PASEO CHAPALA RESIDENTIAL / OFFICE ASSOCIATION

Das Williams
Dale Francisco
Grant House

October 23, 2009

Dear Members of the Ordinance Committee:

You have received a copy of the appeal of the Farmacy permit that was filed on October 15, 2009. The appeal was filed by The Paseo Chapala Residential / Office Association, and BDC Paseo Chapala, LLC which owns five residences.

The Commercial Association is controlled by Ray Mahboob, but both the Commercial and Residential / Office associations are subject to the same CC& R's. Mr. Mahboob acquired his commercial property with this requirement as a condition of purchase.

We had attached a complete copy of the CC& R's to the appeal that you previously received.

There have been discussions by your committee that CC&R's of mixed use projects, in effect before the adoption of the current ordinance, would not have known that dispensaries were going to be permitted by the City. That is a correct assumption. Therefore they did not have an opportunity to restrict this use.

Similarly BDC Paseo Chapala, LLC the developer, in its sale of the commercial property to Mr. Maboob prior to the adoption of the current ordinance, required that Mr. Maboob not engage in City permitted activities that may be a nuisance to the owners. Exhibit F from the agreement, which is attached, shows these activities include a "head shop" and "adult book store". If at that time if a dispensary were a permitted use by the City, it would have been on the list as well. Note also that a nuisance in general, is also not permitted under (g).

The Paseo Chapala project CC& R's, by its terms is to be liberally construed and intentionally does not detail the specific activities that would a nuisance, so as not to miss any that may arise in the future.

The Paseo Chapala CC&R's contain provisions that:

Each Board can determine which activities <u>may</u> or <u>may become</u> nuisances. (A nuisance does not have yet to occur.)

Prohibit illegal activities including those which are illegal by Federal law. (Possession of marijuana is a Federal offense.), and

Security may, but does not have to be allowed by each association. (Commercial owner cannot force security in the common area of the Residential / Office Association – e.g. the parking garage).

Each Board and individual owners (total of 31) can enforce the CC& R's against other owners.

Since mixed use condominiums are in such proximity to each other within the same structure, high standards of care are required of every owner. This is the expectation of owners when they buy a condominium unit, and why CC&R's need to be created with this in mind. The recordation of these requirements are also required by the Department of Real Estate, construction and mortgage lenders, and the City itself in approving a single lot condominium mapped project.

Mr. Mahboob as well as the Farmacy his proposed tenant knows they have to comply with the CC& R's. However in their application and public comments, they have chosen to either ignore the CC&R provisions that negatively impact them (only submitted selected pages of the CC&R's with their application), or relay solely on compliance with the current dispensary law to move forward.

It is frustrating to the condominium owners of Paseo Chapala to be site selected for a dispensary, when only one would be allowed in downtown and there are so many purely commercial structures that could accommodate a dispensary. (This begs the question, why can't a dispensary be placed in the central business district on State Street? What is wrong with that alternative, since it would eliminate the need to put the only downtown dispensary in Paseo Chapala --- against the recorded rights of the owners?)

If the Council wants to set up a model dispensary ordinance, then site approval needs to avoid current and future conflicts, which have already begun in the case of Paseo Chapala.

Other sites are much better for a downtown dispensary.

For these reasons we request that the Ordinance Committee recommend to the City Council that dispensaries not be allowed in existing mixed-use condominiums.

We look forward to speaking further with you on this important issue.

PASEO CHAPALA RESIDENTIAL / OFFICE ASSOCIATION

John P. Campanella
President

October 15, 2009

Planning Commission Members
630 Garden Street
Santa Barbara, CA 93101
ATTN: Julie Rodriquez, Planning Commission Secretary

Dear Planning Commission Members:

The Paseo Chapala Residential/Office Association and BDC Paseo Chapala, LLC the owner of five residences, hereby appeal the decision of Susan Reardon, a City Staff Hearing Officer, on October 7, 2009, granting a medical cannabis dispensary permit to The Farmacy Santa Barbara, Inc., (the "Farmacy") for a dispensary to be located at 741-781 Chapala Street (MST2009-00268). This appeal is based on the Hearing Officer's actions which are not in accord with Chapter 28.80 of the City's Municipal Code and which constitute error and an abuse of discretion.

First, the approval of the permit will result in the violation of both federal and state law. Federal law, because the possession and sale of marijuana, a category 1 controlled substance, is prohibited under 21 U.S.C. § 801 et seq. and because federal law pre-empts state law. *Gonzales v. Raich*,, 545 U.S. 1 (2005). State law because the Compassionate Use Act of 1996, Health & Safety Code § 11362.5(d), protects only permitted users and primary caregivers from California laws criminalizing the possession and sale of marijuana. The Farmacy is neither. *People v. Mentch*, 45 Cal.4th 274 (2008). Thus, the findings required by §§ 28.80.090.B.10 and 11 cannot be made.

