Ordinance 5449 (Original Ordinance)
- G. Ordinance 5526 (Current Ordinance)

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<sup>1</sup> Ordinance No. 5526 ("Current Ordinance"), approved by City Council on June 29, 2010, revised the City's Medical Cannabis Dispensaries Ordinance (Ordinance 5449) and changed the permitted locations for dispensaries. This Ordinance also established a 180-day amortization period for those dispensaries that were open and operating in a manner consistent with state law and the SBMC prior to the effective date of the Ordinance 5526.



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January 6, 2011

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CITY OF SANTA BARBARA  
PLANNING DIVISION

RE: Letter of Appeal From Denial of Application for a  
Medical Marijuana Dispensary Permit by Patrick Fourmy  
for the Compassion Center of Santa Barbara County --  
Staff Hearing Officer Resolution No. 062-10  
(December 17, 2010)

Dear Planning Commission Members:

This is an appeal from the decision of a staff hearing officer on December 17, 2010 denying the Compassion Center of Santa Barbara County – the oldest medical marijuana dispensary in Santa Barbara, and the only dispensary in California to have registered nurses on staff to meet the needs of seriously ill patients – a permit to continue its operations. Because of the two-week City furlough, this appeal is timely.

## **I. INTRODUCTION.**

The Compassion Center of Santa Barbara County is the oldest medical marijuana collective in Santa Barbara, and operates the only medical marijuana

dispensary in California that has licensed medical professionals as collective staff members. The Compassion Center has an 11-year record of serving seriously ill members of the community, many with conditions such as cancer and AIDS. The Compassion Center has the support of medical doctors and the good will of its long-term neighbors. It is the very opposite of a nuisance.

It is undisputed that the continued operation of the Compassion Center serves the public interest and the needs of the community.

Despite the uncontested reality that the Compassion Center is beneficial to the community, the staff hearing officer denied the Compassion Center's application for a Medical Marijuana Storefront Collective Dispensary permit under Santa Barbara Municipal Code section 28.80.070. That section sets forth twelve criteria that the staff hearing officer shall "consider" in making her decision. Here, the staff hearing officer based her decision erroneously on a single criterion, denying the application solely "in consideration of Issue [criterion] 12." That issue relates to whether, as the City Attorney has asserted, the Compassion Center had discontinued its operations for more than 30 days in 2007-2008, in violation of a prior ordinance.

As this letter will show, the staff hearing officer's determination that the permit should be denied based on the Compassion Center's supposed discontinuance of operations at some point in the past is without any factual basis, and legally erroneous, for several independent reasons. These include:

1. The staff hearing officer erroneously denied the permit despite the complete absence of any evidence that the Compassion Center actually had discontinued operations for more than 30 days.
2. Because the alleged violation of the prior ordinance assertedly took place *before* the effective date of the prior ordinance, that ordinance cannot be applied to deny a permit to the Compassion Center.
3. Criterion 12 was plainly misapplied by the staff hearing officer.
4. The staff hearing officer misunderstood and misapplied Section 28.80.070.

5. The Compassion Center did not discontinue operations for 30 days or more between November 2007 and March 2008, as erroneously alleged, and has remained in continuous operation at the De La Vina Street location since April 2006.
6. The proposed alternative condition that the Compassion Center cease operations until there are no more than two other dispensaries operating in the City, if imposed, would violate the Compassion Center's federal constitutional rights to due process of law and just compensation.

Because it is supported neither by the facts nor by the law, the staff hearing officer's decision cannot be sustained. The Commission should grant the permit. Doing so is the only result consistent with due process, and with the public interest.

## **II. ABOUT THE COMPASSION CENTER OF SANTA BARBARA COUNTY.**

The Compassion Center of Santa Barbara County, located at 2915 De La Vina Street, is a medical marijuana collective legally entitled to operate under California law. See Cal. Health & Saf. Code section 11362.775. The Compassion Center began operations in February 2000, and is the oldest medical marijuana collective in Santa Barbara. It has served the members of our community continuously since its inception. Declaration of Patrick Fourmy (Jan. 6, 2011).

The Compassion Center serves a mature patient base with needed medications. Many patients who belong to the Compassion Center collective are seriously ill members of the community, with conditions including AIDS, cancer, and a variety of other painful and chronic diseases, including Alzheimer's disease, anorexia, Crohn's disease, glaucoma, post-traumatic stress disorder arising from war-time military service in Vietnam and Iraq, epilepsy, and multiple sclerosis. Fourmy Declaration.

More than 400 members of the Compassion Center collective are patients over the age of 50. Fourmy Declaration.

To address the needs of the many seriously ill individuals who rely on it, the Compassion Center is the only collective in California to have, as collective members on staff, licensed registered nurses, who are available to advise patients

on the proper medicinal use of marijuana to alleviate their symptoms. Fourmy Declaration.

The Compassion Center has earned the strong support of the Santa Barbara medical community, as submissions in the file reflect. Dr. David Bearman, M.D., attests in a letter of support, that the Compassion Center “has proven to be an excellent resource for mature patients,” notes that “the nurses who work there provide advice and support to clients regarding choices and options for medical cannabis,” affirms that “the environment [at Compassion Center] is as professional as any physician’s office,” and observes that closing the Compassion Center would have the effect of encouraging illegal drug activity.

Dr. William Edelstein, M.D., praises the Compassion Center in his letter as “the most professional & efficient provider of medical marijuana” in the Santa Barbara area, noting they always properly call to verify prescriptions, and states that “this excellent service may be due to their employment of R.N.s, which I believe differentiates them from other marijuana providers.”

Dr. Stephen W. Hosea, M.D., the Director of Clinical Care at nearby Cottage Hospital, and a specialist in AIDS and infectious diseases, states in his letter that the Compassion Center:

“has proven to be *an indispensable resource* for the Santa Barbara community. One of the unique characteristics of the Compassion Center is that it is staffed with Registered Nurses. The atmosphere is comfortable, professional and educational. . . . The expertise of the staff is important in maximizing the therapeutic benefits of medical cannabis. *The Center is a model organization for a dispensary.*” (Emphasis added.)

Because of the critical services provided by the Compassion Center, Dr. Hosea and Dr. Bearman took time from their busy medical practices to appear at the hearing on Compassion Center’s application for a permit on December 15, 2010. Dr. Hosea’s statements are found at pages 44-45 of the transcript of the hearing that is submitted with this letter of appeal; Dr. Bearman’s comments are at pages 33-36.

The Compassion Center has on staff a total of nine members of the collective, who are, of course, also members of the Santa Barbara community. Fourmy Declaration.

During its 11 years of service to the community, the Compassion Center has worked closely with the Attorney General's Office, the Santa Barbara Police Department, and the Santa Barbara County Sheriff's Department to ensure that its activities have conformed fully to the letter and spirit of California law, and to the standards of the Santa Barbara community. Fourmy Declaration.

It is significant that the Compassion Center has received nothing but support from its neighbors, a number of whom have submitted letters in support of the application. Smart Marketing, which shares a parking lot with the Compassion Center, states it has had "no troubles" and that the Compassion Center members are "respectful." Happy Little Hippo, a children's clothing shop, states that the Compassion Center's people "have always been polite and courteous." Dr. John Craviotto, the 101 Dental Laboratory and Madame Tailor Custom Alterations confirm in their letters that the Compassion Center has not caused any problems, and its members are, in the words of Madame Tailor, "nice and respectful." The Compassion Center's staff are, in the words of Plaza Liquors, "good neighbors." Iyengar Yoga Studio of Santa Barbara, a neighbor for the last three years situated less than a block away, commends the Compassion Center as

"a great neighbor; a civilized establishment that . . . is a part of our neighborhood."

### **III. THE STAFF HEARING OFFICER'S DECISION.**

At the conclusion of a hearing held on December 15, 2010, the staff hearing officer denied the Compassion Center's application for a permit. The staff hearing officer denied the Compassion Center's application

"without prejudice making the findings contained in Section X of the written Staff Report dated December 7, 2010, and in consideration of Issue 12."

Staff Hearing Officer Resolution No. 062-10, at p. 2 (December 17, 2010).

The staff report itself addresses the twelve criteria that SBMC section 28.80.070 specifies the hearing officer “shall consider.” The twelfth and final criterion is

“12. 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.”

The staff report states, regarding this factor:

“The applicant has passed the requisite background check. Per the applicant’s signed statement, 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. As stated in Section VI of this Staff Report, the legal status of this dispensary is under dispute. If the dispensary discontinued operations for a period of more than 30 days since the adoption of the Medical Cannabis Dispensary Ordinance, it re-opened illegally and this criterion is not met. If the dispensary is currently legal non-conforming, this criterion is met.”

Staff Report, at pp. 7-8. Section VI of the staff report, referenced in the preceding paragraph, states:

“The legal status of the existing dispensary at 2915 De la Vina is currently under dispute. The City Attorney’s office *contends* that the dispensary discontinued operation for a period of time exceeding 30 days at some point between November 2007 and January 2009, thus losing its status as a legal non-conforming dispensary (see Exhibit C [letter from City Attorney’s office]). The Attorney’s office [sic] indicated what types of evidence could serve as proof that the dispensary operated continuously during that time. Adequate evidence showing continuous operation to the satisfaction of the City Attorney’s office was not submitted and a Complaint for Injunctive Relief and Civil Penalties was filed against the applicant in the Santa Barbara Superior Court on June 30, 2010. The complaint *alleges* that the dispensary discontinued operations for a period of more than 30 days, and as such, is presently operating in violation of Municipal Code Chapter 28.80. Trial has been set for June 9, 2011.” (Emphasis added.)

#### **IV. THE COMPASSION CENTER'S PERMIT APPLICATION SHOULD BE GRANTED.**

- 1. The staff hearing officer erroneously denied the permit despite the complete absence of any evidence that the Compassion Center actually had discontinued operations for more than 30 days.**

Both the Due Process Clause of the United States Constitution and California Code of Civil Procedure section 1094.5, authorizing judicial review of local agency decisions, require that a decision to deny a permit must be supported by substantial evidence. A decision not supported by substantial evidence is unconstitutional and statutorily invalid. Substantial evidence is defined as evidence of "ponderable legal significance ... reasonable in nature, credible, and of solid value." *H.N. & Frances C. Berger Foundation v. City of Escondido*, 127 Cal.App.4th 1, 7 (2005); *Valenzuela v. State Personnel Bd.*, 153 Cal.App.4th 1179, 1185 (2007).

The hearing officer's decision to deny the permit in this case was not supported by substantial evidence.

As shown above, the hearing officer's decision was based on "consideration of Issue 12" in the staff report. Staff Hearing Officer Resolution No. 062-10, at p. 2. The discussion of Issue 12 in the staff report in turn refers to Section VI of the staff report. Section VI, quoted above, states that the City Attorney's office "*contends* that" the Compassion Center discontinued operations for a period of more than 30 days, that the City Attorney's office has filed a civil lawsuit against the Compassion Center based on this allegation, and that trial is scheduled for June 2011.

The staff report itself did not substantiate in any way the contention that the Compassion Center had discontinued operations for more than 30 days.

Section VI of the staff report did refer to Exhibit C, a letter from the City Attorney's office to the Compassion Center's managing member, Patrick Fourmy, dated April 7, 2010. The letter states:

"Inspections performed at the Real Property on November 21, 2007 and January 8, 2008, revealed that Compassion Center had ceased operation at

that location [on De La Vina St.]. The city is also informed that after closing its location at 2915 De La Vina Street, Compassion Center reopened and began doing business at 3532 State Street in March 2008. Based on this information the City has determined that Compassion Center ceased operations at the Real Property for a period over thirty (30) days.”

City Attorney’s letter, April 7, 2010, p. 1.

This letter was the only submission before the staff hearing officer that related to the assertion that the Compassion Center had discontinued operations.

Under federal and California law, this lawyers’ letter simply does not rise to the level of “evidence,” let alone substantial evidence. The City Attorney has *alleged* that the Compassion Center discontinued operations for more than 30 days, making this claim in the letter, and in a civil lawsuit that is currently pending -- unresolved -- before the Santa Barbara Superior Court. But under California law, an attorney’s signature “cannot transform” allegations into evidence, and “allegations [are] not ‘evidence.’” *Zavala v. Board of Trustees*, 16 Cal.App.4th 1755, 1761 (1993).

Even if the City Attorney’s signature on a letter could somehow transform allegations into evidence, the evidence would, in any event, be legally insufficient to support the adverse decision by the hearing officer. The allegation that two inspections were performed and the City “was informed” that the Compassion Center “reopened” at a later date are, at best, vague and unsubstantiated hearsay.<sup>1</sup> And that is not enough:

“Even if admissible, hearsay evidence alone ‘is insufficient to satisfy the requirement of due process of law, and mere uncorroborated hearsay does not constitute substantial evidence. [Citation.]’ (*Dyer v. Watson* (1953) 121 Cal. App. 2d 84, 92; *Martin v. State Personnel Bd.* (1972) 26 Cal. App. 3d 573, 583 citing *Consolidated Edison Co. v. National Labor Relations Bd.* (1938) 305 U.S. 197, 229-230 [59 S. Ct. 206, 216-217, 83 L. Ed. 126]; *Kinney v. Sac. etc. Retirement System* (1947) 77 Cal. App. 2d 779, 782.)”

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<sup>1</sup> Under California Evidence Code section 1200, “[h]earsay evidence’ is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.”

*Gregory v. State Bd. of Control*, 73 Cal.App.4th 584, 597 (1999); accord, *Walker v. City of San Gabriel*, 20 Cal.2d 879, 881.

Accordingly, since the hearing officer's factual determination that the Compassion Center had discontinued operations at some time for a period of more than 30 days is not supported by any evidence, let alone substantial evidence, the decision is legally unsupportable. It is a violation of due process, arbitrary and capricious, and clearly erroneous to deny a permit to continue an 11-year established operation in the complete absence of any evidence that the facts alleged in a lawyer's letter are anything more than allegations.<sup>2</sup>

**2. Because the alleged violation of the prior ordinance assertedly took place *before* the effective date of the prior ordinance, that ordinance cannot be applied to deny a permit to the Compassion Center.**

The hearing officer denied the permit based on the staff report's representation that the City Attorney's office had contended that the Compassion Center discontinued operations for a period of more than 30 days, and therefore was operating in violation of Municipal Code Chapter 28.80. The factual contention consists of the assertion, in the City Attorney's letter of April 7, 2010, that

“[i]nspections performed at the Real Property on November 21, 2007 and January 8, 2008, revealed that Compassion Center had ceased operation at that location. The city is also informed that after closing its location at 2915 De La Vina Street, Compassion Center reopened and began doing business at 3532 State Street in March 2008.”

Thus, the essence of the City Attorney's factual contention is that the Compassion Center discontinued operations at some point for 30 days or more between November 20, 2007 – the day before the first inspection -- and some unspecified date in March 2008. Based on this unproven factual contention, the

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<sup>2</sup> Moreover, it must be stressed that this is an *unproven* allegation. The City Attorney filed suit against the Compassion Center based on this allegation and the case is set for trial on June 9, 2011. The permit process should not serve as an “end-run” around the judicial system for local officials.

City Attorney contends that the Compassion Center is no longer a pre-existing legal use that was authorized under former Chapter 28.80, Ordinance No 5449, Section Three. City Attorney's Letter, April 7, 2010, pp. 1-2.<sup>3</sup>

The City Attorney has misread the City's ordinances, and in particular Ordinance No 5449, Section Three. Even if the Compassion Center *had* discontinued operations for more than 30 days between November 2007 and March 2008 – and it did not – that would not, under the plain language of the City's ordinances, disqualify it as a pre-existing use or show that its operations were in violation of municipal law.

Ordinance No. 5449 was enacted on March 26, 2008, and added a new chapter to the Santa Barbara Municipal Code, Chapter 28.80. Under Section 514 of the City Charter, the new Chapter 28.80 did not become effective until 30 days later, on April 25, 2008.<sup>4</sup> Section Three of this Chapter, relied on by the City Attorney in its letter, states in pertinent part:

“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<sup>[5]</sup> shall be deemed pre-existing legal uses of real property upon which they are situated

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<sup>3</sup> In the letter of April 10, 2007, the City Attorney demanded proof of continuous operations be provided for the period October 1, 2007 to January 1, 2009. But the City Attorney's factual contention in its letter is limited to an alleged discontinuance of operations between November 20, 2007 and March 2008. The City Attorney offers not a shred of justification for this far broader demand, which exceeds the four-month scope of the factual contention of discontinued operation by almost a year.

<sup>4</sup> Section 514 of the Charter provides that, subject to certain exceptions not applicable here, “Every ordinance shall become effective thirty (30) days from and after the date of its adoption . . . .”

<sup>5</sup> Since Section Two of Ordinance No. 5449 expressly created a *new* Chapter 28.80 of the Santa Barbara Municipal Code, this reference makes no sense. No dispensaries were authorized by Chapter 28.80 the Santa Barbara Municipal Code

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; . . . .”* (Emphasis added.)”

The italicized language of Section Three plainly shows its application is *prospective only*. Section Three does not state that to be a preexisting use, the dispensary “shall not *have been* relocated” or “shall not *have been* discontinued” for more than 30 days – it says a dispensary “*shall not be* relocated nor *shall it be* discontinued.” This is future-oriented language that, indisputably, indicates prospective application only.

As noted above, the City Attorney’s factual contention is that the Compassion Center discontinued operations for a period of more than 30 days at some time between November 20, 2007 and some unspecified date in March 2008. But since the application of Section Three of Ordinance 5449 is plainly prospective only, and since the Ordinance did not become effective until April 25, 2008, the allegation, *even if true*, would not show a violation of the former ordinance. Ordinance 5449, on its face, has no application to conduct that occurred before its effective date.

The denial of a permit to the Compassion Center because it allegedly discontinued operations for 30 days at some point prior to March 2008, and therefore assertedly violated an ordinance that is, on its face, prospective only, and that did not come into effect until April 2008, is arbitrary, irrational, and a violation of due process, in addition to violating local law.

### **3. Criterion 12 was plainly misapplied by the staff hearing officer.**

As we have seen, the staff hearing officer denied a permit to the Compassion Center based on “consideration of Issue 12.” Staff Hearing Officer Resolution No. 062-10, at p. 2 (December 17, 2010). Issue 12 applies Criterion 12 of Section 28.80.070, which provides that the hearing officer shall consider, in pertinent part:

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prior to its enactment, nor could they have been. Any attempt to apply this nonsensical provision to the Compassion Center would violate due process.

“12. 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. (Ord. 5526, 2010.)”

(Emphasis added.) Here, the allegation was that the Compassion Center *itself* had discontinued operations for a period of more than 30 days, and thus was not operating lawfully under the prior ordinance. The hearing officer denied the permit on this basis.

Plainly, the hearing officer misread the ordinance. Even assuming that a non-profit medical marijuana dispensary can be properly regarded as a “business,” Criterion 12, on its face, applies solely to the operation of *another business* -- not the dispensary business itself.

For this reason alone, the decision cannot be sustained.

**4. The staff hearing officer misunderstood and misapplied Section 28.80.070.**

Section 28.80.070 of the ordinance provides that the hearing officer, in deciding whether to grant or deny a permit, shall “consider” each of twelve criteria. Criteria, of course, are standards of judgment to be used in evaluating or testing. The ordinance does not provide that the hearing officer must find that each criteria is met or the permit shall be denied – instead, it mandates that the hearing officer “consider” each of the criteria.

Here, the staff hearing officer’s rigid approach erroneously led her to use the criteria, not as standards to be “considered” as part of a reasoned evaluation, as plainly intended, but instead as a simple, inflexible checklist.

