



**City of Santa Barbara**  
Community Development Department

**Planning Commission Staff Report**

**REPORT DATE:** December 10, 2009

**AGENDA DATE:** December 17, 2009

**TO:** Planning Commission

**FROM:** Planning Division (805) 564-5470  
Danny Kato, Senior Planner *DK*

**SUBJECT:** Medical Cannabis Dispensary Ordinance Revisions

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**INTRODUCTION**

On March 25, 2008, the City Council adopted the Medical Cannabis Dispensary Ordinance (MCDO). On July 28, 2009, the City Council directed the Ordinance Committee (OC) to review the existing MCDO, and make recommendations for revisions. The September 15<sup>th</sup> Ordinance Committee Staff Report that describes the Council's direction to the OC is attached as Exhibit B. The Ordinance Committee met five times: September 15<sup>th</sup>, September 29<sup>th</sup>, October 6<sup>th</sup>, October 20<sup>th</sup>, and November 24<sup>th</sup>.

On October 20<sup>th</sup>, the Ordinance Committee directed Staff to draft a revised ordinance based on its recommendations. The Ordinance Committee reviewed the draft ordinance at its November 24<sup>th</sup> meeting. The November 24<sup>th</sup> OC Staff Report that describes the OC's recommendations to Planning Commission and council is attached as Exhibit C.

On November 17, 2009, the City Council directed the Ordinance Committee to consider further amending the MCDO to accomplish the following:

1. Make it more clear that, pursuant to state law (i.e. the Compassionate Use Act), the City would only allow the cultivation and distribution of medical marijuana through cooperatives or collectives; and
2. Develop further City regulations for storefront cooperatives and collectives such that they are required to operate as true collectives/cooperatives in a manner consistent with the state Attorney General August 2008 "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use."

The Council also directed staff to continue processing the revisions that the Ordinance Committee recommended on October 20<sup>th</sup>, and to return to Council as soon as possible with an ordinance suspending the approval of new marijuana dispensaries pending the consideration of these long-term dispensary ordinance revisions. This ordinance was introduced on December 8<sup>th</sup>, and is scheduled for adoption on December 15<sup>th</sup>. Staff will provide the Commission an update at the December 17<sup>th</sup> hearing.

## PROPOSED REVISIONS

The Ordinance Committee recommended the following revisions to the Council:

1. A citywide cap of seven dispensaries, one in each of the following seven geographic areas:
  - a. Outer State
  - b. De la Vina
  - c. Mission
  - d. Downtown, east of Santa Barbara Street
  - e. Downtown, west of Santa Barbara Street
  - f. Milpas
  - g. Mesa

The proposed ordinance does this by eliminating language that allows dispensaries in the C-2 and C-M Zones, and expanding the list of special areas where dispensaries are allowed. This methodology results in a smaller area where dispensaries are allowed. Staff believes that this was not the Ordinance Committee's intent, but there was not enough time or mapping resources to have a complete discussion of the allowed areas at the Ordinance Committee's November 24<sup>th</sup> hearing. Staff and two Ordinance Committee members would like the Planning Commission to further discuss the allowable locations, and make recommendations to Council.

2. A reduced amortization period of six months for existing, nonconforming dispensaries (those that existed legally prior to the adoption of the current ordinance, in March 2008), starting at the adoption date of the proposed revisions. At the end of this reduced amortization period, these nonconforming dispensaries would be required to cease operations.
3. A prohibition on dispensaries in existing, mixed-use building, where the residential units are condominiums.
4. More discretion for the Staff Hearing Officer or Planning Commission, in the form of changes to criteria for issuance #7 and #10.
5. A prohibition on dispensaries within 1000 feet of Casa Esperanza.
6. A requirement that security be provided by a separate private party operator security company, which is licensed by the State.
7. A requirement for annual review of permitted dispensaries by the Police Department and the Staff Hearing Officer.

8. Minor and miscellaneous changes to the draft ordinance language.

The Ordinance Committee did not recommend changing the appeal procedure (PC decision is final) or expanding the allowable areas to the Cottage Hospital area or the Coast Village Road area.

The revisions described above, as well as some minor and miscellaneous changes, have been incorporated into the draft ordinance (Exhibit A).

### **ADDITIONAL DISCUSSION NEEDED ON ALLOWABLE LOCATIONS**

As stated earlier, because the proposed ordinance deletes the reference to the C-2 and C-M zones, large areas where dispensaries are currently allowed would no longer be available. Staff does not believe that this is the Ordinance Committee's intent, and requests the Planning Commission's recommendations on the areas where dispensaries are currently allowed, but would not be under the proposed ordinance language.

The proposed ordinance (Exhibit A) shows both the current locational requirements, and those recommended by the Ordinance Committee in ~~strikeout~~ and underline format (Section 28.80.060.). The maps included as Exhibits D-I show a graphical representation of the existing and proposed locational requirements. The maps show the currently allowable areas in a terra cotta color, and the proposed allowable areas as drafted in the ordinance in purple stripes. The differences in currently allowed areas vs. proposed to be allowed areas will be discussed by region, below.

#### **Outer State Street (Exhibit D)**

The proposed ordinance language would leave out a large part of La Cumbre Plaza and surrounding parcels, several parcels in and around Five Points Shopping Center, and a few parcels near Calle Laureles.

Additionally, there are two parcels in the Outer State Street area (16 S. La Cumbre Road, APN 051-021-003 and 38 S. La Cumbre Road, APN 051-021-004), where dispensaries are not currently allowed, because of the specific language in the current ordinance. However, these two parcels are completely surrounded by areas where dispensaries are allowed. Staff recommends that dispensaries be allowed on these two parcels.

#### **De la Vina Street (Exhibit E)**

The proposed language would leave out the block between Constance and Alamar, several parcels on Calle Laureles, and two parcels that are zoned C-2, but do not front on De la Vina Street. However, it would include the Ralph's shopping center, which is currently excluded.

### **Mission (Exhibit F)**

The proposed language would leave out areas on De la Vina Street, Mission Street, State Street, as well as several parcels that are zoned C-2, but do not front on Mission Street.

### **Downtown West (Exhibit G)**

The Ordinance Committee changed the eastern boundary of this area from State Street to Santa Barbara Street. The proposed language would leave out large areas of De la Vina Street, parcels on the east-west streets from Sola to Gutierrez, the area near Castillo and Montecito Streets, as well as various parcels that are zoned C-2, but do not front on Chapala, Anacapa or Santa Barbara Streets.

### **Downtown East (also shown on Exhibit G)**

The Ordinance Committee changed the western boundary of this area from State Street to Santa Barbara Street. The proposed language would leave out large areas near Ortega and Laguna Streets, East Carrillo Street and Laguna Streets, as well as various parcels that are zoned either C-2 or C-M, but do not front on Haley or Gutierrez Streets.

The reason that the boundary was changed from State Street to Santa Barbara Street is because the Ordinance Committee felt that there were not enough areas in the Downtown West area that allowed dispensaries. If the Planning Commission recommends additional areas where dispensaries would be allowed, so that more areas of Downtown West were available as dispensary locations, Staff believes that the boundary between the two areas is most appropriately located on State Street, if only to avoid confusion. For example, a parcel at the northeast corner of Santa Barbara and Haley Streets could qualify in both the Downtown West (because it fronts on Santa Barbara Street) and Downtown East (because it fronts on Haley Street) areas.

