



**BOARD OF SUPERVISORS
AGENDA LETTER**

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: P&D
Department No.: 053
For Agenda Of: 1/5/10
Placement: Administrative
Estimated Time: N/A
Continued Item: From 12/8/09
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Planning and Development
Glenn Russell, Ph.D., Director 568-2085
Contact Info: Dianne Black, Development Services Director 568-2086
SUBJECT: **Permitting of Medical Marijuana Dispensaries**

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: NA

Other Concurrence: Select_Other

As to form: NA

Recommended Actions:

That the Board of Supervisors receive a report on the status of Planning and Development permitting of Medical Marijuana Dispensaries and the draft Moratorium Ordinance.

Summary Text/Background

On December 8, 2009, the Board of Supervisors directed staff of County Counsel, Planning and Development, Sheriff, and Probation to return to the Board on or before January 19, 2010 with a draft ordinance establishing a moratorium on permitting of medical marijuana dispensaries (MMD) to allow the County time to study ordinance amendments including a potential ban of MMDs. During the hearing, the Board expressed concern that additional dispensaries may be established prior to the Board's consideration of the moratorium. As staff indicated at the hearing on December 8th, Planning and Development's interpretation of the Land Use and Development Code (LUDC) has been to treat MMDs as "general retail", resulting in some circumstances where no permit is required to establish the use.

The LUDC provides that when a use is not specifically enumerated, it is prohibited unless the Planning Commission makes a Use Determination. MMDs are not an enumerated use in the LUDC. Therefore, following the Board hearing on December 8, 2009, Planning and Development, in consultation with County Counsel, has decided to require a Use Determination by the Planning Commission for any MMD prior to its establishment. Without a Use Determination, any new MMD would be a zoning violation. The Use Determination requires the Planning Commission to make a finding that the MMD is "similar in character to those permitted uses" and that "the proposed use is not more injurious to the health, safety or welfare of the neighborhood (LUDC Section 35.82.190(E)(1).) The Use Determination

requirement would delay consideration of any proposed MMDs until after the Board's consideration of the moratorium on January 19, 2010, since the Planning Commission review requires at least a month's lead time for noticing and preparation of a staff report.

Your Board requested staff return no later than January 19, 2010 with a moratorium ordinance. Since this interpretation effectively ensures that no new MMD can be legally established prior to January 19, 2010, staff will return on January 19, 2010 with a draft moratorium ordinance on approvals of MMDs and the analysis necessary to support adoption of a moratorium ordinance.

Fiscal and Facilities Impacts:

Budgeted in the FY 2009-2010 Planning and Development adopted budget, under the Administration Division, page D-300.

Authored by:

Dianne Black, Development Services Director, 568-2086