The staff hearing officer expressly adopted the findings contained in Section X of the staff report as to the twelve criteria of Section 28.80.070. Staff Hearing Officer Resolution No. 062-10, at p. 2. Those findings deserve attention. They include findings that:

- the operation of the Compassion Center is consistent with California law and the Municipal Code.
- the location is not identified as an area of increased or high crime.
- there have not been a significant number of police calls or arrests in the dispensary's former location.
- issuance of a dispensary permit to the Compassion Center is appropriate to meet the needs of the community for access to medical marijuana.
- issuance of the permit would serve the needs of City residents near the location.

Staff Report, at pp. 4-6.<sup>6</sup>

However, the staff hearing officer gave *no* effective weight to those factors that she was also required to consider – she gave effective weight to only one, Criterion 12.

Thus, the staff hearing officer's approach led to the anomaly that a dispensary that is – unquestionably -- operating in the public interest, that has never been a nuisance in 11 years of operation, that has the strong endorsement of physicians, that meets an important need of ill members of the community, many of them older, that operates in a medically-appropriate manner, and that has the support of neighbors and the community – is denied a permit, because of a hyper-technical reason relating to a supposed discontinuance of operations.

Zoning laws should be administered with an awareness of context and common-sense. This is especially true of zoning laws that affect vulnerable segments of the population, such as the chronically ill.

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<sup>6</sup> As to Criteria 1, 2, 3, 4, 5 and 8, the findings conclude that these criteria have been fully satisfied. As to Criteria 7 and 9, the staff report has proposed conditions that are, in the event the permit is promptly granted in this proceeding, acceptable to the Compassion Center.

Denying a permit in this case, in the unlikely event a permit denial would be ultimately upheld in court, would have the perverse result of driving out of operations a collective which has, beyond question, been dedicated to lawful operation, high standards, and community well-being.

This serves no one's interest.

**5. The Compassion Center did not discontinue operations for 30 days or more between November 2007 and March 2008, as erroneously alleged, and has remained in continuous operation at the De La Vina Street location since April 2006.**

As discussed above, the staff hearing officer's denial of a permit to the Compassion Center was ultimately based upon the City Attorney's factual contention, in its letter of April 7, 2010, that that the Compassion Center discontinued operations at some point for 30 days or more between November 20, 2007 and some unspecified date in March 2008. This assertion is based on alleged inspections performed on November 21, 2007 and January 8, 2008 that allegedly "revealed that Compassion Center had ceased operation at that location" on De La Vina Street. City Attorney's Letter, April 7, 2010, pp. 1-2.

This factual contention is incorrect. As explained in the sworn Declaration of Patrick Fourmy, submitted with this letter:

"5. The Compassion Center has operated our dispensary at 2915 De La Vina Street continuously, without a break in operations, from April 2006 through the present date. It is currently our only location.

"6. In the Fall of 2007, the Drug Enforcement Agency attempted to exert pressure on our 2915 De La Vina Street landlord, Dr. Bernard Friedman. Exhibit A to this declaration is a true and correct copy of a letter from the DEA to Dr. Friedman dated September 19, 2007. In response, the Compassion Center decided to adopt a somewhat lower profile at this location. At the same time, together with my brother Christian Fourmy, also a member of the Compassion Center collective, we decided to open Harmonic Alliance, a music store. Harmonic Alliance opened its doors at 2915 De La Vina Street in November 1, 2007. It occupied the front of the 2915 De La Vina Street building. When Harmonic Alliance opened for

business, we placed signage on the building making it identifiable from the street as housing Harmonic Alliance *only*.

“7. Harmonic Alliance continued to operate at the front of the building at 2915 De La Vina Street from November 1, 2007 until April 2009, when my brother and I closed the business.

“8. Since, during the period of November 1, 2007 until April 2009, the front of the building was occupied by Harmonic Alliance, and the building’s signage identified only Harmonic Alliance, it is possible to understand how a visitor might mistakenly have concluded that the Compassion Center no longer operated at the location.

“9. But the Compassion Center did continue to operate at the 2915 De La Vina Street location during, before and after the entire period of occupancy of Harmonic Alliance. During the period of Harmonic Alliance’s operations in the front of the building, the Compassion Center continued its operations *in the rear of the building*. Patients and collective members entered and exited through the door at the rear of the building.

“10. In its letter of April 7, 2010, the City Attorney’s office demanded proof of continuous operation from the period October 1, 2007 to January 1, 2009. Since the City Attorney has only made the claim that the Compassion Center discontinued operations at some time between November 2007 and March 2008, it is difficult to understand the justification for this broad demand. Nevertheless, the Compassion Center submits as Exhibit B to this declaration a true and correct copy of signed statements -- by a total of 103 patients -- affirming that

‘during the period of January 1 2007 to October 2009, I received my medicine from 2915 De La Vina St.’

“11. The Compassion Center has maintained current business licenses for its location at 2915 De La Vina Street at all applicable times. Exhibit C is a certified statement from the Finance Department-Treasury Division of the City of Santa Barbara, dated July 9, 2009, stating that the Compassion Center

‘has held a City of Santa Barbara Business License Tax Certificate since April 7, 2006, and is licensed through March 31, 2010. The

Compassion Center . . . has always been located and is currently conducting business at 2915 De La Vina St., Santa Barbara, CA 93105.”

Mr. Fourmy's declaration is further corroborated by the Declaration of Sol Levitt, Esq., also submitted with this letter of appeal. Mr. Levitt, who is the attorney for the landlord of the Compassion Center at 2915 De La Vina Street, corroborates the Compassion Center's long term, uninterrupted tenancy of the building, and further affirms that the Compassion Center remained in operation at the location during the period the City Attorney erroneously claims it discontinued operations.

**6. The proposed alternative condition that the Compassion Center cease operations until there are no more than two other dispensaries operating in the City, if imposed, would violate the Compassion Center's federal constitutional rights to due process of law and just compensation.**

As noted above, the staff hearing officer denied the Compassion Center's permit application based on Criterion 12, in accordance with the staff report's recommendation. The staff report alternatively recommended that if the Compassion Center's permit was granted, the permit be subject to certain conditions. One of those conditions would require that the Compassion Center cease its operations.

As explained in Section VIII.A of the staff report, the ordinance limits to total number of dispensaries in the City to three. Seven are currently operating, with all but one required to close, under the City Attorney's interpretation of the law, by January 26, 2011. One dispensary has since obtained a permit. Another obtained an injunction issued by the federal district court for the Central District of California on November 24, 2010, and an injunction is expected to be issued on behalf of yet another. Staff Report at pp. 3-4.

The proposed Staff Hearing Officer Conditions of Approval provides, as Condition A:

“The operation of this dispensary shall not commence and no building permit may be issued for the tenant improvement associated with this use until such time that, including the subject dispensary, no more than the maximum number of Storefront Collective Dispensaries allowed by the Medical Marijuana Storefront Collective Dispensary Ordinance in the City are in operation.”

This condition was apparently *erroneously included in the staff report*. Another application for a dispensary permit was also heard by the staff hearing officer on December 15, 2010, immediately before the hearing on the Compassion Center’s application. A partial transcript of the recorded proceedings on the Application of Heather Poet for the Santa Barbara Patients Group, 16 South La Cumbre Road, is included with this filing. At that hearing, the applicant’s attorney raised the issue whether the operation of dispensaries that had not received permits would count toward the total of three dispensaries allowed under the ordinance. The City’s representative at the hearing clearly stated that they would not:

“MR. KATO: As far as your concern goes, we have been in contact with the City Attorney's Office, and their opinion is *the two dispensaries that are preplanned into the previous ordinance* that are supposed to -- that were supposed to close by January 29, *if they are allowed to remain*, they're -- the City Attorney's Office does not consider them to be permitted under the new ordinance, so they're -- *don't count towards the three*.

“So there's still two open spots, 331 North Milpas being -- taking one of the -- one of the spots, and then two open spots.” (Emphasis added.)

Application of Heather Poet, etc., Partial Transcription of Recorded Proceedings (Dec. 15, 2010) at p. 7, lines 7-18.

Accordingly, the staff’s inclusion of this condition in the staff report appears to be unintended and contrary to City policy.

If it *were* applied to the Compassion Center, however, this proposed condition would be unconstitutional. As the California Supreme Court has noted,

“if the law effects an unreasonable, oppressive, or unwarranted interference with an existing use, or a planned use for which a substantial investment in

development costs has been made, the ordinance may be invalid as applied to that property unless compensation is paid. (*Beverly Oil Co. v. City of Los Angeles*, *supra*, 40 Cal. 2d 552, 559; *Village of Terrace Park v. Errett* (2d Cir. 1926) 12 F.2d 239.) Zoning ordinances and other land-use regulations customarily exempt existing uses to avoid questions as to the constitutionality of their application to those uses.”

*Hanson Bros. Enterprises, Inc. v. Board of Supervisors*, 12 Cal.4th 533, 551-552 (1996). As stated in *Tahoe Regional Planning Agency v. King*, 233 Cal.App.3d 1365, 1394 (1991):

“A jurisdiction may eliminate nonconforming uses by either of two constitutionally equivalent alternatives: it can eliminate the use immediately by payment of just compensation, or it can require removal of the use without compensation following a reasonable amortization period.”

Here, the City has offered no compensation. The ordinance itself provides for a six-month amortization period, but this is clearly constitutionally insufficient. In any event, under the proposed condition, the Compassion Center would be required to *immediately* go out of business upon the issuance of a permit containing the condition, without *any* period of amortization. The period of non-operation would be indefinite, and could last for the imaginable future. Accordingly, under *Tahoe Regional Planning Agency* and similar authorities, proposed Condition A, as applied to the Compassion Center, would be clearly unconstitutional.

The same is true under the approach of federal cases. The United States Court of Appeals for the Ninth Circuit has ruled that an amortization of a nonconforming land use is constitutionally impermissible

“if it puts a business in an impossible position due to a shortage of relocation sites.”

*World Wide Video of Wash., Inc. v. City of Spokane*, 368 F.3d 1186, 1200 (9th Cir. 2004). Here, the ordinance *itself*, at Section 28.80.050, creates such a “shortage of relocation sites” by limiting the number of dispensaries in the City to a total of three. The application of Condition A would put the Compassion Center in what

the federal court of appeals described as “an impossible position,” and thus establish a constitutional violation.

Accordingly, Condition A could not constitutionally be imposed on the Compassion Center.

Proposed alternative Conditions E and F are also unacceptable. Condition E requires that the tenant improvements in conformance with plans submitted on November 22, 2010 shall be completed and have received final building inspection “[p]rior to commencement of business operations.” Similarly, Condition F might be interpreted to require that an alarm system permit be issued and an alarm system be installed before operation is allowed. On the face of it, these requirements would be rational if applied to a new business – but the Compassion Center is an ongoing, pre-existing use. The Compassion Center has no objection whatsoever to promptly obtaining the requested permits and completing installation of the improvements and alarm system on the issuance of a permit. However, if these conditions are interpreted to mean that the Compassion Center must cease its ongoing operations as a nonconforming use until they are satisfied, then the conditions would be arbitrary, irrational, and a violation of due process, as well as inimical to the public interest.

## **V. ADDITIONAL CONSTITUTIONAL DEFECTS OF THE SANTA BARBARA ORDINANCE.**

A review of Chapter 28.80 reveals other serious constitutional defects in this ordinance. While these constitutional defects do not directly bear on this Commission’s decision, a brief discussion may nonetheless be appropriate. These constitutional flaws include, but are not limited to, the following:

- Section 28.80.080, subdivision D.1 effectively prohibits medical marijuana dispensaries from operating on Sundays. The Santa Barbara Municipal Code singles out only one other class of business for mandatory closure on Sundays – pawnbrokers and junk dealers. See Municipal Code section 5.44.210. Other retail operations that are much more analogous and are, in equal protection terminology, similarly situated to marijuana dispensaries, are allowed to operate on Sundays without municipal interference – including, for example, pharmacies, liquor stores,

restaurants, doctor's offices, and the like, without limitation. This entirely disparate treatment of retail operations that are similarly situated lacks any rational basis, and therefore violates the equal protection guarantees of the federal and California constitutions.

- Section 28.80.080, subdivision F.2 prohibits the sale by a dispensary of any means by which to administer medical marijuana, and subdivision F.1 gives a staff hearing officer uncontrolled discretion to allow or prohibit the sale of other items by dispensaries. By comparison, pharmacies, the businesses most similarly situated, for equal protection purposes, suffer no such municipal restriction – pharmacies can sell a wide variety of items ancillary to the primary purpose of dispensing medications, such as colostomy bags, canes, pill bottles, etc. The ordinance bans the sale of items by dispensaries which will be beneficial to patients in just the same way that items sold by pharmacies are beneficial – for example, the sale of vaporizers, which are helpful to patients who cannot tolerate smoke. This distinction between dispensaries and pharmacies is arbitrary, and because it lacks any rational basis, violates the constitutional guarantees of equal protection. Moreover, the grant of entirely unlimited discretion to staff hearing officers to decide which other items a given dispensary will be permitted to sell, because of the absence of standards to guide the decision-maker's discretion, violates the constitutional guarantees of due process of law.

- Section 28.80.090 authorizes the police department and community development department to obtain dispensary documents without a warrant, subpoena or other court process. With the exception of private medical records, City employees can, at will, inspect a collective's records. Those records include the names and personal identifying information of all members of the collective, including dates of birth, addresses and telephone numbers. There is no limitation in place with respect to what City employees may do with this information. This section is virtually identical in purpose and effect to Los Angeles Municipal Code section 45.19.6.4. On December 10, 2010, the Los Angeles Superior Court ruled that this provision of the City of Los Angeles medical marijuana ordinance violated the privacy rights guaranteed by Article I Section 1 of the California Constitution, and issued an injunction against its enforcement. *Medical Marijuana Collective Litigation*, L.A.S.C. Case No. BC433942 (Dec. 10, 2010).<sup>7</sup>

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<sup>7</sup> Generally, a facial challenge to a zoning ordinance must be brought within ninety days of the ordinance's effective date. But there is an important exception

## VI. RESERVATION OF RIGHTS.

In the event of an adverse outcome on its application for a permit, the Compassion Center reserves all of its legal rights in this matter, including its right to bring a civil action in the appropriate forum for injunctive and declaratory relief, a writ of mandate, damages, attorney fees pursuant to Code of Civil Procedure section 1021.5 and 42 U.S.C. section 1988, and such other and further relief as a court of competent jurisdiction may deem appropriate.

## VII. CONCLUSION.

For the foregoing reasons, as well as those adduced at or before the hearing on the matter, the Planning Commission should grant the appeal of the Compassion Center of Santa Barbara County, and order the issuance of a permit allowing its continued operation.

DATED: January 6, 2011

Yours very truly,

Gilbert Gaynor  
Attorney for Applicant Patrick Fourmy for  
the Compassion Center of Santa Barbara  
County

  
\_\_\_\_\_  
GILBERT GAYNOR  
Cal. Bar No. 107109

Enclosures:

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to this rule. Under California Supreme Court precedent, facial constitutional challenges to Chapter 28.80 would not be time-barred if they are brought in connection with a challenge to the denial of a permit application by the Compassion Center, or the imposition of unlawful conditions on such a permit. *Travis v. County of Santa Cruz*, 33 Cal.4th 757, 767 (2004).

Declaration of Sol Levitt, Esq.

Declaration of Patrick Fourmy  
and Exhibits A, B & C thereto

Transcript of Recorded Proceedings on  
Application of Patrick Fourmy for Compassion Center, etc.  
(Dec. 15, 2010)

Partial Transcript of Recorded Proceedings on  
Application of Heather Poet for the Santa Barbara Patients Group, etc.  
(Dec. 15, 2010)

## DECLARATION OF SOL LEVITT, ESQ.

I, Sol Levitt, declare as follows:

I am an attorney licensed to practice law in California, with my office in Santa Barbara. If called upon to do so, I could and would testify competently and upon my personal knowledge as follows:

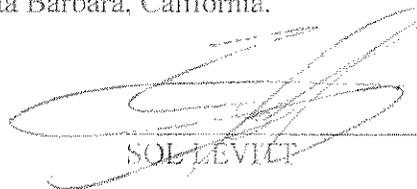
1. I represent Dr. Bernard Friedman, the owner of the property located at 2915 De La Vina Street, Santa Barbara, California.

2. Patrick Fourmy and his brother Christian Fourmy have leased the property at 2915 De La Vina Street since January 2004. They have maintained possession of the premises since that date, and as collective members of the Compassion Center, have been operating the Compassion Center from that location since at least April 2006, continuing without a break to the present date.

3. I understand the City Attorney has questioned whether the Compassion Center had discontinued operations at 2915 De La Vina Street in the period November 2007 – March 2008. During that period, the tenants did change the appearance of the front of the building, so that it was not apparent from the outside that a marijuana dispensary continued to operate at that location.

During that period of time, I personally met with Christian Fourmy at the premises, and observed signs of ongoing dispensary activity, including quantities of marijuana that appeared to be packaged for sale and associated supplies. The tenants have been consistently current on their rent and in all other respects have been, and continue to be, exemplary tenants.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 5th day of January 2011 at Santa Barbara, California.

  
SOL LEVITT

## **DECLARATION OF PATRICK FOURMY**

I, Patrick Fourmy, declare as follows:

I am a resident of Santa Barbara, California, and over the age of eighteen. If called upon to do so, I could and would testify competently and upon my personal knowledge as follows:

1. I am one of the founding members, and currently a managing member, of the Compassion Center of Santa Barbara County, a medicinal cannabis collective legally entitled to operate under California law. See Cal. Health & Saf. Code section 11362.775.

2. After seeking guidance from the State of California Attorney General's Office and the Mayor of Santa Barbara, Harriet Miller, the Compassion Center of Santa Barbara County opened its doors in February 2000 at the Medical Center located at 119 North Milpas.

3. After six years of operations without one complaint from the City of Santa Barbara, the Santa Barbara Police Department or the District Attorney's Office, the Compassion Center opened up a second location five blocks from Cottage Hospital located at 2915 De La Vina Street in April 2006.

4. Due to pressure from Federal authorities on our landlord, Dr. Bob Young, one of the Compassion Center's locations, located at 119 North Milpas, was forced to close its doors in November 2007.

5. The Compassion Center has operated our dispensary at 2915 De La Vina Street continuously, without a break in operations, from April 2006 through the present date. It is currently our only location.

6. In the Fall of 2007, the Drug Enforcement Agency attempted to exert pressure on our 2915 De La Vina Street landlord, Dr. Bernard Friedman. Exhibit A to this declaration is a true and correct copy of a letter from the DEA to Dr. Friedman dated September 19, 2007. In response, in the fall of 2007, the Compassion Center decided to adopt a somewhat lower profile at this location. At the same time, together with my brother Christian Fourmy, also a member of the Compassion Center collective, we decided to open Harmonic Alliance, a music store. Harmonic Alliance opened its doors at 2915 De La Vina Street on November 1, 2007. It occupied the front of the 2915 De La Vina Street building. When Harmonic Alliance opened for business, we placed signage on the building making it identifiable from the street as housing Harmonic Alliance *only*.

7. Harmonic Alliance continued to operate at the front of the building at 2915 De La Vina Street from November 1, 2007 until April 2009, when my brother and I closed the business.

8. Since, during the period of November 1, 2007 until April 2009, the front of the building was occupied by Harmonic Alliance, and the building's signage identified only Harmonic Alliance, it is possible to understand how a visitor might mistakenly have concluded that the Compassion Center no longer operated at the location.

9. But the Compassion Center did continue to operate at the 2915 De La Vina Street location during, before and after the entire period of occupancy of Harmonic Alliance. During the period of Harmonic Alliance's operations in the front of the building, the Compassion Center continued its operations *in the rear of the building*. Patients and collective members entered and exited through the door at the rear of the building.

