



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: February 26, 2008

TO: Ordinance Committee

FROM: Planning Division, Community Development Department

SUBJECT: Medical Marijuana Dispensary Permanent Ordinance

RECOMMENDATION:

That the Ordinance Committee review a draft Medical Marijuana Dispensary Permanent Ordinance and forward it to Council with a recommendation for introduction and adoption.

DISCUSSION:

On October 3, 2007, Council adopted an Interim Zoning Control Ordinance Relating to Medical Marijuana Dispensaries. That ordinance suspended the opening of any new medical marijuana dispensaries within the City until a permanent medical marijuana dispensary ordinance could be drafted, reviewed, and adopted.

On December 4, 2008, the Ordinance Committee reviewed a draft of a proposed permanent ordinance, gave direction to Staff, and requested recommendations from the Planning Commission in the areas of: proximity to residential zones and/or uses, treatment of existing facilities with regard to locational restrictions, several operational restrictions, and ongoing periodic review.

On February 7, 2008, the Planning Commission held a public hearing on the proposed ordinance. Six Planning Commissioners were in attendance at the hearing. Two Commissioners were generally in favor of the permit structure of the ordinance as presented, including the use of locational and operational restrictions. Four Commissioners thought that the ordinance as presented was too complicated, and they were against locational restrictions (except a prohibition on locations in the M-1 zone). The same four Commissioners wanted fewer operational restrictions (i.e., more like those imposed by state law on pharmacies), although they felt that operational restrictions were more important than locational restrictions. All Commissioners were against medical marijuana vending machines.

REVIEWED BY: _____ Finance _____ Attorney

Agenda Item No. _____

Locational Restrictions

The draft ordinance as presented allowed dispensaries in the C-2, C-M, and M-1 Zones. It prohibited dispensaries on State Street between Cabrillo and Arrellaga Street, within 500 feet of schools, parks and other dispensaries, and prohibited dispensaries on properties in the allowed zones that contained residential uses (with exceptions), and on properties immediately adjacent to residential zones. The Ordinance Committee asked the Planning Commission for recommendations on the proximity to residential zones/uses, and the treatment of existing dispensaries. On the subject of proximity to residential zones and uses, two Commissioners agreed with the ordinance as presented, with a prohibition on properties abutting residentially zoned property, and a prohibition on properties in commercial zones that contain residences, with certain exceptions. Four Commissioners disagreed with the concept of locational requirements altogether. Those four Commissioners wanted to allow dispensaries in all zones where pharmacies are allowed (i.e., most commercial zones), except the M-1 zone.

There was not much discussion on the subject of existing dispensaries. The position of the four Commissioners that did not agree with the locational restrictions was that if there were no locational restrictions, then the existing dispensaries would not be affected geographically. One of the commissioners who agreed with the locational restrictions thought it would be appropriate to “grandfather” the existing dispensaries.

Operational Restrictions

The ordinance, as presented, contained a long list of operational restrictions, and the Planning Commission commented on a number of them. Most Commissioners thought that market forces should determine operating hours, size of business (physical size and number of patients), and whether the front door was locked or not. The issue of the number of visits by patients was discussed, and most Planning Commissioners felt that there should not be a restriction to monthly visits by patients.

The issue of on-site consumption was discussed at some length. Some of the Commissioners did not want any consumption on site, including employees. Others felt that if employees were patients, then they should be able to consume on site. As presented, the ordinance prohibited consumption on site, except for employees who are also patients. For those employees, consumption is proposed to be limited to oral consumption and vaporization. Vaporization is a technique where the marijuana is heated to a temperature just below the smoking point, where THC is released. The idea is that vaporization does not cause smoke and odor, and would be less intrusive on the surroundings. Staff has recently learned that vaporization still has an odor, so this method of consumption may not be appropriate.

Ongoing Periodic Review

The ordinance, as presented, proposed that Medical Marijuana Dispensaries be permitted pursuant to a Performance Standard Permit (PSP), with approval by the Staff Hearing Officer, and appeal to the Planning Commission. The ordinance contained a 3 year permit validity period, with required renewals. The Ordinance Committee asked the Planning Commission for a recommendation on the renewal period. Staff recommended that there be an unlimited initial validity period, although the permit would not be transferable. Enforcement would take place on a complaint basis, and if a dispensary was not complying with the operational regulations, they would face a suspension or revocation hearing at the Planning Commission. Most Commissioners liked this idea, although one Commissioner liked the 3-year validity period, and another thought that a probationary period would be appropriate.

