

LAST MINUTE AGENDA INFORMATION

III

08/19/09 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the August 19, 2009 Regular meeting.)

<u>ITEM NO.</u>	<u>DESCRIPTION</u>
3.1	<p>ORDINANCE NO. 2009-1090 – AN INTERIM ORDINANCE ENACTING AN URGENCY MEASURE PROHIBITING COOPERATIVE, COLLECTIVE, OR OTHER FORMS OF MARIJUANA DISPENSARIES DURING A SPECIAL STUDY PERIOD FOR 45 DAYS. (0610-95)</p> <p>a. E-mail correspondence from Lori Green of Coalition for a Drug Free California, received August 18, 2009. Includes the following attachments:</p> <ul style="list-style-type: none">i. 2009 Summit on the Impacts of California’s Medical Marijuana Laws by Martin J. Mayer of Jones & Mayerii. White Paper on Medical Marijuana Dispensaries, prepared by FixLosAngeles.comiii. Use of Marijuana as a “Medicine” by California Narcotics Officers’ Associationiv. White Paper on Marijuana Dispensaries by California Police Chiefs Association’s Task Force on Marijuana Dispensariesv. Notice Letter from the Drug Enforcement Administration, dated November 26, 2007vi. Letter from the Inland Valley Drug Free Community Coalition to City of Beaumont, dated April 21, 2009vii. Partial listing of pot dispensaries from the Inland Valley Drug Free Community Coalition
6.6	<p>RESOLUTION NO. 2009-6797 – LAND USE DETERMINATION APPEAL (APPEAL 09-01) FOR A PROPOSED MEDICAL MARIJUANA COOPERATIVE TITLED SOUTH BAY ORGANIC CO-OP LOCATED AT 1233 PALM AVENUE, IN THE C-1 GENERAL COMMERCIAL ZONE. MF 1016. (0610-05)</p> <p>a. E-mail correspondence from Marcus Boyd of South Bay Organic Co-Op requesting Item No. 6.6 be heard prior to Item No. 3.1, received August 18, 2009, including web article from Americans for Safe Access.</p>

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Jacque Hald

From: Lori Green [lori@drugfreecalifornia.org]
Sent: Monday, August 17, 2009 6:23 PM
To: Tina Barclay; jimjanney@oappkg.com; loriebraggib@aol.com; mccoy4ib@aol.com; jimkingforib@gmail.com; rose4ib@aol.com; ibcmanager; Mar 2009; Frank Spte; Jacque Hald
Cc: IVDFC Coalition
Subject: Hello to Imperial Beach From the Coalition For A Drug Free California
Attachments: 2009 Summit on the Impacts of CA Med MJ Laws.zip; 2009 White Paper Medical Fraud Pot.zip; CA Narc Association.zip; CPCA white paper.zip; DEA Business Marijuana Letter.zip; IVDFC City Letter and Fact Sheet 10 pages.zip; IVDFC pot dispensaries harm communities Dec 2008.zip

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CITY OF IMPERIAL BEACH

Dear **Imperial Beach**, City Council, Police Chief, City Manager, City Planning, City Attorney, Chamber of Commerce, School Board Members and Concerned Citizens:

The Coalition For A Drug Free California would like for you to know our position on an upcoming issue the **Imperial Beach** City Council will decide for your residents regarding marijuana dispensaries, collectives and cooperatives.

Clearly, we stand firmly 100% **against** allowing such operations in **any** community.

We also want you to know that within California, the **Imperial Beach** region is currently one of the most active for the pro-marijuana movement, and therefore, please do not be intimidated when they show up in force to voice their support for marijuana at a council meeting. They are very well organized and utilize the internet to spread their information. They also send members from around state (outside of **Imperial Beach**) to speak at your city council meetings. Often times they are rude and boo and hiss those who speak out against drugs.