10. In its letter of April 7, 2010, the City Attorney's office demanded proof of continuous operation from the period October 1, 2007 to January 1, 2009. Since the

City Attorney has only made the claim that the Compassion Center discontinued operations at some time between November 2007 and March 2008, it is difficult to understand the justification for this broad demand. Nevertheless, the Compassion Center submits as Exhibit B to this declaration a true and correct copy of signed statements -- by a total of 103 patients -- affirming that

"During the period of January 1 2007 to October 2009, I received my medicine from 2915 De La Vina St."

11. The Compassion Center has maintained current business licenses for its location at 2915 De La Vina Street at all applicable times. Exhibit C to this declaration is a certified statement from the Finance Department-Treasury Division of the City of Santa Barbara, dated July 9, 2009, stating that the Compassion Center

"Has held a City of Santa Barbara Business License Tax Certificate since April 7, 2006, and is licensed through March 31, 2010. The Compassion Center . . . has always been located and is currently conducting business at 2915 De La Vina St., Santa Barbara, CA 93105."

12. Over the 11 years of its operation, and currently, the Compassion Center serves a mature patient base with needed medications. As a managing member of the collective, I have personal knowledge that many patients who belong to the Compassion Center's Collective are seriously ill members of the community, with conditions including AIDS, cancer, Alzheimer's disease, anorexia, Crohn's disease, amyotrophic lateral sclerosis, rheumatoid arthritis, glaucoma, chemotherapy-related nausea, anxiety disorders, epilepsy, post-traumatic stress disorder arising from war-time military service in Vietnam, Iraq and Afghanistan, and multiple sclerosis.

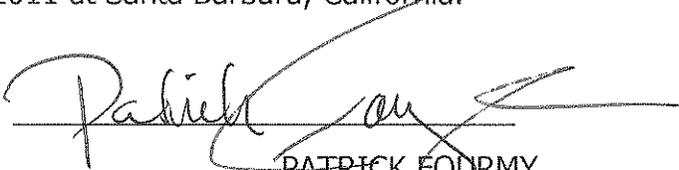
13. Our records reflect that more than 400 members of the Compassion Center Collective are patients over the age of 50.

14. To address the needs of the many seriously ill individuals who rely on it, the Compassion Center is the only collective in California to have, as collective members on staff, licensed registered nurses, who are available to advise patients on the proper medicinal use of cannabis to alleviate their symptoms. The Compassion Center currently has two collective members who are registered nurses on staff.

15. The Compassion Center has on staff a total of nine members of the collective, who are, of course, also members of the Santa Barbara community. Seven are City residents.

16. As advised by the Staff Hearing Officer, please find ten copies of the updated security plan for the building which address the changes that she had suggested I make.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed this 6th day of January 2011 at Santa Barbara, California.

  
PATRICK FOURMY



# EXHIBIT A





456-443  
CCP

569-3333  
4500047

U. S. Department of Justice  
Drug Enforcement Administration  
Los Angeles Field Division  
255 E. Temple Street, 17th Floor  
Los Angeles, CA 90012  
(213) 621-5700

www.dea.gov

SEP 19 1997

Co. D. Emerald  
Pebble

Bernard Friedman  
939 Arcady Road  
Santa Barbara, California 93108

213-994-4503  
Direct - 621 6786

Dear Mr. Friedman:

-213 210 3331

NOTICE

The Drug Enforcement Administration (DEA) has determined you own, or have under your management or control, a building located at 2915 De La Vina, Santa Barbara, California. The DEA has determined there is a marijuana dispensary, Hydrowizard, also known as the Compassion Center of Santa Barbara County, operating on the property. This is a violation of federal law. Federal law 21 U.S.C. § 856(a) states:

"It shall be unlawful to knowingly and intentionally rent, lease, or make available for use, with or without compensation, [a] building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing or using a controlled substance."

Federal law takes precedence over State law. It is not a defense to this crime or to the seizure of the property that the facility operating on the property is providing "medical marijuana" under California law including the provisions of California Proposition 215. Violation of this law is a felony crime, and carries with it a penalty of up to 20 years in prison.

In addition, federal law allows for the seizure of assets, including real property, which have been used in conjunction with the distribution of controlled substances. Specifically, 21 U.S.C. § 881(a)(7) states:

"The following shall be subject to forfeiture to the United States and no property right shall exist in them: All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land which is used in any manner or part, to commit, or to facilitate the commission of, a violation of this sub-chapter."

Drug Enforcement Administration  
Notice Letter  
Page Two

This letter shall serve as notice that, after a thorough investigation, the DEA has determined there is a marijuana dispensary operating on the above described property. By this notice, you have been made aware of the purposes for which the property is being used. You are further advised that violations of federal laws relating to marijuana may result in criminal prosecution, imprisonment, fines and forfeiture of assets.

*Duty Officer S. H. H. H. H.*

For further information, please contact Acting Group Supervisor Deanne Reuter at (213) 621-6789.

Sincerely,



Timothy J. Landrum  
Special Agent in Charge

*Apt 2 Major Bloom*

*If asking for  
2 mo ext to wrap up  
Then actually mean  
They are still there  
related illegal activity*

# EXHIBIT B

## **EXHIBIT B**

**(Hard copy available upon request.)**

# EXHIBIT C





**City of Santa Barbara**

Finance Department-Treasury Division

735 Anacapa Street  
Santa Barbara, CA 93101  
Phone: 805-564-5346  
Fax: 805-897-1978

COPY

THE COMPASSION CENTER OF SANTA BARBARA COUNTY  
ATTN: PATRICK FOURMY  
2915 DE LA VINA ST  
SANTA BARBARA, CA 93105

Regarding City of Santa Barbara, Business License #61608  
**THE COMPASSION CENTER OF SANTA BARBARA COUNTY**

I, Caroline Dosa, Accounting Assistant for the City of Santa Barbara, DO  
HEREBY CERTIFY that, PATRICK FOURMY, is the sole owner of record,  
**THE COMPASSION CENTER OF SANTA BARBARA COUNTY**, a Medical Center  
Business.

**THE COMPASSION CENTER OF SANTA BARBARA COUNTY** has held a City of  
Santa Barbara Business License Tax Certificate since April 7<sup>th</sup>, 2006 and is licensed  
through March 31, 2010. **THE COMPASSION CENTER OF SANTA BARBARA  
COUNTY** has always been located and is currently conducting business at 2915 De La  
Vina St., Santa Barbara, CA 93105.

IN WITNESS WHEREOF, I have here unto set my hand this 9th of July 2009.

Caroline Dosa  
Finance Department  
City of Santa Barbara





# City of Santa Barbara California

## STAFF HEARING OFFICER STAFF REPORT

**REPORT DATE:** December 7, 2010  
**AGENDA DATE:** December 15, 2010  
**PROJECT ADDRESS:** 2915 De la Vina Street (MST2009-00497)  
"Compassion Center of Santa Barbara County"  
**TO:** Staff Hearing Officer  
**FROM:** Planning Division, (805) 564-5470  
Danny Kato, Senior Planner *DK*  
Dan Gullett, Associate Planner *DG*

### I. PROJECT DESCRIPTION

The project consists of the permitting of an existing Medical Marijuana Storefront Collective Dispensary in a commercial building located at 2915 De la Vina Street.

### II. REQUIRED APPLICATION

The discretionary application required for this project is a Medical Marijuana Storefront Collective Dispensary Permit (SBMC §28.80.030).

### III. RECOMMENDATION

Staff's position is that the proposed dispensary does not conform to the issuance criteria for a Storefront Collective Dispensary. Therefore, Staff recommends that the Staff Hearing Officer deny the application, making the finding in Section X of this report. In Exhibit A, staff has included recommended conditions of approval in the case the Staff Hearing Officer approves the Storefront Collective Dispensary Permit.

### IV. SITE INFORMATION

Applicant: Compassion Center of Santa Barbara County	Property Owner: Bernard Friedman
Parcel Number: 051-202-007	Lot Area: 7,500 sf
General Plan: General Commerce/Buffer	Zoning: C-2/SD-2
Existing Use: Storefront Collective Dispensary	Topography: 6% average slope
Adjacent Land Uses:	
North - Commercial	East - Commercial
South - Commercial	West - Single Family Residential

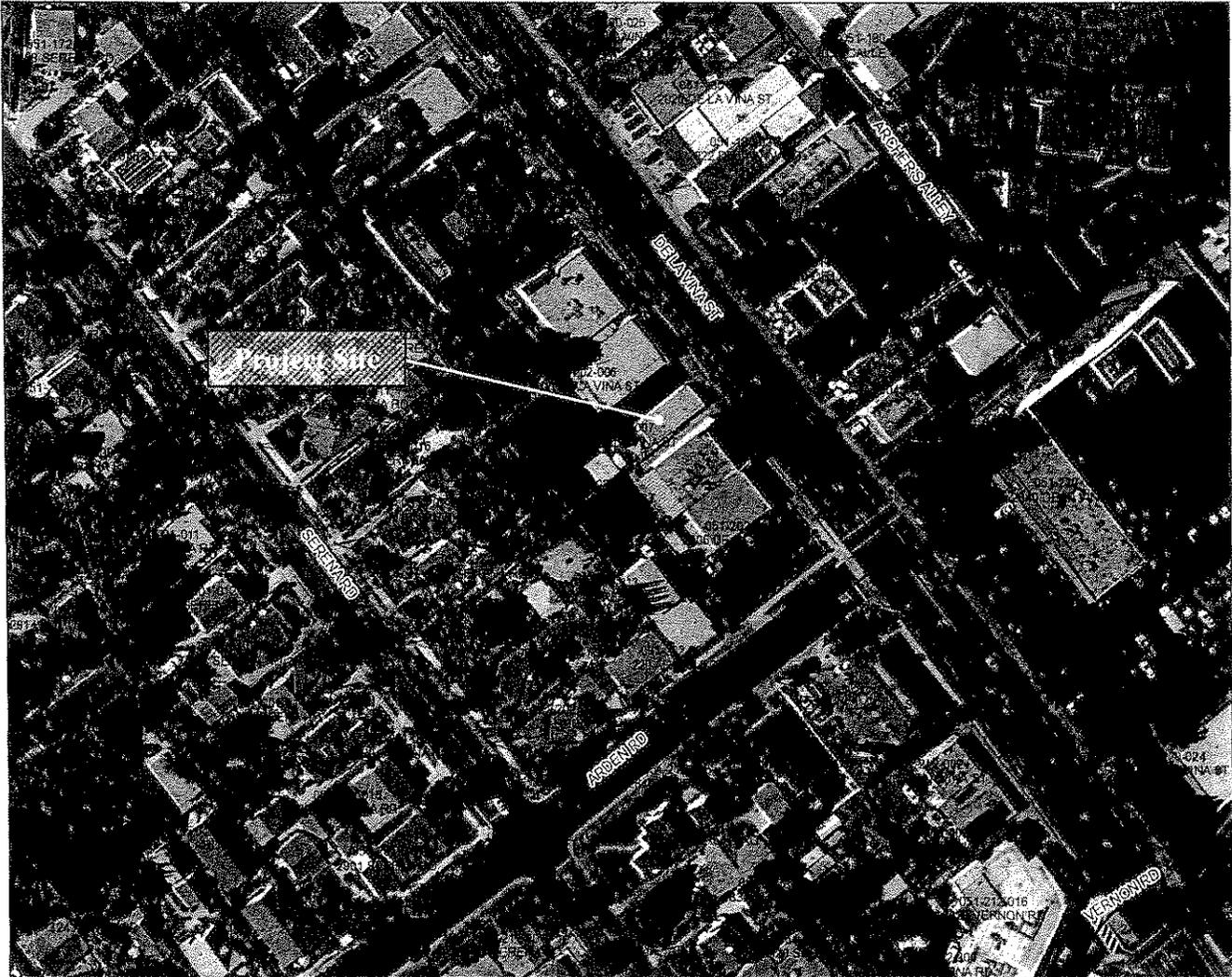


Figure 1: Project Vicinity

## V. APPLICATION HISTORY

The application was initially submitted November 2, 2009 and deemed complete March 22, 2010. The Medical Cannabis Dispensary Ordinance was amended by City Council June 29, 2010. An updated application was submitted in compliance with the amended ordinance on November 22, 2010 following the outcome of the Measure T vote on November 2, 2010.

## VI. NON-CONFORMING STATUS

The legal status of the existing dispensary at 2915 De la Vina is currently under dispute. The City Attorney's office contends that the dispensary discontinued operations for a period of time exceeding 30 days at some point between November 2007 and January 2009, thus losing its status as a legal non-conforming dispensary (see Exhibit C). The Attorney's office indicated what types of evidence could serve as proof that the dispensary operated continuously during that time. Adequate evidence showing continuous operations to the satisfaction of the City Attorney's office was not submitted and a Complaint for Injunctive Relief and Civil Penalties

was filed against the applicant in the Santa Barbara Superior Court on June 30, 2010. The complaint alleges that the dispensary discontinued operations for a period of more than 30 days, and as such, is presently operating in violation of Municipal Code Chapter 28.80. Trial has been set for June 9, 2011.

## **VII. DESIGN REVIEW**

Changes to landscaping and hardscape areas for compliance with accessibility requirements of the building code would be required for the proposed dispensary. The project was reviewed twice by the Architectural Board of Review, on March 15, 2010 and March 29, 2010. The ABR consent reviewer continued the project to the Staff Hearing Officer on March 29, 2010 noting that the architecture was acceptable and requesting a landscape plan and installation of a planter bed in front of the building. The project would return to ABR consent following final approval of the Storefront Dispensary Permit.

## **VIII. ZONING ORDINANCE CONSISTENCY**

### **A. STOREFRONT COLLECTIVE DISPENSARY LIMITATIONS**

In SBMC Section 28.80.050, the Dispensary Ordinance requires that a storefront dispensary be located in a building with a ground floor location with a visible storefront that provides good public views of the dispensary entrance. The proposed dispensary location conforms to this requirement as it is a ground floor location with good views of the storefront from De la Vina Street.

The ordinance defines permissible dispensary locations, delineates five areas of the City where dispensaries may be located and restricts each of the five areas to a maximum of one dispensary, and requires a minimum separation between dispensaries of 1,000 feet. The subject parcel is in an allowable location in the Upper De la Vina area (see Exhibit D). No other permitted dispensaries are located in this area and the parcel is greater than 1,000 feet from the nearest permitted dispensary.

The Dispensary Ordinance also limits the total number of dispensaries in the City to three. At this time, the City is aware of seven operating dispensaries, three of which were issued City permits to operate (331 N. Milpas, 500 N. Milpas, and 631 Olive). Ordinance No. 5526 provided a 180 day amortization period for all legal dispensaries operating without a dispensary permit and all permitted dispensaries not conforming to the dispensary location requirements. With the 180 day amortization, all but one of the existing dispensaries (331 N. Milpas) would be required to close by January 26, 2011.

The operators of the two permitted dispensaries required to close under the amended ordinance (500 N. Milpas and 631 Olive) have challenged the City's application of the ordinance in Federal Court. A preliminary injunction, which was granted by the Court on November 24, 2010, enjoining the City from enforcing the new regulations against the operation at 500 N. Milpas. As a result of the preliminary injunction, 500 N. Milpas is not expected to close by

January 26, 2011. The City Attorney expects a similar preliminary injunction for the 631 Olive, but it has not been issued to date.

As of the date this staff report, the City's response to the preliminary injunction is not known. Staff will provide updated information on this topic at the public hearing.

#### **B. PARKING**

The existing parking on the subject parcel is provided by six parking spaces in the rear parking lot. To meet accessibility requirements, the back patio is proposed to be converted to an accessible parking space and access aisle. The Zoning Ordinance requirement for parking at this location for this use is one space per 250 square feet of floor area. The total parking requirement is four spaces for the 1,060 sf building. The applicant is proposing three more spaces than required by the Zoning Ordinance.

#### **C. ISSUANCE CRITERIA**

The Zoning Ordinance requires that the Staff Hearing Officer consider the following issuance criteria in determining whether to grant or deny a Storefront Dispensary (SBMC Section 28.80.070):

*1. That the Collective Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers, and with the provisions of the Municipal Code, including the application submittal and operating requirements of SBMC Chapter 28.80.*

The applicant has submitted a written affidavit stating that the proposed dispensary complies with all applicable state laws, including the Proposition 215 (Compassionate Use Act, Health and Safety Code Section 11362.5), SB 420 (Health and Safety Code Sections 11362.7 – 11362.83), and the State Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (dated August 2008, or as updated from time-to-time). As conditioned and with design review approvals and issuance of a building permit for the proposed building changes, the dispensary is consistent with the provisions of the Municipal Code. Therefore, the application conforms to this criterion.

*2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.*

The application was reviewed by Police Department, who determined that the area is not considered an area of high crime activity based upon crime reporting statistics. Therefore, the application conforms to this criterion.

*3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicant's former location.*

The Compassion Center of Santa Barbara County currently operates a storefront dispensary at 2915 De la Vina and previously operated a storefront dispensary at 119 N. Milpas Street. There was one reported break in at the 2915 De la Vina location in 2007. The Police Department does not consider the amount of calls for service, crimes or arrests in the area of 2915 De la Vina Street or 119 N. Milpas Street to be significant. Therefore, the application conforms to this criterion. The storage facility used by the subject dispensary was robbed recently. This is discussed below in Criterion 9 below.

*4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of the community for access to medical marijuana.*

A remodel of the existing building is proposed with no change in the building size. The proposed 1,060 net square foot building is an appropriate size in order to safely and efficiently operate a dispensary. Therefore, the application conforms to this criterion.

*5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.*

The proposed location is located on upper De la Vina Street in proximity to Samarkand, Oak Park and East San Roque neighborhoods. There are no dispensaries within 1,000 feet of this location. Therefore, the dispensary would serve the needs of proximate residents and this criterion has been met.

*6. 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 likely or anticipated, and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.*

The parcel is an allowed location for a Storefront Collective Dispensary as provided in Ordinance 5526. The dispensary would be the sole operating dispensary in the Upper De la Vina Area. The building has a visible storefront ground floor location that provides direct public views of the dispensary entrance from De la Vina Street. As conditioned, the dispensary would not be permitted to operate until such time that, including the subject dispensary, the maximum number of dispensaries in the City conforms to the Medical Marijuana Storefront Collective Dispensary Ordinance. No other prohibitions for a dispensary at this location were identified in any local, state, statute or rule or regulation. No significant nuisance issues or problems are likely or anticipated because the proposal incorporates operating procedures and security measures that reduce the potential for nuisance issues. Security measure include alarm systems, security cameras, lighting, a security guard, and patient screening are included. No smoking or use of marijuana is permitted on the premises and the applicant is required to monitor and address loitering, trash, litter and graffiti in the area surrounding the dispensary. As conditioned, this criterion would be met.

*7. That the Dispensary's Operations Plan, its site plan, its floor plan, the proposed hours of operation, and a 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.*

The submitted Operations Plan site plan and floor plan are consistent with the requirements of SBMC Subsection 28.80.060.E. The proposed operation hours of 8 AM to 6 PM, Monday through Saturday comply with the ordinance operational restrictions. The submitted security plan, operations plan, site plan, floor plan, hours of operation and were reviewed by the Police Department and determined to have incorporated features necessary in reducing crime related problems. As conditioned, this criterion would be met.

*8. That all reasonable measures have been incorporated into the Dispensary 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, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.*

Planning and Police Department staff have reviewed the Dispensary security plan and determined that reasonable measures have been incorporated into the Dispensary security plan consistent with this criterion. The security plan includes employment of a minimum of one full time security guard, provides for lighting, cameras, and includes procedures for addressing congregating and obstructing public ways and neighboring property.

