

MONTECITO PLANNING COMMISSION
Staff Report for Marijuana Collective/Cooperative (MMC) Storefront Ordinance

Hearing Date: August 24, 2011
Staff Report Date: August 15, 2011
Case Nos.: 11ORD-00000-00020
11ORD-00000-00021
Environmental Document:
CEQA Guidelines Section 15061(b)(3)
General Exemption

Director: Jeff Hunt, AICP
Division: Long Range Planning
Supervising Planner: June Pujo
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1.0 REQUEST

Hearing on the request of the Planning and Development Department that the Montecito Planning Commission:

- 1.1 Case No. 11ORD-00000-00020.** Adopt a resolution recommending that the Board of Supervisors adopt an ordinance (Case No. 11ORD-00000-00020) amending Division 35.2, Montecito Standards for Specific Land Uses, and Division 35.10, Glossary, of Section 35-2, of the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, as set forth in Attachment C; and
- 1.2 Case No. 11ORD-00000-00021.** Recommendation that the County Planning Commission recommend that the Board of Supervisors adopt an ordinance (Case No. 11ORD-00000-00021) amending Division 2, Definitions, Division 4, Zoning Districts, and Division 11, Permit Procedures, of Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code, as set forth in Attachment D.

and determine that the project is exempt from CEQA pursuant to Section 15061(b)(3) of the State Guidelines for Implementation of the California Environmental Quality Act.

The proposed ordinances would create new regulations pertaining to potential Medical Marijuana Collective/Cooperative (MMC) Storefronts County-wide.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 11ORD-00000-00020 (Montecito Inland).** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 11ORD-00000-00020 as shown in Attachment C based upon the ability to make the appropriate findings. Your Commission's motion should include the following:
 - 1.** Recommend that the Board of Supervisors make the findings for approval of the proposed amendment (Attachment A);
 - 2.** Recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
 - 3.** Adopt a Resolution recommending that the Board of Supervisors adopt Case No. 11ORD-00000-00020, an ordinance amending Section 35-2, the Santa Barbara County

Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C).

2.2 Case No. 11ORD-00000-00021 (Coastal). Follow the procedures outlined below and recommend to the County Planning Commission that they recommend that the Board of Supervisors adopt Case No. 11ORD-00000-00021 as shown in Attachment D based upon the ability to make the appropriate findings. Your Commission's motion should include the following:

1. Recommend that the County Planning Commission recommend that the Board of Supervisors make the findings for approval of the proposed amendments (Attachment A);
2. Recommend that the County Planning Commission recommend that the Board of Supervisors determine that this ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and,
3. Recommend that the County Planning Commission adopt a Resolution recommending that the Board of Supervisors adopt Case No. 11ORD-00000-00021, an ordinance amending Article II, the Santa Barbara County Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment D).

Refer back to staff if the Montecito Planning Commission takes other than the recommended action for appropriate findings and conditions.

3.0 JURISDICTION

3.1 Montecito Land Use Development Code, Case No. 11ORD-00000-00020

This project is being considered by the Montecito Planning Commission based upon Section 65855 of the Government Code and Section 35.494.050 of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC). The Government Code and the Montecito LUDC require that the Montecito Planning Commission, as the designated planning agency for the unincorporated area of the County within the Montecito Community Plan Area, review and consider proposed amendments to the Montecito LUDC and provide a recommendation to the Board of Supervisors.

3.2 Coastal Zoning Ordinance (Article II), Case No. 11ORD-00000-00021

This project is being considered by the Montecito Planning Commission in compliance with Section 2-25.2 of Chapter 2 of the Santa Barbara County Code that provides that the Montecito Planning Commission may make recommendations to the County Planning Commission on text amendments to Article II of Chapter 35 of the County Code that will affect land use decisions within the Coastal Zone portion of the Montecito Planning Area.

