



CITY OF SANTA BARBARA

ORDINANCE COMMITTEE AGENDA REPORT

AGENDA DATE: April 27, 2010
TO: Ordinance Committee
FROM: Planning Division, Community Development Department
SUBJECT: Medical Marijuana Storefront Collective Ordinance Revisions

RECOMMENDATION:

That the Ordinance Committee review a draft Medical Marijuana Storefront Collective Dispensary Ordinance, and refer a possible draft ordinance back to City Planning Commission and City Council for subsequent actions as appropriate.

DISCUSSION:

At the April 13, Ordinance Committee meeting, the Ordinance Committee came to a general consensus on the draft Medical Marijuana Storefront Collective Ordinance, and directed Staff to return to the Ordinance Committee with a draft that included all Committee consensus items. The Ordinance Committee also requested the City Attorney to consider a possible provision in the ordinance that might appropriately allow the dispensary at 3128 State Street (SB Patient's Group) to remain in its current location indefinitely as a pre-existing legal non-conforming use. The Ordinance Committee decided to postpone discussion of the question of whether to continue to require a discretionary approval by the Staff Hearing Officer, Planning Commission or Council on appeal, or to allow the ordinance to be administered at the staff level (Finance, Police or Planning), to its next meeting.

All consensus points have been incorporated into the draft ordinance, and the major points are listed below:

1. All amendments recommended by the Ordinance Committee to Council on February 23, 2010
2. Medical Marijuana should only be made available to Qualified Patients and Caregivers at storefront locations if such locations are operated as "collectives" in the manner required by SB 420.
3. Storefront Collective members must reside in Santa Barbara, San Luis Obispo or Ventura counties.
4. Specific cultivation, membership, and financial records are required, with inspection by specified City Staff with limited notice.
5. Member medical records are required and may be inspected by City Staff, but only with a search warrant or inspection warrant.
6. Dispensary inspection with limited notice by City Staff.

7. A maximum of five storefront collectives within the City.
8. Prohibit Storefront Collective dispensaries within 500 feet of 17 high priority recovery facilities.
9. Allow storefront collectives to be located in the Upper Westside Medical Facility area (formerly known as the "Cottage Hospital area").
10. Prohibit storefront collectives in the Mesa area (currently allowed)
11. Medical Marijuana in edible forms would be allowable.

SB Patient's Group – 3125 State Street:

The draft ordinance has not been revised to include a provision allowing the existing dispensary at 3125 State Street (the "SB Patient's Group") to remain at this location as a pre-existing legal non-conforming use. The City Attorney's office has determined that it is probably not workable to do this in a way that is legally appropriate and defensible without also "grandfathering – in" similarly situated existing dispensaries which would not conform to the new locational restrictions.

Permit Approval Procedure:

Currently, the SBMC Chapter 28.80 requires that a dispensary application be reviewed and approved by the Staff Hearing Officer, with an appeal to the Planning Commission. The amendments recommended by the Ordinance Committee in February 2010 also included a provision that allowed a further appeal to the City Council.

At its April 13th meeting, the City Attorney asked whether the Committee wished to consider a potential new approval process. Ordinance Committee members felt that this topic should be discussed after the Committee had reached consensus on all other aspects of the draft ordinance. Although the Committee reached consensus on April 13th on most items, there wasn't enough time to discuss this topic. The topic can be summarized as follows: Since the revised regulations controls storefront collectives so extensively as to their possible number and locations within the City and with respect to how they must operate on a day-to-day basis, is there a need for a discretionary approval process? Alternatively, can the approval process for dispensaries now be handled administratively, where staff ensures that the proposed storefront collective meets all ordinance requirements, and issues a storefront collective permit? This process could still include a right of appeal to the City Council, if that is the Committee's desire.

ATTACHMENT: Ordinance Draft

PREPARED BY: Danny Kato, Senior Planner

SUBMITTED BY: Paul Casey, Assistant City Administrator/Community Development Director

APPROVED BY: City Administrator's Office

ORDINANCE NO. _____

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

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

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

Section 28.80.010 Purpose and Intent.

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

Section 28.80.020 Definitions.

For the purpose of this Chapter, the following words and phrases shall have the following meanings:

A. Applicant. A person who is required to file an application for a Medical Marijuana Collective permit under this Chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, Management Member, employee, or agent of a Medical Marijuana Storefront Collective Dispensary.