*9. That the Storefront Collective Dispensary is likely to have no potentially adverse affect on 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, and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana 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.*

On November 23, 2010, the applicant reported a burglary of a storage unit in a community storage facility that the dispensary used to store marijuana. About 50 pounds of marijuana was stolen from the unit and, according to the police report, about 100 pounds of marijuana was stored in the unit. The unit was secured by a padlock and the roof of the unit was made of chicken wire. Staff's position is that the applicant was negligent in providing proper security for the marijuana and the lack of security resulted in illegal drug activity, police arrests, and adversely affected the health, peace, and safety of persons in the community as a whole. Because of the applicant's negligence in this recent instance, staff expects that the continued

operation of the subject dispensary is likely to have a potentially adverse affect on the health, peace, or safety of persons living or working in the surrounding area, or result in repeated nuisance activities, including police detentions or arrests. Therefore, the application does not meet this criterion.

As conditioned and consistent with the requirements of Municipal Code Subsection 28.80.060.E, the Operations Plan would be required to be amended to provide for Management Members to take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private nuisance in the area, reduce loitering in the area and keep the area clear of litter, debris and trash.

*10. 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.*

As conditioned, no violation of municipal code provisions, conditions of any City-issued permits, or any other local or state law, regulation or order or any condition imposed by permits issued in compliance with any local or state law have been identified for future operations of a dispensary at this location. However, as discussed in Section VI of this Staff Report, the legality of the existing operation is currently under dispute with the City. In the event that the dispensary violates any requirements of the Dispensary Ordinance, is in violation of the operational plan, or operates in conflict with state law, the Staff Hearing Officer has the authority to suspend or revoke the Storefront Collective Dispensary Permit pursuant to Municipal Code Section 28.80.120.

*11. That the Applicant has not made a false statement of material fact or has omitted to state a material fact in the application for a permit.*

The applicant indicated that all statements made in the application are true. As discussed in Section VI of this Staff Report, the City Attorney's office determined that dispensary operations were discontinued for a period of more than 30 days between November 2007 and January 2009, while the applicant has stated that operations were not discontinued more than 30 days during that time frame. In addition to the submitted application materials, the Staff Hearing Officer must consider any testimony presented by the applicant at the public hearing. The Staff Hearing Officer must consider the applicants conformance to this criterion based on a judgment of the facts as stated within the entire record.

*12. 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.*

The applicant has passed the requisite background check. Per the applicant's signed statement, the applicant has not engaged in any unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City of Santa Barbara in the past. As stated in Section VI of this Staff Report, the legal status of this dispensary is under

dispute. If the dispensary discontinued operations for a period of more than 30 days since the adoption of the Medical Cannabis Dispensary Ordinance, it re-opened illegally and this criterion is not met. If the dispensary is currently legal non-conforming, this criterion is met.

**IX. ENVIRONMENTAL REVIEW**

Staff has determined that the project qualifies for an exemption from further environmental review under Section 15301 (Existing Development) of the California Environmental Quality Act (CEQA) Guidelines. The project involves a tenant improvement in an existing commercial building.

**X. FINDING**

The Staff Hearing Officer finds the following:

**A. STOREFRONT COLLECTIVE DISPENSARY PERMIT (SBMC §28.80.100)**

- I. The dispensary permit does not comply with the criteria set forth in Section 28.80.070 (Criteria for Review of Collective Dispensary Applications by the Staff Hearing Officer) of the Zoning Ordinance, as explained in Section VIII.C of the Staff Report.

Exhibits:

- A. Conditions of Approval
- B. Application package, dated November 22, 2010
- C. Letter from the City Attorney's office to Patrick Fourmy dated April 7, 2010
- D. Municipal Code Chapter 28.80

## STAFF HEARING OFFICER CONDITIONS OF APPROVAL

2915 DE LA VINA STREET  
STOREFRONT COLLECTIVE DISPENSARY PERMIT  
DECEMBER 15, 2010

In consideration of the project approval granted by the Staff Hearing Officer and for the benefit of the owner(s) and occupant(s) of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the Real Property:

- A. **Operation of the Storefront Collective Dispensary Contingent upon Compliance with the Limitation on the Maximum Number of Dispensaries.** The operation of this dispensary shall not commence and no building permit may be issued for the tenant improvement associated with this use until such time that, including the subject dispensary, no more than the maximum number of Storefront Collective Dispensaries allowed by the Medical Marijuana Storefront Collective Dispensary Ordinance in the City are in operation.
- B. **Approved Dispensary.** The applicant shall operate the dispensary in accordance with the application information and plans submitted to the Planning Division November 22, 2010.
- C. **Design Review.** The project is subject to the review and approval of the Architectural Board of Review (ABR). ABR shall not grant project design approval of the project until the following Staff Hearing Officer land use conditions have been satisfied.
  1. **Security.** The owner shall provide revised plans with bars and/or breakage sensors provided on all exterior windows to the satisfaction of the Police Department.
- D. **Operations Plan Revisions.** The Operations Plan shall be revised to incorporate the following requirements of Municipal Code Subsection 28.80.060.E to the satisfaction of the Planning Division prior to issuance of a building permit:
  1. **Public Nuisance.** The Operations Plan shall provide for the Management Members of the Collective Dispensary to take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private 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 Storefront Collective Dispensary.
  2. **Loitering Adjacent to a Dispensary.** The Operations Plan shall provide that the Management Members will take all reasonable steps to reduce loitering by Collective members in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Storefront Collective Dispensary.
  3. **Trash, Litter, Graffiti.** The Operations Plan shall provide that the Management Members will keep an area which includes the sidewalks adjoining the Dispensary plus ten (10) feet beyond property lines (as well as any parking lots under the control of the Dispensary) clear of litter, debris, and trash.
- E. **Building Permit Required.** Prior to commencement of business operations, the tenant improvements in conformance with the plans submitted November 22, 2010, or as

modified City Building Official, shall be completed and shall have cleared final building inspection. The applicant shall obtain a Building Permit for said tenant improvements.

- F. **Alarm System Permit.** Applicant shall apply for an alarm system permit. Said alarm system shall be installed and registered per Municipal Code Chapter 9.100 and shall meet the requirements of the Santa Barbara Police Department.
- G. **Management Requirements.** The Storefront Collective Dispensary operations shall be maintained and managed on a day-to-day basis in compliance with the following operational standards and requirements of Municipal Code Section 28.80.080.
- H. **Medical Marijuana Storage.** All Medical Marijuana provided to the Dispensary by the Collective shall be stored on site.
- I. **Litigation Indemnification Agreement.** In the event the Staff Hearing Officer's approval of the permit is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

**EXHIBIT B**

**(Hard copy available upon request.)**



# City of Santa Barbara

Office of the City Attorney

www.SantaBarbaraCA.gov

Stephen P. Wiley • City Attorney • Tel: 805.564.5326 • Fax: 805.897.2532

Street Address: 740 State Street, Suite #201 Santa Barbara, California 93101

Mailing Address: Post Office Box 1990 Santa Barbara, California 93102

April 7, 2010

Patrick Fourmy  
2915 De La Vina Street  
Santa Barbara, California 93105

Re: Santa Barbara Municipal Code Violation (SBMC):  
Compassion Center  
Medical Cannabis Dispensary located at 2915 De La Vina Street

Dear Mr. Fourmy:

You are being contacted as the operator of the medical cannabis dispensary, Compassion Center, located at 2915 De La Vina Street (hereinafter the "Real Property"). This dispensary is currently being operated at the Real Property without the requisite City permit in violation of Santa Barbara Municipal Code (SBMC) section 28.80.030, "Dispensary Permit Required to Operate."<sup>1</sup>

Under Santa Barbara City Ordinance 5449, Section Three, pre-existing medical cannabis dispensaries that were operating prior to August 14, 2007 are deemed "pre-existing legal uses of real property upon which they are situated for a period of three (3) years," provided the dispensary business is not *discontinued for a period of time in excess of thirty days* and the dispensary complies with all portions of Chapter 28.80 (except for locational provisions).

Inspections performed at the Real Property on November 21, 2007 and January 9, 2008, revealed that Compassion Center had ceased operation at that location. The City is also informed that after closing its location at 2915 De La Vina Street, Compassion Center reopened and began doing business at 3532 State Street in March 2008. Based on this information the City has determined that Compassion Center ceased operation at the Real Property for a period over thirty (30) days. As such, the dispensary is no longer

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<sup>1</sup> SBMC sec. 28.80.030: 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 premise 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 appeal from a decision by the Staff Hearing Officer.

Patrick Fourmy  
April 7, 2010  
Re: 2915 De La Vina/Compassion Center  
Page 2

deemed "pre-existing" legal and may only continue to operate under an approved City permit in compliance with SBMC Chapter 28.80.

As you know, on October 30, 2009, the City Attorney's Office sent a letter to the owner of the Real Property, Bernard Friedman, notifying him that Compassion Center was operating a dispensary on his property in violation of the Santa Barbara Municipal Code. You were sent a copy of this letter. Mr. Friedman was directed to take action to abate the municipal code violation within fifteen (15) days of the date of the letter. Despite this direction from the City, the dispensary continues to operate.

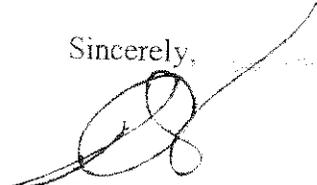
Your associate, Corey Cervantes, recently submitted an application for a dispensary permit under the City's new ordinance for this location. This letter is to notify you that the City Attorney's Office will not recommend approval of an application for a dispensary that has intentionally disregarded the City's regulations governing operation of a medical cannabis dispensary. Consequently, please be advised that unless the medical cannabis dispensary located on the Real Property ceases operation within ten (10) days of the date of this letter, the City Attorney's Office will recommend to the City Staff Hearing Officer and Planning Commission that the application for legalization be denied based on your failure to comply with current Municipal Code requirements.

You previously requested guidance regarding what evidence the City would accept as proof of continuous operation. Specifically, you inquired about appropriate language pertaining to declarations under penalty of perjury to be signed by your patients indicating that they purchased marijuana from Compassion Center. These would need to be created for individual patients and indicate that he or she purchased marijuana *from the location* at 2915 De La Vina Street within a particular month during the period of October 1, 2007 to January 1, 2009. These alone may not be adequate proof of continuous operation. You may also need to provide additional supporting evidence, such as cash register receipts, payroll taxes, workers compensation payments, lease, utility bills, bank statements, delivery/shipping receipts (e.g. FedEx, UPS), and phone bills, all pertaining to the period from October 1, 2007 to January 1, 2009. Since each one of these documents is not sufficient to provide satisfactory proof, you will need to provide several different forms of the documents I just mentioned that, when viewed cumulatively, would indicate continuous operation.

Patrick Fourmy  
April 7, 2010  
Re: 2915 De La Vina/Compassion Center  
Page 3

If you have any questions about this enforcement case, you may contact me at  
(805) 560-7513 or [tostrenger@santabarbaraca.gov](mailto:tostrenger@santabarbaraca.gov).

Sincerely,

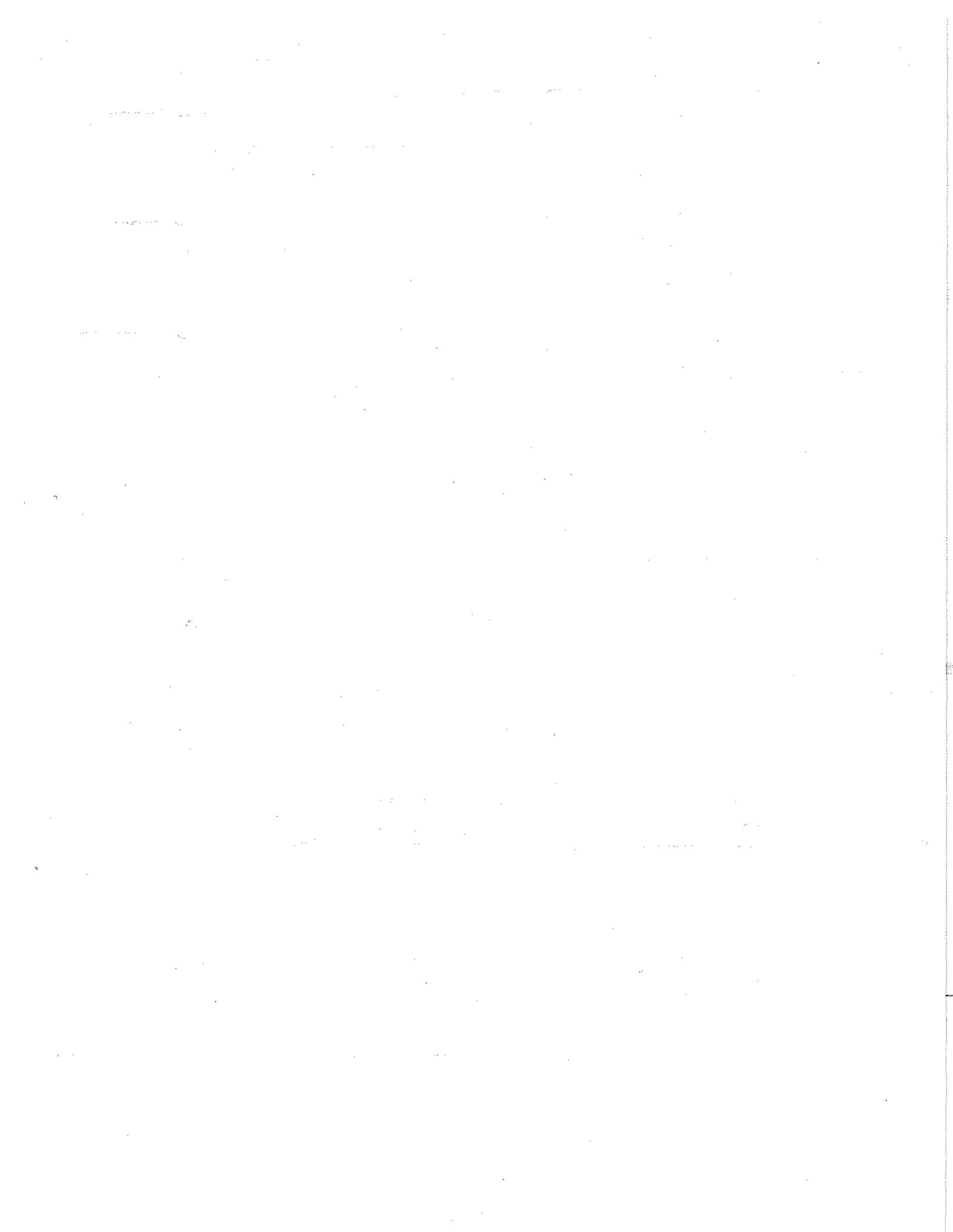


Tava Ostrenger, Esq.

cc: Stephen P. Wiley, City Attorney  
Michelle Montez, Assistant City Attorney  
Capt. Armando Martel, Santa Barbara Police Department  
Danny Kato, Zoning Enforcement Supervisor  
Brenda Monser, Business License Supervisor  
Sol Levitt, Attorney for Bernard Friedman (sent via email)

**RECEIVED**  
APR 07 2010

CITY OF SANTA BARBARA  
PLANNING DIVISION



## Chapter 28.80

### MEDICAL CANNABIS DISPENSARIES

#### Sections:

28.80.010	Purpose and Intent.	28.80.090	City Access to and Inspection of Required Storefront Collective Dispensary Records.
28.80.020	Definitions.	28.80.100	Sale, Distribution, or Exchange of Medical Marijuana with a Non-Medical Marijuana Collective Member.
28.80.030	Storefront Collective Dispensary - Permit Required to Operate.	28.80.110	Appeal from Staff Hearing Officer Determination.
28.80.040	Imposition of Medical Marijuana Storefront Collective Dispensary Permit Fees.	28.80.120	Suspension and Revocation by Staff Hearing Officer.
28.80.050	Limitations on the Permitted Location of a Storefront Collective Dispensary.	28.80.130	Transfer of Collective Dispensary Permits.
28.80.060	Storefront Collective Dispensary – Permit Application Requirements.	28.80.140	Medical Marijuana Vending Machines.
28.80.070	Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer.	28.80.150	Business License Tax Liability.
28.80.080	Ongoing Management Requirements for Medical Marijuana Storefront Collective Dispensaries.		

#### 28.80.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate the storefront distribution of medical marijuana in order to ensure the health, safety, and welfare of the residents of the City of Santa Barbara. The regulations in this Chapter, in compliance with the State Compassionate Use Act of 1996 and the State Medical Marijuana Program Act (“the SB 420 statutes”), are not intended and do not interfere with a patient’s right to use medical marijuana as authorized under the Compassionate Use Act or the SB 420 statutes, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under the Compassionate Use Act. Under the Compassionate Use Act of 1996 and the SB 420 statutes, only qualified patients, persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively and provide it to qualified patients or persons with identification cards. Therefore, medical marijuana collectives within the City which choose to operate storefront dispensary locations must comply with all provisions of the Santa Barbara Municipal Code (“SBMC”) for obtaining a permit for the storefront dispensary as well as complying with the Compassionate Use Act, the SB 420 statutes, and all other applicable local and state laws. Nothing in this Chapter purports to permit activities that are otherwise illegal under federal, state, or local laws. (Ord. 5526, 2010.)

#### 28.80.020 Definitions.

For the purposes 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 Medical Marijuana Storefront Collective Dispensary permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other dispensary operator, Management Member, employee, or agent of a Medical Marijuana Storefront Collective Dispensary.

**B. Drug Paraphernalia.** As defined in California Health and Safety Code Section 11014.5, and as may be amended from time to time.

**C. Identification Card.** As defined in California Health and Safety Code Section 11362.71, and as may be amended from time to time.

**D. Management Member.** A Medical Marijuana Collective member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective including, but not limited to, members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.

**E. Medical Marijuana Storefront Collective Dispensary or Storefront Collective Dispensary.** An incorporated or unincorporated association which is composed of four (4) or more Qualified Patients and their designated Primary Caregivers who associate at a particular location or Property within the City in order to collectively or cooperatively cultivate marijuana for medical purposes and who, acting through Management Members, distribute the collectively-cultivated medical marijuana to the members of their Collective at a storefront dispensary located within a nonresidential zone of Santa Barbara, all in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code section 11362.5) and Health and Safety Code sections 11362.7 through 11362.9. For the purposes of this Chapter, the term "Medical Marijuana cooperative" (or "cooperative") shall have the same meaning as a "Medical Marijuana collective" (or a "collective"), and the term "cooperative" shall have the definition and formation requirements established for it by state law.

A Storefront Collective Dispensary shall not include the dispensing of medical marijuana by primary caregivers to qualified patients in the following locations so long as the location and operation of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code and is operated in the manner required 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. 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 also fully complies with applicable laws including, but not limited to, the Compassionate Use Act of 1996 and the SB 420 statutes.

**F. Permittee.** The Management Member or Members identified to the City by an Applicant as such, and to whom a City Storefront Collective Dispensary permit has been issued, and someone who also qualifies as a primary caregiver.

**G. Person with an Identification Card.** A person as described in California Health and Safety Code Section 11362.71 through 11362.76, 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.** A person as defined and described in either subdivision (d) or (e) of California Health and Safety Code Section 11362.7 as it may be amended from time to time.

**J. Property.** The location or locations within the City at which Medical Marijuana Collective members and Management members associate to collectively or cooperatively cultivate or to distribute Medical Marijuana exclusively to their Collective members.

**K. Qualified Patient.** A person as defined and described in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time. For the purposes of this Chapter, a Qualified Patient shall also include a Person with an Identification Card.

**L. Reasonable Compensation.** Compensation commensurate with reasonable wages and benefits paid to employees of federal Internal Revenue Code-qualified nonprofit organizations, which employees have similar job descriptions and duties, as well as a comparable required level of experience and education, similar prior earnings or wage history, and number of hours typically worked per week. The payment of a bonus shall not be considered reasonable compensation.

**M. 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. (Ord. 5526, 2010.)

#### **28.80.030 Storefront Collective Dispensary - Permit Required to Operate.**

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon his or her Property located within the City, the operation of a Storefront Collective Dispensary unless an Applicant has first obtained and continues to maintain in full force and effect a valid Storefront Collective Dispensary Permit issued by the City for that Property pursuant to this Chapter. (Ord. 5526, 2010.)