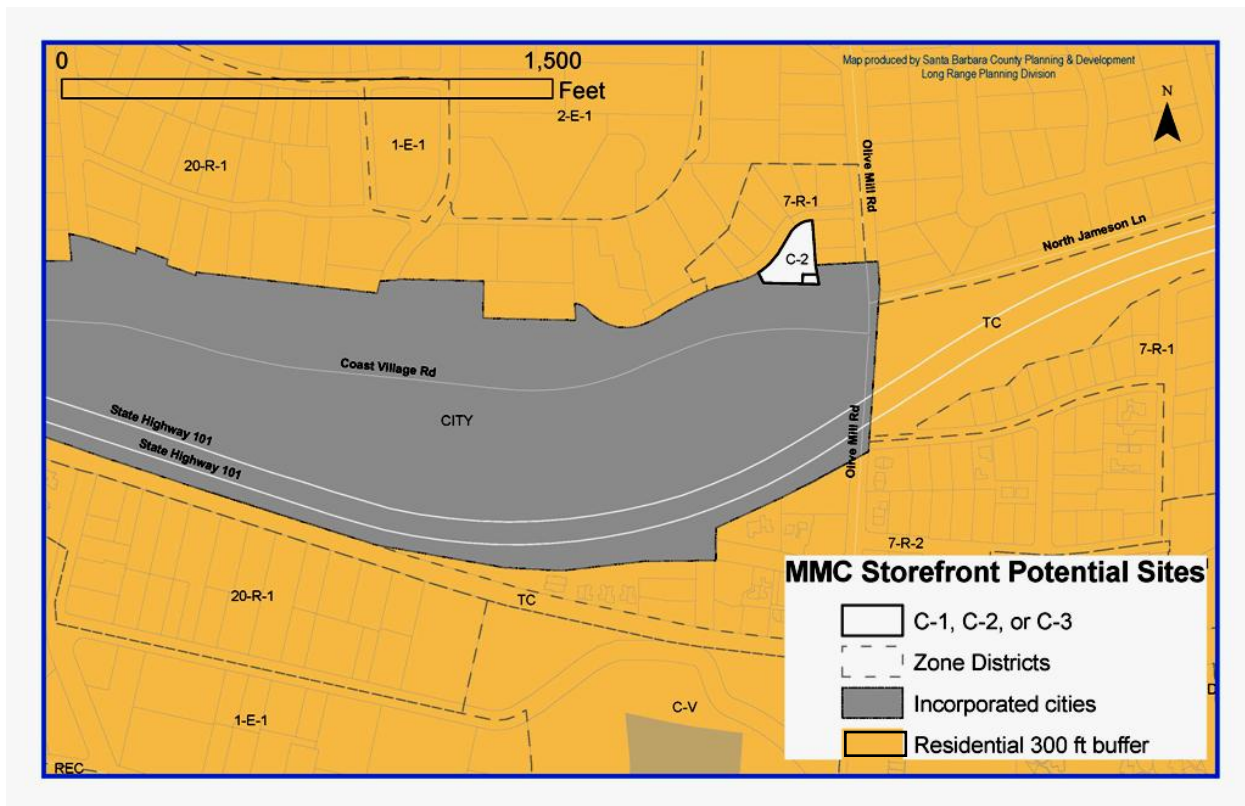
4.0 ISSUE SUMMARY

The purpose of the ordinance is to institute regulations that specify and clarify conditions under which a MMC Storefront establishment may be considered under zoning. An MMC Storefront is a facility or location in a commercial area that is operated by a non-profit medical marijuana collective or cooperative that provides medical marijuana to members. Below is a summary of definitions included in the ordinance amendments:

- *Medical Marijuana.* Marijuana used by Qualified Patients and Persons with ID Cards for medical purposes, in compliance with Health and Safety Code Section 11362.5 et seq. *Attending Physician, Qualified Patient, Primary Caregiver, and Person with an ID Card* are also defined consistent with Health and Safety Code Section 11362.
- *Medical Marijuana Cooperative.* A Cooperative for the mutual benefit of its members, that must file articles of incorporation, is a non-profit entity, and is subject to all legal requirements of a statutory Cooperative, as outlined in the California Corporations Code or Food and Agriculture Code.
- *Medical Marijuana Collective.* A non-profit organization, with five or more members, which exists merely to facilitate the collaborative efforts of Qualified Patient, Persons with ID Card, and Primary Caregiver members and to coordinate transactions between members involving Medical Marijuana.
- *Medical Marijuana Collective/Cooperative (MMC) Storefront.* A storefront facility or location that is organized and operated by a Medical Marijuana Collective or Medical Marijuana Cooperative, that provides, exchanges, or gives away Medical Marijuana, to its members who are Qualified Patients, Persons with an Identification Card, or Primary Caregivers as defined in the ordinance.