### **Milpas (Exhibit H)**

The proposed language would leave out various C-2 or C-M zoned parcels that do not front Milpas Street.

### **Mesa (Exhibit I)**

There would be no change in the Mesa area.

### **State Street Prohibition (Exhibit G)**

The proposed language would eliminate the State Street prohibition. Because there are several parcels that front both State and Chapala or both State and Anacapa, the

elimination of this prohibition could result in a dispensary on State Street. Staff recommends retaining this prohibition.

## METHODOLOGY FOR DESCRIBING ALLOWABLE LOCATIONS

Staff believes that the allowable locations are described in the proposed ordinance are too limited, and that the areas should be expanded somewhat. Staff does not believe that current methodology for describing the allowable locations (general allowable areas, with exclusions, such as prohibition radii around schools and parks) is the best way to accomplish this task. Staff recommends using a number of criteria, including zoning and proximity to schools and parks to determine specific blocks faces where dispensaries are allowed, then amending the ordinance to allow those block faces, and eliminating as many of the prohibitions (radii from schools and parks, etc.) as possible.

## RECOMMENDATION

Staff recommends that the Planning Commission:

1. Review the proposed Ordinance language, including the allowable locations;
2. Review the maps that show the current and proposed allowable locations;
3. Recommend to Council:
  - a. The inclusion of 16 and 38 S. La Cumbre Road in the list of allowable locations;
  - b. The retention of the State Street Prohibition;
  - c. Changes to the methodology for describing the allowable areas as described above; and
  - d. Any changes to the allowable locations.

### Exhibits:

- A. Draft Ordinance
- B. Ordinance Committee Staff Report, September 15, 2009
- C. Ordinance Committee Staff Report, November 24, 2009
- D. Outer State Street Area Map
- E. De la Vina Area Map
- F. Mission Area Map
- G. Downtown East and West Area Map
- H. Milpas Area Map
- I. Mesa Map



ORDINANCE COMMITTEE DRAFT  
NOVEMBER 24, 2009  
SHOWING CHANGES FROM CURRENT CODE

Draft for Planning Commission Review  
December 71, 2009

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE COUNCIL OF THE  
CITY OF SANTA BARBARA AMENDING THE  
MUNICIPAL CODE BY ADDING A REVISED  
CHAPTER 28.80 ESTABLISHING  
REGULATIONS AND PROCEDURES FOR  
MEDICAL CANNABIS 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 Cannabis 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  
locations of medical cannabis dispensaries in order to promote  
the health, safety, and general welfare of residents and  
businesses within the City. It is neither the intent nor the  
effect of this chapter to condone or legitimize the use or  
possession of cannabis except as allowed by California law.

**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 permit under this chapter, including an  
individual owner, managing partner, officer of a  
corporation, or any other operator, manager, employee, or  
agent of a 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. Medical Cannabis Dispensing Collective or Dispensary.**

Any association, cooperative, affiliation, or collective of persons where multiple qualified patients or primary care givers are organized to provide education, referral, or network services, and facilitation or assistance in the lawful distribution of medical cannabis. "Dispensary" shall include any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by an "attending physician" [as that term is defined in Health & Safety Code Section 11362.7(a)] and where medical cannabis is made available to or distributed by or to a primary caregiver or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations so long as the location of the clinic, health care facility, hospice, or residential care facility is otherwise permitted by the Municipal Code or 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 complies with applicable laws including, but not limited to, Health and Safety Code Section 11362.5 et seq..

**E. Permittee.** The person to whom either a dispensary permit is issued by the City and who is identified as a primary caregiver in California Health and Safety Code Section 11362.7, subdivision (d), ~~and~~ or (e).

**F. Person.** An individual, partnership, co-partnership, firm, association, joint stock company, corporation, limited liability company or combination of the above in whatever form or character.

**G. Person with an Identification Card.** As set forth in California Health and Safety Code Section 11362.5 et seq., and as amended from time to time.

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

**I. Primary Caregiver.** As defined in subdivision (d) of California Health and Safety Code Section 11362.7 as it may be amended from time to time.

**J. Qualified Patient.** As defined in California Health and Safety Code Section 11362.5 et seq., and as it may be amended from time to time.

**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.

#### **28.80.030 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 any premises in the City the operation of a dispensary unless the person first obtains and continues to maintain in full force and effect a Dispensary Use Permit issued by the City Staff Hearing Officer pursuant to this Chapter, or by the

Planning Commission on an appeal from a decision by the Staff Hearing Officer.

**28.80.040 Business License Tax Liability.**

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

**28.80.050 Imposition of Dispensary Permit Fees.**

Every application for a dispensary permit or renewal 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 dispensary permit pursuant to this chapter. This 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.

**28.80.060 Limitations on the Permitted Location of a Dispensary.**

**A. Permissible Zoning for Dispensaries.** ~~A dispensary may only be located within the C-2 or C-M zoned areas of the City as so designated in the General Plan, Title 28 of the Municipal Code, and City Zoning map provided, however, that Dispensaries may~~ only also be located on parcels within the City situated as follows:

1. any parcel fronting on State Street between Calle Laureles and the westerly boundary of the City at the intersection State Street and Calle Real;
2. any parcel fronting on Milpas between Canon Perdido Street and Carpinteria Street;
3. any C-P zoned parcel fronting on Cliff Drive within 1000 feet of the intersection of Cliff Drive and Meigs Road;
4. any parcel fronting on De La Vina Street between Alamar Street and State Street;

5. any parcel fronting on Mission Street between State Street and De La Vina Street;

6. any parcel on Chapala, Anacapa, or Santa Barbara Street between Sola Street and U.S. Highway 101;

7. any parcel on Haley Street or Gutierrez Street between Santa Barbara Street and Olive Street.

**B. Storefront Locations.** A dispensary shall only be located in a visible store-front type location which provides good public views of the dispensary entrance, its windows, and the entrance to the dispensary premises from a public street.

**C. Areas and Zones Where Dispensaries Not Permitted.**

Notwithstanding subparagraph (A) above, a dispensary shall not be allowed or permitted in the following locations or zones:

1. On a parcel located within 500 feet of a school or a park unless the park is separated from the proposed dispensary location by U.S. Highway 101; or

2. On a parcel located within ~~500~~ 1000 feet of a permitted dispensary provided that this separation requirement shall not apply to dispensary locations separated by U.S. Highway 101; or

~~3. On a parcel fronting on State Street between Cabrillo Boulevard and Arrellaga Street; or~~

~~3.4.~~ On a parcel zoned R-0 or zoned exclusively for residential use.

~~4.5.~~ On a parcel being used as a mixed residential/commercial use condominium project at the time of the adoption of this ordinance.

~~5.6.~~ On a parcel located within 1000 feet of the homeless shelter facility located 816 Cacique Street.

**D. Locational Measurements.** The distance between a dispensary and above-listed uses shall be made in a straight line from any parcel line of the real property on which the 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 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 dispensary application for any particular location.

**E. Maximum Number of Dispensary Permits.** Notwithstanding the above, the City may not issue a total of more than seven (7) dispensary permits at any one time and no more than seven (7) permitted dispensaries may legally operate within the City at any one time.