Second, precisely because the possession of marijuana violates federal law, there is no way that the Farmacy's customers will be allowed to use the parking garage in the Paseo Chapala project. The parking garage is under the control of the Residential/Office Association. The Farmacy provided the Hearing Officer with portions of the declaration of conditions, covenants and restrictions for the project (the "CC&Rs") but failed to provide those portions of the CC&Rs which deal with the prohibition against the maintenance of nuisances. A complete copy of the CC&Rs is attached as Exhibit A. It should be noted that the CC&Rs cover both the Residential/Office Association and the Commercial Association.

CC&R § 5.1.H states:

> "Each Association shall maintain and operate its respective Common Area in accordance with all applicable municipal, state, and federal laws, statutes and ordinances, as the case may be. Each Association shall also, as a separate and distinct responsibility, take reasonable action to require that third parties (including Owners and their guests) utilize the Common Areas in accordance with the aforementioned laws. Each Association shall, when it becomes aware of any violation of

the aforementioned laws, take reasonable action to expeditiously correct such violations."

CC&R § 7.7 states, in pertinent part:

> "No noxious, **illegal**, or seriously offensive activities shall be carried on within the Condominium, or in any part of the Project, nor shall anything be done thereon that which [sic] may be or may become a serious annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners' Condominiums .... A Board is entitled to determine if any device, noise, odor, or activity within the area under its control constitutes a nuisance." [Emphasis added.]

The Board of the Residential/Office Association has determined that the use of the common area under its control by the Farmacy's customers – purchasers of marijuana – and by those members of the Farmacy's staff who are entitled to use medical marijuana on-site will constitute a nuisance under § 7.7 because that use will result in violations of federal law, will substantially and adversely affect the security of residents within the project and will generally diminish their quiet enjoyment.

The Board of the Residential/Office Association will enforce the provisions in the CC&Rs and will not allow any use of its common area which violates any of the provisions or which make their violation possible, i.e., it will not allow either surveillance cameras to be installed nor will allow guards to be stationed in the common areas. Further, the Board's authority to enforce the CC&Rs is not exclusive; it anticipates that individual owners within the Association will also enforce those provisions even if the Board doesn't. BDC Paseo Chapala, LLC, the owner of five residences also has a right to enforce these provisions.

Third, there has been no evidence provided which would justify findings under §§ 28.80.090.B.5 or 6. There has been no demonstration that either the needs of the community in general or those of people in proximity to the proposed location require the issuance of a dispensary permit to the Farmacy. In fact, Danny Kato, a Senior Planner with the City, has provided a list of 13 other locations where dispensaries are currently approved and either operating or will soon be operating, are currently operating as legal nonconforming uses or have applications pending. A copy of Mr Kato's e-mail listing the various locations is attached as Exhibit B.

Fourth, the Hearing Officer misconstrued the City Council's intent when she approved the permit in a mixed use building which currently contains 29 residential condominiums, the first of which was sold on August 1, 2007, over seven months before Chapter 28.80 was adopted on March 18, 2008. The proposed location is in a C-2 zone. Section 28.80.060.A allows dispensaries in C-2 zones; § 28.80.060.C.4. prohibits them in zones zoned for residential uses. C-2 zones allow all uses allowed in C-P zone. Section 28.66.030.A. The C-P zone allows residential uses, Section 28.54.030.A. Read literally, this would bar dispensaries in the C-2 zone which is clearly

contrary to the Council's intent. However, both the restrictions in § 28.060.C.4 and the introductory sentence in § 28.66.001 – the C-2 zone "strives to provide a desirable living environment by preserving and protecting surrounding residential land uses –" make it clear that the Council's intent was not to allow dispensaries to be located in mixed use buildings which, at the time that Chapter 28.80 was adopted, contained residential units. The effect of the Hearing Officer's approval is contrary to the terms of § 28.80.090.B.10 because the Farmacy's operations will adversely affect the health, peace, and safety of the existing residents and will, as noted above, result in illegal drug activities.

The CC&Rs did not specifically prohibit medical marijuana dispensaries when they were adopted in 2007 because no one had any reason to believe they would become a legal use in the City. No one who became a resident in the Paseo Chapala project prior to March, 2008, was concerned about the possible presence of such a dispensary for the same reason. Were the CC&Rs being written for the project today, they would contain such a prohibition because of the residents' concerns for their safety and security.

The task of the Planning Commission, as with the courts, is to effectuate the Council's intention. That intention was clearly to not allow medical marijuana dispensaries in mixed use buildings which already have residents in them. The Hearing Officer's approval of the Farmacy's application and the grant of the permit to it is contrary to that intention and should be reversed.

