Council Introduction Draft
ALL NEW PROVISION OF MUNICIPAL CODE
September 25, 2007 Draft

ORDINANCE NO.

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SANTA BARBARA AMENDING TITLE 28 OF THE SANTA BARBARA MUNICIPAL CODE BY ADDING CHAPTER 28.80 IMPOSING A CONDITIONAL USE PERMIT REQUIREMENT ON MEDICAL MARIJUANA DISPENSARIES TO THE CITY'S ZONING ORDINANCE

WHEREAS, in 1996, California voters approved Proposition 215, (The Compassionate Use Act - now codified as Health & Safety Code Section 11362.5), which legalized the use of marijuana for medical purposes under state law and which allows persons with certain medical conditions to grow or possess marijuana based on the recommendation of a licensed physician. In 2003, the state of California enacted supplemental medical marijuana legislation known as Senate Bill 420, (now codified as Health & Safety Code Sections 11362.7 - 11362.9 - hereinafter referred to as "Senate Bill 420") which was intended to clarify the application and scope of the 1996 Compassionate Use Act and to enhance the access of qualified patients and their primary caregivers to medical marijuana through collective, cooperative marijuana cultivation projects;

Whereas, neither Proposition 215 nor Senate Bill 420 (hereinafter referred to collectively as the "Compassionate Use Act") legalize marijuana dispensaries that are "for profit" or which do not operate under the Health & Safety Code definition of and requirements for a "primary caregiver" providing care and assistance to a "qualified (medical marijuana) patient."

Whereas, there appears to be a proliferation of marijuana dispensaries which may not comply with the Compassionate Use Act by many of the medical marijuana dispensaries operators in the City of Santa Barbara. In the absence of any enforcement of the Compassionate Use Act by state authorities, these dispensaries will operate throughout the City with adverse impacts on the

neighborhoods within which they are located in the absence of appropriate City zoning regulations;

Whereas, state law does not specifically address or allow Medical Marijuana Dispensaries as commercial or retail establishments other than to provide for "primary caregivers" to assist "qualified patients" under certain limited circumstances. The absence of lack of state zoning regulations or guidelines has apparently created confusion and hampers the ability of local law enforcement to distinguish appropriate and necessary dispensaries acting as "primary caregivers" from others.

Whereas, Medical Marijuana Dispensaries will apparently continue to proliferate as will citizen complaints about abuses and criminal activity and the risks these dispensaries pose to our communities will potentially increase.

Whereas, it is apparent that the city of Santa Barbara should evaluate the impacts of Medical Marijuana Dispensaries on its residents, its neighborhoods, and on legally operated businesses adjacent to these dispensaries;

Whereas, this ordinance is designed to prevent new Medical Marijuana Dispensaries, from opening pending a City and public review of these concerns, led by the Community Development Department and the City Planning Commission, and the drafting of an SBMC Zoning ordinance to regulate the location of Medical Marijuana Dispensaries and establish viable applicable locational regulations and operating conditions; and

Whereas, on August 14, 2007, the City Council found that this proposed ordinance should give and would the City the time it needs to undertake the critically important task of developing a comprehensive zoning regulatory ordinance for regulating Medical Marijuana Dispensaries, thus ensuring that this important legislative opportunity is fully examined in depth while not permitting new Medical Marijuana Dispensaries operating contrary to state law to be established throughout the City.

NOW THEREFORE, THE COUNCIL OF THE CITY OF SANTA BARBARA DOES ORDAIN AS FOLLOWS:

SECTION ONE. Title 28 of the Santa Barbara Municipal Code is hereby amended by adding Chapter 28.80 which chapter reads as follows:

Section 28.80.010. Definition.

The following term, whenever used in this chapter, shall be construed and defined as follows:

A. **MEDICAL MARIJUANA DISPENSARY.** Any use of real property, real property facility, or location, including but not limited to a retail store, office building, or structure that distributes, transmits, gives, dispenses, facilitates or otherwise provides marijuana in any manner, in accordance with State law, in particular, California Health and Safety Code Sections 11362.5 through 11362.83, inclusive.