**28.80.070 Operating Requirements for Dispensaries.**

Dispensary operations shall permitted and maintained only in compliance with the following day-to-day operational standards:

**A. Criminal History.** A dispensary permit applicant, his or her agents or employees, volunteer workers, or any person exercising managerial authority over a dispensary on behalf of the dispensary applicant shall not have been convicted of a felony or be on probation or parole for the sale or distribution of a controlled substance.

**B. Minors.** It is unlawful for any dispensary permittee, operator, or other person in charge of any dispensary to employ any person who is not at least 18 years of age. Persons under the age of 18 shall not be allowed on the premises of a dispensary unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian. The entrance to a dispensary shall be clearly and legibly posted with a notice indicating that person under the age of 18 are precluded from entering the premises unless they are a qualified patient or a primary caregiver, and they are in the presence of their parent or guardian.

**C. Dispensary Size and Access.** The following dispensary and access restrictions shall apply to all dispensaries permitted by the Chapter:

1. A dispensary shall not be enlarged in size (i.e., increased floor area) without a prior approval from the Staff Hearing Officer amending the existing dispensary permit pursuant to the requirements of this Chapter.

2. The entrance area of the dispensary building shall be strictly controlled; A viewer or video camera shall be installed in the door that allows maximum angle of view of the exterior entrance.

3. Dispensary personnel shall be responsible for monitoring the real property of the dispensary site activity (including the adjacent public sidewalk and rights-of-way) of the block within which the dispensary is operating for the purposes of controlling loitering.

4. Only dispensary staff, primary caregivers, qualified patients and persons with bona fide purposes for visiting the site shall be permitted within a dispensary.

5. Qualified patients or primary caregivers shall not visit a dispensary without first having obtained a valid written recommendation from their physician recommending use of medical cannabis.

6. Only a primary caregiver and qualified patient shall be permitted in the designated dispensing area along with dispensary personnel.

7. Restrooms shall remain locked and under the control of Dispensary management at all times.

**D. Dispensing Operations.** The following restrictions shall apply to all dispensing operations by a dispensary:

1. A dispensary shall only dispense to qualified patients or a primary caregivers with a currently valid physicians approval or recommendation in compliance with the criteria in California Health and Safety Code Section 11362.5 et seq.. Dispensaries shall require such persons to provide valid official identification, such as a Department of Motor Vehicles driver's license or State Identification Card.

2. Prior to dispensing medical cannabis, the dispensary shall obtain a verification from the recommending physician's office personnel that the individual requesting medical cannabis is or remains a qualified patient pursuant to state Health & Safety Code Section 11362.5.

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

**E. Consumption Restrictions.** The following medical marijuana consumption restrictions shall apply to all permitted dispensaries:

1. Cannabis shall not be consumed by patients on the premises of the 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 dispensary's entrance. Dispensary employees who are qualified patients may consume cannabis 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. Dispensary operations shall not result in illegal re-distribution or sale of medical cannabis obtained from the dispensary, or use or distribution in any manner which violates state law.

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

1. With the approval of the Staff Hearing Officer, a dispensary may conduct or engage in the commercial sale of specific products, goods, or services in addition to the provision of medical cannabis on terms and conditions consistent with this chapter and applicable law.
2. No dispensary shall sell or display any drug paraphernalia or any implement that may be used to administer medical cannabis.
3. A dispensary shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.5 et seq.

**G. Operating Plans.** In connection with a permit application under this Chapter, the applicant shall provide, as part of the permit application, a detailed Operations Plan and, upon issuance of the dispensary permit, shall operate the dispensary in accordance with the Operations Plan as such plan is approved by the Staff Hearing Officer:

**1. Floor Plan.** A dispensary shall have a lobby waiting area at the entrance to the dispensary to receive clients, and a separate and secure designated area for dispensing medical cannabis 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 dispensary shall have suitable locked storage on premises, identified and approved as a part of the security plan, for after-hours storage of medical cannabis.

**3. Security Plans.** A dispensary shall 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 and each 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.

**5. Security Cameras.** Security surveillance cameras shall be installed to monitor the main entrance and exterior of the premises to discourage and to report loitering, crime, illegal or nuisance activities. Security video shall be maintained for a period of not less than 72 hours.

**6. Alarm System.** Professionally monitored robbery alarm and burglary alarm systems shall be installed and maintained in good working condition within the dispensary at all times.

**7. Emergency Contact.** A dispensary shall provide the Chief of Police with the name, cell phone number, and facsimile number of an on-site community relations staff person to whom the City may provide notice of any operating problems associated with the dispensary.

#### **H. Dispensary Signage and Notices.**

1. A notice shall be clearly and legibly posted in the dispensary indicating that smoking, ingesting or consuming cannabis on the premises or in the vicinity of the dispensary is prohibited.

2. Signs on the premises shall not obstruct the entrance or windows.

3. Address identification shall comply with Fire Department illuminated address signs requirements.

4. Business identification signage 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.

**I. Employee Records.** Each owner or operator of a dispensary shall maintain a current register of the names of all volunteers and employees currently working at or employed by the dispensary on-site at the dispensary at all times, and shall disclose such registration for inspection by any City officer or official but only for the purposes of determining compliance with the requirements of this chapter.

**J. Patient Records.** A dispensary shall maintain confidential health care records of all patients and primary caregivers using only the identification card number issued by the county, or its agent, pursuant to California Health and Safety Code Section 11362.71 et seq., (as a protection of the confidentiality of the cardholders) or a copy of the written recommendation from a physician or doctor of osteopathy stating the need for medical cannabis under state Health & Safety Code Section 11362.5. Such records shall be maintained on-site at the dispensary at all times.

**M. Staff Training.** Dispensary staff shall receive appropriate training for their intended duties to ensure understanding of rules and procedures regarding dispensing in compliance with state and local law and this Chapter, and properly trained or professionally-hired security personnel.

**N. Site Management.**

1. The operator of the establishment shall 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 dispensary.

2. The operator shall take all reasonable steps to reduce loitering in public areas, sidewalks, alleys and areas surrounding the premises and adjacent properties during business hours.

3. The operator shall provide patients with a list of the rules and regulations governing medical cannabis use and consumption within the City and recommendations on sensible cannabis etiquette.

**O. Trash, Litter, Graffiti.**

1. The operator shall clear the sidewalks adjoining the premises plus 10 feet beyond property lines along the street as well as any parking lots under the control of the operator as needed to control litter, debris and trash.

2. The operator shall remove all graffiti from the premises and parking lots under the control of the operator within 72 hours of its application.

**P. Compliance with Other Requirements.** The dispensary operator shall comply with all provisions of all local, state or federal laws, regulations or orders, as well as any condition imposed on any permits issued pursuant to applicable laws, regulations or orders.

**Q. Display of Permit.** Every dispensary shall display at all times during business hours the permit issued pursuant to the provisions of this chapter for such dispensary in a conspicuous place so that the same may be readily seen by all persons entering the dispensary.

**R. Alcoholic Beverages.** No 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.

**S. Parking Requirements.** Dispensaries shall be considered office uses relative to the parking requirements imposed by Section 28.90.100(I).

**28.80.080 Dispensary Permit Application - Preparation and Filing.**

**A. Application Filing.** A complete Performance Standard Permit use permit application submittal packet shall be submitted including all necessary fees and all other information and materials required by the City and this chapter. All applications for permits shall be filed with the Community Development Department, using forms provided by the City, and accompanied by the applicable filing fee. It is the responsibility of the applicant to provide information required for approval of the permit. The application shall be made under penalty of perjury.

