



CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: May 17, 2011

TO: Mayor and Councilmembers

FROM: City Attorney's Office

SUBJECT: Medical Marijuana Dispensary Ordinance – Amendment For Dispensaries Permitted Under The March 2008 Dispensary Ordinance

RECOMMENDATION:

That the City Council introduce and subsequently adopt, by reading of title only, An Ordinance of the Council of the City of Santa Barbara Amending the Municipal Code to Establish Revised Regulations for Those Storefront Medical Marijuana Dispensaries Permitted Under City Ordinance No. 5449 as Adopted on March 25, 2008.

DISCUSSION: In March of 2008, the City Council adopted City Ordinance No. 5449 to enact and codify Santa Barbara Municipal Code Chapter 28.80 as the City's first comprehensive zoning scheme for the permitting of storefront medical marijuana dispensaries. The City's enactment of SBMC Chapter 28.80 was in response to the statewide voter approval of Prop 215 in November 1996 (now state Health & Safety Code §11362.5 – and known as the "Compassionate Use Act.") It was also intended to supplement the state Legislature's enactment of the state Medical Marijuana Program Act (Health & Safety Code §§11362.7 -11362.83 – the "MMPA") which became effective on January 1, 2004 and, which according to guidelines adopted by the State Attorney General's Office, allows the operation of storefront medical marijuana dispensaries, under strictly limited circumstances, by groups of people who associate on a cooperative or collective basis to assist qualified patients in cultivating and obtaining medical marijuana.

Given the state medical marijuana law provisions, the Attorney General's express recognition that some medical marijuana dispensaries may be lawful, and with the appearance of several storefront dispensaries within the City in late 2007 and 2008, the City Council decided to enact City zoning regulations to limit dispensaries to nonresidential areas of the City and to establish day-to-day operational and security requirements for such dispensaries – all in an effort to minimize some of the potentially negative collateral impacts which are often associated with dispensaries.

Ultimately, under the City's initial March 2008 Ordinance, three collective/cooperative entities obtained City land use permits to open and operate – provided that they operate in accordance with the state MMPA and the Compassionate Use Act. These City permitted storefront dispensaries are as follows: 1. the Santa Barbara Patients' Collective Health Cooperative (500 N. Milpas), 2. the Greenlight Dispensary (631 Olive Street), and 3. Pacific Coast Collective (300 N. Milpas).

However, in late 2009 and early 2010, it became apparent there was significant public concern that, among other things, the City's March 2008 dispensary ordinance did not expressly limit the number of local collectives/cooperatives which might be allowed to obtain a City dispensary permit nor did it require that the permitted dispensaries be geographically well dispersed around the City. In response, the Council asked the Council Ordinance Committee to hold public hearings to consider amendments to the March 2008 ordinance. Ultimately, after a number of public hearings and significant public input, SBMC Chapter 28.80 was revised in June 2010 to impose a maximum limit on City permitted dispensary locations within the City, including those dispensaries which had been permitted under the original 2008 dispensary ordinance. In addition, the June 2010 ordinance revised the locations within the City where dispensaries could be permitted by establishing five separate dispersed areas for dispensaries. This ordinance also expressly limited dispensaries to certain block faces within each of those areas and by not allowing more than one dispensary in each area.

These locational restrictions had the effect of making two of the dispensaries permitted under the March 2008 ordinance (500 N. Milpas and 631 Olive Street) non-conforming locations. As a result, the June 2010 ordinance required any non-conforming dispensary to either move to a permitted location (by obtaining a new permit for that location) or to close down the previously permitted dispensary within six months of the adoption of the June 2010 ordinance. This final requirement – that certain permitted dispensaries now be required to close within 180 days of the effective date of the June 2010 ordinance - resulted in federal litigation against the City – based on legal claims that the June 2010 ordinance 180 day “amortization” provision violates the federal constitutional rights of the two permitted dispensary operators directly impacted by this requirement; that is, by virtue of the Fifth and Fourteenth Amendments to the U.S. Constitution, these two operators have claimed that, having made a substantial investment in obtaining a City dispensary permit and having undertaken the tenant improvements required by the City in order to open their dispensaries, they acquired a fundamental vested property right to continue in operation.

In November 2010, in ruling on a motion for a preliminary injunction filed by one of the non-conforming dispensary operators, the federal district court judge assigned to hear both lawsuits made it clear that he, at least preliminarily and prior to a trial on the merits, is inclined to agree with these dispensaries that the City's June 2010 ordinance 180 day closure requirement is a possible violation of the due process rights of the dispensary operators. In ruling in favor of the plaintiffs on their motion, the District Court issued a preliminary injunction which orders the City to refrain from any effort to shut the 500 N. Milpas dispensary down, at least pending a full trial of their lawsuit.

Consequently, in an effort to address the constitutional concerns raised by the District Court and to achieve a prompt and mutually acceptable resolution of the litigation filed by the two non-conforming dispensaries, it is the recommendation of the City Attorney's office that the City acknowledge the District Judge's ruling on this motion and accept that the judge in this case is not likely to alter his conclusions regarding the constitutional precedents applicable to the June 2010 ordinance's application to these two previously permitted dispensaries.

As a result, in our view, the City Attorney's office believes it be appropriate for the City Council to amend the City's present dispensary ordinance to acknowledge that the two dispensaries permitted under the March 2008 ordinance (but which are located at locations no longer allowed for dispensaries) may continue as pre-existing non-conforming uses for a total period of four years from the effective date of the June 2010 Dispensary Ordinance amendment. Therefore, we recommend the adoption of the attached uncodified ordinance which would impose the new four year amortization period which adoption we believe will result in a successful and final resolution of the pending federal court litigation.

We should also be clear, however, that nothing in this ordinance will allow any medical marijuana dispensary within the City to operate on a day-to-day basis in a manner contrary to the state Compassionate Use Act, the state Medical Marijuana Program Act, or the June 2010 Ordinance's operational requirements. And, of course, nothing allows the distribution of marijuana to persons not entitled to its use under state law (i.e., use by a "qualified patient") or the distribution of marijuana on a for-profit basis and doing so will remain a crime under the state Penal Code which will be prosecuted. Finally, as a non-conforming use, these dispensaries would be subject to the City's existing Zoning Ordinance requirement that any non-conforming use which ceases operation for a continuous period of more than thirty days will lose its legal non-conforming status and must close and any dispensary which violates the law is subject to having its permit revoked upon the completion of an appropriate "due process" revocation hearing.

PREPARED BY: Stephen P. Wiley, City Attorney

APPROVED BY: City Administrator's Office