

Article X. - Establishment and Operation of **Medical Marijuana** Dispensaries

Sec. 18-75. - Purpose.

The purpose of interim urgency Ordinance 4770 is to extend the moratorium enacted by Ordinance 4743 for a period of one year, 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.

(Ord. No. 4739, § 1, 1-19-2010; Ord. No. 4743, § 1, 2-23-2010; Ord. No. 4770, § 1, 12-7-2010)

Sec. 18-76. - Definitions.

For purposes of this article, 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 are 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.

(Ord. No. 4739, § 2, 1-19-2010; Ord. No. 4743, § 2, 2-23-2010; Ord. No. 4770, § 2, 12-7-2010)

Sec. 18-77. - Findings of board.

The board of supervisors hereby finds and determines as follows:

A.

Several 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. In the City of Santa Barbara, a new regulating ordinance was adopted in the last year, but Measure T on the November ballot may be overturned, thereby prohibiting MMDs in the City of Santa Barbara. This would increase 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 provide 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 at least 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.

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.

F.

The California 4th District Court of Appeals ruling in Qualified Patients Association v. City of Anaheim (August 2010) stated that federal law does not preempt the State of California's decriminalization provisions for **medical marijuana** in the Compassionate Use Act of 1996 and the **Medical Marijuana** Program of 2003, but the court declined to comment on whether state law preempts Anaheim's ordinance and remanded the case back to the trial court for further proceedings.

G.

To address potential concerns surrounding **medical marijuana** dispensaries, it is necessary for the County of Santa Barbara to study the 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 and Coastal Zoning Ordinance.

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 entitlement 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.

(Ord. No. 4739, § 3, 1-19-2010; Ord. No. 4743, § 3, 2-23-2010; Ord. No. 4770, § 3, 12-7-2010)

Sec. 18-78. - Measures taken to alleviate the conditions that led to the adoption of Ordinance 4743.

Pursuant to Government Code Section 65858(d), the board of supervisors reports that following adoption of Ordinance 4743 on February 23, 2010, the county has initiated research on the action 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 **medical marijuana** dispensaries. The planning and development work program for FY 2010-11 was approved, which outlined the **medical marijuana** ordinance work. Staff has begun research and inter-divisional/-departmental collaboration.

(Ord. No. 4743, § 4, 2-23-2010; Ord. No. 4770, § 4, 12-7-2010)

Sec. 18-79. - Enactment.

The board of supervisors hereby enacts this article by not less than four-fifths vote, and in light of the findings set forth in section 18-77, 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.

(Ord. No. 4739, § 4, 1-19-2010; Ord. No. 4743, § 5, 2-23-2010; Ord. No. 4770, § 5, 12-7-2010)

Sec. 18-80. - Moratorium.

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 coastal zoning ordinance, 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.

(Ord. No. 4739, § 5, 1-19-2010; Ord. No. 4743, § 6, 2-23-2010; Ord. No. 4770, § 6, 12-7-2010)

Sec. 18-81. - Exemption from CEQA.

The board of supervisors finds that this article 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 article 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.

(Ord. No. 4739, § 6, 1-19-2010; Ord. No. 4743, § 7, 2-23-2010; Ord. No. 4770, § 7, 12-7-2010)

Sec. 18-82. - Severability.

If any provision of this article or application thereof to any person or circumstance is held invalid, such invalidity shall not affect the other provision of this article which can be given effect without the invalid provision or application. To this end, the provisions of this article are severable. The board of supervisors hereby declares that it would have adopted this article irrespective of the invalidity of any particular portion thereof.

(Ord. No. 4739, § 7, 1-19-2010; Ord. No. 4743, § 8, 2-23-2010; Ord. No. 4770, § 8, 12-7-2010)

Sec. 18-83. - Effective date; duration.

This article 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 one year from the date of adoption unless extended by the board of supervisors pursuant to Government Code section 65858.

(Ord. No. 4739, § 8, 1-19-2010; Ord. No. 4743, § 9, 2-23-2010; Ord. No. 4770, § 9, 12-7-2010)