#### **28.80.040 Imposition of Medical Marijuana Storefront Collective Dispensary Permit Fees.**

Every application for a Storefront Collective Dispensary permit shall be accompanied by an application fee (in an amount established by resolution of the City Council) at an amount calculated to recover the City's full cost of reviewing and issuing the Storefront Collective Dispensary permit) and the filing of a complete required application pursuant to this Chapter. The application 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. (Ord. 5526, 2010.)

**28.80.050 Limitations on the Permitted Location of a Storefront Collective Dispensary.**

**A. Permissible Zoning for Storefront Collective Dispensaries.** Storefront Collective Dispensaries may only be permitted and located on parcels within the City which are zoned for commercial uses and on those street block faces listed in the exhibit to this Chapter designated as "Medical Marijuana Storefront Collective Dispensaries – Allowed Locations," dated as of June 22, 2010.

**B. Storefront Locations.** Except for those locations shown as allowed within the West Pueblo Medical Area on the exhibit attached to this Chapter which have been specifically approved by the Staff Hearing Officer as non-storefront locations pursuant to this Chapter, a Storefront Collective Dispensary shall only be located in a visible storefront type ground-floor location which provides good public views of the Dispensary entrance, its windows, and the entrance to the Storefront Collective Dispensary premises from a public street.

**C. Commercial Areas and Zones Where Storefront Collective Dispensaries Not Permitted.** Notwithstanding subparagraph (A) above, a Storefront Collective Dispensary shall not be allowed or permitted on a parcel located within 1000 feet of another permitted or allowed Storefront Collective Dispensary.

**D. Locational Measurements.** The distance between a Storefront Collective Dispensary and above-listed restrictions shall be calculated as a straight line from any parcel line of the Property on which the Storefront Collective Dispensary is located to the parcel line 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.

For the purposes of determining compliance with the locational restrictions imposed by this section, the permissibility of a proposed Storefront Collective Dispensary location shall be determined by City staff based on the date the permit application has been deemed complete by the City, with the earliest complete applications deemed to have priority over any subsequent Storefront Collective Dispensary application for any particular permissible location.

**E. One Collective Dispensary for Each Area of the City.** No more than one Storefront Collective Dispensary may open or operate in each of the areas of the City designated as allowed or permissible Collective Dispensary location areas in the exhibit attached to this Chapter, except for those areas which, at the time of the adoption of the ordinance amending this Chapter, already have more than one Storefront Collective Dispensary on a legal non-conforming basis and which are allowed to continue to operate on a legal non-conforming basis under Section Two of the Ordinance amending this Chapter--in which case a legal non-conforming Dispensary may be allowed to continue to operate in such an area.

**F. Maximum Number of Medical Marijuana Storefront Collective Dispensaries Allowed Permits.** Notwithstanding the above, the City may not issue a total of more than three (3) Collective Dispensary permits at any one time and, subject to the amortization allowance period contained within the uncodified portions of the City ordinance adopting amendments to this chapter, no more than three (3) permitted or allowed Collective Dispensaries may legally operate within the City, including specifically those dispensaries which are open and operating in a legal nonconforming manner at the time of the adoption of the ordinance amending this Chapter. (Ord. 5526, 2010.)

**28.80.060 Storefront Collective Dispensary – Permit Application Requirements.**

**A. Application Filing.** A complete Performance Standard Permit application submittal packet is required for a Storefront Collective Dispensary permit, and it shall be submitted (along with all required fees) and all other information and materials required by this Chapter in order to file a complete application for a Storefront Collective Dispensary Permit for a specific Property. All applications for Storefront Collective Dispensary permits shall be filed with the Community Development Department using forms provided by the City. It is the responsibility of the Applicant to provide all of the information required for approval of the permit. The application shall be signed by a Management Member under penalty of perjury.

**B. Eligibility for Filing.** If a Storefront Collective Dispensary permit application is filed by a non-owner of the Property, it shall also be accompanied by a written affirmation from the Property owner expressly allowing the Applicant and Management Member to apply for the Permit and acknowledging the Applicant's right to use and occupy the Property for the intended Medical Marijuana Storefront Collective Dispensary use.

**C. Filing Date.** The filing date of any application shall be the date when the City officially receives the last submission of information or materials required in compliance with the submittal requirements specified herein, and the application has been deemed complete in writing by the City.

**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 thirty (30) days. If the application remains incomplete in excess of thirty (30) days, the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request.

**E. Filing Requirements – Proposed Operational Plan.** In connection with a permit application, an Applicant for a Storefront Collective Dispensary permit shall provide a detailed "Operations Plan" for the proposed Dispensary and, upon issuance of the Storefront Collective Dispensary permit by the City, shall operate the Storefront Collective Dispensary in accordance with the Operations Plan, as approved, at all times. A required Operations Plan shall consist of at least the following:

1. **Site Plan and Floor Plan.** A Storefront Collective Dispensary application shall have a proposed site plan and floor plan which shows a lobby waiting area at the entrance to the Storefront Collective Dispensary used to receive qualified patients or primary caregivers, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated primary caregiver members of the Collective. 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 Storefront Collective Dispensary shall have suitable locked storage on the premises, identified and approved as a part of the operational security plan for the after-hours storage of medical marijuana.

3. **Security Plans.** A Storefront Collective Dispensary shall provide a plan to provide adequate security on the premises of the Dispensary which shall be maintained in accordance with the Dispensary security plan approved by the Chief of Police and as reviewed by the Staff Hearing Officer. This plan shall include provisions for adequate lighting and alarms in order to ensure the safety of persons and to protect the premises from theft. All security guards used by dispensaries shall be licensed and employed by a state-licensed private-party operator security company retained by the Storefront Collective Dispensary, and each security guard used shall possess a valid state Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess or carry firearms or tazers while working at a Collective Dispensary.

4. **Security Cameras.** The Security Plan shall show how the Property will be monitored at all times by closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the Property. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

5. **Alarm Systems.** The Operations Plan shall provide that professionally monitored burglary and fire alarm systems shall be installed, and such systems shall be maintained in good working condition within the Storefront Collective Dispensary at all times.

6. **Emergency Contact.** An Operations Plan shall provide the Chief of Police with the name, cell phone number, and facsimile number of a Management Member to act as an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the Storefront Collective Dispensary.

7. **Public Nuisance.** The Operations Plan shall provide for the Management Members of the Collective Dispensary to take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private 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 Storefront Collective Dispensary.

8. **Loitering Adjacent to a Dispensary.** The Operations Plan shall provide that the Management Members will take all reasonable steps to reduce loitering by Collective members in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Storefront Collective Dispensary.

9. **Trash, Litter, Graffiti.** The Operations Plan shall provide that the Management Members will keep an area which includes the sidewalks adjoining the Dispensary plus ten (10) feet beyond property lines (as well as any parking lots under the control of the Dispensary) clear of litter, debris, and trash.

10. **Removal of Graffiti.** The Operations Plan shall provide a method for the Management Members to promptly remove all graffiti from the Property and parking lots under the control of the Collective within 72 hours of its appearance.

**F. Filing Requirements – Information Regarding Storefront Collective Dispensary Management.** A Storefront Collective Dispensary Applicant shall also provide the following Management Member and Collective information as part of a Storefront Collective Dispensary application:

1. The name, address, telephone number, title and function(s) of each Management Member;

2. For each Management Member, a fully legible copy of one (1) valid government-issued form of photo identification, such as a state driver's license or identification card. Acceptable forms of government-issued identification include, but are not limited to, driver's license or photo identity cards issued by the state Department of Motor Vehicles (or equivalent) that meet REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a Permanent Resident card.

3. Written confirmation as to whether the Collective or a Management Member of the Collective previously operated in this or any other county, city or state under a similar license or permit, and whether the Collective or Management Member Applicant ever had such a license or permit revoked or suspended and the reason(s) therefore.

4. If the Collective is a corporation or a cooperative, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's By Laws;

5. If the Collective is an unincorporated association, a copy of the articles of association;

6. The name and address of the Applicant's or Collective's current designated Agent for Service of Process;

7. A statement dated and signed by each Management Member of the Collective, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the identified Management Member(s);

8. Whether edible medical marijuana products will be prepared and distributed at the proposed Dispensary Property;

9. The Property location or locations where any and all medical marijuana will be collectively cultivated by the Collective members and Management Members. (Ord. 5526, 2010.)

#### 28.80.070 Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer.

**A. Decision on Application.** Upon an application for a Storefront Collective Dispensary permit being deemed complete, the Staff Hearing Officer shall either issue a Storefront Collective Dispensary permit, issue a Storefront Collective Dispensary permit with conditions in accordance with this Chapter, or deny a Storefront Collective Dispensary permit.

**B. Criteria for Issuance.** The Staff Hearing Officer, or the City Council on appeal, shall consider the following criteria in determining whether to grant or deny a Medical Marijuana Storefront Collective Dispensary permit:

1. That the Collective Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers, and with the provisions of this Chapter and the Municipal Code, including the application submittal and operating requirements herein.

2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.

3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicant's former location.

4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of the community for access to medical marijuana.

5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.

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

7. That the Dispensary's Operations Plan, its site plan, its floor plan, the proposed hours of operation, and a 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.

8. That all reasonable measures have been incorporated into the Dispensary 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, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.

9. That the Storefront Collective Dispensary is likely to have no potentially adverse affect on 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, and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana 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.

10. 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.

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

12. 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. (Ord. 5526, 2010.)

#### 28.80.080 Ongoing Management Requirements for Medical Marijuana Storefront Collective Dispensaries.

Storefront Collective Dispensary operations shall be maintained and managed on a day-to-day basis only in compliance with the following operational standards and requirements:

**A. Criminal History.** A Storefront Collective Dispensary permittee, including all Management Members of that permittee, shall not have been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance and shall remain free of such a conviction or probation during the period of time in which the Storefront Collective Dispensary is being operated.

**B. Minors.** It shall be unlawful for any Storefront Collective Dispensary permittee, a Management Member of the permittee, or any other person effectively in charge of any Storefront Collective Dispensary to employ any person who is not at least 18 years of age. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Collective Dispensary unless they are a qualified patient member of the Collective and they are accompanied by a parent or guardian at all times. The entrance to a Storefront Collective Dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient member of the Collective and they are in the presence of their parent or guardian.

**C. Storefront Collective Dispensary Size and Access.** The following access restrictions shall apply to all Storefront Collective Dispensaries permitted by this Chapter:

1. A Storefront Collective Dispensary shall not be enlarged in size (i.e., increased floor area) without prior review and approval of the change from the Staff Hearing Officer and an approved amendment to the existing Storefront Collective Dispensary permit pursuant to the requirements of this Chapter.

2. An expressly designated Management Member or Members shall be responsible for monitoring the Property of the Storefront Collective Dispensary for any nuisance activity (including the adjacent public sidewalk and rights-of-way) which may occur on the block within which the Storefront Collective Dispensary is operating.

3. Only Collective members as primary caregivers or qualified patients shall be permitted within a Storefront Collective Dispensary building for the purposes of cultivating, processing, distributing, or obtaining medical marijuana.

4. A qualified patient or a primary caregiver shall not visit a Storefront Collective Dispensary without first having obtained a valid written recommendation from his or her licensed physician recommending the use of medical marijuana or, in the case of a primary caregiver, without first having been expressly designated a primary caregiver to a qualified patient as required by the Compassionate Use Act.

5. A qualified patient or primary caregiver may not obtain medical marijuana upon their first in-person visit to a Storefront Collective Dispensary and, instead, may only become a member of the Collective at the first visit to a particular Dispensary. Upon joining the Collective, a registered member of a Collective may obtain medical marijuana as a qualified patient or primary caregiver only after an initial waiting period of 24 hours after their initial in-person visit to the Dispensary for the purposes of joining the Collective.

6. Only a primary caregiver and qualified patient members of the Collective Dispensary shall be allowed within the designated marijuana dispensing area of a Storefront Collective Dispensary (as shown on the site plan required by the Application) along with only necessary Management Members.

7. Restrooms within the Storefront Collective Dispensary shall remain locked and under the control of Collective Dispensary Management Members at all times.

**D. Medical Marijuana Dispensing Operations.** The following medical marijuana distribution restrictions and conditions shall apply to all of the day-to-day medical marijuana dispensing operations which occur within a City-permitted Storefront Collective Dispensary:

1. A Storefront Collective Dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physician's approval or recommendation in compliance with the criteria of the Compassionate Use Act of 1996 and the SB 420 Statutes to those persons who are registered as active members of that Collective, and may do so only during storefront dispensary operating hours of between eight o'clock in the morning (8:00 a.m.) through six o'clock in the evening (6:00 p.m.), Monday through Saturday only. The days and hours of the dispensary's operation shall be posted in a sign located on the street frontage of the dispensary premises in a manner consistent with the City's Sign Ordinance. Storefront Collective Dispensaries shall require such persons receiving medical marijuana to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card, each time they seek to obtain medical marijuana.

2. Prior to dispensing medical marijuana, a Management Member of the Storefront Collective Dispensary shall obtain a re-verification from the recommending physician's office personnel that the individual requesting medical marijuana is or remains a qualified patient or a primary caregiver.

3. A Storefront Collective Dispensary shall not have a physician on-site to evaluate patients and provide a Compassionate Use Act recommendation for the use of medical marijuana.

4. Every Storefront Collective Dispensary shall display, at all times during its regular business hours, the permit issued pursuant to the provisions of this Chapter for such Collective Dispensary in a conspicuous place so that the same may be readily seen by all persons entering the Storefront Collective Dispensary.

5. No Storefront Collective 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 of the Dispensary that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

6. Storefront Collective Dispensaries shall be considered a commercial use relative to the parking requirements imposed by Santa Barbara Municipal Code Section 28.90.100(I).

7. A notice shall be clearly and legibly posted in the Storefront Collective Dispensary indicating that smoking, ingesting, or consuming marijuana on the premises or in the vicinity of the Dispensary is prohibited. Signs on the premises shall not obstruct the entrance or windows. Address identification shall comply with Fire Department illuminated address sign requirements.

8. Business identification signage for Storefront Collective Dispensaries 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.

**E. Dispensary Medical Marijuana On-Site Consumption and Re-Distribution Restrictions.** The following medical marijuana consumption restrictions shall apply to all permitted Storefront Collective Dispensaries:

1. Medical marijuana shall not be consumed by qualified patients on the Property or on the premises of the Storefront Collective 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 Collective Dispensary's entrance. Collective Dispensary Management Member employees who are qualified patients may consume marijuana 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. Storefront Collective Dispensary operations shall not result in illegal re-distribution or sale of medical marijuana obtained from the Collective Dispensary, or the use or distribution in any manner which violates state law.

**F. Retail Sales of Other Items by a Storefront Collective Dispensary.** The retail sales of related marijuana use items at a Storefront Collective Dispensary may be allowed only under the following circumstances:

1. With the approval of the Staff Hearing Officer, a Collective Dispensary may conduct or engage in the commercial sale of specific products, goods, or services (except drug paraphernalia) in addition to the provision of medical marijuana on terms and conditions consistent with this Chapter and applicable law.

2. No Collective Dispensary shall sell or display for sale any drug paraphernalia or any implement that may be used to administer medical marijuana.

**G. Storefront Collective Dispensary – Compliance with the Compassionate Use Act of 1996 and SB 420 Statutes.**

1. **State Law Compliance Warning.** Each Collective Dispensary shall have a sign posted in a conspicuous location inside the Storefront Collective Dispensary advising the public of the following:

a. The diversion of marijuana for non-medical purposes is a criminal violation of state law.  
b. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.

c. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law.

2. **Not-For-Profit Operation of the Storefront Collective Dispensary.** No Medical Marijuana Storefront Collective Dispensary shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation for services provided by Management Members and Collective Members toward the Collective's actual expenses for the growth, cultivation, processing, and provision of Medical Marijuana to qualified patients of the Collective shall be allowed, provided that such reimbursements are in strict compliance with the applicable provisions of the SB 420 Statutes. All such cash and in-kind reimbursement amounts and items shall be fully and properly documented in the financial and accounting records of the Collective Dispensary in accordance with and as required by the recordkeeping requirements of this Chapter.

3. **Cultivation of Medical Marijuana by the Collective.** The collective cultivation of medical marijuana shall be limited to the Collective Members and Management Members. Cultivation of medical marijuana by the Collective Members and the Management Members shall occur exclusively within the boundaries of the counties of Santa Barbara, Ventura, or San Luis Obispo and only at the real property identified for such cultivation on the approved Storefront Collective Dispensary Permit application.

No cultivation of medical marijuana at any Property where the marijuana will be visible with the unaided eye from any public or other private property, nor shall cultivated medical marijuana or dried medical marijuana be visible from the building exterior on the Property. No cultivation shall occur at the Property of the Collective unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

4. **Distribution of Medical Marijuana Within Santa Barbara Only.** Distribution of the medical marijuana collectively cultivated by some Collective Members to other Collective Members shall occur exclusively within the boundaries of the city of Santa Barbara and only at the real property identified as the permitted Dispensary location on the approved Storefront Collective Dispensary Permit application.

5. **Membership Limited to One Collective.** Membership in a Collective which operates a Storefront Collective Dispensary within the City shall be limited to one Collective per qualified patient or primary caregiver. Each Collective shall also consist only of individuals residing within Santa Barbara County, as the term "principal residence" is defined in the federal Internal Revenue Code.

**H. Maintenance of Appropriate Collective Records Regarding Cultivation and Compliance with the SB 420 Statutes.**

1. **Cultivation Records.** Every permitted Storefront Collective Dispensary shall maintain on-site (i.e., at the Property designated for the operation of the Storefront Collective Dispensary) the medical marijuana cultivation records of the Collective. These records shall be signed under penalty of perjury by each Management Member responsible for the cultivation and shall identify the location or locations within the counties of Santa Barbara, Ventura, or San Luis Obispo at which the Collective's medical marijuana is being cultivated. Such records shall also record the total number of marijuana plants cultivated or stored at each cultivation location. The Storefront Collective Dispensary shall also maintain an inventory record documenting the dates and amounts of medical marijuana cultivated or stored at the Dispensary Property, if any, as well as the daily amounts of Medical Marijuana distributed from the permitted Dispensary.

2. **Membership Records.** Every Storefront Collective Dispensary shall maintain full and complete records of the following membership information: a. the full name, date of birth, residential address, and telephone number(s) of each Collective Member and Management Member; b. the date each Collective Member and Management Member joined the Collective; c. the exact nature of each Collective Member's and Management Member's participation in the Collective; and d. the current status of each member and Management Member as a Qualified Patient or Primary Caregiver.

3. **Financial Records.** The Collective Dispensary shall also maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements, (including any in-kind contributions), and any and all reasonable compensation for services provided by the Management Members or other members of the Collective, as well as records of all operational expenditures and costs incurred by the Storefront Collective Dispensary in accordance with generally accepted accounting practices and standards typically applicable to business records.

4. **Dispensary Record Retention Period.** The records required above by subparagraphs (1), (2), and (3) of this subsection shall be maintained by the Medical Marijuana Collective Dispensary for a period of three (3) years and shall be made available to the City upon a written request, subject to the authority set forth in Section 28.80.090. (Ord. 5526, 2010.)

#### **28.80.090 City Access to and Inspection of Required Storefront Collective Dispensary Records.**

A duly designated City Police Department or Community Development Department representative may enter and shall be allowed to inspect the premises of every Storefront Collective Dispensary as well as the financial and membership records of the Collective required by this Chapter between the hours of eight o'clock (8:00) A.M. and six o'clock (6:00) P.M., or at any appropriate time to ensure compliance and enforcement of the provisions of this Chapter, except that the inspection and copying of the private medical records of a Collective Member shall be made available to the Police Department only pursuant to a properly executed search warrant or inspection warrant by a court of competent jurisdiction, or a court order for the inspection of such records.