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

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

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

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

A Storefront Collective Dispensary shall not include dispensing of medical marijuana by primary caregivers to qualified patients in the following locations so long as the location and operation of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code and operated in the manner required by applicable state laws:

1. a clinic licensed pursuant to Chapter 1 of Division 2 of the state Health and Safety Code;
2. a health care facility licensed pursuant to Chapter Two of Division 2 of the state Health and Safety Code;
3. a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the state Health and Safety Code;
4. residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the state Health and Safety Code;
5. a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the state Health and Safety Code;

provided that any such clinic, health care facility, hospice or residential care facility also fully complies with applicable laws including, but not limited to, the Compassionate Use Act of 1996 and the SB 420 statutes.

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

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

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

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

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

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

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.

L. Reasonable Compensation. Compensation commensurate with reasonable wages and benefits paid to employees of federal Internal Revenue Code qualified non-profit organizations who have similar job descriptions and duties, required level of experience and education, prior earnings history, and number of hours worked. The payment of a bonus shall not be considered reasonable compensation.

Section 28.80.030 Storefront Collective 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 his or her Property the operation of a Storefront Collective Dispensary unless an Applicant has first obtained and continues to maintain in full force and effect a valid Storefront Collective Dispensary Permit issued by the City for that Property pursuant to this Chapter.

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

Every application for a Storefront Collective Dispensary permit or for a renewal thereof shall be accompanied by an application fee (in an amount established by resolution of the City Council from time to time at a amount calculated to recover the City's full cost of reviewing and issuing the Storefront Collective Dispensary permit) and a complete application pursuant to this chapter. The 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.

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

A. Permissible Zoning for Storefront Collective Dispensaries.

Storefront Collectives Dispensaries may only be permitted and located on parcels within the City which are zoned for commercial uses and on those street block faces listed in the exhibit to this Chapter designated as "Medical Marijuana Storefront Collectives Dispensaries - Allowed Locations" dated as of April 27, 2010.

B. Storefront Locations. Except for those locations shown as allowed within the West Pueblo Medical Area on the exhibit attached to this Chapter and dated as of April 27, 2010 which have been specifically approved by the Staff Hearing Officer as non-storefront locations pursuant to this Chapter, a Storefront Collective Dispensary shall only be located in a visible storefront type ground-floor location which provides good public views of the Dispensary entrance, its windows, and the entrance to the Storefront Collective Dispensary premises from a public street.

C. Commercial Areas and Zones Where Storefront Collective Dispensaries Not Permitted. Notwithstanding subparagraph (A) above, a Storefront Collective Dispensary shall not be allowed or permitted in the following locations or zones:

1. On a parcel located within 1000 feet of another permitted or allowed Collective Dispensary; or
2. On a parcel on State Street between Cabrillo Boulevard and Arrellaga Street;

D. Locational Measurements. The distance between a Storefront Collective Dispensary and above-listed restrictions shall be made in a straight line from any parcel line of the Property on which the Storefront Collective Dispensary is located to the parcel line the real property on which the facility, building, or structure, or portion of the building or structure, in which the above-listed use occurs or is located.

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

E. One Collective Dispensary for Each Area of the City. No more than one Storefront Collective Dispensary may open or operate in each of the areas of the City designated as allowed or permissible Collective Dispensary location areas in the exhibit attached to this chapter and dated as of April 27, 2010 except for those areas which, at the time of the adoption of the ordinance amending this Chapter, already have more than one Storefront Collective Dispensary on a legal non-conforming basis and which are allowed to continue to operate on a legal non-conforming basis under Section Two of the Ordinance amending this Chapter - in which case a legal non-conforming Dispensary may be allowed to continue to operate in such an area.

F. Maximum Number of Medical Marijuana Storefront Collective Dispensaries Allowed Permits. Notwithstanding the above, the City may not issue a total of more than five (5) Collective Dispensary permits at any one time and no more than five (5) permitted Collective Dispensaries may legally operate within the City including specifically those dispensaries which are open and operating in a legal nonconforming manner at the time of the adoption of the ordinance amending this Chapter.

Section 28.80.060 Storefront Collective Dispensary - Permit Application Requirements.