**B. Eligibility for Filing.** Applications may only be filed by the owner of the subject property, or by a person with a lease signed by the owner or duly authorized agent of the owner expressly allowing them the right to occupy the property for the intended 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.

**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 30 days. If the application remains incomplete in excess of 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. Effect of Other Permits or Licenses.** The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a dispensary permit.

**28.80.090 Criteria for Review of Dispensary Applications by Staff Hearing Officer.**

**A. Decision on Application.** Upon an application for a 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 Dispensary permit, issue a Dispensary permit with conditions in accordance with this chapter, or deny a Dispensary permit.

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

1. That the dispensary permit is consistent with the intent of the state Health & Safety Code for providing medical marijuana to qualified patients and primary caregivers and the provisions of this Chapter and the Municipal Code, including the application submittal and operating requirements herein.

2. That the proposed location of the Dispensary is not identified by the City Chief of Police as an area of increased or high crime activity. ~~(e.g., based upon crime reporting district/statistics as maintained by the Police Department.~~

3. For those applicants operating other 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 dispensary location.

4. That all required application fees have been paid and reporting requirements have been satisfied in a timely manner.

5. That issuance of a dispensary permit for the dispensary size requested is appropriate justified to meet needs of community for access to medical marijuana.

6. That issuance of the dispensary permit would serve needs of City residents within a proximity to this location.

7. 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 ~~or resulted~~ and that compliance with other applicable requirements of the City's Zoning Ordinance will be accomplished.

8. That the site plan, floor plan, and 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.

9. 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, cannabis use in public, or creation of a public or private nuisance, or interference of the operation of another business.

10. That the dispensary is likely to have no potentially ~~would not~~ adversely 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 dispensary will generally not result in repeated nuisance activities including disturbances of the peace, illegal drug activity, cannabis 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.

11. 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.

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

13. 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.

#### **28.80.100 Appeal from Staff Hearing Officer 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

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. Planning Commission Appeal.** Notwithstanding subparagraph (C) of Section 28.05.020, Section 28.87.360, and Section 1.30.050, a decision by the Planning Commission on appeal of the Staff Hearing Officer pursuant to this Chapter shall be final and may not be appealed to the City Council.

**28.80.110 Suspension and Revocation by Planning Commission.**

**A. Authority to Suspend or Revoke a Dispensary Permit.**

Consistent with Section 28.87.360, any 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 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 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 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 dispensary have not been convicted of or on probation for a crime related to the possession, sale, or distribution of controlled substances. The staff may initiate a permit suspension or revocation process for any 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. B- 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 dispensary permit.

**C. Appeal of Planning Commission Decision.** Notwithstanding subparagraph (C) of Section 28.05.020, Section 28.87.360, and Section 1.30.050, a decision by the Planning Commission to suspend or revoke a permit issued pursuant to this Chapter shall be final and may not be appealed to the City Council.

#### **28.80.120 Transfer of Dispensary Permits.**

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

**B. Transfer of a Permitted Dispensary.** A permittee shall not transfer ownership or control of a dispensary or attempt to transfer a 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 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 permit either directly or indirectly in violation of this section is declared void, and the permit shall be deemed revoked.

#### **28.80.130 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 dispensary.

**SECTION THREE.** Those Dispensaries which were authorized and permitted pursuant to the Santa Barbara Municipal Code Chapter 28.80 prior to the date of the adoption of the ordinance enacting these amendments to Chapter 28.80 shall be deemed pre-existing legal uses of real property upon which they are situated for a period of one hundred eighty (180) days from the effective date of this Ordinance provided the following operational conditions are complied with:

1. the dispensary shall not be relocated nor shall it be discontinued for a period of time in excess of thirty (30) consecutive days without obtaining a dispensary permit pursuant to this Chapter;
2. the operation of the dispensary shall comply with all portions of Chapter 28.80 (as enacted by this Ordinance) except for the locational provisions of Section 28.80.060; and
3. the dispensary shall be subject to the requirements for non-conforming uses of SBMC section 28.87.030 until such time that they have been permitted under this Ordinance.

Prior to the expiration of the one hundred eighty (180) day non-conforming period, all medical marijuana dispensaries operating as allowed dispensaries which pre-date the date of the initial enactment of this Chapter or which were permitted between the date of March 26, 2008 and the effective date of this Ordinance shall either obtain a dispensary permit (as required by and in full accord with this Ordinance) or shall discontinue such use not later than the end of the one-hundred-eighty (180) day amortization period provided for herein. No such pre-existing legal dispensary shall be assigned or otherwise transferred to a new owner or owners, whether voluntarily or by operation of law, without having obtained a permit pursuant to this Ordinance.





# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE REPORT

**AGENDA DATE:** September 15, 2009

**TO:** Ordinance Committee

**FROM:** Planning Division, Community Development Department

**SUBJECT:** Medical Cannabis Dispensary Ordinance Revision

### RECOMMENDATION:

That the Ordinance Committee review the existing Medical Cannabis Dispensary Ordinance, discuss options, and provide direction to staff on potential revisions.

### EXECUTIVE SUMMARY:

On July 28, 2009, the City Council referred the Medical Cannabis Dispensary Ordinance, SBMC Chapter 28.80, to the Ordinance Committee, with direction to review the ordinance, discuss options, and make recommendations to Council. Several subject areas were specifically mentioned by the Council, and others have been added by staff, based on experience processing recent applications. Each subject area is discussed briefly in this Ordinance Committee report.

### BACKGROUND:

On July 28, 2009, the City Council referred the Medical Cannabis Dispensary Ordinance to the Ordinance Committee, with direction to review the following nine subject areas, discuss options, and make recommendations to Council on revisions to the ordinance.

1. Police Department statistics surrounding the existing dispensaries in order to tighten up the ordinance;
2. Cap on the number of dispensaries per area or citywide;
3. Security requirements;
4. Milpas Street recovery zone and how it interacts with the dispensaries;
5. Locational requirements of dispensaries in proximity of schools and educational enterprises;
6. Reducing the amortization period for nonconforming dispensaries;
7. Impacts on neighborhoods;
8. Re-establishing a moratorium or interim ordinance, and the applicability of new regulations to existing and pending dispensaries; and
9. Information about neighboring jurisdictions' medical cannabis regulations.

Additionally, based on recent experience processing Medical Cannabis Dispensary Permits (MCDPs) and recent public input, staff suggests that the Ordinance Committee also discuss the following subject areas:

- 10. Criteria for Issuance;
- 11. Permit discretion given to the Staff Hearing Officer;
- 12. Whether permit decisions should be appealable to the City Council;
- 13. Allowing Dispensaries in the C-O and/or C-1 Zones.
- 14. Full cost recovery for application review.