It shall be unlawful for any property owner, landlord, lessee, Medical Marijuana Collective Dispensary Member or Management Member or any other person having any responsibility over the operation of the Storefront Collective Dispensary to refuse to allow, impede, obstruct or interfere with an inspection of the Storefront Collective Dispensary or the required records thereof. (Ord. 5526, 2010.)

#### **28.80.100 Sale, Distribution, or Exchange of Medical Marijuana with a Non-Medical Marijuana Collective Member.**

**A. Transfers to or from a Non-Collective Member.** A Storefront Collective Dispensary, including the Management Member operating the Dispensary, shall not cause or permit the sale, distribution, or exchange of medical marijuana or of any edible medical marijuana product to any non-Collective Member or Management Member. No Storefront Collective Dispensary shall possess medical marijuana that was not collectively cultivated by its Management Members or members either at the Property designated for the cultivation or at its prior location allowed in accordance with this Chapter.

**B. Assistance for Edible Marijuana Products.** Sales of edible medical marijuana products may be permitted at a Storefront Collective Dispensary and an individual or business within the City which assists a Dispensary in preparing and processing such a product will be deemed by the City as an "individual who provides assistance to a qualified patient or person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to a qualified patient ..." as that phrase is used in state Health and Safety Code section 11362.765(b)(3). (Ord. 5526, 2010.)

#### **28.80.110 Appeal from Staff Hearing Officer Determination.**

**A. Appeal to the Planning Commission and the City Council.** An applicant or any interested party who disagrees with the Staff Hearing Officer's decision to issue, issue with conditions, or to deny or revoke a Storefront Collective Dispensary permit may appeal the Staff Hearing Officer's decision to the City Planning Commission in accordance with the appeal provisions of subsection (B) of Santa Barbara Municipal Code section 28.05.020 and, thereafter, to the City Council by filing an appeal pursuant to the requirements of section 1.30.050 of the Municipal Code.

**B. Notice of Appeal Hearing.** Upon the filing of an appeal pursuant to subparagraph (A) above, the Community Development Director or the City Clerk shall provide public notice of the appeal hearing in accordance with the notice provisions of SBMC Section 28.87.380. (Ord. 5526, 2010.)

#### **28.80.120 Suspension and Revocation by Staff Hearing Officer.**

**A. Authority to Suspend or Revoke a Storefront Collective Dispensary Permit.** Consistent with Section 28.87.360, any Storefront Collective Dispensary permit issued under the terms of this Chapter may be suspended or revoked by the Staff Hearing Officer if it shall appear to that Officer that the Dispensary permittee has violated any of the requirements of this Chapter, or the Dispensary is being operated in a manner which violates the operational requirements or operational plan required by this Chapter, or it is operated in a manner which conflicts with state law.

**B. Annual Review of Collective Dispensary Operations.** The staff of the Community Development Department and the Police Department are hereby authorized to conduct an annual review of the operation of each permitted Storefront Collective Dispensary within the City for full compliance with the operational and recordkeeping requirements of this Chapter, including specifically, annual verification that all persons employed or volunteering at the Storefront Collective Dispensary have not been convicted of or on probation for a crime related to the possession, sale, or distribution of controlled substances. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time involved in the annual review process. The staff may initiate a permit suspension or revocation process for any Storefront Collective Dispensary which, upon completion of an annual review, is found not to be in compliance with the requirements of this Chapter or which is operating in a manner which constitutes a public nuisance.

**C. Suspension or Revocation – Written Notice.** Except as otherwise provided in this Chapter, no permit shall be revoked or suspended by the Staff Hearing Officer under the authority of this Chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon a Management Member or the person to whom the permit was granted at least ten (10) days prior to the date set for such review hearing. Such revocation or suspension notice shall state the specific reasons for the proposed suspension or revocation and must have been provided to the permittee in writing prior to the hearing. 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 Storefront Collective Dispensary permit. (Ord. 5526, 2010.)

#### **28.80.130 Transfer of Collective Dispensary Permits.**

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

**B. Transfer of a Permitted Collective Dispensary.** A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective 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 transfer review application fee.

**C. Request for Transfer with a Revocation or Suspension Pending.** No Storefront Collective 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 for non-compliance with this Chapter and a notice of such suspension or revocation has been provided.

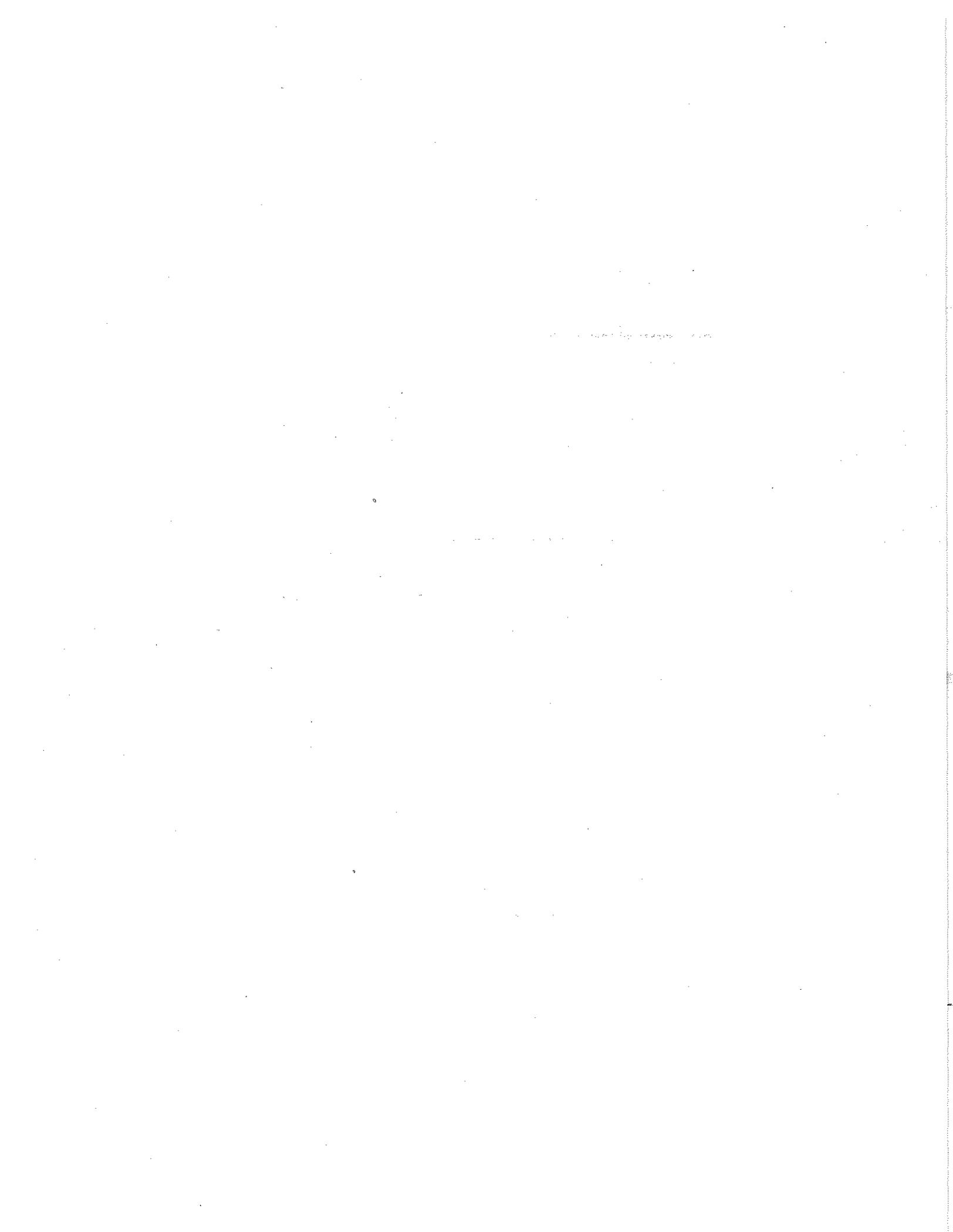
**D. Transfer without Permission.** Any attempt to transfer a Storefront Collective Dispensary permit either directly or indirectly in violation of this Chapter is declared void, and the permit shall be deemed revoked. (Ord. 5526, 2010.)

#### **28.80.140 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 Collective Dispensary. (Ord. 5526, 2010.)

#### **28.80.150 Business License Tax Liability.**

An operator of a Storefront Collective Dispensary shall be required to apply for and obtain a Business Tax Certificate pursuant to Chapter 5.04 as a prerequisite to obtaining a Storefront Collective Dispensary permit pursuant to the terms of this Chapter. When and as required by the State Board of Equalization, Storefront Collective Dispensary transactions shall be subject to sales tax in a manner required by state law. (Ord. 5526, 2010.)



24-hour waiting period, enforcement of only one allowed collective membership, and no intent by the applicant to provide a medical physician presence on-site.

Ms. Reardon discussed additional conditions with the applicant including requiring the applicant to work with City Transportation Planning staff on improvements to the signage in the parking lot and exploring the provision of onsite bicycle parking as well as, submitting a revised operational plan within 30 days addressing the changes discussed in the hearing. The applicant indicated support of the revised conditions.

**ACTION:** **Assigned Resolution No. 061-10**  
Approved the project making the findings contained in Section IX of the written Staff Report dated December 7, 2010, and subject to the Conditions of Approval contained in Exhibit A of that written Staff Report, as revised at the hearing.

The extended appeal period of January 6, 2011 was announced and subject to suspension for review by the Planning Commission.

**ACTUAL TIME: 10:03 A.M.**

**D. APPLICATION OF PATRICK FOURMY FOR COMPASSION CENTER OF SANTA BARBARA COUNTY, 2915 DE LA VINA STREET, APN 051-202-007, C-2 AND SD-2 ZONES, GENERAL PLAN DESIGNATION: GENERAL COMMERCE/BUFFER (MST2009-00497)**

The proposed project involves permitting of an existing Medical Marijuana Storefront Collective Dispensary within a 1,060 square foot commercial building located at 2915 De la Vina Street.

The discretionary application required for this project is a Medical Marijuana Storefront Collective Dispensary Permit (SBMC §28.80.030).

The Environmental Analyst has determined that the project is exempt from further environmental review pursuant to the California Environmental Quality Guidelines Section 15301 (Existing Facilities).

Present: Patrick Fourmy, Compassionate Center of Santa Barbara County;  
and Police Captain Armando Martel.

Ms. Reardon announced that she read the Staff Report for the proposed project and also visited the site and surrounding neighborhood.

Dan Gullett, Associate Planner, gave the Staff presentation and recommendation.

Ms. Reardon asked questions to Captain Martel regarding the proposed security plan, what constitutes a high crime area, and what would be a significant number of calls for service over a designated period of time.

Police Captain Martel stated that there were some previous security concerns prior to the 2007 incident, and after the 2007 break-in additional security measures were requested such as additional security cameras to give police staff additional response time. He also clarified what constitutes a "high crime area" and that in his opinion, the proposed location of the project is not considered a high crime area, and the owners have demonstrated responsiveness to the neighborhood community, and that the number of reports and emergency response calls have been small in number.

Mr. Fourmy responded that although the incident of theft was unfortunate, immediate increased security measures were taken.

The Public Hearing was opened at 10:43 a.m.

The following members of the public spoke either in support or in opposition of the proposed project:

In support:

- 1) Dr. David Bearman.
- 2) Robert Laprad.
- 3) Joe Loebman.
- 4) Dr. Stephen Hosea.
- 5) Hathor Hammett.
- 6) Razmik Mardyan.
- 7) Heather Poet.

In opposition:

- 1) Karen Bradshaw.
- 2) Jeff Briggs (submitted a letter of opposition).

Various letters of support (8) were acknowledged from:

- 1) Edgar Blass.
- 2) Dr. John Craviotto.
- 3) Lianne Clifford and Nicole Shultz.
- 4) Emma Jane Huerta.
- 5) Maria Lazcano.
- 6) David Cybulski.
- 7) John S. Nam.

A letter of concern from Paula Westbury was acknowledged.

The Public Hearing was closed at 11:07 a.m.

Upon request by Ms. Reardon, the applicant clarified plans for additional security measures in light of the previous thefts, explained how nuisance issues were resolved, and explained the type of storage container sold onsite.

After discussion of the required issuance criteria for a dispensary permit, Ms. Reardon concluded the application could not be found to meet the criteria regarding security measures and unlawful business practices in regards to the legal status of the applicant's existing dispensary.

**ACTION:**

**Assigned Denial Resolution No. 062-10**

Denied the project application without prejudice making the findings contained in Section X of the written Staff Report dated December 7, 2010, and in consideration of Issuance Criterion 12.

The extended appeal period of January 6, 2011 was announced.

**III. ADJOURNMENT**

Ms. Reardon adjourned the meeting at 11:42.

Submitted by,



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Kathleen Goo, Staff Hearing Officer Secretary



**PLANNING COMMISSION CONDITIONS OF APPROVAL**

2915 DE LA VINA STREET  
*MEDICAL MARIJUANA STOREFRONT COLLECTIVE DISPENSARY PERMIT*  
FEBRUARY 3, 2010

In consideration of the project approval granted by the Planning Commission and for the benefit of the owner(s) and occupant(s) of the Real Property, the owners and occupants of adjacent real property and the public generally, the following terms and conditions are imposed on the use, possession, and enjoyment of the Real Property:

- A. **Approved Dispensary.** The applicant shall operate the dispensary in accordance with the application information and plans submitted to the Planning Division November 22, 2010, as updated by the plans submitted on January 6, 2011.
- B. **Design Review.** The project is subject to the review and approval of the Architectural Board of Review (ABR). ABR shall not grant project design approval of the project until the following Planning Commission land use condition has been satisfied.
  - 1. **Security.** The owner shall provide revised plans with bars and/or breakage sensors provided on all exterior windows to the satisfaction of the Police Department.
- C. **Operations Plan Revisions.** The Operations Plan shall be revised to incorporate the following requirements of Municipal Code Subsection 28.80.060.E to the satisfaction of the Planning Division prior to issuance of a building permit:
  - 1. **Public Nuisance.** The Operations Plan shall provide for the Management Members of the Collective Dispensary to take all reasonable steps to discourage and correct objectionable conditions that constitute a public or private 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 Storefront Collective Dispensary.
  - 2. **Loitering Adjacent to a Dispensary.** The Operations Plan shall provide that the Management Members will take all reasonable steps to reduce loitering by Collective members in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Storefront Collective Dispensary.
  - 3. **Trash, Litter, Graffiti.** The Operations Plan shall provide that the Management Members will keep an area which includes the sidewalks adjoining the Dispensary plus ten (10) feet beyond property lines (as well as any parking lots under the control of the Dispensary) clear of litter, debris, and trash.
- D. **Building Permit Required.** Within 60 days of approval, the applicant shall obtain a building permit for the tenant improvements in conformance with the plans submitted January 6, 2011, as modified City Building Official. Within 60 days of building permit issuance, these improvements shall be completed and shall have cleared final building inspection.
- E. **Alarm System Permit.** Applicant shall apply for an alarm system permit. Said alarm system shall be installed and registered per Municipal Code Chapter 9.100 and shall meet the requirements of the Santa Barbara Police Department.

- F. **Management Requirements.** The Storefront Collective Dispensary operations shall be maintained and managed on a day-to-day basis in compliance with the operational standards and requirements of Municipal Code Section 28.80.080.
- G. **Medical Marijuana Storage.** All Medical Marijuana provided to the Dispensary by the Collective shall be stored on site.
- H. **Litigation Indemnification Agreement.** In the event the Planning Commission's approval of the permit is appealed to the City Council, Applicant/Owner hereby agrees to defend the City, its officers, employees, agents, consultants and independent contractors ("City's Agents") from any third party legal challenge to the City Council's denial of the appeal and approval of the Project, including, but not limited to, challenges filed pursuant to the California Environmental Quality Act (collectively "Claims"). Applicant/Owner further agrees to indemnify and hold harmless the City and the City's Agents from any award of attorney fees or court costs made in connection with any Claim.

Applicant/Owner shall execute a written agreement, in a form approved by the City Attorney, evidencing the foregoing commitments of defense and indemnification within thirty (30) days of the City Council denial of the appeal and approval of the Project. These commitments of defense and indemnification are material conditions of the approval of the Project. If Applicant/Owner fails to execute the required defense and indemnification agreement within the time allotted, the Project approval shall become null and void absent subsequent acceptance of the agreement by the City, which acceptance shall be within the City's sole and absolute discretion. Nothing contained in this condition shall prevent the City or the City's Agents from independently defending any Claim. If the City or the City's Agents decide to independently defend a Claim, the City and the City's Agents shall bear their own attorney fees, expenses, and costs of that independent defense.

ORDINANCE NO. 5436

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING TITLE 28 OF THE SANTA BARBARA MUNICIPAL CODE BY ADDING CHAPTER 28.80 IMPOSING A CONDITIONAL USE PERMIT REQUIREMENT ON MEDICAL MARIJUANA DISPENSARIES TO THE CITY'S ZONING ORDINANCE

WHEREAS, in 1996, California voters approved Proposition 215, (The Compassionate Use Act - now codified as Health & Safety Code Section 11362.5), which legalized the use of marijuana for medical purposes under state law and which allows persons with certain medical conditions to grow or possess marijuana based on the recommendation of a licensed physician. In 2003, the state of California enacted supplemental medical marijuana legislation known as Senate Bill 420, (now codified as Health & Safety Code Sections 11362.7 - 11362.9 - hereinafter referred to as "Senate Bill 420") which was intended to clarify the application and scope of the 1996 Compassionate Use Act and to enhance the access of qualified patients and their primary caregivers to medical marijuana through collective, cooperative marijuana cultivation projects;

Whereas, neither Proposition 215 nor Senate Bill 420 (hereinafter referred to collectively as the "Compassionate Use Act") legalize marijuana dispensaries that are "for profit" or which do not operate under the Health & Safety Code definition of and requirements for a "primary caregiver" providing care and assistance to a "qualified (medical marijuana) patient."

Whereas, there appears to be a proliferation of marijuana dispensaries which may not comply with the Compassionate Use Act by many of the medical marijuana dispensaries operators in the City of Santa Barbara. In the absence of any enforcement of the Compassionate Use Act by state authorities, these dispensaries will operate throughout the City with adverse impacts on the neighborhoods within which they are located in the absence of appropriate City zoning regulations;

Whereas, state law does not specifically address or allow Medical Marijuana Dispensaries as commercial or retail establishments other than to provide for "primary caregivers" to assist "qualified patients" under certain limited circumstances. The absence of lack of state zoning regulations or guidelines has apparently created confusion and hampers the ability of

local law enforcement to distinguish appropriate and necessary dispensaries acting as "primary caregivers" from others.

Whereas, Medical Marijuana Dispensaries will apparently continue to proliferate as will citizen complaints about abuses and criminal activity and the risks these dispensaries pose to our communities will potentially increase.

Whereas, it is apparent that the city of Santa Barbara should evaluate the impacts of Medical Marijuana Dispensaries on its residents, its neighborhoods, and on legally operated businesses adjacent to these dispensaries;

Whereas, this ordinance is designed to prevent new Medical Marijuana Dispensaries, from opening pending a City and public review of these concerns, led by the Community Development Department and the City Planning Commission, and the drafting of an SBMC Zoning ordinance to regulate the location of Medical Marijuana Dispensaries and establish viable applicable locational regulations and operating conditions; and

Whereas, on August 14, 2007, the City Council found that this proposed ordinance should give and would the City the time it needs to undertake the critically important task of developing a comprehensive zoning regulatory ordinance for regulating Medical Marijuana Dispensaries, thus ensuring that this important legislative opportunity is fully examined in depth while not permitting new Medical Marijuana Dispensaries operating contrary to state law to be established throughout the City.