State law contains no regulations defining MMC Storefronts; the ordinance amendments rely on the Attorney General Guidelines to generally define them (see Attachment F).

Within the unincorporated areas of the County, based on zone district compatibility and intent, MMC Storefronts are proposed to only be allowed in the C-1 (Limited Commercial), C-2 (Retail Commercial), and C-3 (General Commercial) zone districts. Buffers from residential and mixed-use zone districts, schools, parks, daycares, existing conforming dwellings, and other MMC Storefronts are also proposed. As proposed, zoning application of the minimum residential and facilities buffers would result in approximately 34 generally eligible sites County-wide; however with the application of a 1500-foot minimum buffer between MMC Storefronts, there would be a total of approximately seven potential sites County-wide (see Attachment E). Only two sites within the Montecito Plan Area are zoned C-1, C-2, or C-3.



These two parcels are zoned C-2 and located within the Coastal Zone. The proposed criteria (e.g. residential and mixed-use zone district buffers of 300 feet) would exclude both of these sites from eligibility. Therefore, at this time, there are no known qualifying sites in the Montecito Plan Area.

5.0 PROJECT INFORMATION

5.1 Project Description

Under the proposed ordinances, a Conditional Use Permit (CUP) under the jurisdiction of the Planning Commission would be required for any MMC Storefront location in the allowed zone districts and subject to specific criteria, development standards, and all other requirements of a CUP. The proposed CUP requirements are summarized below in Table 5.1:

The proposed ordinance amendments include processing requirements for MMC Storefronts and place all new MMC Storefronts under the jurisdiction of the Planning Commission; amend the applicable Commercial Zone District uses; regulate potential locations through zone districts and buffers from residential and educational facilities, residential uses, and another legal MMC Storefront; includes MMC Storefront development, operational, and lighting standards; and adds definitions related to medical marijuana.

Table 5.1 Proposed MMC Storefront CUP Requirements		
Requirement	Location/Buffer	Chapter 35 Section
Allowed Zone Districts	C-1: Limited Commercial C-2: Retail Commercial C-3: General Commercial	MLUDC 35.424.030/35.472.115 Art II 35-77A.4./35-78.4
Minimum Buffer from Any from Other Legal MMC Storefront	1500 feet (Parcel to Parcel)	MLUDC 35.472.115.B.1 Article II 35-172.13.6.B
Minimum Buffer from Schools, Parks, and Daycares	1000 feet (Parcel to Parcel)	MLUDC 35.472.115.B.2 Article II 35-172.13.6.B
Minimum Buffer from Residential and Mixed-Use Zones and Overlay	300 feet (Parcel to Building)	MLUDC 35.472.115.B.3 Article II 35-172.13.6.B
Minimum Buffer from any Legal Conforming Dwelling Unit	100 feet (Building to Building)	MLUDC 35.472.115.B.4 Article II 35-172.13.6.B
Minimum Maximum MMC Storefront per Lot	One	MLUDC 35.472.115.B.5 Article II 35-172.13.6.B

The following sections describe the proposed language changes to the Montecito Inland Zoning Ordinance (MLUDC) and the Coastal Zoning Ordinance (Article II). Note that parallel proposed ordinance amendments to the Inland Ordinances for the remainder of the County incorporated area outside the Montecito Planning Area will be forwarded directly to the County Planning Commission, along with the Montecito Planning Commission’s recommendation relative to Article II for the County Planning Commission’s review prior to forwarding the entire packages of ordinances to the Board of Supervisors for approval. The complete texts of the draft ordinances are included as Attachments C and D.