**Known Medical Cannabis Dispensaries**

The following is a summary of known medical cannabis dispensaries by category:

**PERMITTED BY CITY AND OPERATING**

331 N. Milpas St. (compliance with approved permit is under investigation)

**PERMIT APPROVED APPLICATIONS**

500 N. Milpas St.

**PENDING APPLICATIONS**

631 Olive St. Commission	Approved by Staff Hearing Officer, on appeal to Planning
741 Chapala St	Pending
2 W. Mission	Pending
234 E. Haley	Pending
302 E. Haley	Pending
826 De la Vina	Pending

**NONCONFORMING**

These dispensaries were found to be legal under the City's Interim Ordinance, and are allowed to remain in their current locations for three years from the effective date of the current ordinance (until April 25, 2011). If they meet the locational requirements of the current ordinance, they can apply for a Medical Cannabis Dispensary Permit, otherwise they must close or obtain a City Zoning Variance. See Subject #6 below. A nonconforming status under investigation means that at the time of application, they were found to be nonconforming, but it is uncertain whether those conditions still exist.

3128 State Does not meet locational requirements, too close to MacKenzie Park

3516 State	Meets locational requirements (continuing legal Nonconforming status under investigation).
27 Parker Way	Does not meet locational requirements, but may qualify for a variance. Too close to Moreton Bay Fig Tree Park, which is across US101. (Nonconforming status under investigation)
100 E. Haley	Does not meet locational requirements, too close to Vera Cruz Park. (continuing legal Nonconforming status under investigation).

ILLEGALLY OPERATING – The following are under investigation and enforcement:  
2915 De la Vina (Currently the subject of a City Zoning Enforcement Action)  
336 Anacapa (Currently the subject of a City Zoning Enforcement Action)

There are other dispensaries that are currently under investigation by the Police Department.

#### **DISCUSSION:**

The current Medical Marijuana Dispensary ordinance includes locational requirements for permitted dispensaries. They are allowed in the C-2 and C-M zones, as well as on Upper State Street, Milpas Street, and the Mesa, but not within 500 feet of schools, parks or another dispensary. The ordinance's operational requirements include: a security plan, cameras, floor plan, consumption prohibition within 200 feet, etc. The existing ordinance does not place a cap on the number of dispensaries within the City or a limit on the hours of operation.

#### **1. Police Department Statistics**

The Police Department staff will be present at the Ordinance Committee meeting to present crime statistics concerning existing dispensaries.

#### **2. Cap on the Number of Dispensaries per Area**

The Council discussed both a citywide cap and a cap per geographic area. Currently, the areas (Downtown, Upper State, Milpas, Mesa) are not delineated by boundaries within the ordinance. If the Ordinance Committee would like geographic area caps, staff will return with boundaries, to facilitate the discussion. An alternative to a cap would be to increase the minimum distance between dispensaries from 500 feet (1 block).

#### **3. Security Requirements**

The existing ordinance, SBMC Chapter 28.80, has quite a number of security requirements, which seem adequate to staff; however, it may be appropriate to consider adding two additional requirements: 1) a limitation on the hours of operation, such as from 10 am to 7pm; and 2) a requirement that the security personnel be licensed by the State (Department of Consumer Affairs, Bureau of Security and Investigative Services). Both of

these requirements have been added as conditions of approval of recently approved dispensaries.

The current ordinance requires a separate, secure area designated for dispensing cannabis. A pending dispensary at 741 Chapala Street originally proposed a very open floor plan, with cannabis dispensing taking place at a counter in the general retail area, rather than a separate dispensing area. The operator of this proposed dispensary operates several dispensaries of a similar configuration in the Los Angeles area, and according to them, has had no problems with security. Staff would like the Ordinance Committee's confirmation that a separate, secure dispensing area is appropriate.

#### **4. Milpas Recovery Zone**

The Milpas Recovery Zone is a proposal by the Milpas Action Task Force to create a space where those seeking recovery from substance abuse, mental illness and physical ailments can be free from negative illegal influences. The area suggested by the Milpas Action Task Force is bounded by Milpas Street, the beach, Garden Street, and Gutierrez Street. Although the City has agreed on the implementation of a Recovery Zone concept, definitive boundaries have not yet been determined. Medical Cannabis Dispensaries could be excluded from the Recovery Zone.

#### **5. Siting Requirements of Dispensary in Proximity to Schools and Parks**

The current ordinance prohibits dispensaries within 500 feet of parks and schools (pre-schools, day care centers, colleges, universities, trade schools, and vocational schools are not considered "schools" under the existing ordinance). This 500-foot radius could be increased, which would reduce the number of viable locations, perhaps severely, if the radius is much larger. Pre-schools and day care centers were specifically excluded from this radius requirement since most attendees are in parental control during pick-up and drop-off. At a Downtown Organization meeting, a representative of the SB School Board requested a limitation on dispensaries on or near safe routes to schools or around bus stops where school age children congregate. One concern with more siting restrictions around private schools and day care centers is that such operations come and go, so a dispensary may start up, and later, a child care center is proposed. Does the dispensary become nonconforming?

Additionally, the current ordinance does not contain a prohibition of dispensaries within a certain distance of residential zones. Such a prohibition was discussed, but not recommended. In recent hearings, concern was raised by the public about the proximity of dispensaries to residential zones. Depending on the distance, this requirement could eliminate large portions of Milpas Street and Outer State Street from the areas where dispensaries are allowed.

## **6. Reducing the Amortization Period for Nonconforming Dispensaries**

SBMC Chapter 28.80 allows dispensaries that were in compliance with the Interim Ordinance to continue operation for three years from the effective date of the current ordinance (April 25, 2008), under certain conditions. Three years was considered reasonable by the Council in 2008, as it gave operators time to amortize their tenant improvement expenses. Additionally, for those dispensaries that could be legalized, the three years gave adequate time to do so. The nonconforming dispensaries must either get a Medical Cannabis Dispensary Permit or relocate before April 25, 2011 (about 19 months). The Ordinance Committee could recommend a shorter amortization period.

## **7. Impacts on Neighborhoods**

Staff has heard about the following types of neighborhood impacts from the public in meetings and correspondence: loitering, such that passers-by or nearby business owners or residents are uncomfortable or fearful; smoking near dispensaries, either in public or in cars; marijuana odors (both from smoking and from the raw material); dispensary patients selling marijuana to non-patients (including children) outside the dispensary; robberies and violence. The Police Department staff will discuss this issue at the Ordinance Committee hearing.

## **8. Re-establishing an Interim Ordinance, and the applicability of new regulations to existing and pending dispensaries**

After the issue of Medical Cannabis Dispensaries first arose in August 2007, the City passed an Interim Ordinance which prohibited the opening of new dispensaries for one year, while the permanent ordinance was being drafted. We have a request to do this again, and depending on the extent of changes that the Council may be considering, it may be appropriate to impose a new moratorium/interim ordinance.

The subject of applicability of new regulations to existing and pending dispensaries must be addressed in the ordinance revision. Normally, new regulations do not apply to existing, legal land uses, at least not without an appropriate amortization period. For example, if a land use zone changes from industrial to residential, the industrial use is allowed to remain as long as certain criteria are met for not expanding the non-conforming use. Another methodology is to allow an amortization period, similar to the current Medical Cannabis Dispensary Ordinance, which allows pre-existing, nonconforming dispensaries three years to seek approval of a MCDP under the current code, relocate, or close operations. For pending dispensaries, any number of points in the process (building occupancy, building permit issuance, project approval, application completeness, etc.), could be the point at which the revised regulations would apply.