Our Coalition (www.drugfreecalifornia.org) is made up of teachers, parents, law enforcement, youth, business leaders and many many more groups, who are standing up against drugs in our communities. We represent California citizens who are here to help protect our communities from the harm of illegal drugs. Our Coalition is also made up of members of **Imperial Beach** who specifically asked us to get involved.

At the forefront of this battle is the fallacy that smoked marijuana is medicine. Marijuana use, sale, possession remains a Federal crime regardless of state law. Pro-drug legalization groups have used so-called "medical marijuana" to force a decriminalization effort across America. Legal drugs, approved by the FDA exist already to help patients, including Marinol (pill form of marijuana THC). The government is also working on marijuana patches and nose sprays. But please don't be fooled by "smoked marijuana" as medicine. We are finding high school seniors obtaining marijuana ID cards as a "so-called" right of passage.

While the State AG has provided recent "guidelines" for marijuana cooperatives, we believe that cities know what is best for their communities and therefore cities have the right to say what should and should not be allowed.

The latest tactic by the pro marijuana movement is to confuse city council members into thinking they must now allow for pot shops due to the recent refusal of the supreme court to hear arguments in the marijuana ID card case of San Bernardino and San Diego counties. The truth is this case has **NOTHING** to do with a City's lawful right to ban marijuana co-ops, collectives, or dispensaries.

The U.S. Government Code states: "cities may not authorize the operation of dispensaries, or even cooperatives or collectives, for the purpose of cultivating or distributing marijuana for medicinal purposes. Further, Government Code 37100 states that a city's "...legislative body may pass ordinances not in conflict with the Constitution and laws of the State or the United States.

The law adds that the distribution of marijuana violates Federal law, weather in a dispensary, co-operative, or collective, therefore passing a "zoning ordinance" which, for example only allows these operations to be conducted in the industrial or commercial zones of a city, would still be in violation of both State and Federal law (G.C. 37100)

Additionally, Federal Law U.S.C.856 (a) states: "It shall be unlawfully to knowingly and intentionally rent, lease, or make

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available for use, with or without compensation, (a) building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing, or using a controlled substance."

According to the Suremacy Clause of the U.S. Constitution: "Federal Law takes precedence of State Law, it is not a defence to this crime or to the seizure of the property that the facility operating on the property is providing "medical marijuana" under State law, including the provisions of California Proposition 215. Violation of this law is a Felony crime and carries with it a penalty of up to 20 years in prison".

Our Coalition holds our City Officials in high esteem to act first on behalf of the health, welfare, and saftey of its citizens.

Cities from around are doing the right thing -- they are joining the growing ranks of localities fed up with pot. Prop 215 was a sham and fooled us here in California. Enough is enough. More harm than good will be brought to a community that allows marijuana to be legitimized. Please stand up with us!

We ask that you vote down any ordinance allowing marijuana to be bought, sold, traded, kept, etc, and join the rest of the State of California (cities who have banned marijuana) saying no to pot.

In making your decision, we ask four things:

1) Please review the attached documents.

2) Please don't be intimidated by the pro-marijuana groups which will show up at your council meetings. They will go away when you take a stand. They always do as they focus on another city which has yet to vote for an ordinance.

3) Review this link by the California Police Chiefs Association:
http://www.californiapolicechiefs.org/nav_files/medical_marijuana.html

4) Consider creating a business ordinance mandating that businesses must abide my local, state and Federal laws. Marijuana sale, use, etc remains a Federal crime regardless of Prop 215.

If you need additional information or would like for our membership to assist you, please don't hesitate to ask.

Like you, we care about what happens in our communities.

Additional information can be found at www.drugfreecalifornia.org.

Together, we are making a difference.

We will be in touch and look forward to hearing good news from your next council meeting.

