



## City of Santa Barbara

Community Development Department

### Planning Commission Staff Report

**DATE:** August 30, 2007

**TO:** Planning Commission

**FROM:** Community Development Department Staff  
City Attorney's Office *DJK*

**SUBJECT:** Medical Marijuana Interim Control Ordinance

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#### INTRODUCTION

On August 14, 2007, the City Council directed the City Attorney and Community Development staff to prepare a draft ordinance to suspend the opening of any further medical marijuana dispensaries within the City pending the drafting, review and possible City Council enactment of a permanent City ordinance regulating the location these dispensaries. This draft "Interim Control Ordinance" temporarily prohibiting the establishment of any new medical marijuana dispensaries within the City is being submitted to the Planning Commission for its review under the requirements of the state Planning and Zoning law, Government Code Sections 65000 et seq..

The proposed City Interim Control Ordinance, attached as Exhibit A, prohibits establishment of new medical marijuana dispensaries, Citywide, for a period of six months beginning as of August 14, 2007. During the Interim Control Ordinance period, the Community Development Department and the City Attorney will develop a permanent ordinance regulating medical marijuana dispensaries, most likely by imposing a Conditional Use Permit (CUP) requirement, and arrange for the permanent ordinance to be reviewed by the Planning Commission, and considered for adoption by the City Council.

#### BACKGROUND

At an election held on November 5, 1996, the voters of the state of California approved Proposition 215 (the "Compassionate Use Act") which is designed to enable persons who are in need of marijuana for specified medical purposes to obtain and use marijuana under limited and specified circumstances. In 2003, in an effort to answer some of the implementation questions left unaddressed by Prop 215, the state Legislature also enacted Senate Bill 420. For example, SB 420 created a process whereby each county health commissioner issues medical marijuana patient photo identification cards in order to allow qualified medical marijuana patients to avoid being

arrested for the possession of marijuana. However, SB 420 did not legalize marijuana "dispensaries" per se, especially those that are operated on a "for profit" basis, or those which do not operate under the SB 420 definition as a "primary caregiver" to a "qualified medical marijuana patient." Consequently, since the enactment of SB 420, it has become apparent to many cities and counties that it is necessary to formulate local land use and zoning regulations consistent with state laws governing the operation of lawful medical marijuana dispensaries. This land use (i.e., "locational") approach is generally intended to protect residents, adjacent businesses, and medical marijuana patients from the adverse secondary effects of dispensary establishments which are being operated unlawfully or as an attractive public nuisance. This approach is very much like the land use and zoning regulations which are typically applicable to the operation of an adult business.

The City's Community Development and Finance Department report that, as of this summer, there are 10 known medical marijuana dispensaries operating within the city of Santa Barbara. Based on recent complaints received by neighbors, several of these dispensaries appear to be located in close proximity to sensitive land uses, such as day care centers, parks, schools, and residentially used properties. The Police Department also reports that there has been a recent increase in crime around and at these dispensaries including vandalism, theft, armed robbery and burglary. The Police Department has also received increased complaints from neighbors, business owners, and concerned citizens about loitering problems associated some of the dispensaries.

Due to the recent apparent increase in such establishments within in the City, and the amount of time required to prepare and adopt permanent zoning regulations, an Interim Control Ordinance was requested by the City Council in order to place a temporary prohibition on the establishment of any new medical marijuana dispensaries until permanent City regulations are considered and adopted.

## **SUMMARY OF STATE AND FEDERAL MARIJUANA LAWS**

Under the Controlled Substances Act, enacted by the United States Congress in 1970, marijuana is classified as a Schedule I controlled substance. This classification is based on a determination that marijuana (1) has a high potential for abuse, (2) has no currently accepted use for medical treatment, and (3) is not accepted as safe, even when used under medical supervision. This federal law makes it illegal to import, manufacture, distribute, possess, or use marijuana in the United States. Use of marijuana is also prohibited under the "California Uniform Controlled Substances Act," enacted by the state Legislature in 1972.