NOW THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

**SECTION ONE.** Title 28 of the Santa Barbara Municipal Code is hereby amended by adding Chapter 28.80 which chapter reads as follows:

**Section 28.80.010. Definition.**

The following term, whenever used in this chapter, shall be construed and defined as follows:

A. **MEDICAL MARIJUANA DISPENSARY.** Any use of real property, real property facility, or location, including but not limited to a retail store, office building, or structure that distributes, transmits, gives, dispenses, facilitates or

otherwise provides marijuana in any manner, in accordance with State law, in particular, California Health and Safety Code Sections 11362.5 through 11362.83, inclusive.

**Section. 28.80.020. Prohibition of New Dispensaries During Interim Period.**

**A. PROHIBITIONS ON NEW DISPENSARIES PENDING ADOPTION OF PERMANENT ZONING ORDINANCE.** Notwithstanding any provisions of the Santa Barbara Municipal Code to the contrary, for a period of one hundred eighty (180) days from the effective date of the ordinance codifying this Chapter, or until a supplemental City ordinance which establishes citywide zoning regulations regarding the permitted locations for Medical Marijuana Dispensaries is adopted, whichever occurs first, no person or entity shall establish, operate, or maintain a Medical Marijuana Dispensary within the City of Santa Barbara unless the following is true:

1. the Dispensary complies with all applicable requirements of state law, and
2. the Dispensary obtained a valid annual business tax payment certificate from the City (as required by Chapter 5.04 of the Municipal Code) for the Dispensary prior to August 14, 2007 and,
3. the Dispensary was actually open and operated prior to August 14, 2007 and was providing assistance to qualified patients in a manner consistent with the requirements of state law.

**B. APPLICABILITY OF EXISTING ZONING REQUIREMENTS.** Nothing herein shall permit the operation or maintenance of a Medical Marijuana Dispensary in a zone of the City where commercial establishments are not otherwise allowed or in any manner contrary to existing City zoning regulations otherwise applicable to such a commercial or retail establishment under Title 28 of this Code.

**C. COMPLIANCE WITH STATE HEALTH AND SAFETY CODE REQUIREMENTS.** Nothing herein shall permit a Medical Marijuana Dispensary to operate in any manner contrary to applicable state or federal laws, in particular, but not limited to, with respect to the statutory requirements applicable to the "primary caregiver" for a "qualified patient" as those terms are defined and applied in

subsections 11362.5(e), 11362.7(d) and (e), 11362.7(f), 11362.71(e), or 11362.765(c) of the state Health & Safety Code.

**D. REGISTRATION OF MEDICAL MARIJUANA DISPENSARIES WHICH OPERATED PRIOR TO AUGUST 14, 2007.** For the purposes of this Section, in order to qualify as a Medical Marijuana Dispensaries which operated prior to August 14, 2007 [as provided for in subparagraph (A) above], the owner or operator of a Dispensary seeking to so qualify shall register in writing with the City within sixty (60) days of the date of the adoption of the ordinance codifying this chapter. The City Community Development Director shall establish a standard registration form for this purpose which form shall require the owner or operator to provide sufficient evidence that the Dispensary obtained its business tax certificate prior to August 14, 2007 and that the Dispensary was open to the public and operating in a manner permitted by law prior to August 14, 2007.

**SECTION TWO.** The City Council finds and declares that this ordinance is required for the immediate preservation of the public peace, health and safety for the following reasons:

1. This ordinance will prohibit new Medical Marijuana Dispensaries and prevent unregulated proliferation, pending adoption of a long-term zoning or similar regulatory ordinance;
2. The recommendations for a long-term ordinance reflecting the spirit and intent of the Compassionate Use Act could be undermined if new dispensaries are allowed during this interim period of time;
3. The number of dispensaries operating within the City is increasing and the Santa Barbara Police Department has received an increasing number of complaints from neighbors, business owners, and concerned citizens regarding the negative impacts of such dispensaries;
4. Local citizens have raised concerns that there will be an increase in crime, particularly in those areas in close proximity to residences, schools, places of worship, and other sensitive uses, as well as concerns regarding a lack of regulations for the hours of operation.

5. Without regulations for the location of a dispensary and hours of operation, the result has been the establishment of dispensaries in close proximity to sensitive land uses and dispensaries operating at all hours of the day. This ordinance will prevent unregulated proliferation of new dispensaries and provide the City with time to develop appropriate zoning regulations, especially regulations regarding the appropriate to distances dispensaries should be separated from sensitive uses, the appropriate hours of operation, the compatibility with surrounding uses, and other related land use concerns.

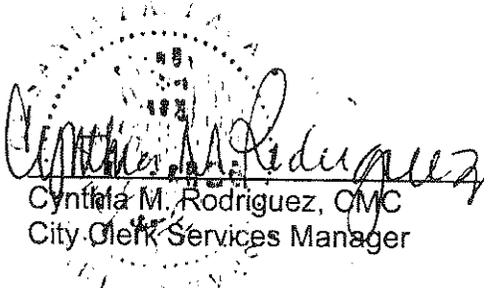
ORDINANCE NO. 5436

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

I HEREBY CERTIFY that the foregoing ordinance was introduced on September 25, 2007, and was adopted by the Council of the City of Santa Barbara at a meeting held on October 2, 2007, by the following roll call vote:

- AYES: Councilmembers Brian B. Barnwell, Iya G. Falcone, Roger L. Horton, Grant House, Helene Schneider, Das Williams; Mayor Marty Blum
- NOES: None
- 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 October 3, 2007.



*Cynthia M. Rodriguez*  
Cynthia M. Rodriguez, CMC  
City Clerk Services Manager

I HEREBY APPROVE the foregoing ordinance on October 3, 2007.

*Marty Blum*  
Marty Blum  
Mayor

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.

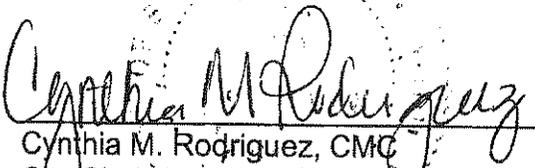
ORDINANCE NO. 5449

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

ORDINANCE NO. 5526

AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SANTA BARBARA AMENDING THE MUNICIPAL CODE BY  
REVISING CHAPTER 28.80 AND ESTABLISHING  
REVISED REGULATIONS AND PROCEDURES FOR  
MEDICAL MARIJUANA STOREFRONT COLLECTIVE  
DISPENSARIES.

The Council of the City of Santa Barbara does ordain as follows:

SECTION ONE. Chapter 28.80 of Title 28 of the Santa Barbara Municipal Code, entitled "Medical Marijuana Dispensaries," is amended to read as follows:

Section 28.80.010 Purpose and Intent.

It is the purpose and intent of this Chapter to regulate the storefront distribution of medical marijuana in order to ensure the health, safety, and welfare of the residents of the City of Santa Barbara. The regulations in this Chapter, in compliance with the State Compassionate Use Act of 1996 and the State Medical Marijuana Program Act ("the SB 420 statutes"), are not intended and do not interfere with a patient's right to use medical marijuana as authorized under the Compassionate Use Act or the SB 420 statutes, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under the Compassionate Use Act. Under the Compassionate Use Act of 1996 and the SB 420 statutes, only qualified patients, persons with identification cards, and primary caregivers may legally cultivate medical marijuana collectively and provide it to qualified patients or person with identifications cards. Therefore, medical marijuana collectives within the City which choose to operate storefront dispensary locations must comply with all provisions of the Santa Barbara Municipal Code ("SBMC") for obtaining a permit for the storefront dispensary as well as complying with the Compassionate Use Act, the SB 420 statutes, and all other applicable local and state laws. Nothing in this Chapter purports to permit activities that are otherwise illegal under federal, state, or local laws.

**Section 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 Medical Marijuana Storefront Collective Dispensary permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other dispensary operator, Management Member, employee, or agent of a Medical Marijuana Storefront Collective Dispensary.

**B. Drug Paraphernalia.** As defined in California Health and Safety Code Section 11014.5, and as may be amended from time to time.

**C. Identification Card.** As defined in California Health and Safety Code Section 11362.71 and as may be amended from time to time.

**D. Management Member.** A Medical Marijuana Collective member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a Collective including, but not limited to, members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the Collective.

**E. Medical Marijuana Storefront Collective Dispensary or Storefront Collective Dispensary.** An incorporated or unincorporated association which is composed of four (4) or more Qualified Patients and their designated Primary Caregivers who associate at a particular location or Property within the City in order to collectively or cooperatively cultivate marijuana for medical purposes and who, acting through Management Members, distribute the collectively cultivated medical marijuana to the members of their Collective at a storefront dispensary located within a non-residential zone of Santa Barbara, all in accordance with the Compassionate Use Act of 1996 (California Health and Safety Code sections 11362.5) and Health and Safety Code section 11362.7 through 11362.9. For the purposes of this Chapter, the term "Medical Marijuana cooperative" (or "cooperative") shall have the same meaning as a "Medical Marijuana collective" (or a "collective") and the term "cooperative" shall have the definition and formation requirements established for it by state law.

A Storefront Collective Dispensary shall not include the dispensing of medical marijuana by primary caregivers to qualified patients in the following locations so long as the location and operation of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code and operated in the manner required 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. 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 also fully complies with applicable laws including, but not limited to, the Compassionate Use Act of 1996 and the SB 420 statutes.

**F. Permittee.** The Management Member or Members identified to the City by an Applicant as such and to whom a City Storefront Collective Dispensary permit has been issued and someone who also qualifies as a primary caregiver.

**G. Person with an Identification Card.** A person as described in California Health and Safety Code Section 11362.71 through 11362.76, and as amended from time to time.

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

**I. Primary Caregiver.** A person as defined and described in either subdivision (d) or (e) of California Health and Safety Code Section 11362.7 as it may be amended from time to time.

**J. Property.** The location or locations within the City at which Medical Marijuana Collective members and Management members associate to collectively or cooperatively cultivate or to distribute Medical Marijuana exclusively to their Collective members.

**K. Qualified Patient.** A person as defined and described in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time. For the purposes of this Chapter, a Qualified Patient shall also include a Person with an Identification Card.

**L. 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.

**M. Reasonable Compensation.** Compensation commensurate with reasonable wages and benefits paid to employees of federal Internal Revenue Code qualified non-profit organizations which employees have similar job descriptions and duties, as well as a comparable required level of experience and education, similar prior earnings or wage history, and number of hours typically worked per week. The payment of a bonus shall not be considered reasonable compensation.

**Section 28.80.030 Storefront Collective Dispensary - Permit Required to Operate.**

It shall be unlawful for any person to engage in, to conduct or carry on (or to permit to be engaged in, conducted or carried on) in or upon his or her Property located within the City, the operation of a Storefront Collective Dispensary unless an Applicant has first obtained and continues to maintain in full force and effect a valid Storefront Collective Dispensary Permit issued by the City for that Property pursuant to this Chapter.

**Section 28.80.040 Imposition of Medical Marijuana Storefront Collective Dispensary Permit Fees.**

Every application for a Storefront Collective Dispensary permit shall be accompanied by an application fee (in an amount

established by resolution of the City Council) at a amount calculated to recover the City's full cost of reviewing and issuing the Storefront Collective Dispensary permit) and the filing of a complete required application pursuant to this Chapter. The application 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.

**Section 28.80.050 Limitations on the Permitted Location of a Storefront Collective Dispensary.**

**A. Permissible Zoning for Storefront Collective Dispensaries.** Storefront Collectives Dispensaries may only be permitted and located on parcels within the City which are zoned for commercial uses and on those street block faces listed in the exhibit to this Chapter designated as "Medical Marijuana Storefront Collectives Dispensaries - Allowed Locations" dated as of June 22, 2010.

**B. Storefront Locations.** Except for those locations shown as allowed within the West Pueblo Medical Area on the exhibit attached to this Chapter which have been specifically approved by the Staff Hearing Officer as non-storefront locations pursuant to this Chapter, a Storefront Collective Dispensary shall only be located in a visible store-front type ground-floor location which provides good public views of the Dispensary entrance, its windows, and the entrance to the Storefront Collective Dispensary premises from a public street.

**C. Commercial Areas and Zones Where Storefront Collective Dispensaries Not Permitted.** Notwithstanding subparagraph (A) above, a Storefront Collective Dispensary shall not be allowed or permitted on a parcel located within 1000 feet of another permitted or allowed Storefront Collective Dispensary.

**D. Locational Measurements.** The distance between a Storefront Collective Dispensary and above-listed restrictions shall be calculated as a straight line from any parcel line of the Property on which the Storefront Collective Dispensary is located to the parcel line 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.

For the purposes of determining compliance with the locational restrictions imposed by this section, the permissibility of a proposed Storefront Collective Dispensary location shall be determined by City staff based on the date the permit application has been deemed complete by the City with the earliest complete applications deemed to have priority over any subsequent Storefront Collective Dispensary application for any particular permissible location.

**E. One Collective Dispensary for Each Area of the City.** No more than one Storefront Collective Dispensary may open or operate in each of the areas of the City designated as allowed or permissible Collective Dispensary location areas in the exhibit attached to this Chapter except for those areas which, at the time of the adoption of the ordinance amending this Chapter, already have more than one Storefront Collective Dispensary on a legal non-conforming basis and which are allowed to continue to operate on a legal non-conforming basis under Section Two of the Ordinance amending this Chapter - in which case a legal non-conforming Dispensary may be allowed to continue to operate in such an area.

**F. Maximum Number of Medical Marijuana Storefront Collective Dispensaries Allowed Permits.** Notwithstanding the above, the City may not issue a total of more than three (3) Collective Dispensary permits at any one time and, subject to the amortization allowance period contained within the uncodified portions of the City ordinance adopting amendments to this chapter, no more than three (3) permitted or allowed Collective Dispensaries may legally operate within the City, including specifically those dispensaries which are open and operating in a legal nonconforming manner at the time of the adoption of the ordinance amending this Chapter.

**Section 28.80.060 Storefront Collective Dispensary - Permit Application Requirements.**

**A. Application Filing.** A complete Performance Standard Permit application submittal packet is required for a Storefront Collective Dispensary permit and it shall be submitted (along with all required fees) and all other information and materials required by this Chapter in order to file a complete application for a Storefront Collective Dispensary Permit for a specific Property. All applications for Storefront Collective Dispensary permits shall be filed with the Community Development Department using forms provided by the City. It is the responsibility of

the Applicant to provide all of the information required for approval of the permit. The application shall signed by a Management Member under penalty of perjury.

**B. Eligibility for Filing.** If a Storefront Collective Dispensary permit application is filed by a non-owner of the Property, it shall also be accompanied by a written affirmation from the Property owner expressly allowing the Applicant and Management Member to apply for the Permit and acknowledging the Applicant's right to use and occupy the Property for the intended Medical Marijuana Storefront Collective Dispensary use.

**C. Filing Date.** The filing date of any application shall be the date when the City officially receives the last submission of information or materials required in compliance with the submittal requirements specified herein and the application has been deemed complete in writing by the City.

**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 thirty (30) days. If the application remains incomplete in excess of thirty (30) days the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request.

**E. Filing Requirements - Proposed Operational Plan.** In connection with a permit application, an Applicant for a Storefront Collective Dispensary permit shall provide a detailed "Operations Plan" for the proposed Dispensary and, upon issuance of the Storefront Collective Dispensary permit by the City, shall operate the Storefront Collective Dispensary in accordance with the Operations Plan, as approved, at all times. A required Operations Plan shall consist of at least the following:

- 1. Site Plan and Floor Plan.** A Storefront Collective Dispensary application shall have a proposed site plan and floor plan which shows a lobby waiting area at the entrance to the Storefront Collective Dispensary used to receive qualified patients or primary caregivers, and a separate and secure designated area for dispensing medical marijuana to qualified patients or designated primary caregivers members of the Collective. 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 Storefront Collective Dispensary shall have suitable locked storage on the premises, identified and approved as a part of the operational security plan for the after-hours storage of medical marijuana.

**3. Security Plans.** A Storefront Collective Dispensary shall provide a plan to provide adequate security on the premises of the Dispensary which shall be maintained in accordance with the Dispensary security plan approved by the Chief of Police and as reviewed by the Staff Hearing Officer. This plan shall include provisions for adequate lighting and alarms in order to insure the safety of persons and to protect the premises from theft. All security guards used by dispensaries shall be licensed and employed by a state licensed private-party operator security company retained by the Storefront Collective Dispensary and each security guard used shall possess a valid state Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess or carry firearms or tazers while working at a Collective Dispensary.

**4. Security Cameras.** The Security Plan shall show how the Property will be monitored at all times by closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of an individual on or adjacent to the Property. The recordings shall be maintained at the Property for a period of not less than thirty (30) days.

**5. Alarm Systems.** The Operations Plan shall provide that professionally monitored burglary and fire alarm systems shall be installed and such systems shall be maintained in good working condition within the Storefront Collective Dispensary at all times.

**6. Emergency Contact.** A Operations Plan shall provide the Chief of Police with the name, cell phone number, and facsimile number of a Management Member to act as an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the Storefront Collective Dispensary.

**7. Public Nuisance.** The Operations Plan shall provide for the Management Members of the Collective Dispensary to take all reasonable steps to discourage and correct

objectionable conditions that constitute a public or private 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 Storefront Collective Dispensary.

**8. Loitering Adjacent to a Dispensary.** The Operations Plan shall provide that the Management Members will take all reasonable steps to reduce loitering by Collective members in public areas, sidewalks, alleys and areas surrounding the Property and adjacent premises during the business hours of the Storefront Collective Dispensary.

**9. Trash, Litter, Graffiti.** The Operations Plan shall provide that the Management Members will keep area which includes the sidewalks adjoining the Dispensary plus ten (10) feet beyond property lines (as well as any parking lots under the control of the Dispensary) clear of litter, debris, and trash.

**10. Removal of Graffiti.** The Operations Plan shall provide a method for the Management Members to promptly remove all graffiti from the Property and parking lots under the control of the Collective within 72 hours of its appearance.

**F. Filing Requirements - Information Regarding Storefront Collective Dispensary Management.** A Storefront Collective Dispensary Applicant shall also provide the following Management Member and Collective information as part of a Storefront Collective Dispensary application:

1. The name, address, telephone number, title and function(s) of each Management Member;

2. For each Management Member, a fully legible copy of one (1) valid government issued form of photo identification, such as a state driver's license or identification card. Acceptable forms of government issued identification include, but are not limited to, driver's license or photo identity cards issued by the state Department of Motor Vehicles (or equivalent) that meet REAL ID benchmarks, a passport issued by the United States or by a foreign government, U.S. Military ID cards (active duty or retired military and their dependents) or a Permanent Resident card.

3. Written confirmation as to whether the Collective or a Management Member of the Collective previously operated in this or any other county, city or state under a similar license or permit, and whether the Collective or Management Member Applicant ever had such a license or permit revoked or suspended by and the reason(s) therefore.

4. If the Collective is a corporation or a cooperative, a certified copy of the Collective's Secretary of State Articles of Incorporation, Certificate(s) of Amendment, Statement(s) of Information and a copy of the Collective's By laws;

5. If the Collective is an unincorporated association, a copy of the articles of association;

6. The name and address of the Applicant's or Collective's current designated Agent for Service of Process;

7. A statement dated and signed by each Management Member, of the Collective, under penalty of perjury, that the Management Member has personal knowledge of the information contained in the Dispensary Application, that the information contained therein is true and correct, and that the application has been completed under the supervision of the identified Management Member(s);

8. Whether Edible Medical Marijuana products will be prepared and distributed at the proposed Dispensary Property;

9. The Property location or locations where any and all Medical Marijuana will be collectively cultivated by the Collective members and Management Members;

**Section 28.80.070      Criteria for Review of Collective Dispensary Applications by the City Staff Hearing Officer.**

**A. Decision on Application.** Upon an application for a Storefront Collective Dispensary permit being deemed complete, the Staff Hearing Officer shall either issue a Storefront Collective Dispensary permit, issue a Storefront Collective Dispensary permit with conditions in accordance with this Chapter, or deny a Storefront Collective Dispensary permit.