A. Application Filing. A complete Performance Standard Permit application submittal packet is required for a Storefront Collective Dispensary permit and it shall be submitted (along with all necessary fees) and all other information and materials required by this Chapter in order to file a complete application for a Storefront Collective Dispensary Permit for a specific

Property. All applications for permits shall be filed with the Community Development Department, using forms provided by the City. It is the responsibility of the Applicant to provide information required for approval of the permit. The application shall signed and made under penalty of perjury.

B. Eligibility for Filing. Applications may only be filed by the owner of the subject property, or by a lessee with a lease signed by the owner or a duly authorized agent of the owner. If an application is filed by a non-owner of the Property, it shall also be accompanied by a written affirmation from the Property owner expressly allowing the Applicant to apply for the Permit and acknowledging the Applicant's right to use and occupy the Property for the intended Storefront Collective Dispensary 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 and the application has been deemed complete.

D. Effect of Incomplete Filing. Upon notification that an application submittal is incomplete, the Applicant shall be granted an extension of time to submit all materials required to complete the application within thirty (30) days. If the application remains incomplete in excess of thirty (30) days the application shall be deemed withdrawn and new application submittal shall be required in order to proceed with the subject request. 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. Filing Requirements - Proposed Operational Plan. In connection with a permit application, the Applicant for a Storefront Collective Dispensary permit shall provide a detailed "Operations Plan" for the proposed Dispensary and, upon issuance of the Storefront Collective Dispensary permit by the City, shall operate the Storefront Collective Dispensary in accordance with the Operations Plan at all times. A required Operations Plan shall consist of at least the following:

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

3. Security Plans. A Storefront Collective Dispensary shall provide a plan to 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. All security guards used by dispensaries shall be licensed and employed by a state licensed private-party operator security company retained by the Storefront Collective Dispensary and each security guard used shall possess a valid state Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess or carry firearms or tazers while working at a Collective Dispensary.

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

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

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

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

objectionable conditions that constitute a 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 Collective Dispensary.

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

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

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

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

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

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

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

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

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

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

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

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

G. Effect of Other Permits or Licenses. The fact that an Applicant possesses other types of state or City permits or licenses or tax certificate does not exempt the Applicant from the requirement of obtaining a Storefront Collective Dispensary permit pursuant to this Chapter.

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

A. Decision on Application. Upon an application for a Storefront Collective Dispensary permit being deemed complete, the Staff Hearing Officer, or the Planning Commission on appeal of a decision of the Staff Hearing Officer, shall either issue a Storefront Collective Dispensary permit, issue a Storefront

Collective Dispensary permit with conditions in accordance with this Chapter, or deny a Storefront Collective Dispensary permit.

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

1. That the Collective Dispensary permit is consistent with the intent of the Compassionate Use Act of 1996 and the SB 420 Statutes for providing medical marijuana to qualified patients and primary caregivers and the provisions of this Chapter and with the Municipal Code, including the application submittal and operating requirements herein.
2. That the proposed location of the Storefront Collective Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity.
3. For those applicants who have operated other Storefront Collective Dispensaries within the City, that there have not been significant numbers of calls for police service, crimes or arrests in the area or to the applicant's existing Collective Dispensary location.
4. That issuance of a Collective Dispensary permit for the Collective Dispensary size requested is appropriate to meet needs of community for access to medical marijuana.
5. That issuance of the Collective Dispensary permit would serve needs of City residents within a proximity to this location.
6. That the location is not prohibited by the provisions of this Chapter or any local or state law, statute, rule, or regulation and no significant nuisance issues or problems are likely or anticipated and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.
7. That the Operations Plan, a site plan, a floor plan, the proposed hours of operation, and a security plan have incorporated features necessary to assist in reducing potential crime-related problems and as specified in the operating requirements section. These features may include, but are not limited to, security on-site; procedure for allowing entry; openness to surveillance and control of the premises; the perimeter, and surrounding properties;

reduction of opportunities for congregating and obstructing public ways and neighboring property; illumination of exterior areas; and limiting furnishings and features that encourage loitering and nuisance behavior.

8. That all reasonable measures have been incorporated into the security plan or consistently taken to successfully control the establishment's patrons' conduct resulting in disturbances, vandalism, crowd control inside or outside the premises, traffic control problems, marijuana use in public, or creation of a public or private nuisance, or interference of the operation of another business.

9. That the Storefront Collective Dispensary is likely to have no potentially adverse affect on the health, peace, or safety of persons living or working in the surrounding area, overly burden a specific neighborhood, or contribute to a public nuisance; or that the Collective Dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, marijuana use in public, harassment of passerby, excessive littering, excessive loitering, illegal parking, excessive loud noises, especially late at night or early in the morning hours, lewd conduct, or police detentions or arrests.