- 1) Changes to “Allowed Land Uses and Permit Requirements for Commercial Zones” (Montecito LUDC 35.424.030.C) indicates that MMC Storefronts would not be an allowable use in the CN or CV zone districts, and “Zoning Districts” (Article II 35-77A.4. and 35-78.4) sections would specify that an MMC Storefront use is allowed in the C-1 and C-2 Districts in Coastal Zone Districts with a Conditional Use Permit under the jurisdiction of the Planning Commission. (Note: there are no C-1, C-2, C-3 zone districts in the Montecito LUDC and there is no C-3 district in Article II)
- 2) New zoning sections for “Medical Marijuana Collective/Cooperative Storefronts” (Montecito LUDC 35.472.115/Article II Sec. 35-172.13) would specifically regulate MMC Storefronts, including:
 - Locations and buffer criteria;
 - Permit and Submittal Requirements and MMD Supplemental Information Sheet; and
 - Development, Operational, and Lighting Standards.
- 3) New Definitions (Montecito LUDC 35.500/Article II Sec. 35-58) would be added to the glossary and include the addition of the new following terms:
 - Medical Marijuana;
 - Medical Marijuana Cooperative and Medical Marijuana Collective;
 - Medical Marijuana Collective/Cooperative (MMC) Storefront;
 - Marijuana Drug Paraphernalia; and
 - Primary Caregiver, Qualified Patient, and Attending Physician.

5.2 Background Information

5.2.1 Existing MMC Storefronts

There were four known open MMC Storefronts in the unincorporated area at the time the County's moratorium was enacted in January 2010. As of December 7, 2010, the Sheriff had investigated several MMC Storefronts and closed Storefronts when appropriate County-wide due to criminal activity, including incorporated and unincorporated areas.

The County has no record of MMC Storefront applications or zoning enforcement cases within the Montecito Planning Area. There are currently two known operating MMC Storefronts in the County, both located in Summerland: The Miramar Collective and The Green Room. The Miramar Collective is currently the subject of zoning enforcement by the Planning and Development Department.¹

5.2.2 Board of Supervisors Moratorium

On January 19, 2010, the Board of Supervisors adopted an Urgency Ordinance establishing a Moratorium on approval of MMC Storefronts (then referred to as Medical Marijuana Dispensaries) for a 45-day period. On February 16, 2010 the Board of Supervisors extended the Urgency Ordinance for 10 months and 15 days. On December 7, 2010, the Board extended that ordinance for one year. Government Code Section 65868 provides that a moratorium and any extension cannot exceed a total of two years.

At the December 7, 2010 Board of Supervisors hearing, the Board directed Planning and Development to return to the Board with a report on the County's coordinated efforts concerning the moratorium, and "provide recommendations as appropriate".

5.2.3 State Regulation

The intent of the ordinances is to protect the rights of both medical-marijuana patients and County residents, in compliance with California Health and Safety Code Sections 11362.5 et. seq. The proposed ordinance amendments provide consistency with state law, Attorney General Guidelines, and with recent court decisions.

State Law: Described below is a summary of two pieces of legislation and one set of guidelines which regulate medicinal marijuana in California:

The *Compassionate Use Act* (CUA) (Prop. 215) was passed by California voters in 1996 in order to:

- Provide for safe access to medical marijuana for seriously ill Californians;
- Ensure that Qualified Patients, Primary Caregivers and Physicians are not subject to criminal prosecution or sanction; and
- Encourage the federal and state governments to implement safe and affordable medical marijuana.

¹ 10ZEV-00000-00142

The *Medical Marijuana Program Act* (MMP) (SB 420) was passed in 2003 to:

- Create a statewide ID card program;
- Set cultivation and possession limits for medical marijuana (declared unconstitutional);
- Allow for cooperative and collective cultivation projects;
- Prohibit the smoking of marijuana in certain areas; and
- Allows cities and counties to adopt and enforce laws consistent with the MMP.

The *Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use* were released in 2008 to:

- Provide law enforcement with greater guidance regarding Medical Marijuana;
- Define Dispensary, Cooperative, Collective; and
- Offer guidelines regarding the operation of Cooperatives and Collectives.

Neither the CUA nor the MMP define “MMC Storefronts” and confusion has arisen among the different types of uses. The Attorney General Guidelines state that a properly organized and operated collective or cooperative that dispenses medical marijuana through a Storefront may be lawful in California if it complies with the Guidelines.² (See Attachment F, Attorney General Guidelines, page 11.)

