

ATTACHMENT A

Ordinance No. _____

AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF SANTA BARBARA
ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT AND
OPERATION OF MEDICAL MARIJUANA DISPENSARIES PURSUANT TO
GOVERNMENT CODE SECTION 65858

WHEREAS, under the federal Controlled Substances Act, marijuana is a Schedule I drug and the manufacture, distribution, or possession of marijuana is a criminal offense; and

WHEREAS, in 1996, California voters passed Proposition 215, the Compassionate Use Act (CUA) to ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes; and

WHEREAS, in 2003, the California legislature passed Senate Bill 420, the Medical Marijuana Program, Health and Safety Code sections 11362.7 et. seq., to clarify the scope of the CUA and to allow cities and counties to adopt and enforce rules and regulations on medical marijuana consistent with SB 420 and the CUA; and

WHEREAS there is a conflict between federal and state law and the United States Supreme Court addressed this conflict in two cases: *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483 [holding that there is no medical necessity exception to the Controlled Substances Act prohibition of the manufacture and distribution of various drugs] and *Gonzales v. Raich* (2005) 545 U.S. 1. [holding that under the Commerce Clause the federal government has the power to prohibit the local cultivation and use of marijuana in compliance with California law]; and

WHEREAS the County of Santa Barbara Land Use and Development Code provides that when a use is not specifically enumerated it is prohibited, and medical marijuana dispensaries are not an enumerated use in the Land Use and Development Code; and

WHEREAS, in August 2008, the California Attorney General published the Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use which concluded that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful in California; and

WHEREAS the legal framework in California is continuously changing due to recent case law including *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, and a decision is expected in *Qualified Patients Association v. City of Anaheim* (G040077, app. pending, argued September 23, 2009) in spring/summer 2010; and

WHEREAS on December 8, 2009, the Board of Supervisors heard testimony from the County Sheriff, Probation Department and the public that the establishment of medical marijuana dispensaries have resulted in negative and harmful secondary effects such as increased crime; and

WHEREAS the California Police Chiefs Association's Task Force on Medical Marijuana Dispensaries prepared a White Paper on Marijuana Dispensaries dated April 22, 2009 that identifies and discusses in detail, including case studies, the adverse secondary effects of marijuana dispensaries and similarly operating cooperatives including armed robberies and murders; burglaries; traffic, noise and drug dealing; organized crime, money laundering and firearms violations; and, poisonings, both intentional and unintentional; and

WHEREAS on January 19, 2010, the Board of Supervisors adopted Ordinance 4739, An Interim Urgency Ordinance of the County of Santa Barbara on Establishing a Moratorium on the Establishment and Operation of Medical Marijuana Dispensaries Pursuant to Government Code Section 65858.

NOW, THEREFORE, THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA BARBARA, ORDAINS AS FOLLOWS:

SECTION 1: The purpose of this interim urgency ordinance is to extend Ordinance 4739 for ten months and fifteen days, extending the moratorium on the approval of any use permits, variances, building permits or other applicable entitlements for the establishment or operation of medical marijuana dispensaries in the County of Santa Barbara for the immediate preservation of public health, safety and welfare.

SECTION 2: For purposes of this ordinance, the terms defined below shall have the following meaning:

A. "Marijuana" shall have the meaning set forth in Health and Safety Code section 11018 as that section now appears and may be amended or renumbered.

B. "Medical marijuana" shall mean marijuana used for medical purposes where that medical use has been recommended or prescribed by an attending physician.

C. "Medical marijuana dispensary" shall mean a storefront facility or location that is organized and operated by a collective or cooperative that dispenses medical marijuana to its members who are qualified patients, persons with an identification card, or primary caregivers as described by the California Attorney General on page 11 of the August 2008 Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use. (AG Guidelines) (Dispensaries that are retail establishments that not operated by and for collectives and cooperatives or do not substantially comply with the AG Guidelines are likely to be operating outside the authority of Proposition 215 (Health and Safety Code section 11362.5) and the Medical Marijuana Program (Health and Safety Code sections 11362.7 et seq.) and the operators of such dispensaries may be subject to arrest and criminal prosecution under California law.)

D. "Qualified patient," "attending physician," "person with an identification card," and "primary caregiver" shall have the meanings set forth in Health and Safety Code section 11362.7 as that section now appears and may be amended or renumbered.

SECTION 3: The Board of Supervisors hereby finds and determines as follows:

A. California cities and counties that have permitted the establishment of medical marijuana dispensaries have found that such dispensaries have resulted in adverse secondary effects including armed robberies and murders; burglaries; traffic, noise and drug dealing; organized crime, money laundering and firearms violations; and, poisonings, both intentional and unintentional.

B. Numerous California cities and counties, including all of the cities in the County of Santa Barbara, have adopted ordinances prohibiting or heavily regulating medical marijuana dispensaries. This increases the likelihood of medical marijuana dispensaries establishing or relocating in the County of Santa Barbara.

C. The County of Santa Barbara Land Use and Development Code provides that when a use is not specifically enumerated it is prohibited, and medical marijuana dispensaries are not an enumerated use in the Land Use and Development Code.

D. The County of Santa Barbara currently has four medical marijuana dispensaries located within the unincorporated area that did not receive permits, and the Planning and Development Department has received inquiries and/or permit requests for many of the urban areas within the County's jurisdiction including Old Town Orcutt, Orcutt, Santa Ynez, Los Olivos, Eastern Goleta and Summerland, although no permits have been processed.