10. That any provision of the Municipal Code or condition imposed by a City issued permit, or any provision of any other local, or state law, regulation, or order, or any condition imposed by permits issued in compliance with those laws will not be violated.

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

12. That the Applicant has not engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices with respect to the operation of another business within the City.

Section 28.80.080 On-Going Operating Requirements for Medical Marijuana Collective Dispensaries.

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

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

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

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

1. A Storefront Collective Dispensary shall not be enlarged in size (i.e., increased floor area) without a prior approval from the Staff Hearing Officer and an approved amendment to the existing Storefront Collective Dispensary permit pursuant to the requirements of this Chapter.
2. An expressly designated Management Member or Members shall be responsible for monitoring the real property of the Storefront Collective Dispensary for any nuisance activity (including the adjacent public sidewalk and rights-of-way) which may occur on the block within which the Storefront Collective Dispensary is operating.
3. Only Collective members as primary caregivers or qualified patients shall be permitted within a Storefront Collective Dispensary building for the purposes of cultivating, processing, distributing, or obtaining medical marijuana.

4. Qualified patients or primary caregivers shall not visit a Storefront Collective Dispensary without first having obtained a valid written recommendation from their physician recommending use of medical marijuana and shall become a member of the Collective upon their first visit.

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

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

D. Medical Marijuana Dispensing Operations. The following medical marijuana distribution restrictions and conditions shall apply to all medical marijuana dispensing operations by a permitted Storefront Collective Dispensary:

1. A Storefront Collective Dispensary shall only dispense to qualified patients or primary caregivers with a currently valid physicians approval or recommendation in compliance with the criteria of the Compassionate Use Act of 1996 and the SB 420 Statutes to persons who are registered as active members of that Collective. Storefront Collectives Dispensaries shall require such persons to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card each time they obtain medical marijuana.

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

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

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

same may be readily seen by all persons entering the Storefront Collective Dispensary.

5. No Storefront Collective Dispensary shall hold or maintain a license from the State Division of Alcoholic Beverage Control for the sale of alcoholic beverages, or operate a business on the premises that sells alcoholic beverages. No alcoholic beverages shall be allowed or consumed on the premises.

6. Storefront Collective Dispensaries shall be considered office use relative to the parking requirements imposed by Section 28.90.100(I).

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

8. Business identification signage for Storefront Collective Dispensaries shall comply with the City's Sign Ordinance (SBMC Chapter 22.70) and be limited to that needed for identification only, consisting of a single window sign or wall sign that shall not exceed six square feet in area or 10 percent of the window area, whichever is less.

E. Dispensary Medical Marijuana Consumption Restrictions. The following medical marijuana consumption restrictions shall apply to all permitted Storefront Collective Dispensaries:

1. Medical marijuana shall not be consumed by patients on the Property or the premises of the Storefront Collective Dispensary.

The term "premises" includes the actual building, as well as any accessory structures, parking lot or parking areas, or other surroundings within 200 feet of the Collective Dispensary's entrance. Collective Dispensary employees who are qualified patients may consume marijuana within the enclosed building area of the premises, provided such consumption occurs only via oral consumption (i.e., eating only) but not by means of smoking or vaporization.

2. Storefront Collective Dispensary operations shall not result in illegal re-distribution or sale of medical marijuana obtained from the Collective Dispensary, or the use or distribution in any manner which violates state law.

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

1. With the approval of the Staff Hearing Officer, a Collective Dispensary may conduct or engage in the commercial sale of specific products, goods, or services in addition to the provision of medical marijuana on terms and conditions consistent with this Chapter and applicable law.
2. No Collective Dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical marijuana.

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

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

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

2. Not For Profit Operation of the Storefront Collective Dispensary. No Storefront Collective Dispensary shall operate for profit. Cash and in-kind contributions, reimbursements, and reasonable compensation for services provided by Management Members and Collective members toward the Collective's actual expenses for the growth, cultivation, processing, and provision of Medical Marijuana to qualified patients of the Collective shall be allowed provided that such reimbursements are in strict compliance

with the applicable provisions of the SB 420 Statutes. All such cash and in-kind reimbursement amounts and items shall be fully documented in the records of the Collective Dispensary in accordance with this Chapter.