Section. 28.80.020. Prohibition of New Dispensaries During Interim Period.

A. PROHIBITIONS ON NEW DISPENSARIES PENDING ADOPTION OF PERMANENT ZONING ORDINANCE. Notwithstanding any provisions of the Santa Barbara Municipal Code to the contrary, for a period of one hundred eighty (180) days from the effective date of the ordinance codifying this Chapter, or until a supplemental City ordinance which establishes citywide zoning regulations regarding the permitted locations for Medical Marijuana Dispensaries is adopted, whichever occurs first, no person or entity shall establish, operate, or maintain a Medical Marijuana Dispensary within the City of Santa Barbara unless the following is true:

1. the Dispensary complies with all applicable requirements of state law, and

2. the Dispensary obtained a valid annual business tax payment certificate from the City (as required by Chapter 5.04 of the Municipal Code) for the Dispensary prior to August 14, 2007 and,

3. the Dispensary was actually open and operated prior to August 14, 2007 and was providing assistance to qualified patients in a manner consistent with the requirements of state law.

B. APPLICABILITY OF EXISTING ZONING REQUIREMENTS. Nothing herein shall permit the operation or maintenance of a Medical Marijuana Dispensary in a zone of the City where commercial establishments are not otherwise allowed or in any manner contrary to existing City zoning regulations otherwise applicable to such a commercial or retail establishment under Title 28 of this Code.

C. COMPLIANCE WITH STATE HEALTH AND SAFETY CODE REQUIREMENTS. Nothing herein shall permit a Medical Marijuana Dispensary to operate in any manner contrary to applicable state or federal laws, in particular, but not limited to, with respect to the statutory requirements applicable to the "primary caregiver" for a "qualified patient" as those terms are defined and applied in subsections 11362.5(e),11362.7(d) and (e), 11362.7(f), 11362.71(e), or 11362.765(c) of the state Health & Safety Code.

D. REGISTRATION OF MEDICAL MARIJUANA DISPENSARIES WHICH OPERATED PRIOR TO AUGUST 14, 2007. For the purposes of this Section, in order to qualify as a Medical Marijuana Dispensaries which operated prior to August 14, 2007 [as provided for in subparagraph (A) above], the owner or operator of a Dispensary seeking to so qualify shall register in writing with the City within sixty (60) days of the date of the adoption of the ordinance codifying this chapter. The City Community Development Director shall establish a standard registration form for this purpose which form shall require the owner or operator to provide sufficient evidence that the Dispensary obtained its business tax certificate prior to August 14, 2007 and that the Dispensary was open to the public and operating in a manner permitted by law prior to August 14, 2007.

SECTION TWO. The City Council finds and declares that this ordinance is required for the immediate preservation of the public peace, health and safety for the following reasons:

1. This ordinance will prohibit new Medical Marijuana Dispensaries and prevent unregulated proliferation, pending adoption of a long-term zoning or similar regulatory ordinance;

2. The recommendations for a long-term ordinance reflecting the spirit and intent of the Compassionate Use Act could be undermined if new dispensaries are allowed during this interim period of time;

3. The number of dispensaries operating within the City is increasing and the Santa Barbara Police Department has received an increasing number of complaints from neighbors, business owners, and concerned citizens regarding the negative impacts of such dispensaries;

4. Local citizens have raised concerns that there will be an increase in crime, particularly in those areas in close proximity to residences, schools, places of worship, and other sensitive uses, as well as concerns regarding a lack of regulations for the hours of operation.

5. Without regulations for the location of a dispensary and hours of operation, the result has been the establishment of dispensaries in close proximity to sensitive land uses and dispensaries operating at all hours of the day. This ordinance will prevent unregulated proliferation of new dispensaries and provide the City with time to develop appropriate zoning regulations, especially regulations regarding the appropriate to distances dispensaries should be separated from sensitive uses, the appropriate hours of operation, the compatibility with surrounding uses, and other related land use concerns.