



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: Planning & Development
Department No.: 053
For Agenda Of: November 1, 2011
Placement: Departmental
Estimated Time: 30 min.
Continued Item: Yes from 10/4/11
If Yes, date from: N/A
Vote Required: Majority

TO: Board of Supervisors

FROM: Planning and Development: Glenn Russell, Ph.D, Director, Planning & Development, 568-2085

Contact Info: Jeff Hunt, AICP, Long Range Planning Director, 568-2072

SUBJECT: Medical Marijuana Dispensary Storefront Ordinance

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence:

As to form: N/A

Recommended Actions:

That the Board of Supervisors consider the recommendation of the County and Montecito Planning Commissions, to approve Case Nos. 11ORD-00000-00029, 11ORD-00000-00030, and 11ORD-00000-00031 which would amend the County Land Use and Development Code, Montecito Land Use and Development Code, and the Coastal Zoning Ordinance to prohibit Medical Marijuana Dispensary storefronts, and take the following actions:

A. Case No. 11ORD-00000-00029 (County LUDC Amendments)

1. Make the findings for approval of the proposed amendments, including CEQA findings (Attachment A);
2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and
3. Approve Case No. 11ORD-00000-00029, and adopt an ordinance amending Section 35-1, the Santa Barbara County Land Use and Development Code, of Chapter 35, Zoning, of the County Code (Attachment C, Exhibit 1.1).

B. Case No. 11ORD-00000-00030 (Montecito LUDC Amendments)

1. Make the findings for approval of the proposed amendments, including CEQA findings

(Attachment A);

2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and
3. Approve Case No. 11ORD-00000-00030, and adopt 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 D, Exhibit 1.2).

C. Case No. 11ORD-00000-00031 (Coastal Zoning Ordinance Amendments)

1. Make the findings for approval of the proposed amendments, including CEQA findings (Attachment A);
2. Determine that the adoption of this ordinance is categorically exempt from the California Environmental Quality Act in compliance with Section 15061(b)(3) of the Guidelines for Implementation of CEQA (Attachment B); and
3. Approve Case No. 11ORD-00000-00031, and adopt an ordinance amending Article II, the Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment E, Exhibit 2).

Summary:

The purpose of the ordinance is to prohibit Medical Marijuana Dispensaries (MMD) under zoning. An MMD is a facility or location that provides medical marijuana through a storefront. Ordinance amendments which would have allowed an MMD with a Conditional Use Permit subject to location criteria went before the Board of Supervisors on October 4, 2011. The Board voted 4-1 to direct staff to draft ordinances banning MMDs.

The proposed ordinance amendments would only prohibit storefront dispensaries similar to the Board adopted moratorium currently in effect, that only affects storefront dispensaries. State Law and County regulations would continue to govern the operation of non-storefront dispensary collectives and cooperatives which could continue to provide for access to medical marijuana as allowed under the Compassionate Use Act and as regulated by other laws.

Background:

1. Board of Supervisors Moratorium

On January 19, 2010, the Board of Supervisors adopted an Urgency Ordinance establishing a moratorium on approval of MMD storefronts (then referred to as Medical Marijuana Dispensaries) for an initial 45-day period. The moratorium was extended twice and is set to expire on December 6, 2011. Government Code Section 65858 provides that a moratorium and any extensions cannot exceed a total of two years.

At the October 4, 2011 Board of Supervisors hearing, the Board directed the Planning and Development Department to return to the Board with a ban on MMDs prior to the expiration of the moratorium on December 6, 2011.

There were four known open MMDs in the unincorporated area at the time the County's moratorium was enacted in January 2010. Two of four storefronts have since closed: Helping Hands Wellness Center due to a criminal investigation by the Sheriff and the Central Coast Collective as a

result of a zoning enforcement investigation.¹ There are currently two known operating MMDs 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.²

2. State Regulation

The proposed ordinance amendments provide consistency with state law, Attorney General Guidelines, and California court rulings.

For a discussion of existing state law discussed previously and enacted prior to the January 1, 2011, please see the County Planning Commission Staff Report (Attachment F). Below is a summary of new medicinal marijuana legal developments in California.

AB 1300- goes into effect on January 1, 2012 and would:

- Allow for local governing bodies to regulate the location, operation, or establishment of a medical marijuana cooperative or collective.
- Reinforces the County's authority to regulate and enforce the location, operation, and establishment of storefront collectives.

Ryan Pack et al. v. the Superior Court of Los Angeles County (2011) Case No. B228781- The Second District Court of Appeals issued a decision on October 4, 2011 that overturned the City of Long Beach's ordinance permitting medical marijuana collectives. The court ruled that the city's ordinance goes beyond decriminalization and that portions of the city's permit scheme are pre-empted by federal law.³

3. 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.⁴ 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 drugs⁵ and that the federal government has the power to prohibit the local cultivation and use of marijuana that would be allowed under California law.⁶

Additionally, the Department of Justice has recently begun enforcing federal law as it relates to medical marijuana; for details please see the October 7, 2011 Department of Justice Press Release (Attachment H).

Processing

The Montecito Planning Commission reviewed the proposed ordinance amendments ban under their purview on October 19, 2011. No members of the public attended or gave input on this item. At this hearing, the Montecito Planning Commission voted 4-0 to adopt a resolution recommending that the

¹ 11ZEV-0000-00001. Both the Helping Hand Wellness Center and the Central Coast Collective were located at 4141 State Street.

² 10ZEV-00000-00142

³ Ryan Pack et al. v. the Superior Court of Los Angeles County (2011) Case No. B228781.

⁴ 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).)

⁵ *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483

⁶ *Gonzales v. Raich* (2005) 545 U.S. 1

Board of Supervisors approve the MLUDC ordinance amendments (See Attachment D,) and recommended approval of the Article II (Coastal) ordinance amendments.

The County Planning Commission reviewed the proposed ordinance amendments to the LUDC and Article II (Coastal) on October 19, 2011. At this hearing the County Planning Commission voted 5-0 to adopt two resolutions (included in Attachment C and Attachment E) recommending Board of Supervisors approval of the ordinances as proposed. (See Attachments C-E.)

In addition to the public hearing notices, information was also posted on the Planning and Development Department website for additional public notification.

The amendments would be effective 30 days after adoption, and if adopted on November 1, 2011 would be effective prior to expiration of the existing moratorium on MMDs on December 6, 2011.

Fiscal and Facilities Impacts:

Budgeted: Yes

Funding for this ordinance amendment work effort is budgeted in the Planning Support program of the Long Range Planning Division on page D-312 of the adopted Planning and Development Department's budget for fiscal year 2011-12, and is under Program 4020: General Plan Amendments. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall send a copy of the signed and numbered ordinance and minute order to the Planning and Development Department, attention Holly Bradbury

Attachments:

- A) Findings
- B) Notice of Exemption
- C) County LUDC Amendments:
 - a. Clean Copy (Exhibit 1.1)
 - b. PC Resolution and Ordinance – Tracked Changes
- D) Montecito LUDC Amendments:
 - a. Clean Copy (Exhibit 1.2)
 - b. MPC Resolution and Ordinance – Tracked Changes
- E) Coastal Zoning Ordinance Amendments:
 - a. Clean Copy (Exhibit 2)
 - b. PC Resolution and Ordinance – Tracked Changes
- F) County Planning Commission Staff Report dated October 12, 2011
- G) Montecito Planning Commission Staff Report dated October 12, 2011 (w/o attachments)
- H) DOJ Press Release, October 7, 2011

Authored by:

Holly Bradbury, Planner, Planning and Development Department, (805) 568-3577