## **9. Information about Neighboring Jurisdictions' Medical Cannabis Regulations**

Staff has researched neighboring jurisdictions on the South Coast, and found that virtually all jurisdictions (Lompoc, Santa Maria, Buellton, Solvang, Goleta, Carpinteria, Ventura, Oxnard, Camarillo and Guadalupe) have either an outright ban on dispensaries or a temporary moratorium on new dispensaries. Both Goleta's and Ventura's moratoriums are to consider allowing dispensaries pursuant to an ordinance in the future. It appears that the city and County of Santa Barbara are the only local jurisdictions that currently allow medical cannabis dispensaries.

## **10. Criteria for Issuance**

SBMC Chapter 28.80 establishes 13 criteria for issuance that must be considered by the decision making body in determining whether to grant or deny a dispensary permit. After processing several dispensary permit applications, Staff believes that it is appropriate to revise or eliminate some of these criteria.

- A. Criterion #2 requires that the location of the dispensary is not identified by the City Chief of Police as an area of high crime activity. The Police Department has not currently identified any areas of high crime activity in the City, so the value of this criterion is questionable. Staff recommends changing the language so that it can better reflect when the Police Department has concerns over criminal activity at the potential location of a dispensary.
- B. Criterion #4 refers to "reporting requirements." This is a remnant from when the Ordinance contained language requiring periodic reporting or permit renewal. Staff proposes to delete this phrase.

## **11. Amount of discretion given to the Staff Hearing Officer**

The Medical Cannabis Dispensary Permit is set up as a Performance Standard Permit (PSP), which is a discretionary action partway between a ministerial action (no discretion) and a Conditional Use Permit (total discretion). A PSP allows the decision making body only a limited amount of discretion, and if the Criteria for Issuance are met, then the permit is approved. This was done because it seemed that the location and operational requirements would prevent the type of neighborhood concerns that caused the drafting of the current ordinance. It was to be the Staff Hearing Officer's responsibility to review the project to ensure that the requirements were met, and to give the public a forum to speak to the project.

Of the current 13 criteria for issuance, there are two criteria for issuance that give the decision making bodies some discretion: #7 and #10. Criterion #7 states, "...no significant nuisance issues or problems are anticipated..." Criterion #10 states, "That the

dispensary would not adversely affect the health, peace, or safety of persons living or working in the surrounding area..."

A question that has arisen from the Staff Hearing Officer is: how much discretion does the Staff Hearing Officer have to deny a dispensary permit, if all locational and operational requirements are met. Staff would like to discuss this issue with the Ordinance Committee for possible amendments to these criteria.

## **12. Lack of Appeal to City Council**

The current ordinance allows the Staff Hearing Officer's decision to be appealed to the Planning Commission, but the Planning Commission is the final review body. The Planning Commission's decision cannot be appealed to City Council. Planning Commissioners, appellants and some interested parties have questioned this lack of appeal rights, and Staff would appreciate a discussion of this subject by the Ordinance Committee.

## **13. Allowing Dispensaries in the C-O and/or C-1 Zones**

During the City Council meeting on July 28, 2009, several public speakers commented that Medical Cannabis Dispensaries should be located near hospitals or in doctors' offices, and that the current ordinance targets certain areas of the City for dispensaries. Hospitals and doctors' offices are located, for the most part, in the C-O Zone, which is centered around Cottage Hospital and the old St. Francis Hospital on East Micheltorena Street. Staff does not believe that dispensaries should be located in the East Micheltorena C-O Zone, as it's very small, is surrounded by residential uses, and the hospital is no longer in operation. However, dispensaries could be found to be appropriate in the C-O Zone surrounding Cottage Hospital. Additionally, perhaps dispensaries should be allowed in the C-1 zone (Coast Village Road), in order to have a more even distribution of dispensaries in the city.

## **14. Full Cost Recovery for Application Processing**

The City Council directed the Finance Committee to review a cost recovery fee, and staff would like the Ordinance Committee's input on this issue as well. Although several Councilmembers have expressed interest in fees that would recover the cost of all aspects of City involvement with dispensaries, including policing, staff does not believe that all such fees are lawful. However, it would be appropriate to charge full cost for application processing. Currently, Planning Staff charges its hourly rate for application processing. The current rate is \$200/hr. Planning Staff collects \$2000 as a deposit (10 hrs) and charges additionally if the processing takes more than 10 hours of the case planner's time. There are several issues we would like the Ordinance Committee to discuss:

A. The other major participants in the review of Medical Cannabis Dispensaries are the Police Department and the Building & Safety Division. We have not been charging the

applicants for the time spent by these participants, but will do so from this point forward. Another issue here is that we will be re-examining whether \$200/hr represents the full hourly rate (including overhead), of the Community Development Department and Police Departments.

- B. The appeal fees in the City are very low and only cover a small percentage of the costs involved with appeals. Currently, appellants (usually neighbors) pay the appeal fee of \$300.00, but we do not charge applicants the hourly fee. Should the applicants be charged hourly for the time spent on an appeal?

**ATTACHMENTS:**

1. Current Medical Marijuana Dispensary Ordinance
2. Maps of Allowed Locations for Medical Marijuana Dispensaries

**PREPARED BY:** Danny Kato, Senior Planner

**SUBMITTED BY:** Paul Casey, Community Development Director

**APPROVED BY:** City Administrator's Office



# CITY OF SANTA BARBARA

## ORDINANCE COMMITTEE REPORT

**AGENDA DATE:** November 24, 2009  
**TO:** Ordinance Committee  
**FROM:** Planning Division, Community Development Department  
**SUBJECT:** Medical Cannabis Dispensary Ordinance Revision

### RECOMMENDATION:

That the Ordinance Committee review the proposed revisions to the Medical Cannabis Dispensary Ordinance, and make recommendations to the Planning Commission and Council regarding adoption of the proposed revisions.

### DISCUSSION:

After receiving direction from the Council to review and revise the existing Medical Cannabis Dispensary (MCD) Ordinance on July 28, 2009, the Ordinance Committee met four times on September 15<sup>th</sup>, September 29<sup>th</sup>, October 6<sup>th</sup>, and October 20<sup>th</sup>, to hear public comment and provide direction on revisions to the MCD Ordinance.

On October 20<sup>th</sup>, the Ordinance Committee made the following recommendations, which have been included in the attached draft:

1. A citywide cap of seven dispensaries, one in each of the following seven geographic areas:
  - a. Outer State
  - b. De la Vina
  - c. Mission
  - d. Downtown, east of State
  - e. Downtown, west of State
  - f. Milpas
  - g. Mesa
2. A reduced amortization period of six months for existing, nonconforming dispensaries, starting at the adoption date of the proposed revisions.
3. A prohibition on dispensaries in existing, mixed-use buildings, where the residential units are condominiums.

4. More discretion for the Staff Hearing Officer, in the form of changes to the criteria for issuance, including but not limited to Criteria #7 and #10, which currently state, in part:
  - #7. "...no significant nuisance issues or problems are anticipated or resulted..." (emphasis added)
  - #10. "That the dispensary **would not** adversely affect the health, peace, or safety of persons living or working the surrounding areas, overly burden a specific neighborhood, or contribute to a public nuisance..." (emphasis added)
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, which is licensed by the State.
7. A requirement for annual review of permitted dispensaries by the Police Department and the Staff Hearing Officer.