Sincerely,

PASEO CHAPALA RESIDENTIAL/
OFFICE ASSOCIATION

By: _____
John P. Campanella
President

BDC PASEO CHAPALA, LLC

By: _____
Arthur F. Burke
Chief Financial Officer of
Bermant Homes, Manager

Enclosures

cc: Mayor & Council Members, 735 Anacapa St., Santa Barbara, CA 93102
Ordinance Committee Members, 735 Anacapa St., Santa Barbara, CA 93102
Kelly Brodison, Assistant Planner, 630 Garden St., Santa Barbara, CA 93101
Danny Kato, Senior Planner, 630 Garden St., Santa Barbara, CA 93101

EXHIBIT F

USE RESTRICTIONS

Buyer shall not use or permit the use of the Property for any of the following uses: (a) funeral homes; (b) any production, manufacturing, industrial, or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof from the Property; (c) entertainment or recreational facilities ("entertainment or recreational facilities" includes, but are not limited to, a bowling alley, skating rink, electronic or mechanical games arcade, theater, billiard room or pool hall, massage parlor, discotheque, dance hall, banquet hall, night club, bar or tavern (***does not include an upscale restaurant with a bar***) head shop, pornographic or adult store, racquetball court or gymnasium, or other place of public amusement); (d) training or educational facilities ("training or educations facilities" includes, but are not limited to, a beauty school, child care facility, barber college, library, reading room, church, school, place of instruction, or any other operation catering primarily to students or trainees rather than to customers); (e) car washes, gasoline or service stations, or the displaying, repairing, renting, leasing, or sale of any motor vehicle, boat or trailer; (f) dry cleaner with on-premises cleaning; (g) any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke, gases, or materially increases fire, explosion or radioactive hazards in the project, (h) any business with drive-up or drive-through lanes; and (i) second-hand or thrift stores, or flea markets.

City of Santa Barbara
Mayor & Council members
Attn: Linda Gunther
735 Anacapa Street
Santa Barbara, CA 93102

November 14, 2009

Dear Mayor Blum & City Council members:

We the undersigned of this petition support a **ban** to prohibit Medical Cannabis Dispensaries from existing mixed-use buildings. We feel this is prohibited by both Federal and State Law, and is in violation our own building's CC&Rs. A medical marijuana dispensary recently received City approval for a business permit to operate within our mixed-use Paseo Chapala building at 741-781 Chapala Street, which we have appealed. Since such facilities are prohibited from residential R-2 and R-O zones of the City, they should also be prohibited from mixed-use buildings as a type of business that is unsuited to our mostly residential building with over 30 residents. We also feel that the City, by its approval of such facilities, promotes illegal activities that will be a "nuisance" to owners of residential units in our building and as such, is specifically in violation of our CC&Rs. Every condominium owner of our mixed-use building signed ***in good faith*** to be bound by the CC&Rs prior to their purchase, including the commercial condominium owner who now intends to lease part of his space to the dispensary. It is simply unreasonable ***to force*** owners and residents of a pre-existing mixed-use buildings to comply with the later adopted Ordinance, accept such facilities and make them part of our *daily* lives. As concerned citizens and tax payers, we look to you, our leaders in the community, for guidance and support. Thank you!

	Names	Signatures	Condominium Addresses	Contact Info: (Optional)
1	Kathleen Boo	Kathleen Boo	105-X De La Guerra St	[illegible]
2	Brock Dumont	[illegible]	105 W De La Guerra St L	brockd@cox.net
3	Peter Andrews	[illegible]	105 W De La Guerra St M	
4	Ivana Sanchez	Ivana Sanchez	105 W De la Guerra	
5	Ana Sanchez	[illegible]	105 W De la Guerra	
6	Rick Sanchez	[illegible]	105 W De la Guerra	
7	Kay Stern	Kay Stern	" " P	
8	Adam MADOKORO	Adam Madokoro	105 W De La Guerra #D	
9	NAKISA HERRICK	Nakisa M. Herrick	105 W. De La Guerra St B2	
10	TOMMY HERRICK	Tommy Herrick	105 W. De La Guerra #B2	
11	JOHN CAMPANELLA	John Campanella	105 W. DE LA GUERRA #G	
12	BDC PASEO CHAPALA LLC	John Campanella	105 W DE LA GUERRA #B	
13	BDC PASEO CHAPALA LLC	John Campanella	105 W DE LA GUERRA #C	
14	BDC PASEO CHAPALA LLC	John Campanella	105 W DE LA GUERRA #Q	
15	BDC PASEO CHAPALA LLC	John Campanella	105 W DE LA GUERRA #R	
16	BDC PASEO CHAPALA LLC	John Campanella	105 W DE LA GUERRA #T	
17	ALENA KITSON	Alena Kitson	105 W DE LA GUERRA #N	
18	GREGFF ROLAND	[illegible]	105 W De La guerra N	

City of Santa Barbara
Mayor & Council members
Attn: Linda Gunther
735 Anacapa Street
Santa Barbara, CA 93102