Federal Law: California law is in conflict with federal law. Under the federal Controlled Substances Act, the manufacture, distribution, or possession of marijuana is a criminal offense. Marijuana is classified as a Schedule I drug.³ The United States Supreme Court held that there is no medical necessity exception to the federal Controlled Substances Act prohibition of the manufacture and distribution of various drugs⁴ and that the federal government has the power to prohibit the local cultivation and use of marijuana that would be allowed under California law.⁵

6.0 ANALYSIS

In response to the Board’s requests, Planning and Development met with interested parties and researched recent case law and legal opinions, other jurisdictions’ regulations, available alternatives, and evaluated options for regulating MMC Storefronts, resulting in the set of draft regulations proposed for review.

California Health and Safety Code Section 11362.768 requires a minimum 600-foot buffer for MMC Storefronts from schools. California State Health and Safety Code 11362.79 prohibits smoking of medical marijuana within 1000 feet of a school or youth center. The Sheriff’s Department also suggested the school buffer should be greater than 600 feet. In order to meet the provisions of state law and provide a recommended standard that would protect related

² A court of appeal agreed with this conclusion in *People v. Hochandel* (2009) 176 Cal.App.4th 997, concluding that the Attorney General Guidelines were persuasive and that storefronts that operated as collectives or cooperatives and complied with the CUA and MMP might have a defense from arrest and prosecution. (*People v. Hochandel* (2009) 176 Cal.App.4th 997, 1002.) (2008)

³ The federal government considers Schedule I it to be a drug that “has a high potential for abuse,” “has no currently accepted medical use” and “[t]here is a lack of accepted safety for use of the drug or other substance under medical supervision.” (21 U.S.C. § 812(b)(1).)

⁴ *United States v. Oakland Cannabis Buyers’ Cooperative* (2001) 532 U.S. 483

⁵ *Gonzales v. Raich* (2005) 545 U.S. 1

sensitive uses where minors congregate, the proposed ordinances would require a 1000-foot buffer not only from schools, but also from parks, recreation centers, and daycare centers.

Staff reviewed residential and mixed-use zone district buffer options ranging from 100 to 500 feet; however, the 500-foot buffer did not result in enough realistic potential sites to serve the County. The proposed buffer of 300 feet protects residential uses while providing for an adequate number of potential sites and an even distribution of sites through the County. An adequate number of potential sites are necessary in order to overcome non-zoning constraints such as a lack of vacant commercial lease sites, a lack of commercial for-sale sites, commercial property owners' unwillingness to lease to MMC Storefronts, or other factors.

The proposed buffers are also based on a recommended separation of residential uses and places where children are present based on evidence presented at public hearings during the moratorium⁶ and the *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries (Attachment G).

In addition, the recommended ordinance includes buffers from existing permitted conforming dwellings to protect existing residential/mixed use dwellings in the commercial districts, and a buffer of 1500 feet between MMC Storefronts is recommended to discourage concentration in any one area. The C-1 (Limited Commercial), C-2 (Retail Commercial), and C-3 (General Commercial) zone districts were selected as appropriate locations based on the intent of each zone district. A CUP also allows the exercise of discretion on each proposed MMC Storefront to condition as appropriate and necessary to help address use compatibility and safety concerns.

Staff's research included the review of several scenarios, which were narrowed to three main options: one of which is the staff recommended option described above. The two other options described below were also considered:

Option #2 Parameters: C-1 and C-2 Zone Districts

- 100-foot minimum zone district to building residential buffer
- 600-foot minimum parks and schools buffer
- 2000-foot minimum buffer between MMC Storefronts

Option #2, with 86 total sites and 15 potential when applying the MMC Storefront buffer, could potentially provide for an adequate number of sites, however it only provided for one-third the buffer for residences as compared to the recommended option. A minimum buffer of 600-foot from schools and places where youth congregate would meet the basic state law requirement, however only minimally. The 1000-foot buffer from schools, parks, and daycare centers built into the recommended option exceeds the state-required minimum and is also consistent with California State Health and Safety Code 11362.79 which prohibits smoking of medical marijuana within 1000 feet of a school or youth center.⁷

Option #3 Parameters: C-1, C-2, and C-3 Zone Districts

⁶ Board of Supervisors hearings on January 19, 2010; February 16, 2010; and December 7, 2010.