On November 17, 2009, the City Council discussed the issues of for-profit dispensaries versus not-for-profit collectives (with or without storefronts), and a moratorium on pending and approved dispensaries. For-profit dispensaries do not comply with State law, whereas it appears that not-for-profit collectives and cooperatives do comply with state law. The Council voted to schedule the moratorium issue on a Council agenda in December 2009. The Council also directed the Ordinance Committee to continue its work on the existing ordinance and start a new work effort to further revise the ordinance to restrict medical marijuana distribution outlets to those that comply with all aspects of state law.

Staff recommends that the Ordinance Committee review the draft revisions to the Medical Cannabis Dispensary Ordinance, and forward it to City Council for action.

**ATTACHMENT:** Draft Ordinance  
**PREPARED BY:** Danny Kato, Senior Planner  
**SUBMITTED BY:** Paul Casey, Community Development Director  
**APPROVED BY:** City Administrator's Office



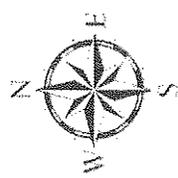


# Medical Cannabis Dispensaries De la Vina Currently Allowed (Terra Cotta) VS Proposed (Purple Stripes)



- Legend**
- Currently Allowed
  - Proposed
  - State of California
  - Local Jurisdiction
  - State of California
  - Local Jurisdiction
- Existing Dispensaries**
- State
  - Local
  - State
  - Local
- Dispensaries Allowed Currently**
- State
  - Local
- Dispensaries Proposed**
- State
  - Local
  - State
  - Local
  - State
  - Local
- Status**
- Approved and Operating
  - Approved
  - Pending
  - Nonconforming
  - Under Dispute or Illegal

December 3, 2009

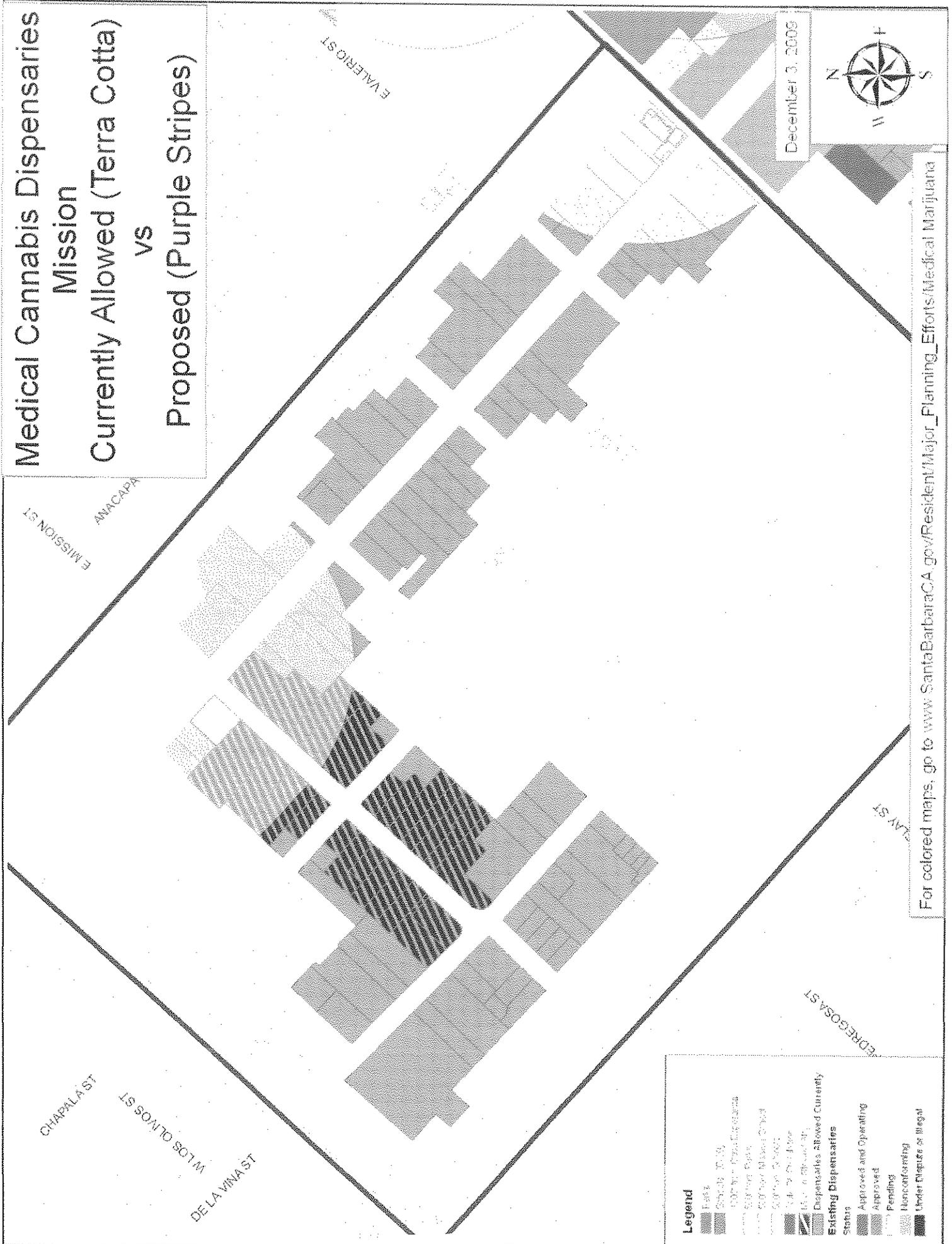


For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major\\_Planning\\_Efforts/Medical\\_Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)

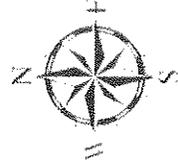
EXHIBIT E



Medical Cannabis Dispensaries  
Mission  
Currently Allowed (Terra Cotta)  
VS  
Proposed (Purple Stripes)



December 3, 2009



For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major\\_Planning\\_Efforts/Medical Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)

**Legend**

- Parks
- Currently Allowed (Terra Cotta)
- Proposed (Purple Stripes)
- Unimproved Lots
- Existing Dispensaries
- Under Dispute or Illegal

**Existing Dispensaries**

- Approved and Operating
- Approved
- Pending
- Nonconforming
- Under Dispute or Illegal

EXHIBIT F



Medical Cannabis Dispensaries  
 Downtown East and West  
 Currently Allowed (Terra Cotta)  
 VS  
 Proposed (Purple Stripes)