November 14, 2009

Dear Mayor Blum & City Council members:

We the undersigned of this petition support a **ban** to prohibit Medical Cannabis Dispensaries from existing mixed-use buildings. We feel this is prohibited by both Federal and State Law, and is in violation our own building's CC&Rs. A medical marijuana dispensary recently received City approval for a business permit to operate within our mixed-use Paseo Chapala building at 741-781 Chapala Street, which we have appealed. Since such facilities are prohibited from residential R-2 and R-O zones of the City, they should also be prohibited from mixed-use buildings as a type of business that is unsuited to our mostly residential building with over 30 residents. We also feel that the City, by its approval of such facilities, promotes illegal activities that will be a "nuisance" to owners of residential units in our building and as such, is specifically in violation of our CC&Rs. Every condominium owner of our mixed-use building signed ***in good faith*** to be bound by the CC&Rs prior to their purchase, including the commercial condominium owner who now intends to lease part of his space to the dispensary. It is simply unreasonable ***to force*** owners and residents of a pre-existing mixed-use buildings to comply with the later adopted Ordinance, accept such facilities and make them part of our *daily* lives. As concerned citizens and tax payers, we look to you, our leaders in the community, for guidance and support.

Thank you!

	Names	Signatures	Condominium Addresses	Contact Info: (Optional)
1	Corey Toth		105 W De La Guerra Unit W	
2	Chris Agnoli		105 W. De La Guerra	Unit X
3	[redacted] Agnoli		105 W. De La Guerra	" "
4	Vladmir Cuperman		105 W. De La Guerra	Unit 10
5	Ida Cuperman		105 W. De La Guerra	" "
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City of Santa Barbara
Mayor & City Council members
735 Anacapa Street
Santa Barbara, CA 93101
Attn: Linda Gunther, CAO Supervisor

Subject: **City Council Review of Medical Cannabis Dispensary Ordinance on Tuesday, November 17, 2009.**

Dear Mayor & Council members:

In regards to City Council's review of the Medical Dispensary Ordinance, as a resident of the Paseo Chapala Residential/Office Association, I am submitting this letter to state my personal views. I personally have nothing against medical cannabis dispensaries, and believe they serve a mixed purpose in our community, but specifically ***where*** they are located within the City requires special consideration.

A medical marijuana dispensary recently received City approval for a business permit to operate within my mixed-use Paseo Chapala building on the corner of De la Guerra and Chapala Streets. This approval has been appealed and is scheduled for Planning Commission review on December 10th. I feel such dispensaries are prohibited by State and Federal Law. I also feel that the City, by its approval of such facilities, promotes illegal activities that will be a "nuisance" to me and fellow owners of residential units in my building and as such, is specifically in violation of my building's CC&Rs. Every condominium owner of our mixed-use building signed in good faith to be bound by the CC&Rs prior to their purchase, including the commercial condominium owner who now intends to lease part of his commercial space to a dispensary. It is simply unreasonable ***to force*** owners and residents of pre-existing mixed-use buildings to comply with the later adopted Ordinance, compelling them to make marijuana dispensaries a part of their ***daily*** lives. And yes, sharing a building with the commercial spaces street-side below does make them a part of resident's daily lives (aside from restaurant patronage, this includes serious impacts to parking, mutual trash concerns, water use, noise concerns, etc.). Such facilities are simply inappropriate in mixed-use buildings for ***exactly*** the same reasons they are inappropriate for strictly residential zones (R-2, R-3 and R-O-residential office). And mixed-use families are located in much closer proximity than simply next door or just across the street. Our upstairs residential living spaces are mere inches away from the commercial spaces below! Your "home" is your sanctuary; a place you go ~ to live, relax after a hard day's work, raise your children and spend precious family time together. I simply view City approvals of applications in such close proximity as the City granting a marijuana dispensary to be built on my front lawn!

I therefore respectfully request the City Council recommend to the Ordinance Committee placing a **ban** to prohibit Medical Cannabis Dispensaries from existing mixed-use buildings as it is prohibited from State and Federal Law, many **existing** mixed-use building's CC&Rs, and for the following additional reasons:

- **Proposed Retroactive Restriction/Ban of Dispensaries from Existing Mixed-Use Buildings.** Ordinance Committee member Grant House has proposed a *retroactive* restriction on ***existing*** mixed-use buildings, with the provision that ***future*** mixed-use buildings would be required to include medical marijuana dispensaries in their advisory notifications, CC&Rs, or Declaration of Restrictions for Operation of Commercial Areas. I support this recommendation.

- **Proposed Cap on Number of Dispensaries per Area or Citywide.** A suggestion was made by Ordinance Committee Chair Das Williams for further clarification of the proposed "cap" or maximum number of dispensaries allowed per geographic region. The proposal was to allow only a maximum of 7 total dispensaries within the City of Santa Barbara, with only 1 dispensary allowed per geographic region of the City. I support this recommendation.