The attached draft of the ordinance contains italicized/bold comments from the Planning Commission following each section of the ordinance relevant to the particular comment.

NEXT STEPS

At this meeting, the Ordinance Committee will provide direction to staff on the ordinance and consider forwarding a revised ordinance to City Council for introduction.

ATTACHMENT: Draft Ordinance

PREPARED BY: Danny Kato, Senior Planner II

SUBMITTED BY: Dave Gustafson, Acting Community Development Director

APPROVED BY: City Administrator's Office

**Ordinance Committee Draft
February 26 2008
w/ *comments from Planning Commission in
italics/bold***

ORDINANCE NO. _____

**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 City 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 deemed to conflict with federal law as

contained in the Controlled Substances Act, 21 U.S.C. Section 841, to otherwise permit any activity that is lawfully and constitutionally prohibited under that Act.

F. 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.

G. 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.

H. 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.

I. 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.

J. That 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.

K. That 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.

L. That this chapter will not be detrimental to the public health, safety and general welfare, in that uses will be subject to careful review, that because of the small area and population

of Santa Barbara, lack of experience with this use, and potential for adverse effects, dispensaries would be limited in number, and would be subject to strict operating requirements, limiting potential negative effects.

M. That this chapter will not adversely affect the orderly development of property, in that there would be absolute limits on the number of dispensaries, dispensaries would be subject to a careful review process, and strict operating requirements would be imposed.

SECTION 2. 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:

Section 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 of cannabis except as allowed by state law.

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 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 two or more of the following: 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 2 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 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 doctors 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 it as 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.

[A majority of the Planning Commission believed that Medical Marijuana Dispensaries should be regulated in a manner similar to that the zoning regulations and state law applicable to pharmacies or medical uses.]

28.80.040 Term of Dispensary Permits and Required Renewal.

A. Term of Permit. A Dispensary Permit issued by the City under this Chapter shall expire three years following the date of its issuance, unless renewed prior to its expiration.

B. Term of Renewal. Use Permits may be renewed by the Community Development Director for additional three year periods upon application by the permittee, unless the permit has been

suspended or revoked in accordance with the provisions of this Chapter prior to its renewal.

C. Processing of Renewals. Applications for renewal shall be made at least 60 days before the expiration date of the permit and shall be accompanied by the nonrefundable renewal application fee referenced herein. Applications for renewal shall be acted on in the same manner as provided herein for action upon applications for original dispensary permits.

D. Expiration of Existing Permit. Applications for renewal made less than 60 days before the expiration date of the prior dispensary permit shall not stay the expiration date of the permit.

[Several Planning Commissioners favored enforcement (i.e., potential suspension/revocation of a permit) in lieu of a renewal process. One Commissioner suggested an initial "probation" period followed by enforcement on a complaint basis.]

28.80.050 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.

28.80.060 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.

28.80.070 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.

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 Where Dispensaries Not Permitted. A dispensary shall not be allowed or permitted in the following locations even if otherwise allowed by the applicable zoning of subparagraph (A) above:

1. On a parcel located within 500 feet of a school, or a park; or
2. On a parcel having a residential unit, or on a parcel directly abutting a residentially-zoned property except the R-2 residential zone, unless there are intervening non-residential uses between the dispensary and the residential unit, as determined appropriate by the Staff Hearing Officer.
3. On a parcel located within 500 feet of a permitted dispensary.
4. On a parcel fronting on State Street between Cabrillo Boulevard and Arrellaga Street.

D. Locational Measurements. The distance between a dispensary and 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 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.

E. Waiver. A waiver of the provisions in subsection (C)(2) of this section may be granted if the applicant demonstrates to the satisfaction of the Staff Hearing Officer, or the Planning Commission on appeal, that a physical barrier or similar separation condition exists which achieves the same purposes as the distance separation requirements established herein and makes the issuance of the permit otherwise appropriate.

[A majority of the Planning Commission did not favor locational restrictions other than not allowing dispensaries in and near residential zones and in the M-1 zone. Two Commissioners agreed with the residential radius and other locational restrictions contained within this draft of the Ordinance.]

28.80.080 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 a criminal drug or controlled substance offense.

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. Operating Hours. Unless the Staff Hearing Officer imposes more restrictive hours due to specific considerations for a particular application, a dispensary shall only be operated during the following days and hours:

1. Sunday through Thursday: 7:00 a.m. to ____ p.m.
2. Friday and Saturday: 9:00 a.m. to ____ p.m.
3. Closed on federal holidays. (?)