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

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

4. Distribution of Medical Marijuana within Santa Barbara Only. Distribution of the medical marijuana collectively cultivated by the Collective members and Management Members to Collective members and Management Members shall occur exclusively within the boundaries of the city of Santa Barbara and only at the real property identified on the Storefront Collective Dispensary Permit application.

5. Membership Limited to One Collective. Collective membership and Management Membership, as established pursuant to this Chapter, shall be limited to one Collective Dispensary fully permitted in accordance with this Chapter. Each Collective shall consist only of individuals residing with Santa Barbara, Ventura, or San Luis Obispo Counties as the term "principle residence" is defined in the federal Internal Revenue Code.

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

1. Cultivation Records. Every Storefront Collective Dispensary shall maintain, on-site at the Property which is permitted to operate as a Storefront Collective Dispensary, cultivation records, signed under penalty of perjury by each Management Member responsible for cultivation, identifying the location within the counties of Santa Barbara, Ventura, or San Luis Obispo at which the medical marijuana was cultivated, and the total number of said plants cultivated at each location. The Storefront Collective Dispensary shall also maintain an inventory record documenting the dates and amounts of medical marijuana cultivated at the Property, and the daily amounts of Medical Marijuana stored on the Property for which the permit is issued.

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

3. Financial Records. The Collective Dispensary shall also maintain a written accounting of all cash and in-kind contributions, reimbursements, and reasonable compensation provided by the Management Members of the Collective, and all expenditures and costs incurred by the Storefront Collective Dispensary in accordance with generally accepted accounting practices and standards.

4. Dispensary Record Retention Period. The records required above by subparagraphs (6), (7), and (8) of this subsection shall be maintained by the Medical Marijuana Collective Dispensary for a period of three (3) years and shall be made available by the Collective to the City upon request, subject to the authority set forth in Section 28.90.080.

Section 28.80.090 City Inspection of Required Collective Records.

A duly designated City Police or Community Development Department representative may enter and inspect the property of every Storefront Collective Dispensary or the financial and membership records of the Collective between the hours of ten o'clock (10:00) A.M. and eight o'clock (8:00) P.M., or at any appropriate time to ensure compliance and enforcement of the provisions of this Chapter, except that the inspection and copying of the private medical records of a Collective member shall be made available to the Police Department only pursuant to a properly executed search warrant, inspection warrant subpoena, or court order for such records.

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

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

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

Section 28.80.110 Appeal from Staff Hearing Officer or Planning Commission Determination.

A. Appeal to the Planning Commission. An applicant or any interested party who disagrees with the Staff Hearing Officer's decision to issue, issue with conditions, or to deny a Storefront Collective Dispensary permit may appeal such decision to the City Planning Commission by filing an appeal pursuant to the requirements of subparagraph (B) of Section 28.05.020 of the Municipal Code.

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

C. Appeal of Planning Commission Decision. A decision by the Planning Commission on appeal of the Staff Hearing Officer pursuant to this Chapter may be appealed to the City Council pursuant to the authority of Section 28.05.020(C).

Section 28.80.120 Suspension and Revocation by Planning Commission.

A. Authority to Suspend or Revoke a Storefront Collective Dispensary Permit. Consistent with Section 28.87.360, any Storefront Collective Dispensary permit issued under the terms of this Chapter may be suspended or revoked by the Planning Commission when it shall appear to the Commission that the permittee has violated any of the requirements of this Chapter or the Storefront Collective 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. Annual Review of Collective Dispensary Operations. The staff of the Community Development Department and the Police Department are hereby authorized to conduct an annual review of the operation of each permitted Storefront Collective Dispensary within the City for full compliance with the operational requirements of this Chapter, including specifically a verification that all persons employed or volunteering at the Storefront Collective Dispensary have not been convicted of or on probation for a crime related to the possession, sale, or distribution of controlled substances. A fee in an amount established by resolution of the City Council may be established in order to reimburse the City for the time involved in this review process. The staff may initiate a permit suspension or revocation process for any Storefront Collective Dispensary which is found not to be in compliance with the requirements of this Chapter or which is operating in a manner which constitutes a public nuisance.