E. There is a conflict between federal and state law and the United States Supreme Court addressed this conflict in two cases: *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483 [holding that there is no medical necessity exception to the Controlled Substances Act prohibition of the manufacture and distribution of various drugs] and *Gonzales v. Raich* (2005) 545 U.S. 1. [holding that under the Commerce Clause the federal government has the power to prohibit the local cultivation and use of marijuana in compliance with California law].

F. The legal framework in California is continuously changing due to recent case law including the *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418 and *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, and a decision is expected in *Qualified Patients Association v. City of Anaheim* (G040077, app. pending, argued September 23, 2009) in spring/summer 2010.

G. To address this conflict between state and federal law and the potential concerns surrounding medical marijuana dispensaries, it is necessary for the County of Santa Barbara to study legal framework of medical marijuana dispensaries, the potential impacts that such dispensaries may have on the public health, safety, and welfare, and evaluate potential amendments to the County of Santa Barbara Land Use and Development Code.

H. Based upon the foregoing, the Board of Supervisors finds that there is a current and immediate threat to public health, safety and welfare and that approval of any use permits, variances, building permits or other applicable entitlements for the establishment or operation of medical marijuana dispensaries in the County of Santa Barbara would result in this threat to public health, safety and welfare. Therefore, a temporary moratorium on the approval and issuance of such use permits, variances, building permits or other applicable entitlements is necessary.

SECTION 4: Measures Taken to Alleviate the Conditions that Led to the Adoption of Ordinance 4739:

Pursuant to Government Code Section 65858(d), the Board of Supervisors reports that following adoption of Ordinance 4739 on January 19, 2010, the County has initiated research on the actions of other jurisdictions with respect to medical marijuana dispensaries. Planning and Development, the Sheriff and County Counsel have been requested to examine alternatives and provide an evaluation of regulating or banning MMDs. Staff has begun designing the work plan and has enumerated the MMD ordinance work in the Planning and Development Work Program for FY 2010-11.

SECTION 5: The Board of Supervisors hereby enacts this interim urgency ordinance by not less than four-fifths vote, and in light of the findings set forth in Section 3 of this ordinance, under the authority granted to it by Article XI, Section 7 of the California Constitution and Government Code section 65858 which allows the Board to adopt an interim urgency ordinance to protect public safety, health and welfare, prohibiting any uses that may be in conflict with a zoning proposal that the County is considering or studying or intends to study within a reasonable time.

SECTION 6: The Board of Supervisors hereby directs the Planning and Development Department to consider and study possible means to regulate or prohibit medical marijuana dispensaries, including possible amendments to the Land Use and Development Code, and enacts a moratorium during which medical marijuana dispensaries shall not be approved through either the approval or issuance of permits or by Use Determination of the County Planning Commission or the Montecito Planning Commission.

SECTION 7: The Board of Supervisors finds that this interim ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) [activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15060(c)(3) [activity is not a project as defined in Section 15378]. The ordinance has no potential for resulting in a physical change to the environment directly or indirectly as it prevents change to the environment pending completion of the County's contemplated research and study.

SECTION 8: If any provision of this ordinance or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provisions of this ordinance which can be given effect without the invalid provision or application. To this

end, the provisions of this ordinance are severable. The Board of Supervisors hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 9: This ordinance shall take effect and be in full force immediately upon adoption by at least a four-fifths vote of the Board of Supervisors and shall be in effect for ten months and fifteen days from the date of adoption unless extended by the Board of Supervisors pursuant to Government Code section 65858.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2010, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

JANET WOLF
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

MICHAEL F. BROWN
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

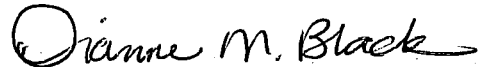
By *Rachel Jan Muller*
Deputy County Counsel

ATTACHMENT B

NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Dianne Black, Planning & Development



The activity identified below is determined to be exempt from further environmental review requirements of the California Environmental Quality Act (CEQA) of 1970, as defined in the State and County Guidelines for the implementation of CEQA.

Title: AN INTERIM URGENCY ORDINANCE OF THE COUNTY OF SANTA BARBARA ESTABLISHING A MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES PURSUANT TO GOVERNMENT CODE SECTION 65858

Description: An interim urgency ordinance establishing a moratorium throughout the County of Santa Barbara during which medical marijuana dispensaries shall not be approved through either the approval or issuance of permits or by Use Determination of the County Planning Commission or the Montecito Planning Commission. During the moratorium, Planning and Development will consider and study possible means to regulate or prohibit medical marijuana dispensaries, including possible amendments to the Land Use and Development Code.

Name of Public Agency: County of Santa Barbara

Cite specific CEQA and/or CEQA Guideline Section: CEQA Guidelines section 15060(c)(2) and 15060(c)(3).

Reasons to support exemption findings: The interim urgency ordinance is exempt from CEQA pursuant to CEQA Guidelines sections 15060(c)(2) [activity will not result in a direct or reasonably foreseeable indirect physical change in the environment] and 15060(c)(3) [activity is not a project as defined in Section 15378]. The ordinance has no potential for resulting in a physical change to the environment directly or indirectly as it prevents change to the environment pending completion of the County's contemplated research and study.

Lead Agency Contact Person: Dianne Black, Development Services Director
Phone: 568-2000

Acceptance Date: February 16, 2010

Date Filed by County Clerk: February 16, 2010