- **Proximity to Paseo Nuevo Mall.** It should be noted that directly across from the Paseo Chapala building, under the existing Ordinance the commercial district along State Street and the Paseo Nuevo Mall directly abutting Chapala Street prohibits dispensaries where families, children, students, and tourists congregate. I am genuinely appalled that the City would consider it even remotely appropriate to locate a dispensary directly across the street from the Mall, let alone so close to the residential families living at Paseo Chapala.

- **Serious Impacts to Neighborhoods:**
  - **Security Concerns.** The Medical Cannabis Dispensary Ordinance, SBMC Chapter 28.80 requires security measures including cameras, exterior lighting, etc. Additionally, the Paseo Chapala's Declaration of Restrictions for Operation of Commercial Area state in Section A, Item 2, *"Provisions to Run with the Land. The foregoing restrictions ('Restrictions') are reasonably necessary **to protect present and future human health and safety or the environment of the Project**"*. Stated "restrictions" in this document do not include medical marijuana dispensaries, but as stated before, they *would* have been included if the need to include them *existed* then. In prior applications, approvals granted by the City's Staff Hearing Officer were made conditional upon the owner being held responsible for activity on and around the property through hire of a "licensed" security guard, which is **not** appropriate for buildings with families and children living in such close proximity.

I also ask that the Mayor and City Council consider that the City of Santa Barbara and County are the only local governments currently permitting these dispensaries to operate in the mid-coast area. As evidenced since the current Ordinance went into effect, the result has been a virtual flood of applications for dispensaries over the last year. It is inevitable that the City of Santa Barbara will be scrutinized by the surrounding districts in how they answer to the needs of City residents as well as merely commercial interests. In setting an example to the rest of the State of California, I respectfully request that you carefully consider the number of dispensaries approved and the consequences for residents and the future of our fair City.

As a concerned citizen and tax payer, I look to you, our leaders in the community, for guidance, support, and protection. I welcome discussion of these concerns at the City Council 6:00 p.m. Evening Session, and look forward to an equitable resolution to both existing and future potential problems.

Thank you for your time and consideration!

Respectfully,

Kathleen Leolani Goo

Kathleen Leolani Goo
Resident and Officer-at-Large for the Paseo Chapala Residential / Office Association

cc: Ordinance Committee members
Paseo Chapala Residential / Office Association Board members
James Nguyen – Bartlein & Company

November 17, 2009

Mayor Blum and Council Members:

The Association of Realtors of Santa Barbara is concerned about the conflicts that have and will arise if medical marijuana dispensaries are allowed in existing mixed-use for-sale condominium buildings.

We strongly request that the City Council prohibit dispensaries in these existing projects.

Since mixed-use condominiums are in such proximity to each other within the same structure, high standards of care are required of every owner – both residential and commercial. This is the expectation of owners when they buy a condominium and why CC&R's are created with this in mind. The recording of these CC&R's are also required by the Department of Real Estate, construction and mortgage lenders, and the City itself in approving a single lot condominium mapped project.

The CC&R's are usually liberal in nature, prohibiting in general illegal activities and nuisances at the association's discretion. Such activities do not have to be specifically identified in the CC&R's in order to be prohibited. The CC&R's can be enforced by the Board or any condominium owner, allowing the broadest form of protection, but also the greater likelihood of conflict if a condominium owner does not abide the rules.

The permitting of a medical marijuana dispensary according to the City Ordinance can be used as a cover to get around the CC&R's to which a commercial condominium owner has previously obligated himself. The fact that dispensaries are illegal by Federal law, do not fully comply with the compassionate use act of the State, is a nuisance and requires security, makes an association Board obligated to fight a dispensary being allowed in an existing mixed-use building.

The responsibilities of the Association of Realtors in providing full disclosure and advice to buyers, necessitates our discouragement of entering sales contracts in existing mixed-use projects if a dispensary could be allowed by City Ordinance.

This inappropriate location and inherent conflicts also undermines the City's goal of creating a model to provide a source of treatment for those in need.

Thank you for not allowing dispensaries in existing mixed-use condominium buildings.

Sincerely,

Association of Realtors

City of Santa Barbara
Mayor & Council members
Attn: Linda Gunther
735 Anacapa Street
Santa Barbara, CA 93102

November 14, 2009

Dear Mayor Blum & City Council members:

I the undersigned of this petition support a **ban** to prohibit Medical Cannabis Dispensaries from existing mixed-use buildings. I feel this is prohibited by both Federal and State Law, and is in violation my own building's CC&Rs. A medical marijuana dispensary recently received City approval for a business permit to operate within my mixed-use Paseo Chapala building at 741-781 Chapala Street, which my condo association has appealed. Since such facilities are prohibited from residential R-2 and R-O zones of the City, they should also be prohibited from mixed-use buildings as a type of business that is unsuited to my mostly residential building with over 30 residents. I also feel that the City, by its approval of such facilities, promotes illegal activities that will be a "nuisance" to owners of residential units in our building and as such, is specifically in violation of my building's CC&Rs. As a condominium owner in my mixed-use building, I signed ***in good faith*** to be bound by the CC&Rs prior to their purchase, similar to the commercial condominium owner who now intends to lease part of his space to the dispensary. It is simply unreasonable ***to force*** owners and residents of a pre-existing mixed-use buildings to comply with the later adopted Ordinance, accept such facilities and make them part of our *daily* lives. As concerned citizens and tax payers, I look to you, our leaders in the community, for guidance and support.