C. Suspension or Revocation - Written Notice. Except as otherwise provided in this Chapter, no permit shall be revoked or suspended by virtue of this Chapter until written notice of the intent to consider revocation or suspension of the permit has been served upon the person to whom the permit was granted at least ten (10) days prior to the date set for such review

hearing and the reasons for the proposed suspension or revocation have been provided to the permittee in writing. Such notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending such permit. Notice may be given either by personal delivery to the permittee, or by depositing such notice in the U.S. mail in a sealed envelope, postage prepaid, (via regular mail and return receipt requested), addressed to the person to be notified at his or her address as it appears in his or her application for a Storefront Collective Dispensary permit.

C. Appeal of Planning Commission Decision. A decision by the Planning Commission to suspend or revoke a Collective Dispensary permit issued pursuant to this Chapter may be appealed to the City Council pursuant to the authority of section 28.05.020(C).

Section 28.80.130 Transfer of Collective Dispensary Permits.

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

B. Transfer of a Permitted Collective Dispensary. A permittee shall not transfer ownership or control of a Storefront Collective Dispensary or attempt to transfer a Collective Dispensary permit to another person unless and until the transferee obtains an amendment to the permit from the Staff Hearing Officer pursuant to the permitting requirements of this Chapter stating that the transferee is now the permittee. Such an amendment may be obtained only if the transferee files an application with the Community Development Department in accordance with this all provisions of this Chapter accompanied by the required application fee.

C. Request for Transfer with a Revocation or Suspension Pending. No Storefront Collective Dispensary permit may be transferred (and no permission for a transfer may be issued) when the Community Development Department has notified in writing the permittee that the permit has been or may be suspended or revoked and a notice of such suspension or revocation has been provided.

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

Section 28.80.140 Medical Marijuana Vending Machines.

No person shall maintain, use, or operate a vending machine which dispenses marijuana to a qualified patient or primary caregiver unless such machine is located within the interior of a duly permitted Collective Dispensary.

Section 28.80.150 Business License Tax Liability.

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

SECTION TWO.

A. Dispensaries Permitted under the March 2008 Ordinance. Those Dispensaries which were authorized and permitted pursuant to the Santa Barbara Municipal Code Chapter 28.80 (as adopted on March 25, 2008 as City Ordinance No. 5449) shall be deemed pre-existing legal non-conforming uses of the real property locations upon which they are situated provided that, upon the effective date of this Ordinance, such dispensaries operate in accordance with all Collective Dispensary operational provisions added to Santa Barbara Municipal Code Chapter 28.80 by this Ordinance.

B. Dispensaries Which Have Operated Legally Prior to and Since the Effective Date of Ordinance No. 5449. Those dispensaries which opened and operated in a legal manner prior to the effective date of City Ordinance No. 5449 and which have remained in a legal nonconforming manner of operation since that time, may, despite its non-conforming location, remain as a legal non-conforming use for a period of one hundred eighty (180) days from the effective date of this Ordinance, provided that such a dispensary or Collective Dispensary implements and observes the following operational conditions of this Ordinance prior to the effective date of this Ordinance:

1. the operation of the dispensary or Collective Dispensary is not discontinued for a period of time in excess of thirty (30) consecutive days;
2. the operation of the dispensary or Collective Dispensary complies with all portions of Chapter 28.80, as revised and enacted by this Ordinance, and;
3. the dispensary or Collective Dispensary shall be subject to the requirements for non-conforming uses of SBMC section 28.87.030 until such time that it has been discontinued or permitted at a new allowed location pursuant to this Ordinance.

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

swiley\ord\Medical.Marijuan.Disp.April 27th Ordinance Comm. Discussion Draft
April 21, 2010; 4:07 pm

EXHIBIT A TO ORDINANCE NO. ____
MEDICAL MARIJUANA DISPENSARIES
SANTA BARBARA MUNICIPAL CODE CHAPTER 28.80
ALLOWED LOCATION EXHIBIT
REVISED 4/21/10

1. Outer State Street Area:

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

2. Upper De la Vina Area:

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

3. Mission Street Area:

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

4. Downtown West Area:

- a. 600-700 blocks of Chapala
- b. 300-400 blocks of west Carrillo
- c. 100 blocks of west De la Guerra
- d. 00-100 blocks of west Ortega

5. Downtown East Area:

- a. 900 block of Laguna Street
- b. 400 block of east Cota
- c. 300 block of east Carrillo

6. Milpas Street:

- a. 00–400 blocks of north Milpas Street

7. Upper Westside Medical Facility Area:

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