⁷ Also prohibits smoking in no smoking zones (except in private residences), on school buses, in a motor vehicle that is being operated, or while operating a boat.

- 300-foot minimum parcel line to parcel line residential buffer
- 1000-foot minimum schools and parks buffer
- 1500-foot minimum buffer between MMC Storefronts

Option #3, with 7 total sites and 4 potential sites when the MMC Storefront buffer is applied, would provide buffers from residential uses and facilities where minors congregate, equivalent to the recommended option; however, it does not provide an adequate number of potential sites to serve the County. An adequate number of potential sites is necessary in order to overcome constraints due to a lack of available lease or for-sale sites, property owner preferences, or other non-zoning factors.

The option recommended, as described in Section 5.0, provides enough buffer from residential uses, public facilities, and other MMC Storefronts to provide for realistic access to medical marijuana while ensuring surrounding uses are protected. See Attachment E for a summary of approximate sites and locations per the staff recommendation and two other options.

Note that the proposed ordinance does not address items outside the usual scope of land use such as personal traits of the operator, unregulated off-site cultivation, possession, or transportation of Medical Marijuana.

7.0 ENVIRONMENTAL REVIEW

The proposed amendments are determined to be exempt from environmental review pursuant to Section 15061(b)(3) of the California Guidelines for Implementation of the California Environmental Quality Act (CEQA). Section 15061(b)(3), the general rule exemption, states that where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, that activity is not subject to CEQA. A Conditional Use Permit under the jurisdiction of the Planning Commission would be required for each MMC Storefront, which would be subject to CEQA at the project level. No significant environmental impacts would occur as a result of these ordinance amendments as discussed in Attachment B.

8.0 POLICY CONSISTENCY

The proposed amendments would not alter the purpose and intent of any Comprehensive Plan, Coastal Land Use Plan, and Montecito Community Plan development standards, and adoption of the proposed ordinance amendments would not result in any inconsistencies with the adopted policies and development standards of the County's Comprehensive Plan, Coastal Land Use Plan, and Montecito Community Plan. The proposed ordinance amendments would primarily regulate the location of and discretionary permit requirements for MMC Storefronts.

In order for a development permit for an MMC Storefront to be approved based on these proposed amendments, it would have to be determined that the project is consistent with the policies and development standards of the Comprehensive Plan, Coastal Land Use Plan, and Montecito Community Plan. As part of this process, a policy consistency analysis would be performed during the review of the application, and projects would not be approved unless they were determined to be consistent with applicable policies, and the findings required for approval

could be made. Therefore, this amendment may be found consistent with the adopted Comprehensive Plan, the Local Coastal Program, and the Montecito Community Plan.

9.0 ORDINANCE COMPLIANCE

The proposed ordinances are consistent with the remaining portions of the Montecito LUDC and Article II that would not be revised by these ordinances. In order to approve a MMC Storefront based on these proposed amendments, it would have to be determined that the project is consistent with the whole of the Montecito LUDC and Article II as applicable.

10.0 PROCEDURES

Montecito Land Use and Development Code: The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the Board of Supervisors.

Article II Coastal Zoning Ordinance: The Montecito Planning Commission may recommend approval, approval with revisions, or denial of the proposed ordinance to the County Planning Commission.

11.0 APPEALS PROCEDURE

Ordinance amendments are automatically forwarded to the Board of Supervisors for final action, therefore no appeal is required.

ATTACHMENTS

- A. Findings: Montecito LUDC and Article II
- B. Notice of Exemption
- C. 11ORD-00000-00020 Montecito LUDC Resolution and Proposed Ordinance
- D. 11ORD-00000-00021 Article II Proposed Ordinance
- E. MMC Storefront Staff Recommendation and Other Options Considered Summary of
- F. Attorney General Guidelines, 2008
- G. *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries