

MONTECITO PLANNING COMMISSION
Staff Report for Medical Marijuana Dispensary Ordinance

Hearing Date: October 19, 2011

Staff Report Date: October 12, 2011

Case Nos.: 11ORD-00000-00030

11ORD-00000-00031

Environmental Document:

CEQA Guidelines Section 15061(b)(3) General Exemption

Division: Long Range Planning

Director: Jeff Hunt, AICP

Director Phone #: 568-2072

Staff Planner: Holly Bradbury

Planner's Phone #: 568-3577

1.0 REQUEST

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

- 1.1 Case No. 11ORD-00000-00030.** Adopt a resolution recommending that the Board of Supervisors adopt an ordinance (Case No. 11ORD-00000-00030) amending Division 35.2, Montecito Zones and Allowable Land Uses, Division 35.4, 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-00000-00031.** Recommendation that the County Planning Commission recommend that the Board of Supervisors adopt an ordinance (Case No. 11ORD-00000-00031) amending Division 2, Definitions and Division 7, General Regulations 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 prohibit Medical Marijuana Dispensaries (MMDs) County-wide. An MMD is a facility or location that provides medical marijuana through a storefront.

2.0 RECOMMENDATION AND PROCEDURES

- 2.1 Case No. 11ORD-00000-00030 (Montecito Inland).** Follow the procedures outlined below and recommend that the Board of Supervisors approve Case No. 11ORD-00000-00030 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 ordinance amendment (Attachment A);
 2. Recommend that the Board of Supervisors determine that this ordinance amendment 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-00000-00030, 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-00000-00031 (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-00000-00031 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 ordinance amendment (Attachment A);
2. Recommend that the County Planning Commission recommend that the Board of Supervisors determine that this ordinance amendment 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-00000-00031, 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-00000-00030

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-00000-00031

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 prohibit Medical Marijuana Dispensaries (MMDs) 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 ordinance amendments with the ban are scheduled to be heard by the Board of Supervisors on November 1, 2011. The amendments would be effective 30 days after adoption, and if adopted on November 1 would be effective prior to expiration of the existing moratorium on MMDs on December 6, 2011.

The previous iteration of the ordinance amendments went the Montecito Planning Commission on August 24, 2011 and the County Planning Commission on September 7, 2011. Montecito Planning Commission recommendations on the new proposed ban are required because proposed amendments would amend the Montecito LUDC and Article II. 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 package of ordinances to the Board of Supervisors for approval.

In response to the Board's requests, the Planning and Development Department drafted ordinances banning MMDs. The prohibition is based on evidence presented in findings at public hearings during the moratorium and adoption hearings,¹ conflict between federal and state law, and the *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries (Attachment E).

The proposed ordinance amendments would only prohibit storefront dispensaries as banned by 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.

5.0 PROJECT INFORMATION

5.1 Project Description

Under the proposed ordinances, Medical Marijuana Dispensaries (MMDs) would be prohibited in unincorporated Santa Barbara County. The proposed ordinance amendments include a new section specifically banning MMDs and adds definitions related to medical marijuana and MMDs.

The complete texts of the draft ordinance amendments are included as Attachments C and D. The following sections describe the proposed language changes to the Montecito Inland Zoning Ordinance (MLUDC) and the Coastal Zoning Ordinance (Article II):

¹ Board of Supervisors hearings on January 19, 2010; February 16, 2010; December 7, 2010; and October 4, 2011.

- 1) Changes to “Allowed Land Uses and Planning Permit Requirements” (Montecito LUDC 35.424.030.C) indicate that a MMD would not be an allowable use in any zone district and that a Use Determination cannot be approved for a MMD.
- 2) New zoning sections for “Medical Marijuana Dispensary” (Montecito LUDC 35.430.125/Article II Sec. 35-144I) would specifically prohibit MMDs.
- 3) New Definitions (Montecito LUDC 35.500/Article II Sec. 35-58) would be added to the glossary including the addition of the following terms:
 - Medical Marijuana
 - Medical Marijuana Dispensary

5.2 Background Information

5.2.1 Existing MMD

There were four known open MMDs in the unincorporated area at the time the County’s moratorium was enacted in January 2010. Two, both located in the Eastern Goleta Valley, have been closed: Helping Hand Collective due to criminal activity and Central Coast Collective as a result of zoning enforcement action. 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

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 any MMD 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 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.

5.2.3 State & Federal Regulation

Described below is a summary of the legal framework that regulates 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

² 10ZEV-00000-00142

- Encourage the federal and state governments to implement a plan to provide for 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 Cooperatives and Collectives; and
- Offer guidelines regarding the operation of Cooperatives and Collectives, including those operating as a dispensary and/or a storefront.

AB 1300 goes into effect on January 1, 2012. It amends the Health and Safety Code Section 11362.83 to allow for local governing bodies 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 collectives and cooperatives and the County's authority to enforce that ordinance.

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 preempted by federal law.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 F).

³ Ryan Pack et al. v. the Superior Court of Los Angeles County (2001) 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

6.0 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. No significant environmental impacts would occur as a result of these ordinance amendments prohibiting dispensaries as discussed in the Notice of Exemption, 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.

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.

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-00000-00030 Montecito LUDC Resolution and Proposed Ordinance
- D. 11ORD-00000-00031 Article II Proposed Ordinance

E. *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries

F. Department of Justice Press Release, October 7, 2011

This page is intentionally blank.

Attachment A

This page is intentionally blank.

ATTACHMENT A: FINDINGS

1.0. CEQA FINDINGS

1.1 CEQA Guidelines Exemption Findings

1.1.1 The Montecito Planning Commission finds, and recommends that the Board of Supervisors find that the proposed project, 11ORD-00000-00030 and recommends that the Planning Commission recommend that the Board of Supervisors approval of 11ORD-00000-00031, is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15061(b)(3). Please see Attachment B, Notice of Exemption.

2.0 ADMINISTRATIVE FINDINGS.

2.1 Montecito Land Use and Development Code Findings (11ORD-00000-00030)

In compliance with Section 35.494.060 (Findings Required for Approval of Amendment) of the Santa Barbara County Montecito Land Use and Development Code (Montecito LUDC), the following findings shall be made to approve a text amendment to the Montecito LUDC:

2.1.1 The request is in the interests of the general community welfare.

Since the Passage for the Compassionate Use Act in 1996 a proliferation of storefront dispensaries has occurred in California and in Santa Barbara County creating the need for regulating these new uses in zoning. Medical Marijuana Dispensary (MMD) storefronts have, according to the Sheriff's Office, resulted in negative and harmful secondary effects, including criminal activity. County-wide, several unregulated MMD storefronts have with been shut down or are under investigation for sale of illegal drugs, money laundering, and illegal firearms.⁷ The proposed ordinance prohibition would be enacted as a health and safety measure pursuant to the County's police power and would prohibit the permitting of MMDs throughout the county. Currently there is a moratorium which expires in December 2011. If the proposed amendments are not adopted, since MMDs are not an enumerated use in the zoning ordinances, applicants would be able to apply for similar use determinations in any zone throughout the County after the moratorium expires.

The MMD prohibition is initiated based on evidence presented at public hearings during the interim moratorium and ordinance adoption process,⁸ conflict between state and federal law, and the *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries.

⁷ County Sheriff testimony at the Board of Supervisors December 8, 2009.

⁸ Board of Supervisors hearings on January 19, 2010; February 16, 2010; and December 7, 2010, and October 4, 2011.

The proposed ordinance amendments prohibiting MMDs are in the interest of the general community welfare since the Montecito LUDC amendments would ban MMDs thus preserving community values, environmental quality, and public health and safety.

The proposed ordinance amendments would not affect non-storefront collectives and cooperatives, which could continue to provide access to medical marijuana as allowed under the Compassionate Use Act and as regulated by other laws. As discussed in Section 5.2.3 of the staff report, and incorporated herein by reference, the ban of MMDs is consistent with federal law.

2.1.2 The request is consistent with the Comprehensive Plan, the requirements of State planning and zoning laws, and the Montecito Land Use and Development Code. If the Amendment involves an Amendment to the Local Coastal Program, then the request shall also be found to be consistent with the Coastal Land Use Plan.

Adoption of the proposed prohibition would allow continued implementation of existing State health and safety, planning, and zoning laws. If no amendments are adopted and the existing moratorium expires in December, applicants would be able to apply for similar use determinations in any zone throughout the County. The proposed ordinance would not result in any inconsistencies with the adopted policies and development standards of the Comprehensive Plan, including the Montecito Community Plan, and would allow the County to protect public health and safety.

The proposed ordinance amendments are also consistent with the remaining portions of the Montecito LUDC that would not be revised by this ordinance. Therefore, this ordinance may be found consistent with the Comprehensive Plan including the Montecito Community Plan, the requirements of state law, and the Montecito LUDC.

The proposed Montecito LUDC amendments would not affect the Coastal Land Use Plan or Article II.

2.1.3 The request is consistent with good zoning and planning practices.

The proposed ordinance is consistent with sound zoning and planning practices by instituting regulations for land uses for the overall protection of the environment and community values, and public health and safety. As discussed in Finding 2.1.2, above, the amendments are consistent with the Comprehensive Plan, including the Montecito Community Plan, and the Montecito LUDC.

2.2 Article II Coastal Zoning Ordinance Findings (11ORD-00000-00031)

In compliance with Section 35-180.6 of the Santa Barbara County Article II Coastal Zoning Ordinance, the following findings shall be made in order to recommend approval of a text amendment to Article II.

2.2.1 The request is in the interests of the general community welfare.

Since the Passage for the Compassionate Use Act in 1996 a proliferation of MMDs has occurred in California and in Santa Barbara County creating the need for regulating these new uses in zoning. These MMDs have, according to the Sheriff's Office, resulted in negative and harmful secondary effects, including criminal activity. County-wide, several unregulated MMDs have with been shut down or are under investigation for sale of illegal drugs, money laundering, and illegal firearms.⁹ The proposed ordinance prohibition would be enacted as a health and safety measure pursuant to the County's police power and would prohibit the permitting of MMDs throughout the county. Currently there is a moratorium which expires December 6, 2011. If the proposed amendments are not adopted, since MMDs are not an enumerated use in the zoning ordinances, applicants would be able to apply for similar use determinations in any zone throughout the County after the moratorium expires.

The prohibition on MMDs is initiated based on evidence presented at public hearings during the interim moratorium and ordinance adoption process,¹⁰ conflict between state and federal law, and the *White Paper on Marijuana Dispensaries* by the California Police Chiefs Association's Taskforce on Marijuana Dispensaries.

The proposed ordinance amendments prohibiting MMDs are in the interest of the general community welfare since the Montecito LUDC amendments would ban Medical Marijuana Dispensaries thus preserving community values, environmental quality, and public health and safety.

The proposed ordinance amendments would not affect non-storefront collectives and cooperatives, which could continue to provide access to medical marijuana as allowed under the Compassionate Use Act and as regulated by other laws. As discussed in Section 5.2.3 of the staff report, and incorporated herein by reference, the ban of MMDs is consistent with federal law.

2.2.2 The request is consistent with the Comprehensive Plan, the Coastal Land Use Plan, the requirements of State planning and zoning laws and this Article.

Adoption of the proposed prohibition would allow continued implementation of existing State health and safety, planning, and zoning laws. If no amendments are adopted and the existing moratorium expires in December, applicants would be able to apply for similar use determinations in any zone throughout the County. The proposed ordinance would not

⁹ County Sheriff testimony at the Board of Supervisors December 8, 2009 and October 4, 2011.

¹⁰ Board of Supervisors hearings on January 19, 2010; February 16, 2010; and December 7, 2010 and October 4, 2011.

result in any inconsistencies with the adopted policies and development standards of the Comprehensive Plan, including the Montecito Community Plan and the Coastal Land Use Plan, and would allow the County to protect public health and safety.

The proposed ordinance amendments are also consistent with the remaining portions of the Montecito LUDC that would not be revised by this ordinance. Therefore, this ordinance may be found consistent with the Comprehensive Plan including the Montecito Community Plan, the requirements of state law, the Montecito LUDC, the Article II Coastal Zoning Ordinance.

2.2.3 The request is consistent with good zoning and planning practices.

The proposed project is consistent with sound zoning and planning practices to regulate land uses for the overall protection of the environment and community values, and public health and safety. As discussed in Finding 2.2.2, above, the amendments are consistent with the Comprehensive Plan including the Montecito Community Plan and Coastal Land Use Plan, and the Article II Coastal Zoning Ordinance.

Attachment B

This page is intentionally blank.

ATTACHMENT B: NOTICE OF EXEMPTION

TO: Santa Barbara County Clerk of the Board of Supervisors

FROM: Holly Bradbury, Project Manager, Planning and Development

The project or 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.

Case No.: 11ORD-00000-00030, 11ORD-00000-00031

Location: The proposed ordinance amendments would apply to all the unincorporated areas of the County within the jurisdiction of the County Land Use Development Code, Montecito Land Use Development Code, and the Coastal Zoning Ordinance (Article II).

Title: Marijuana Dispensary Ordinance

Description: The project proposes to amend the Santa Barbara County Land Use Development Code (LUDC), Montecito County Land Use Development Code (Montecito LUDC), and the Article II Coastal Zoning Ordinance to prohibit Medical Marijuana Dispensaries throughout County of Santa Barbara.

Exempt Status: (Check one)

- Ministerial
- Statutory
- Categorical Exemption
- Emergency Project
- No Possibility of Significant Effect Section 15061(b)(3)

Cite specific CEQA and/or CEQA Guideline Section: CEQA Guidelines Section 15061(b)(3)-No possibility of significant effect.

Reasons to support exemption findings: The ordinance is exempt from CEQA pursuant to CEQA Guidelines sections 15061(b)(3) [activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment]. The proposed ordinance has no potential for resulting in a physical change to the environment directly or indirectly as it prohibits Medical Marijuana Dispensaries and would not result in an increase in permitted densities or modifications to resource protection policies. The proposed ordinance amendments would prevent permitting of any new MMD and would minimize potential adverse impacts to the surrounding area and ensure consistency with California Government Code requirements. Therefore, no significant environmental impacts would occur as a result of the ordinance amendments.

Lead Agency Contact Person: Holly Bradbury, Project Manager, Long Range Planning

Phone: (805) 568-3577

Acceptance Date:

Date Filed by County Clerk:

Attachment C

This page is intentionally blank.

ATTACHMENT C: RESOLUTION AND PROPOSED MLUDC ORDINANCE

RESOLUTION OF THE SANTA BARBARA COUNTY MONTECITO PLANNING
COMMISSION
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

IN THE MATTER OF RECOMMENDING TO THE)
BOARD OF SUPERVISORS THE ADOPTION OF)
AN AMENDMENT TO SECTION 35-2 OF) RESOLUTION NO.: 11 - ____
CHAPTER 35 OF THE COUNTY CODE, THE)
SANTA BARBARA COUNTY MONTECITO) CASE NO.: 11ORD-00000-00030
LAND USE AND DEVELOPMENT CODE,)
REGARDING MEDICAL MARIJUANA)
DISPENSARIES)

WITH REFERENCE TO THE FOLLOWING:

- A. California state law, including the Compassionate Use Act of 1996 (CUA) and the Medical Marijuana Program Act of 2003 (MMP), grants seriously ill Californians access to marijuana for medical purposes and provides an affirmative legal defense against prosecution for cultivating, possessing, consuming, transporting, processing, or selling medical marijuana.
- B. The 2008 Attorney General Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use attempted to provide some guidance for local jurisdictions and law enforcement officials regarding implementation and regulation of the resultant Medical Marijuana Program, but currently state law contains no regulations defining MMDs.
- C. The County of Santa Barbara Code of Ordinances regulates, among other things, the uses, location, and operation of commercial activities but currently does not include permanent regulations for Medical Marijuana Dispensaries.
- D. The Board of Supervisors is concerned with the potential proliferation of MMDs within the County. This concern is based on expert and citizen testimony at public hearings (Board of Supervisors hearings on January 19, 2010; February 16, 2010; December 7, 2010; and October 4, 2011), the experience of cities within the County, and studies from other jurisdictions and from law enforcement agencies.
- E. The Board of Supervisors enacted an Interim Urgency Ordinance (Ordinance Nos. 4739, 4743, 4770) establishing a moratorium on the establishment and operation of MMDs, in order to provide staff with adequate time to study and recommend options for addressing MMDs in the County unincorporated area.

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The above recitations are true and correct.

2. In compliance with the provisions of Section 65855 of the Government Code, this Montecito Planning Commission recommends that the Board of Supervisors of the County of Santa Barbara, State of California, following the required noticed public hearing, adopt 11ORD-00000-00030, based on the findings included as Attachment A of the Montecito Planning Commission staff report dated October 12, 2011.
3. A certified copy of this resolution shall be transmitted to the Board of Supervisors.
4. The Chair of this Montecito Planning Commission is hereby authorized and directed to sign and certify all maps, documents, and other materials in accordance with this resolution to show the above-mentioned action by Montecito Planning Commission.

PASSED, APPROVED AND ADOPTED this day, October 19, 2011 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

JACK OVERALL, Chair
Montecito Planning Commission

ATTEST:

DIANNE MEESTER BLACK
Secretary to the Commission

APPROVED AS TO FORM:

DENNIS A. MARSHALL
COUNTY COUNSEL

By _____
Deputy County Counsel

EXHIBIT:

1.2 11ORD-00000-00030, Montecito Land Use Development Code

EXHIBIT 1.2

ORDINANCE NO. _____

AN ORDINANCE AMENDING SECTION 35-2, THE MONTECITO LAND USE AND DEVELOPMENT CODE, OF CHAPTER 35, ZONING, OF THE COUNTY CODE BY AMENDING DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE USES, DIVISION 35.4, MONTECITO STANDARDS FOR SPECIFIC LAND USE, AND DIVISION 35.10, GLOSSARY, TO IMPLEMENT NEW REGULATIONS PROHIBITING MEDICAL MARIJUANA DISPENSARIES.

Case No. 11ORD-00000-00030

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 35.2, MONTECITO ZONES AND ALLOWABLE LAND USES, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend the Section 35.420.030 (Allowable Development and Planning Permit Requirements), of Chapter 35.420 (Development and Land Use Approval Requirements), to read as follows:

35.420.030 - Allowable Development and Planning Permit Requirements

- A. Allowable land uses.** The land uses allowed by this Development Code in each zone and overlay zone are listed in Chapters 35.421 through 35.428, together with the type of planning permit required for each use. Each listed land use type is defined in Division 35.10 (Glossary).
- 1. Establishment of an allowable use.** Any land use identified by Chapter 35.421 through Chapter 35.428 as being allowable within a specific zone may be established on any lot within that zone, subject to the planning permit requirements of Subsection B. (Permit requirements) below and compliance with all applicable requirements of this Development Code.
 - 2. Use not listed.** A land use not listed in Chapter 35.421 through Chapter 35.428 or not shown in the table of allowable land uses and permit requirements for a particular zone is not allowed, except as otherwise provided in Subsection A.3 (Similar and compatible use may be allowed) below.
 - 3. Similar and compatible use may be allowed.** In the following zones the Montecito Commission may determine that a proposed use not listed in this Division is allowable in compliance with Section 35.472.170 (Use Determinations):
 - a. Applicable zones:**
 - (1) CN (Neighborhood Commercial)

- (2) PU (Public Utilities)
- (3) REC (Recreation)
- (4) TC (Transportation Corridor)

- b. Applicable standards and permit requirements.** When the Montecito Commission determines that a proposed but unlisted use is similar to a listed allowable use, the proposed use will be treated in the same manner as the listed use in determining where it is allowed, what permits are required, and what other standards and requirements of this Development Code apply.
- c. Medical Marijuana Dispensaries.** Medical Marijuana Dispensaries are not allowed in any zone district and shall not be approved through a Use Determination (Section 35.472.180).

SECTION 2:

DIVISION 35.4, MONTECITO STANDARDS FOR SPECIFIC LAND USES, of Section 35-2, the Santa Barbara Montecito County Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Chapter 35.430, Montecito Standards for Specific Land Uses, to add a new Section 35.430.125 titled “Medical Marijuana Dispensaries” to read as follows:

35.430.125 – MEDICAL MARIJUANA DISPENSARIES (MMD)

Medical Marijuana Dispensaries Prohibited. Medical Marijuana Dispensaries are not allowed in any zone district and shall not be approved through a Use Determination (Section 35.472.170).

SECTION 3:

DIVISION 35.10, GLOSSARY, of Section 35-2, the Santa Barbara County Montecito Land Use and Development Code, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to amend Sections 35.500.020 (Definition of Specialized Terms and Phrases) of Chapter 35.500 (Definitions) to add new Medical Marijuana definitions to read as follows:

1. **Medical Marijuana.** Shall mean marijuana, as set forth in the California Health and Safety Code Section 11018 (as that Section now appears and may be amended or renumbered) as used for medical purposes, in compliance with Health and Safety Code Section 11362.5 et seq.
2. **Medical Marijuana Dispensary.** A facility or location that dispenses marijuana through a storefront, including but not limited to storefronts organized and operated by a collective or a cooperative as defined by the 2008 California Attorney General Guidelines or its successor.
 - a. **Medical Marijuana Cooperative.** Shall mean a statutory Cooperative which conducts its business for the mutual benefit of its members, 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.

