

AN ORDINANCE OF THE COUNCIL OF THE
CITY OF SANTA BARBARA EXTENDING A
TEMPORARY SUSPENSION OF THE RIGHT TO
APPLY FOR OR TO OBTAIN A PERMIT FOR
THE OPENING OR OPERATION OF MEDICAL
MARIJUANA DISPENSARIES OTHERWISE
PERMITTED BY SANTA BARBARA MUNICIPAL
CODE CHAPTER 28.80 ON AN INTERIM
BASIS.

WHEREAS, in 1996, California voters approved Proposition 215, (hereinafter referred to as "The Compassionate Use Act") which Act legalized the limited use of marijuana for medical purposes and allowed persons to grow and possess medicinal marijuana based on the recommendation of a licensed physician; and

WHEREAS, in 2003 the California State Legislature enacted supplemental medical marijuana legislation in order to fully implement the Compassionate Use Act (Senate Bill 420 effective January 1, 2004) which was also intended to clarify the application and scope of the Compassionate Use Act and enhance the access of "qualified patients" and "primary caregivers" to medical marijuana through collective or cooperative group cultivation projects; and

WHEREAS, neither the Compassionate Use Act nor Senate Bill 420 expressly allows medical marijuana dispensaries, particularly those that operate on a "for profit" or retail storefront basis and which, while purporting to operate within the SB 420 definition of a "primary caregiver," actually often only provide marijuana on an over-the-counter or "retail" basis; and

WHEREAS, a proliferation of dispensaries within California has followed the passage of the Compassionate Use Act in 1996 and the enactment of the SB 420 statutes and, in some instances, the spirit and intent of the Compassionate Use Act has apparently been and is being exploited and abused both for profit motivation reasons and for recreational drug abuse by many individuals who improperly obtain marijuana from medical marijuana dispensaries; and

WHEREAS, as pointed out in the Compassionate Use Act Guidelines adopted by the state Attorney General's Office in August 2008, (the California Attorney General's "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use") state law does not specifically or expressly permit Medical Marijuana Dispensaries to operate. According to these Guidelines, the lack of statewide regulations or guidelines has created confusion and hampered the ability of local police and other law enforcement to investigate and prosecute Medical Marijuana Dispensary operators that have been linked to criminal activity, such as selling marijuana for recreational use and distributing marijuana to individuals who re-sell the marijuana to persons who are not qualified patients or primary caregivers under the Compassionate Use Act; and

WHEREAS, in several recent published decisions issued by the courts, such as *People v. Hochenadel* (98 Cal.Rprt.3d 347 - decided in August 2009) and *People v. Mentch* (85 Cal.Rptr.3d 480 - decided in November 2008), the courts of this state have indicated that Medical Marijuana Dispensaries may only be allowed or permitted by the Compassionate Use Act and the SB 420 statutes under very limited circumstances and they have indicated that cities may regulate medical marijuana dispensaries and enforce the Compassionate Use Act using their local police and enforcement powers; and

WHEREAS, Medical Marijuana Dispensaries have been known to operate and advertise in and or close to schools, to unlawfully sell marijuana for profit, to lack the medical expertise and security to be able to properly dispense marijuana, and to regularly sell marijuana to individuals without any of the required legal medical documentation; and

WHEREAS, The Santa Barbara City Council believes that it should immediately evaluate the impacts of Medical Marijuana Dispensaries on its residents, neighborhoods, and on adjacent legally operated businesses; and

WHEREAS, this interim City ordinance is designed to prevent new Medical Marijuana Dispensaries from opening or operating while an inter-departmental staff group, led by the Community Development Department, the Police Department, and the City Attorney's office, meets with the Council Ordinance Committee in public hearings and the Committee crafts a draft ordinance intended to regulate the operation of medical marijuana

dispensaries and establish viable regulations for consideration by the full City Council, all in the manner allowed under the Compassionate Use Act and the SB 420 statutes; and

WHEREAS, December 15, 2009, this City Council adopted an ordinance of the City (as City Ordinance No. 5506) imposing a temporary suspension on applications or City permits for the opening or operation of new medical marijuana dispensaries within the City with the intention that this interim suspension ordinance would allow the City staff and the City Council the time it needs to undertake the critically important task of developing a comprehensive strategy for regulating Medical Marijuana Dispensaries and for possibly revising Santa Barbara Municipal Code Chapter 28,80, thus ensuring that this important legislative opportunity is fully examined in depth while not permitting new Medical Marijuana Dispensaries to be established throughout the City;

NOW THEREFORE, the City Council of the City of Santa Barbara does ordain as follows:

Section One. Required Findings for the Extension of City Ordinance No. 5506.

The City Council continues to find and to declare that an interim suspension ordinance suspending the application of Santa Barbara Municipal Code Chapter 28.80 is required in order for the City Council to address a current and immediate threat to the public peace, health, safety and welfare of the residents of the City for all of the reasons stated in the above-recitals as well as for the following reasons:

1. This ordinance will extend the City's temporary limitation on the opening or operation of new Medical Marijuana Dispensaries and thus it will prevent an insufficiently regulated increase in medical marijuana dispensaries pending the City Council due consideration and possible adoption of a long-term and more comprehensive City ordinance regulating the distribution of medical marijuana within the City. Such a long-term ordinance is likely to be more consistent with the City's General Plan (including the proposed new General Plan currently being prepared and known as Plan Santa Barbara) and the City's Zoning Ordinance, SBMC Title 28, such that the legal distribution of medical marijuana within Santa Barbara will

be more consistent with the City's zoning regulations and with the requirements of state law.

2. The City staff recommendation that Santa Barbara have a long-term City medical marijuana ordinance truly reflective of the spirit and intent of the Compassionate Use Act and the SB 420 statutes would probably be substantially undermined if new dispensaries are allowed to open or operate pending the public consideration and City Council review of the proposed long-term City ordinance on medical marijuana.

3. The number of medical marijuana dispensaries operating within the City (both legal and illegal) is apparently increasing (as is the number of new of dispensary applications) and the City Police and City Community Development Departments have received complaints from neighbors, business owners, and concerned citizens regarding the potential negative criminal impacts of some of these dispensaries. Without interim City restrictions on the opening of new dispensaries and on the appropriate location of a dispensary and its hours of operation (including whether such dispensaries are allowed by state law), the result may be the establishment of dispensaries in close proximity to sensitive uses operating at all hours.

4. This extension of the City original December 15, 2009 interim suspension ordinance will prevent an insufficiently regulated increase in the number of new dispensaries and will provide the public and the City Council with the appropriate time it needs to determine if the dispensary model of providing access to medical marijuana is allowed by state law and, if so, under what circumstances it is allowed. This interim ordinance will also permit the City to develop appropriate regulations relative to the distances permitted dispensaries should be from sensitive uses, and to determine appropriate methods of operation, as well as the circumstance of when and where dispensaries would be compatible with the surrounding uses, and other related land use issues.

Section Two. Extension of the Interim Prohibition on the Opening or Operation of New Medical Marijuana Dispensaries. Having been advised that the duly required public noticing for this ordinance has been accomplished by the City staff, City Ordinance No. 5506 is hereby extended for a period of ten months and fifteen (15) days or until this Council adopts a new City ordinance codifying amendments to Santa Barbara Municipal Code Chapter 28.80, whichever is sooner, all as required by subparagraph (a) of state Government Code section 65858.

Swiley/ord/medical.marijuana/suspension-extension-adoption version
January 28, 2010