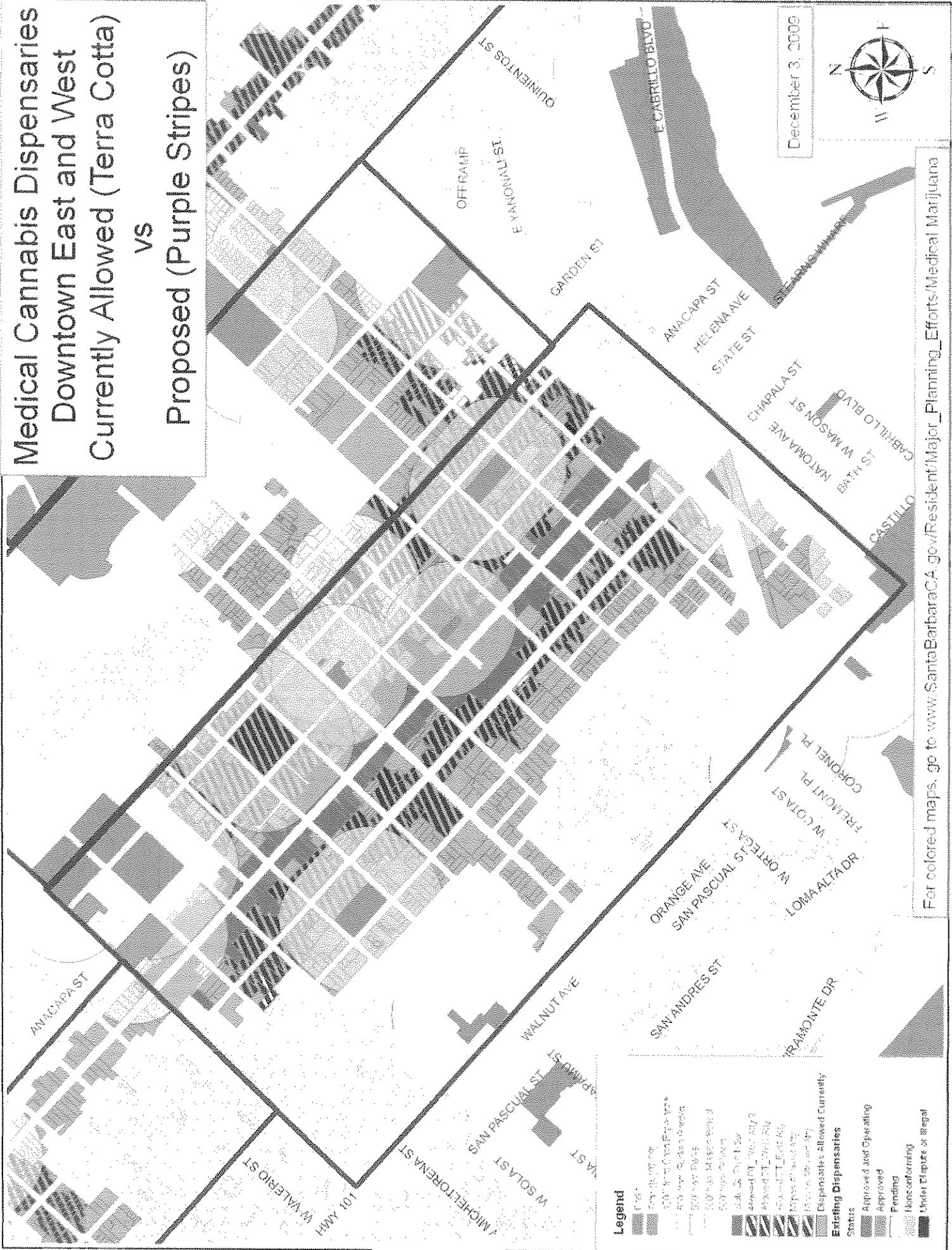


EXHIBIT G

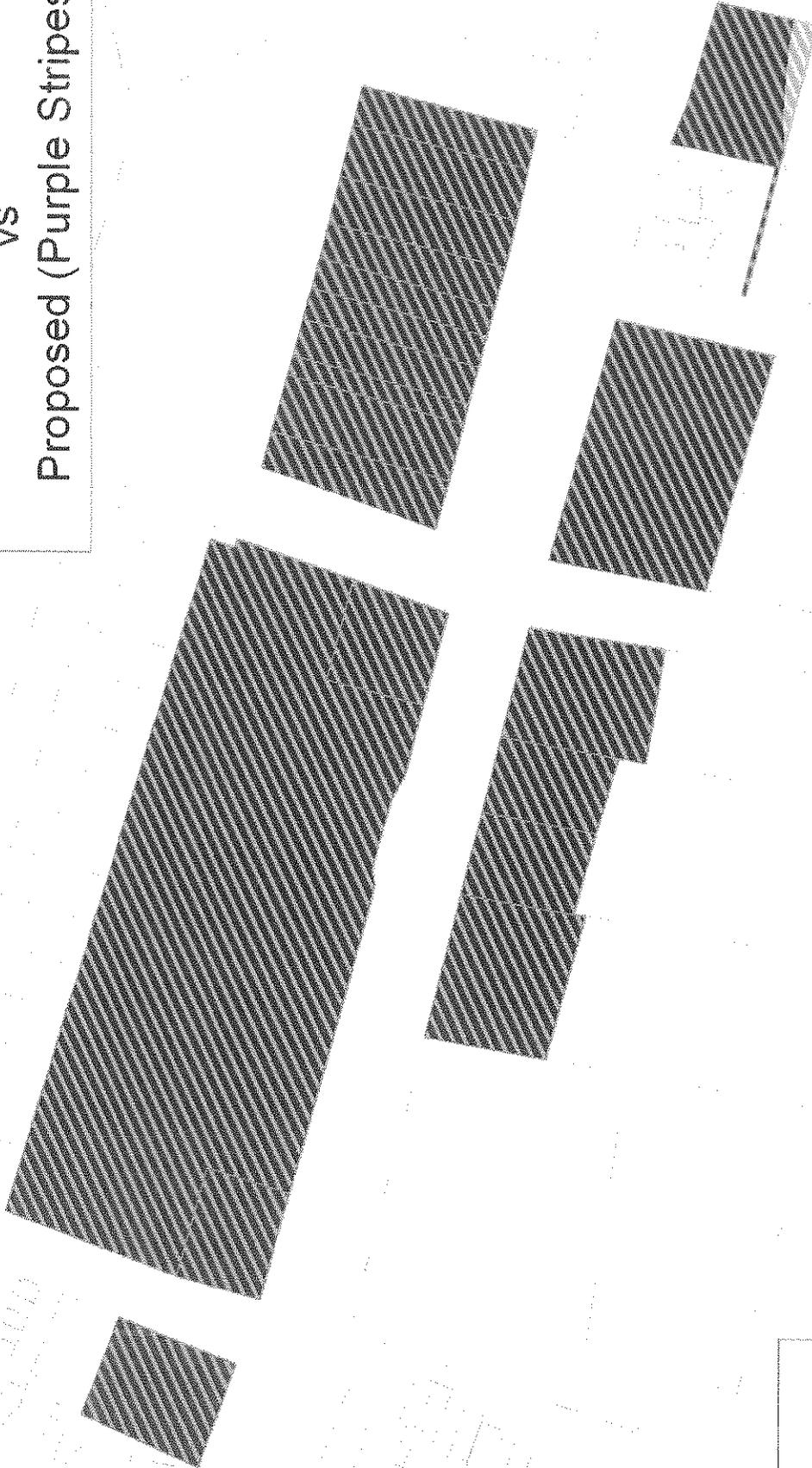
For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major\\_Planning\\_Efforts/Medical Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)



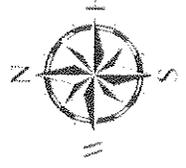




Medical Cannabis Dispensaries  
 Mesa  
 Currently Allowed (Terra Cotta)  
 VS  
 Proposed (Purple Stripes)



December 3, 2009



**Legend**

- Dispensaries Allowed Currently
- Existing Dispensaries
- Status**
- Approved and Operating
- Approved
- Pending
- Noncertifying
- Under Dispute or Illegal

For colored maps, go to [www.SantaBarbaraCA.gov/Resident/Major\\_Planning\\_Efforts/Medical Marijuana](http://www.SantaBarbaraCA.gov/Resident/Major_Planning_Efforts/Medical_Marijuana)

EXHIBIT I