- b. **Medical Marijuana Collective.** Shall mean 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.

SECTION 4:

All existing indices, section references, and figure and table numbers contained in Divisions 35.2, 32.4, and 35.10 of the Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, are hereby revised as appropriate to reflect the revisions enumerated above.

SECTION 5:

Except as amended by this Ordinance, Divisions 35.2, 35.4, and 35.10, of Article 35-2, the Montecito Land Use and Development Code, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 6:

This ordinance shall take effect and be in force 30 days from the date of its passage and before the expiration of 15 days after its passage a summary of it shall be published once together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2011, by the following vote:

AYES:
NOES:
ABSTAINED:
ABSENT:

JONI GRAY
Chair, Board of Supervisors
County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
Clerk of the Board of Supervisors

By _____
Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL
County Counsel

By _____
Deputy County Counsel

Attachment D

This page is intentionally blank.

EXHIBIT 2

ORDINANCE NO. _____

AN ORDINANCE AMENDING ARTICLE II, COASTAL ZONING ORDINANCE, OF CHAPTER 35 OF THE COUNTY CODE BY AMENDING DIVISION 2, DEFINITIONS, AND DIVISION 7, GENERAL REGULATIONS, TO IMPLEMENT NEW REGULATIONS PROHIBITING MEDICAL MARIJUANA DISPENSARIES.

Case No. 11ORD-00000-00031

The Board of Supervisors of the County of Santa Barbara ordains as follows:

SECTION 1:

DIVISION 2, DEFINITIONS, of the Article II Coastal Zoning Ordinance of Chapter 35 Zoning, of the Santa Barbara County Code, is amended to add new Medical Marijuana definitions as part of Section 35.58, to read as follows:

1. **Medical Marijuana.** Shall mean marijuana, as set forth in the California Health and Safety Code Section 11018 (as that Section now appears and may be amended or renumbered) as used for medical purposes, in compliance with Health and Safety Code Section 11362.5 et seq.
2. **Medical Marijuana Dispensary.** A facility or location that dispenses marijuana through a storefront, including but not limited to storefronts organized and operated by a collective or a cooperative as defined by the 2008 California Attorney General Guidelines or its successor.
 - a. **Medical Marijuana Cooperative.** Shall mean a statutory Cooperative which conducts its business for the mutual benefit of its members, 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.
 - b. **Medical Marijuana Collective.** Shall mean 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.

SECTION 2:

DIVISION 7, GENERAL REGULATIONS, of the Article II Coastal Zoning Ordinance, of Chapter 35, Zoning, of the Santa Barbara County Code, is amended to add a new Section (35-144I) Medical Marijuana Dispensaries), to read as follows:

35.144I – MEDICAL MARIJUANA DISPENSARIES (MMD)

Medical Marijuana Dispensaries Prohibited. Medical Marijuana Dispensaries are not allowed in any zone district and shall not be considered similar use under Division 4, Zone Districts

(Sections 35-68 through 35-93A).

SECTION 3:

All existing indices, section references, and figure and table numbers contained in Division 2 and Division 7, of Article II, Coastal Zoning Ordinance, of Chapter 35, Zoning, of the County Code, are hereby revised and renumbered as appropriate to reflect the revisions enumerated above.

SECTION 4:

Except as amended by this Ordinance, Division 2 and Division 7 of Article II, of Chapter 35, Zoning, of the County Code, shall remain unchanged and shall continue in full force and effect.

SECTION 5:

This ordinance and any portion of it approved by the Coastal Commission shall take effect and be in force 30 days from the date of its passage or upon the date that it is certified by the Coastal Commission pursuant to Public Resources Code 30514, whichever occurs later; and before the expiration of 15 days after its passage, it, or a summary of it, shall be published once, together with the names of the members of the Board of Supervisors voting for and against the same in the Santa Barbara News-Press, a newspaper of general circulation published in the County of Santa Barbara.

PASSED, APPROVED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this ____ day of _____, 2011, by the following vote:

- AYES:
- NOES:
- ABSTAINED:
- ABSENT:

JONI GRAY
 Chair, Board of Supervisors
 County of Santa Barbara

ATTEST:

CHANDRA L. WALLAR
 Clerk of the Board of Supervisors

By _____
 Deputy Clerk

APPROVED AS TO FORM:

DENNIS A. MARSHALL

County Counsel

By _____
Deputy County Counsel

Attachment E

This page is intentionally blank.