



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: October 4, 2011
Placement: Departmental
Estimated Time: 60 min.
Continued Item: No
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 Collective/Cooperative (MMC) 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. 10ORD-00000-00007, 11ORD-00000-00020, and 11ORD-00000-00021 which would amend the County Land Use and Development Code, Montecito Land Use and Development Code, and the Coastal Zoning Ordinance regarding commercial Medical Marijuana Collective/Cooperative (MMC) Storefronts, and take the following actions:

A. Case No. 10ORD-00000-00007 (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. 10ORD-00000-00007, 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).

B. Case No. 11ORD-00000-00020 (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-00000-00020, 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).

C. Case No. 11ORD-00000-00021 (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-00000-00021, and adopt an ordinance amending Article II, the Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code (Attachment E).

Summary:

Background:

1. 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 an initial 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 to December 6, 2011. Government Code Section 65858 provides that a moratorium and any extensions cannot exceed a total of two years.

Concurrently with the extension of the moratorium on December 7, 2010 the Board of Supervisors directed the Planning and Development Department to return to the Board with a report on the county's efforts concerning the moratorium and "provide recommendations as appropriate". Subsequently the Planning and Development Work Program for FY 2010-2011 and FY 2011-2012 was approved, which outlines the Medical Marijuana Ordinance development process. In response to the Board's requests, Planning and Development met with interested parties and researched recent case law, other jurisdictions' regulations, and analyzed available alternatives. As a result of Planning and Development's evaluation of options for regulating MMC Storefronts, the attached draft regulations are proposed for review and adoption by the Board of Supervisors.

There were four known open MMC Storefronts 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 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.²

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

Other non-storefront collectives/cooperative operate in the County, include the Patriots Collective located out of a home in Isla Vista and the Maria Ignacio Farm Collective operating out of a home on San Marcos Road.

2. State Regulation

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

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.

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.³

Recent Legislation

Two pieces of recent legislation are summarized below:

AB 1300: Passed by the legislature and signed by the Governor; goes into effect on January 1, 2012. It amends the Health and Safety Code Section 11362.83 to regulate the location, operation, or establishment of a medical marijuana cooperative or collective. AB 1300 reinforces the County’s authority to adopt a local ordinance regulating the location, operation, and establishment of storefront collectives and cooperatives and the County’s authority to enforce that ordinance.

³ 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)

- SB 847: Passed by the legislature, and if signed by the Governor, would go into effect on January 1, 2012. It would require a 600-foot residential buffer from Storefronts, unless local agencies adopt a less restrictive buffer, such as the proposed 300-foot buffer from residential and mixed-use zone districts.

The proposed amendments would be consistent with both AB 1300 and SB 847.

Processing

The intent of the proposed ordinances is two-fold: to offer protection for sensitive uses; and to provide for the medical needs of County residents.

The Planning and Development Department recommendations are based on detailed review of feasible regulatory approaches for MMC Storefronts and on collaboration with other County Departments. The purpose of the ordinances is to institute regulations that specify and clarify conditions under which an MMC Storefront may be established under zoning, thereby protecting the needs of both medical marijuana patients and County residents. The draft ordinances require that potential MMC storefronts obtain a Conditional Use Permit, and conform to specific buffer criteria and development standards. (Please see Attachments C-E.) The proposed ordinances do not address items outside the usual scope of land use and zoning such as the personal traits or history of operators or the possession, transportation or potential criminal aspects that may be related to such uses. Whereas the Planning and Development Department is responsible for enforcement of regulations within the purview of zoning, Environmental Health Services and the Sheriff's Department enforce violations of food safety and criminals laws, respectively.

In addition to interdepartmental collaboration with Environmental Health Services, the County Sheriff and other agencies, an informal public workshop was held on August 22, 2011 which provided an additional opportunity for public input. Three members of the public attended and asked questions of a clarifying nature.