**B. Criteria for Issuance.** The Staff Hearing Officer, or the City Council on appeal, shall consider the following criteria in determining whether to grant or deny a Medical Marijuana Storefront Collective Dispensary permit:

1. That the Collective Dispensary permit and the operation of the proposed Dispensary will be consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers and the provisions of this Chapter and with the Municipal Code, including the application submittal and operating requirements herein.
2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.
3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area of the applicants former location.
4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of community for access to medical marijuana.
5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.
6. 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 likely or anticipated and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.
7. That the Dispensary's Operations Plan, its site plan, its floor plan, the proposed hours of operation, and a 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.

8. That all reasonable measures have been incorporated into the Dispensary 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, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.

9. That the Storefront Collective Dispensary is likely to have no potentially adverse affect on 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 and that the Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana 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.

10. 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.

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

12. 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.

**Section 28.80.080 On-Going Management Requirements for Medical Marijuana Storefront Collective Dispensaries.**

Storefront Collective Dispensary operations shall be maintained and managed on a day-to-day basis only in compliance with the following operational standards and requirements:

**A. Criminal History.** A Storefront Collective Dispensary permittee, including all Management Members of that permittee, shall not have been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance and shall remain free of such a conviction or probation during the period of time in which the Storefront Collective Dispensary is being operated.

**B. Minors.** It shall be unlawful for any Storefront Collective Dispensary permittee, a Management Member of the permittee, or any other person effectively in charge of any Storefront Collective Dispensary to employ any person who is not at least 18 years of age. Persons under the age of eighteen (18) years shall not be allowed on the premises of a Medical Marijuana Collective Dispensary unless they are a qualified patient member of the Collective and they are accompanied by a parent or guardian at all times. The entrance to a Storefront Collective Dispensary shall be clearly and legibly posted with a notice indicating that persons under the age of eighteen (18) are precluded from entering the premises unless they are a qualified patient member of the Collective and they are in the presence of their parent or guardian.

**C. Storefront Collective Dispensary Size and Access.** The following access restrictions shall apply to all Storefront Collective Dispensaries permitted by this Chapter:

1. A Storefront Collective Dispensary shall not be enlarged in size (i.e., increased floor area) without prior review and approval of the change from the Staff Hearing Officer and an approved amendment to the existing Storefront Collective Dispensary permit pursuant to the requirements of this Chapter.

2. An expressly designated Management Member or Members shall be responsible for monitoring the Property of the Storefront Collective Dispensary for any nuisance activity (including the adjacent public sidewalk and rights-of-way)

which may occur on the block within which the Storefront Collective Dispensary is operating.

3. Only Collective members as primary caregivers or qualified patients shall be permitted within a Storefront Collective Dispensary building for the purposes of cultivating, processing, distributing, or obtaining medical marijuana.

4. A qualified patient or a primary caregiver shall not visit a Storefront Collective Dispensary without first having obtained a valid written recommendation from his or her licensed physician recommending the use of medical marijuana or, in the case of a primary caregiver, without first having been expressly designated a primary caregiver to a qualified patient as required by the Compassionate Use Act.

5. A qualified patient or primary caregiver may not obtain medical marijuana upon their first in-person visit to a Storefront Collective Dispensary and, instead, may only become a member of the Collective at the first visit to a particular Dispensary. Upon joining the Collective, a registered member of a Collective may obtain medical marijuana as a qualified patient or primary caregiver only after an initial waiting period of 24 hours after their initial in-person visit to the Dispensary for the purposes of joining the Collective.

6. Only a primary caregiver and qualified patient members of the Collective Dispensary shall be allowed within the designated marijuana dispensing area of a Storefront Collective Dispensary (as shown on the site plan required by the Application) along with only a necessary Management Members.

7. Restrooms with the Storefront Collective Dispensary shall remain locked and under the control of Collective Dispensary Management Members at all times.

**D. Medical Marijuana Dispensing Operations.** The following medical marijuana distribution restrictions and conditions shall apply to all of the day-to-day medical marijuana dispensing operations which occur within a City permitted Storefront Collective Dispensary:

1. A Storefront Collective Dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physicians approval or recommendation in compliance with the criteria of the Compassionate Use Act of 1996 and the SB 420 Statutes to those persons who are registered as active members of that Collective and may do so only during storefront dispensary operating hours of between eight o'clock in the morning (8:00 a.m.) through six o'clock in the evening (6:00 p.m.) Monday through Saturday only. The days and hours of the dispensary's operation shall be posted in a sign located on the street frontage of the dispensary premises in a manner consistent with the City's Sign Ordinance. Storefront Collectives Dispensaries shall require such persons receiving medical marijuana to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card each time they seek to obtain medical marijuana.

2. Prior to dispensing medical marijuana, a Management Member of the Storefront Collective Dispensary shall obtain a re-verification from the recommending physician's office personnel that the individual requesting medical marijuana is or remains a qualified patient or a primary caregiver.

3. A Storefront Collective Dispensary shall not have a physician on-site to evaluate patients and provide a Compassionate Use Act recommendation for the use of medical marijuana.

4. Every Storefront Collective Dispensary shall display at all times during its regular business hours, the permit issued pursuant to the provisions of this Chapter for such Collective Dispensary in a conspicuous place so that the same may be readily seen by all persons entering the Storefront Collective Dispensary.

5. No Storefront Collective 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 of the Dispensary that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

6. Storefront Collective Dispensaries shall be considered commercial use relative to the parking requirements imposed by Santa Barbara Municipal Code Section 28.90.100(I).

7. A notice shall be clearly and legibly posted in the Storefront Collective Dispensary indicating that smoking, ingesting, or consuming marijuana on the premises or in the vicinity of the Dispensary is prohibited. Signs on the premises shall not obstruct the entrance or windows. Address identification shall comply with Fire Department illuminated address signs requirements.

8. Business identification signage for Storefront Collective Dispensaries 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.

**E. Dispensary Medical Marijuana On-Site Consumption and Re-Distribution Restrictions.** The following medical marijuana consumption restrictions shall apply to all permitted Storefront Collective Dispensaries:

1. Medical marijuana shall not be consumed by qualified patients on the Property or the premises of the Storefront Collective 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 Collective Dispensary's entrance. Collective Dispensary management member employees who are qualified patients may consume marijuana 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. Storefront Collective Dispensary operations shall not result in illegal re-distribution or sale of medical marijuana obtained from the Collective Dispensary, or the use or distribution in any manner which violates state law.

**F. Retail Sales of Other Items by a Storefront Collective Dispensary.** The retail sales of related marijuana use items at a Storefront Collective Dispensary may be allowed only under the following circumstances:

1. With the approval of the Staff Hearing Officer, a Collective Dispensary may conduct or engage in the

commercial sale of specific products, goods, or services (except drug paraphernalia) in addition to the provision of medical marijuana on terms and conditions consistent with this Chapter and applicable law.

2. No Collective Dispensary shall sell or display for sale any drug paraphernalia or any implement that may be used to administer medical marijuana.

**G. Storefront Collective Dispensary - Compliance with the Compassionate Use Act of 1996 and SB 420 Statutes.**

1. **State Law Compliance Warning.** Each Collective Dispensary shall have a sign posted in a conspicuous location inside the Storefront Collective Dispensary advising the public of the following:

- a. The diversion of marijuana for non-medical purposes is a criminal violation of state law.
- b. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery.
- c. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of state law.

2. **Not For Profit Operation of the Storefront Collective Dispensary.** No Medical Marijuana Storefront Collective Dispensary shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation for services provided by Management Members and Collective members toward the Collective's actual expenses for the growth, cultivation, processing, and provision of Medical Marijuana to qualified patients of the Collective shall be allowed provided that such reimbursements are in strict compliance with the applicable provisions of the SB 420 Statutes. All such cash and in-kind reimbursement amounts and items shall be fully and properly documented in the financial and accounting records of the Collective Dispensary in accordance with and as required by the recordkeeping requirements of this Chapter.

3. **Cultivation of Medical Marijuana by the Collective.** The Collective cultivation of medical marijuana shall be limited to the Collective members and Management Members. Cultivation of medical marijuana by the Collective members

and the Management Members shall occur exclusively within the boundaries of the counties of Santa Barbara, Ventura, or San Luis Obispo County and only at the real property identified for such cultivation on the approved Storefront Collective Dispensary Permit application.

No cultivation of medical marijuana at any Property where the marijuana will be visible with the un-aided eye from any public or other private property, nor shall cultivated medical marijuana or dried medical marijuana be visible from the building exterior on the Property. No cultivation shall occur at the Property of the Collective unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry.

**4. Distribution of Medical Marijuana within Santa Barbara Only.** Distribution of the medical marijuana collectively cultivated by some Collective members to other Collective members shall occur exclusively within the boundaries of the city of Santa Barbara and only at the real property identified as the permitted Dispensary location on the approved Storefront Collective Dispensary Permit application.

**5. Membership Limited to One Collective.** Membership in a Collective which operates a Storefront Collective Dispensary within the City shall be limited to one Collective per qualified patient or primary caregiver. Each Collective shall also consist only of individuals residing with Santa Barbara County, as the term "principal residence" is defined in the federal Internal Revenue Code.

#### **H. Maintenance of Appropriate Collective Records Regarding Cultivation and Compliance with the SB 420 Statutes.**

**1. Cultivation Records.** Every permitted Storefront Collective Dispensary shall maintain on-site (i.e., at the Property designated for the operation of the Storefront Collective Dispensary) the medical marijuana cultivation records of the Collective. These records shall be signed under penalty of perjury by each Management Member responsible for the cultivation and shall identify the location or locations within the counties of Santa Barbara, Ventura, or San Luis Obispo at which the Collective's medical marijuana is being cultivated. Such records shall also record the total number of marijuana plants cultivated

or stored at each cultivation location. The Storefront Collective Dispensary shall also maintain an inventory record documenting the dates and amounts of medical marijuana cultivated or stored at the Dispensary Property, if any, as well as the daily amounts of Medical Marijuana distributed from the permitted Dispensary.

**2. Membership Records.** Every Storefront Collective Dispensary shall maintain full and complete records of the following membership information: a. the full name, date of birth, residential address, and telephone number(s) of each Collective member and Management Member, b. the date each Collective member and Management Member joined the Collective, 3. the exact nature of each Collective member's and Management Member's participation in the Collective, and 4. the current status of each member and Management Member as a Qualified Patient or Primary Caregiver.

**3. Financial Records.** The Collective Dispensary shall also maintain a written accounting record or ledger of all cash, receipts, credit card transactions, reimbursements, (including any in-kind contributions), and any and all reasonable compensation for services provided by the Management Members or other members of the Collective, as well as records of all operational expenditures and costs incurred by the Storefront Collective Dispensary in accordance with generally accepted accounting practices and standards typically applicable to business records.

**4. Dispensary Record Retention Period.** The records required above by subparagraphs (1), (2), and (3) of this subsection shall be maintained by the Medical Marijuana Collective Dispensary for a period of three (3) years and shall be made available to the City upon a written request, subject to the authority set forth in Section 28.80.090.

**Section 28.80.090 City Access to and Inspection of Required Storefront Collective Dispensary Records.**

A duly designated City Police Department or Community Development Department representative may enter and shall be allowed to inspect the premises of every Storefront Collective Dispensary as well as the financial and membership records of the Collective required by this Chapter between the hours of eight o'clock (8:00) A.M. and six o'clock (6:00) P.M., or at any appropriate time to ensure compliance and enforcement of the

provisions of this Chapter, except that the inspection and copying of the private medical records of a Collective member shall be made available to the Police Department only pursuant to a properly executed search warrant or inspection warrant by a court of competent jurisdiction, or a court order for the inspection of such records.

It shall be unlawful for any property owner, landlord, lessee, Medical Marijuana Collective Dispensary member or Management Member or any other person having any responsibility over the operation of the Storefront Collective Dispensary to refuse to allow, impede, obstruct or interfere with an inspection of the Storefront Collective Dispensary or the required records thereof.

**Section 28.80.100 Sale, Distribution, or Exchange of Medical Marijuana with a non-Medical Marijuana Collective Member.**

**A. Transfers to or from a Non-Collective Member.** A Storefront Collective Dispensary, including the Management Member operating the Dispensary, shall not cause or permit the sale, distribution, or exchange of Medical Marijuana or of any Edible Medical Marijuana product to any non-Collective Management Member or member. No Storefront Collective Dispensary shall possess medical marijuana that was not collectively cultivated by its Management Members or members either at the Property designated for the cultivation or at its prior location allowed in accordance with this Chapter.

**B. Assistance for Edible Marijuana Products.** Sales of edible medical marijuana products may be permitted at a Storefront Collective Dispensary and an individual or business within the City which assists a Dispensary in preparing and processing such a product will be deemed by the City as an "individual who provides assistance to a qualified patient or person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to a qualified patient ..." as that phrase is used in state Health and Safety Code section 11362.765(b)(3).

**Section 28.80.110 Appeal from Staff Hearing Officer Determination.**

A. **Appeal to the Planning Commission and the City Council.** An applicant or any interested party who disagrees with the Staff Hearing Officer's decision to issue, issue with conditions, or to deny or to revoke a Storefront Collective Dispensary permit may appeal the Staff Hearing Officer's decision to the City Planning Commission in accordance with the appeal provisions of subsection (B) of Santa Barbara Municipal Code section 28.05.020 and, thereafter, to the City Council by filing an appeal pursuant to the requirements of section 1.30.050 of the Municipal Code.

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

**Section 28.80.120 Suspension and Revocation by Staff Hearing Officer.**

A. **Authority to Suspend or Revoke a Storefront Collective Dispensary Permit.** Consistent with Section 28.87.360, any Storefront Collective Dispensary permit issued under the terms of this Chapter may be suspended or revoked by the Staff Hearing Officer if it shall appear to that Officer that the Dispensary permittee has violated any of the requirements of this Chapter or the Dispensary is being operated in a manner which violates the operational requirements or operational plan required by this Chapter, or operated in a manner which conflicts with state law.

B. **Annual Review of Collective Dispensary Operations.** The staff of the Community Development Department and the Police Department are hereby authorized to conduct an annual review of the operation of each permitted Storefront Collective Dispensary within the City for full compliance with the operational and recordkeeping requirements of this Chapter, including specifically, annual verification that all persons employed or volunteering at the Storefront Collective Dispensary have not been convicted of or on probation for a crime related to the possession, sale, or distribution of controlled substances. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time

involved in the annual review process. The staff may initiate a permit suspension or revocation process for any Storefront Collective Dispensary which, upon completion of an annual review, is found not to be in compliance with the requirements of this Chapter or which is operating in a manner which constitutes a public nuisance.

**C. Suspension or Revocation - Written Notice.** Except as otherwise provided in this Chapter, no permit shall be revoked or suspended by the Staff Hearing Officer under the authority of this Chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon a Management Member or the person to whom the permit was granted at least ten (10) days prior to the date set for such review hearing. Such revocation or suspension notice shall state the specific reasons for the proposed suspension or revocation and must have been provided to the permittee in writing prior to the hearing. 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 Storefront Collective Dispensary permit.

#### **Section 28.80.130 Transfer of Collective Dispensary Permits.**

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

**B. Transfer of a Permitted Collective Dispensary.** A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective 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 this all provisions of this Chapter accompanied by the required transfer review application fee.

**C. Request for Transfer with a Revocation or Suspension Pending.**

No Storefront Collective Dispensary permit may be transferred (and no permission for a transfer may be issued) when the Community Development Department has notified in writing the permittee that the permit has been or may be suspended or revoked for non-compliance with this Chapter and a notice of such suspension or revocation has been provided.

**D. Transfer without Permission.** Any attempt to transfer a Storefront Collective Dispensary permit either directly or indirectly in violation of this Chapter is declared void, and the permit shall be deemed revoked.

**Section 28.80.140 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 Collective Dispensary.

**Section 28.80.150 Business License Tax Liability.**

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

**SECTION TWO.**

**A. Dispensaries Open and Operating Legally Prior to the Effective Date of This Ordinance.** Those dispensaries which have opened and are being operated in a manner consistent with state law and the Santa Barbara Municipal Code prior to the effective date of this Ordinance and which are either located at a location no longer permitted for dispensaries pursuant to this Ordinance or are operated at locations which have never been issued a City dispensary permit may, despite a non-conforming location or despite not having been issued a City dispensary

permit, remain as a legal non-conforming use for a period not exceeding one hundred eighty (180) days after the effective date of this Ordinance so long as those such dispensary operators comply with the following requirements during the one hundred eighty (180) day amortization period:

1. the day-to-day operation of the dispensary is consistent with all of the day-to-day dispensary operational and recordkeeping requirements of Chapter 28.80, as revised and enacted by this Ordinance, and;

2. the operation of the dispensary has not previously been and is not discontinued in its operation for a period of time in excess of thirty (30) consecutive days;

3. the dispensary operator does either of the following:  
(a) applies for and obtains a City Collective Dispensary permit for its existing location (if such location is allowed under this Ordinance) or applies for a permit for new dispensary location pursuant to the requirements of this Ordinance prior to the expiration of the amortization period, or (b) the operator advises the City in writing of his or her intent to discontinue operation of the nonconforming dispensary upon the expiration of the one hundred eighty (180) period - which application or written advisement shall occur within sixty (60) days of the adoption date of this ordinance.

**SECTION THREE.** City Ordinance No. 5510 entitled "An Ordinance Of The Council Of The City Of Santa Barbara Extending A Temporary Suspension Of The Right To Apply For Or To Obtain A Permit For The Opening Or Operation Of Medical Marijuana Dispensaries Otherwise Permitted By Santa Barbara Municipal Code Chapter 28.80 On An Interim Basis" adopted on February 2, 2010 is hereby repealed as of the effective date of this Ordinance.

**SECTION FOUR.** This ordinance shall not take effect and shall be deemed repealed unless, prior to its effective date, the City Council adopts a resolution calling for a special City election on the regularly scheduled statewide election date of November 2, 2010 in order to submit to the voters of the City for their consideration and possible approval (pursuant to state Elections Code section 9222) an ordinance of the City to ban the operation of all medical marijuana storefront dispensaries within the City of Santa Barbara.

**EXHIBIT A TO ORDINANCE NO. 5526  
MEDICAL MARIJUANA DISPENSARIES  
SANTA BARBARA MUNICIPAL CODE CHAPTER 28.80  
ALLOWED LOCATION EXHIBIT  
DATED AS OF JUNE 22, 2010**

**1. Outer State Street Area:**

- a. 3400 - 3900 blocks of State Street
- b. All parcels on south La Cumbre Road
- c. All parcels on south La Cumbre Lane
- d. All parcels on La Cumbre Plaza Lane
- e. 00-100 blocks of south Hope Avenue

**2. Upper De la Vina Area:**

- a. 2600 – 2900 blocks of De la Vina Street

**3. Mission Street Area:**

- a. 1900-2000 blocks of De la Vina Street
- b. 100 block of west Mission Street
- c. 1800 block of State Street
- d. 1400 block of Chapala Street

**4. Milpas Street:**

- a. 00–400 blocks of north Milpas Street

**5. West Pueblo Medical Facility Area:**

- a. 200 block of Nogales
- b. 200-400 blocks of west Pueblo
- c. 2400-2500 blocks of Bath
- d. 2300 block of Castillo
- e. 300 block of West Junipero

ORDINANCE NO. 5526

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

I HEREBY CERTIFY that the foregoing ordinance was introduced on June 22, 2010, and 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 ordinance on June 30, 2010.

  
Helene Schneider  
Mayor