As mentioned, on November 5, 1996, California voters passed Proposition 215, the "Compassionate Use Act of 1996," with the expressly stated intent of ensuring that seriously ill individuals have the right to obtain and use marijuana for medical purposes under limited, specified circumstances when such use is recommended by a licensed

physician. This voter initiative creates the terms "qualified patients" and their "primary caregivers" and exempt both patients and caregivers from prosecution under state laws that otherwise prohibit the cultivation, possession, or transfer of marijuana.

In 2003, the state Legislature passed Senate Bill 420 (effective January 1, 2004) in an effort to clarify the scope of the Compassionate Use Act (Prop 215.) It did this primarily by defining the key operative terms "qualified patient" and "primary caregiver" in more detail and by requiring county health officers to establish a process for issuing photo identification cards to qualified patients. It also allows qualified patients to formally designate their primary caregivers. The ID card program thus creates a voluntary system for patients and their caregivers by allowing them to obtain identification cards which will insulate them from arrest by police officers for violations of state law relating to marijuana. However, SB 420 does not expressly authorize the establishment of medical marijuana dispensaries. Nevertheless, after passage of Senate Bill 420, a number of people opened medical marijuana dispensaries in cities and counties throughout the state, some of which are apparently operated on a "co-op" basis or as not for profit enterprises in an effort to comply with the requirements of SB 420. SB 420 also provides that nothing in state law would prevent local governments from adopting and enforcing rules and zoning regulations for the cultivation and use of medical marijuana so long as those regulations are fully consistent with Proposition 215 and SB 420.

## **PROPOSED INTERIM CONTROL ORDINANCE**

The draft interim ordinance attached to this report also creates a requirement that existing dispensaries which opened prior to August 14, 2007 submit specific registration documents to the City in order to inform the City of their existence and establishing their pre-existing legal status. Under the ordinance, this pre-existing legal status would exempt them from the interim restrictions. However, it may not exempt them altogether from the CUP requirements of the permanent ordinance. That question remains to be determined. The interim ordinance's exemption provision states that the existing medical marijuana dispensaries are to submit copies of specific documents and register with the Police Department within 60 days of the effective date of the Ordinance in order to establish their pre-existing legal status.

As the number of medical marijuana dispensaries within the City continues to increase, so does the number of citizen complaints. As mentioned previously, state law does not include provisions regulating the siting of or the proper operation and dispensing of medical marijuana. The lack of state regulations or guidelines regarding who can operate a dispensary and where they may operate has created local concern and has apparently hampered the ability of local law enforcement authority to prosecute those marijuana dispensaries that have been linked to illegal activity or which are not operating in a manner consistent with SB 420. As a result, it is believed that appropriate actions should be taken by the City in order to ensure that medical marijuana facilities

are operated legally at all time and that City zoning regulations appropriately address the unique locational considerations for such facilities, especially those concerns identified through a public hearing process.

Consequently, this draft Interim Control Ordinance will give the City the time it needs to undertake the critically important task of developing a comprehensive strategy for regulating the proper location of medical marijuana dispensaries, possibly through the use of a CUP requirement. This approach should also ensure that this important legislative opportunity is fully examined in depth while protecting the status quo by not permitting new medical marijuana dispensaries to be established throughout the City. The attached proposed ordinance (Exhibit A) has been determined to be exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines as an ordinance which have no negative impact on the physical environment and, as a temporary enactment, qualifies for exemption under CEQA Guideline Section 15305 as a "minor alteration in land use limitations."

## **RECOMMENDATION**

Community Development and City Attorney's Office Staff recommend that the Planning Commission hold a public hearing, review the draft Interim Control Ordinance, comment on the draft ordinance, recommend its approval to the Ordinance Committee and City Council, and provide direction for Staff on the permanent ordinance regarding medical marijuana dispensaries.

Exhibit A: Draft Interim Control Ordinance

*PLANNING COMMISSION DRAFT  
ALL NEW PROVISION OF MUNICIPAL CODE  
September 6, 2007 Draft*

ORDINANCE NO.

AN ORDINANCE OF THE CITY 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 and police power 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 minors and children will have access to marijuana for recreational use, and 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 distances dispensaries should be separated from sensitive uses, the appropriate hours of operation, the compatibility with surrounding uses, and other related land use concerns.