The Montecito Planning Commission reviewed the proposed ordinance amendments under their purview on August 24, 2011. No members of the public attended or gave input on this item. At this hearing the Montecito Planning Commission adopted a resolution recommending that the Board of Supervisors approve the MLUDC ordinance amendment (See Attachment D,) and recommended approval of the Article II (Coastal) ordinance amendments. The Montecito Planning Commission's action also included a recommendation for minor formatting changes to the ordinance amendments.

The County Planning Commission reviewed the proposed ordinance amendments to the LUDC and Article II (Coastal) at its hearing on September 7, 2011. Several members of the public attended and eight gave public testimony, all of which provided comments in support of safe access to medical marijuana. At this hearing the County Planning Commission adopted 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 workshop, public hearing notices, and display ads, the ordinance amendment project information was also posted on the Planning and Development Department website for additional public notification.

Project Summary

The proposed ordinances are intended to protect sensitive uses, yet provide for medical needs. The draft ordinances propose that 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 subject to specific criteria, and development standards specific to the use, as well as, compliance with all other requirements of a CUP. The proposed zoning and buffer requirements are summarized below:

Proposed MMC Storefront CUP Requirements		
Requirement	Location/Buffer	New/Amended Chapter 35 Section
Allowed Zone Districts	C-1: Limited Commercial C-2: Retail Commercial C-3: General Commercial	LUDC 35.24.030 MLUDC 35.424.030/35.42.195 ⁴ Art II 35-77A.4./35-78.4
Minimum Buffer from Any Other Legal MMC Storefront	1500 feet (Parcel to Parcel)	LUDC 35.42.195.B.1 Article II 35-172.13.6.B
Minimum Buffer from Schools, Parks, and Daycares	1000 feet (Parcel to Parcel)	LUDC 35.42.195.B.2 Article II 35-172.13.6.B
Minimum Buffer from Residential and Mixed-Use Zones and Overlay	300 feet (Parcel to Building)	LUDC 35.42.195.B.3 Article II 35-172.13.6.B
Minimum Buffer from Any Legal Conforming Dwelling Unit	100 feet (Building to Building)	LUDC 35.42.195.B.4 Article II 35-172.13.6.B
Maximum MMC Storefronts per Lot	1	LUDC 35.42.195.B.5 Article II 35-172.13.6.B

As proposed, application of the minimum residential and facilities buffers would result in approximately 34 total eligible sites County-wide; however with the additional application of a 1500-foot minimum buffer between MMC Storefronts, that total of 34 total eligible sites would be reduced further to an estimated maximum of approximately seven potential storefronts. Based on the proposed buffers and zoning, potential MMC sites would be distributed regionally and within the following unincorporated communities:

- Santa Barbara
- Eastern Goleta Valley
- Lompoc
- Orcutt
- New Cuyama

All the sites are in the Inland Area. Based on an analysis, staff believes all the sites are commercially feasible. For more detail on possible sites, see Attachment F, *County Planning Commission Staff Report*.

Staff considered many different scenarios with differing locations and buffer criteria. However, altering one criteria often resulted in the ordinances no longer meeting both of the intents. An outright ban on MMC Storefronts would clearly not meet the intention of providing for medical marijuana. In addition, no court of appeal has upheld a ban on MMC Storefronts.

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

⁴ There are no C-1, C-2, C-3 zone districts in the Inland Montecito LUDC

budget for fiscal year 2011-12, and is under Program. 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)
 - b. PC Resolution and Ordinance – Tracked Changes
- D) Montecito LUDC Amendments:
 - a. Clean Copy (Exhibit 2)
 - b. MPC Resolution and Ordinance – Tracked Changes
- E) Coastal Zoning Ordinance Amendments:
 - a. Clean Copy (Exhibit 3)
 - b. PC Resolution and Ordinance – Tracked Changes
- F) County Planning Commission Staff Report dated August 23, 2011
- G) Montecito Planning Commission Staff Report dated August 15, 2011 (w/o attachments)
- H) Public Comment Letters

Authored by:

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

cc:

June Pujo, Supervising Planner, Planning and Development

G:\GROUP\COMP\Ordinances\Medical Marijuana Ordinance\Adoption\BOS\10.4.11 BOS Hrg\Hearing Letter_100411.docx