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

1. The dispensary size shall not exceed _____ square feet exclusive of restroom facilities, unless specifically authorized by the Staff Hearing Officer. Dispensaries shall be limited in size, as deemed appropriate and necessary, to best serve patient needs within the intent of this Chapter and to reduce potential adverse impacts that might otherwise occur on surrounding neighborhoods, businesses, and demands on City police services.
2. A dispensary shall not be enlarged in size (i.e., floor area or number of patients) without a prior approval from

the Staff Hearing Officer amending the existing dispensary permit pursuant to the requirements of this Chapter.

3. 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.

4. 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.

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

6. 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.

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

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

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

1. A dispensary shall dispense medical cannabis to meet (monthly) medication needs of qualified patients, similar to typical pharmacy operations. The dispensary shall have policies to discourage daily or weekly visits by patients as a routine practice.

2. A dispensary shall only dispense to qualified patients or caregivers with a currently valid physicians 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.

3. 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 a qualified patient.

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

G. 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 via oral consumption or vaporization, but not by means of smoking.

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

H. 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, with the exception of vaporizers.

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.

I. 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. Minimum Staffing Levels. The dispensary premises shall be staffed with at least one person during all hours of operation who shall not be responsible for dispensing medical cannabis.

4. 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 insure the safety of persons and to protect the premises from theft.

5. 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.

6. 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.

7. 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.

J. 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 signs 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

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

[A majority of the Planning Commission believed that "market conditions" should be allowed to dictate any sort of operational

requirements, such as hours of operation, days of operation, the size of a dispensary, and whether a dispensary is open on a holiday. One Planning Commission favored licensing/operational restrictions similar to that imposed by the state ABC on establishments which sell alcohol. A majority of the Commission appears to favor the case-by-case enforcement with respect to problem operations instead of imposing operational restrictions by ordinance.]

28.80.090 Dispensary Permit Application - Preparation and Filing.

A. Application Filing. A complete special 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, including the rules and regulations adopted pursuant to Section 28.80.150 hereof. 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 person with a lease signed by the owner or duly authorized agent allowing them 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.

F. Renewal. Applications for two-year renewal shall be accompanied by the following minimum information:

1. The operator shall report the number of patients served and pay applicable fees, as required by this chapter.
2. The operator shall provide a detailed description of any adjustments and changes proposed or that have occurred in dispensary operations to address issues, or comply with laws.
3. The operator shall identify any problems encountered during operations and how they have been addressed.
4. The operator shall identify how the dispensary has managed its operations to comply with the operating requirements of this chapter and with state law.

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

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, including with respect to applications for permit renewals:

- A. That the dispensary permit is consistent with the intent of Proposition 215 and related provisions of the state Health & Safety Code, the provisions of this chapter and the City Code, including the application submittal and operating requirements herein.
- B. That the dispensary location is not identified as having significant crime issues (e.g., based upon crime reporting district/statistics as maintained by the Police Department).
- C. That there have not been significant numbers of calls for police service, crimes or arrests in the area or to an existing dispensary location.
- D. That all required application materials have been provided and the dispensary has operated successfully in a manner that shows it would comply with the operating requirements and standards specified in this chapter.
- E. That all required application or annual renewal fees have been paid and reporting requirements have been satisfied in a timely manner.

F. That an appropriate limit on size of the dispensary has been established and the requested permit would not exceed limitations on number of patients or permits allowed by this chapter.

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

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

I. 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.

J. 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.

K. That all reasonable measures have been incorporated into the 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 of the operation of another business.

L. 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 has resulted 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.

M. 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 has not been and will not be violated.

N. 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.

O. That the applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.

28.80.110 Appeal from Staff Hearing Officer Determination.

A. Appeal to the Planning Commission. An applicant aggrieved by the Staff Hearing Officer's decision to issue, issue with conditions, or to deny a 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. Planning Commission Appeal. Notwithstanding subparagraph (C) of Section 28.05.020 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.

28.80.120 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 and

reasons for the proposed suspension or revocation have been provided to the permittee. 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.

28.80.130 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 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 this 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 in writing the permittee 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.

28.80.140 Chapter Rules and Regulations.

The Community Development Director shall develop standard rules and regulations for the administrative implementation of this Chapter and with respect to the permit application materials deemed required by this chapter which rules and regulations shall be approved by resolution of the City Council.

[A majority of the Planning Commission favored adding a provision to this ordinance which would prohibit the dispensing of medical marijuana by the use of a vending machine.]

\swiley\ord\Medical.Marijuan.Disp-005
February 19, 2008