Thank you for your attention!

Douglas Etsell	[signature]	11/16/09
Printed Name	Signature	Date

Paseo Chapala Building
105 West De La Guerra Street
Santa Barbara, CA 93101

City of Santa Barbara
Mayor & Council members
Attn: Linda Gunther
735 Anacapa Street
Santa Barbara, CA 93102

November 14, 2009

Dear Mayor Blum & City Council members:

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Thank you for your attention!

COREY TOTH		11/14/2009.
Printed Name	Signature	Date

Paseo Chapala Building
105 West De La Guerra Street
Santa Barbara, CA 93101

City of Santa Barbara
Mayor & Council members
Attn: Linda Gunther
735 Anacapa Street
Santa Barbara, CA 93102

November 14, 2009

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I the undersigned of this petition support a **ban** to prohibit Medical Cannabis Dispensaries from existing mixed-use buildings. I feel this is prohibited by both Federal and State Law, and is in violation my own building's CC&Rs. A medical marijuana dispensary recently received City approval for a business permit to operate within my mixed-use Paseo Chapala building at 741-781 Chapala Street, which my condo association has appealed. Since such facilities are prohibited from residential R-2 and R-O zones of the City, they should also be prohibited from mixed-use buildings as a type of business that is unsuited to my mostly residential building with over 30 residents. I also feel that the City, by its approval of such facilities, promotes illegal activities that will be a "nuisance" to owners of residential units in our building and as such, is specifically in violation of my building's CC&Rs. As a condominium owner in my mixed-use building, I signed ***in good faith*** to be bound by the CC&Rs prior to their purchase, similar to the commercial condominium owner who now intends to lease part of his space to the dispensary. It is simply unreasonable ***to force*** owners and residents of a pre-existing mixed-use buildings to comply with the later adopted Ordinance, accept such facilities and make them part of our *daily* lives. As concerned citizens and tax payers, I look to you, our leaders in the community, for guidance and support.

Thank you for your attention!

ROY NIXON		11-15-09
Printed Name	Signature	Date

Paseo Chapala Building
105 West De La Guerra Street
Santa Barbara, CA 93101

Goo, Kathleen

Subject: FW: City Council Hearing November 17 - Medical Cannabis Dispensary Ordinance

---------- Forwarded message ----------
From: **Geoff Roland** <geoffroland@gmail.com>
Date: Thu, Nov 12, 2009 at 4:38 PM
Subject: City Council Hearing November 17 - Medical Cannabis Dispensary Ordinance
To: IFalcone@santabarbaraca.gov, DFrancisco@santabarbaraca.gov, RHorton@santabarbaraca.gov, GHouse@santabarbaraca.gov, HSchneider@santabarbaraca.gov, DasWilliams@santabarbaraca.gov, SWiley@santabarbaraca.gov, frankh110@cox.net, friendsofbendywhite@gmail.com

City of Santa Barbara
Mayor/City Council/City Attorney
735 Anacapa Street
Santa Barbara, CA 93101

November 12, 2009

Subject: City Council Hearing November 17 - Medical Cannabis Dispensary Ordinance

Dear Council Members et al,

There are many issues with the existing Medical Cannabis Dispensary ordinance that have been voiced in ordinance revision committee meetings since September 2009. It is my understanding that the issues that are currently under consideration are:

1. A citywide cap of seven dispensaries, one in each of seven geographic areas.

2. A reduced amortization period of six months.

3. A prohibition on dispensaries in existing, mixed-use building, where the residential units are condominiums.

4. More discretion for the Staff Hearing Officer.

5. A prohibition on dispensaries within 1000 feet of Casa Esperanza and similar recovery facilities.

6. A requirement that security be provided by a separate security company, licensed by the State.

7. A requirement for annual review of permitted dispensaries by the Police Department and the Staff Hearing Officer.

8. The intent of senate bill 420 and the concept of cooperatives vs storefront retail marijuana sales.

I am in full support of the above proposed items and changes to the ordinance.

I am particularly in support of prohibiting dispensaries in mixed use commercial/residential condominium developments as that particular issue affects me, my family, and my neighbors very directly. Some have said that changes to the ordinance based on mixed use would address the situation in my building only - this is simply not the case. There are a number of other mixed use buildings in the city that face the same issues as we do now – two others on Chapala, one on W. De La Guerra, as well as others throughout the city if they are located outside of restricted areas.

The overarching intention of the ordinance is to restrict dispensaries from locating in areas where people live and children congregate, hence the restriction against residential zones and R-O residential office zones. What puzzles and concerns me is that those of us who have chosen to make our homes in mixed use developments are not currently availed of the same protections from dispensary placements as all other residents of the city. This makes no sense at all, is unfair, and places an undue burden upon us. As property owners rather than renters, we don't have the option of easily moving away if and when a dispensary becomes a nuisance. Unlike commercial businesses, whose owners and employees leave at the end of the work day, residents of mixed use buildings are faced with potential nuisance neighbors (as little as 16 inches away) 24 hours a day, 7 days a week. We don't get to go home after work and leave the nuisance behind; we have to live next to or directly on top of it.

- The current restriction on residential zones makes sense – don't locate dispensaries where people live.

- The current restriction for R-O residential office zones makes sense – don't locate dispensaries in "mixed use" residential office zones - adjacent to where people live.

- <u>We are currently lacking a restriction for mixed use commercial/residential condominium buildings</u> - don't locate dispensaries in mixed use buildings – adjacent to where people live, similar to the R-O restriction.

Let's be realistic and honest. Current California laws regarding medical marijuana were and are intended as a first step, or toe in the door, towards eventual legalization of marijuana. That is why I voted in favor of them years ago. However, the current dispensary situation throughout the state has gotten out of control. <u>If Santa Barbara is to allow any dispensaries at all they should be strictly limited both in number and in location and they should be monitored very closely.</u> Any person with a valid condition can go to their doctor today to get a prescription for federally legal marijuana in pill form, it's called Marinol. And, they are currently researching other delivery methods such as inhalers and patches. There is no medically valid reason for these retail marijuana stores in our community since California law allows people to grow their own "medicine", join non-retail cooperatives, or use Marinol.

<u>I urge you to put in place an immediate moratorium on all new and pending dispensary applications until the Medical Marijuana Ordinance has been re-worked to address the very valid concerns of the community.</u>

Thank you for your consideration on this matter.

Geoff Roland
105 W. De La Guerra, Unit N
Santa Barbara, CA 93101

To:

- Mayor: MBlum@SantaBarbaraCA.gov
- City Council: IFalcone@SantaBarbaraCA.gov, DFrancisco@SantaBarbaraCA.gov, RHorton@SantaBarbaraCA.gov, GHouse@SantaBarbaraCA.gov, HSchneider@SantaBarbaraCA.gov, DasWilliams@SantaBarbaraCA.gov
- City Attorney: SWiley@SantaBarbaraCA.gov
- Newly Elected Council: frankh110@cox.net, friendsofbendywhite@gmail.com

11/17/2009

Rodriguez, Cyndi

From: Pedersen, Lori
Sent: Monday, November 16, 2009 2:22 PM
To: Rodriguez, Cyndi
Subject: FW: PRO MED MJ IN SB! Registered Dem

FYI - For Ordinance Committee November 24th?

From: Douglas Dye [mailto:douglas.dye@gmail.com]
Sent: Monday, November 16, 2009 10:46 AM
To: Blum, Marty; Schneider, Helene; Williams, Das; Kato, Danny; Pedersen, Lori; House, Grant; Falcone, Iya; Francisco, Dale
Subject: PRO MED MJ IN SB! Registered Dem

Good Day - I'm a registered Democrat who lives within the Santa Barbara city limits. I'm also an advocate for the safe access to medical marijuana for those with a legally recognized recommendation and would urge you to FULLY SUPPORT our local dispensaries. These small businesses are serious and vital in providing an invaluable service to our community. Additionally, in these challenging economic times these businesses are thriving and are good neighbors here in Santa Barbara. Of the local dispensaries I've visited, I have never once seen loitering teens, guns or crime, vandalism, or any of the other alleged negatives that opponents of these businesses continuously claim. Again, thank you for your time and serious consideration of the future rules regarding dispensaries. Sincerely - Doug Dye, Santa Barbara, CA / 805.218.7139

Rodriguez, Cyndi

From: Pedersen, Lori
Sent: Thursday, November 19, 2009 10:41 AM
To: Rodriguez, Cyndi
Subject: FW: From Don Duncan, Dir of ASA - FYI

For November 24ths Ord. Comm. meeting

-----Original Message-----
From: Kato, Danny
Sent: Thursday, November 19, 2009 10:18 AM
To: Armstrong, Jim; Pedersen, Lori; Tschech, Susan
Cc: Casey, Paul; Weiss, Bettie
Subject: FW: From Don Duncan, Dir of ASA - FYI

This was sent to Mayor and Council.

D

-----Original Message-----
From: JoAnna LaForce [mailto:jlaforce2000@yahoo.com]
Sent: Wednesday, November 18, 2009 5:50 PM
To: Williams, Das; Francisco, Dale; Horton, Roger; House, Grant; Schneider, Helene; Wiley, Stephen
Cc: Kato, Danny; Tony Vasallo
Subject: Fw: From Don Duncan, Dir of ASA - FYI

Hello,
This information was sent to Mayor Blum yesterday from the Director of Americans for Safe Access and their attorneys.
Would appreciate it if you would read it at your convenience.
Respectfully,
JoAnna LaForce

--- On Tue, 11/17/09, Don Duncan <don@safeaccessnow.org> wrote:

> From: Don Duncan <don@safeaccessnow.org>
> Subject: Medical cannabis
> To: MBlum@SantaBarbaraCA.gov
> Date: Tuesday, November 17, 2009, 5:08 PM
>
>
> Medical cannabis
>
>
> Dear Mayor Blum,
>
>
>
> Tonight, you will receive a report advocating for banning medical
> cannabis collectives and cooperatives that provide medicine to

> Qualified Patients in exchange for reimbursement. I urge you to reject
> this option, and continue with the successful implementation of your
> local regulations.
>
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>
> Research by Americans for Safe Access (ASA) and our experience in
> dozens of cities and counties that have already adopted ordinances
> authorizing access to medical cannabis indicate that sensible
> regulations reduce crime and complaints surrounding patients'
> associations.
> Patients who need access to medicine to treat the symptoms of
> HIV/AIDS, cancer, Multiple Sclerosis, chronic pain, and other serious
> conditions rely of medical cannabis dispensing collectives every day
> in Santa Barbara. They are counting on you to maintain their safe
> access.
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>
> Medical cannabis patients' association that provide medicine in
> exchange for reimbursements are legal.
> California Health and Safety Code Section 11362.775 states that
> qualified patients and their primary caregivers "who associate within
> the State of California in order collectively or cooperatively to
> cultivate marijuana for medical purposes, shall not solely on the
> basis of that fact be subject to state criminal sanctions under
> Section 11357 , 11358, 11359 , 11360 , 11366 , 11366.5, or 11570."
> Thus, the possession (Section 11357), possession for sale (Section
> 11359), and cultivation of cannabis (Section 11358) within the context
> of a collective or cooperative medical cannabis association is lawful.
> Furthermore, in guidelines published in August of 2008, California
> Attorney General Jerry Brown clarified "that a properly organized and
> operated collective or cooperative that dispenses medical marijuana
> through a storefront may be lawful under California law," provided
> they are in compliance with the provisions of the guidelines.
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>
> The legal status of medical cannabis collectives and cooperatives, and
> the storefronts they maintain to provide medicine to registered
> members, has been upheld by the California courts, including People v.
> Urziceanu
> (2005) 132 Cal.App. 4th 747, People v. Hochandel
> (2009) 98 Cal.Rptr.3d 347, and County of Butte v.
> Superior Court (2009) 209 WL 1879719 Cal.App. 3rd.
> Furthermore, the obligation of local government to uphold state
> medical cannabis laws, regardless of federal law, has been established
> in County of San Diego v. San Diego NORML (2008) 165 Cal.App.4t.
>
>
>
> Some of the analysis provided in you agenda package tonight is

> misleading. Lobbyists representing law enforcement interests and some
> medical cannabis opponents wrongly assert that the 2009 California
> Supreme Court decision in People v. Mentch (2008) 45 Cal.4th 274, 283,
> makes Medical Cannabis Dispensing Collectives and Cooperatives (MCDC)
> illegal. This is a clear misreading of the decision, and in some
> cases, the argument may be propagated to intentionally confuse the
> issue of legal access under California law.
> While it is true that the Mentch decision upholds a narrow definition
> of the term "Primary Caregiver" in Proposition 215, the ruling only
> concerns an individual's claim to be a Primary Caregiver under state
> law; it does not address the legality of patients' collectives and
> cooperatives. The Lungren v. Peron (1997) 59 Cal.App.4th 1383,
> decision already stated that MCDCs could not be caregivers. So,
> applying Mentch to MCDCs, including those that maintain storefront
> facilities in Santa Barbara, is misguided and not legally valid.
>
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>
> Please let me know if I or my colleagues at ASA can be of assistance
> in this conversation. You can reach me at this email address or by
> calling (323) 326-6347.
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> Thank you,
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> Don Duncan
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> _____
>
> Don Duncan
>
> California Director
>
> Americans for Safe Access
>
> http://www.americansforsafeaccess.org/
>
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> Americans for Safe Access (ASA) is the largest national member-based
> organization of patients, medical professionals, scientists and
> concerned citizens promoting safe and legal access to cannabis for
> therapeutic use and research.
>
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> Are you an ASA member? http://www.AmericansforSafeAccess.org/Join
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