THANK YOU,
Coalition For A Drug Free California

J & M

JONES & MAYER

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2009

**SUMMIT ON THE IMPACTS
OF CALIFORNIA'S
MEDICAL MARIJUANA LAWS**

*History and Background of Proposition 215
Senate Bill 420
Attorney General Guidelines*

**Opening Session
April 23, 2009**

**By: Martin J. Mayer
Jones & Mayer**

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Martin J. Mayer is a name partner in the firm of Jones & Mayer (J&M) and serves as legal counsel to the Sheriffs and Chiefs of Police in approximately 70 law enforcement agencies throughout California. He serves as General Counsel to the California State Sheriffs Association (CSSA), the California Police Chiefs Association (CPCA) and the California Peace Officers Association (CPOA), and has done so for approximately 25 years. Mr. Mayer is also responsible to oversee the attorneys in the firm of J&M who serve as City Prosecutor in the 16 cities where the firm provides that legal service.

Prior to merging with the Law Office of Richard D. Jones, Mr. Mayer was a name partner in the firm of Mayer & Coble, which provided legal advice and representation to police and sheriff's departments and served as the City Prosecutor for several municipalities. He is a graduate of the City University of New York and St. John's University School of Law. He began his professional career in New York City as a deputy Public Defender and served in that capacity for five years. After relocating to California in 1975 he became the Director of the Criminal Justice Planning Unit for the League of California Cities. In 1980 he entered the private practice of law focusing on issues arising out of law enforcement.

Mr. Mayer is a graduate of the 6th FBI National Law Institute at Quantico, Virginia (designed for police legal advisors) and was the first attorney in private practice to be invited to participate in the program. He also served for nine years as a POST reserve with the Downey Police Department.

Mr. Mayer writes and lectures extensively, in California and nationally, on legal issues which impact on law enforcement including, but not limited to, the use of force, pursuits, discipline and due process, public records, personnel files, and the Public Safety Officers Procedural Bill of Rights Act. He presents on behalf of numerous statewide law enforcement associations and the California Commission on Peace Officers Standards and Training (POST). He has served on many POST committees as a subject matter expert and has participated in several POST Telecourses, which are used for training peace officers throughout the state. Mr. Mayer is also the 2005 recipient of the "Governor's Lifetime Achievement Award for Excellence in Peace Officer Training."

Published Articles

- *Possession of Handguns: New Case Decisions*
California Peace Officer, Fall 2008
- *Employee Computers, E-mails, Text Messages- A Matter of Privacy*
California Sheriff, Vol. 23, No. 4, October 2008
- *Drug Testing of All Applicants for Municipal Employment is Unconstitutional*
California Peace Officer, Summer 2008

- *Union Activity and First Amendment Rights*
California Sheriff, Vol. 23, No. 3, July 2008
- *The Use of Medical Marijuana and One's Job*
California Sheriff, Vol. 23, No. 2, April 2008
- *A Potential Avalanche of Released Felons*
California Sheriff, Vol. 22, No.4, October 2007
- *An Officer's Use of Force: What is Reasonable?*
California Sheriff, Vol.22, No. 3, July 2007
- *Multiple Case Decisions Impact Peace Officer's Bill of Rights*
California Sheriff, Vol.22, No.2, April 2007
- *Medical Marijuana: Law Enforcements "Rock and a Hard Place"*
California Sheriff, Vol. 22, No. 1, January 2007
- *Public Employees, Politics and the First Amendment*
California Sheriff, Vol. 21, No. 4, October 2006
- *Cost Recovery of Expenses Responding to DUI Incidents*
California Sheriff, Vol. 21, No. 3, July 2006
- *Confidentiality of Peace Officers- Personnel Files Under Attack*
California Sheriff, Vol. 21, No. 2, April 2006
- *FLSA – Who is Exempt?*
California Sheriff, Vol. 21, No. 1, January 2006
- *Utilizing the Department's Legal Counsel at Major Incidents*
The Police Chief, Published by IACP, May 1998, Vol. LXV, Number 5
- *Fair Labor Standards Act & Police Personnel Administration*
Journal of California Law Enforcement, Vol. 29, No. 2, 1995
The Police Chief, Published by IACP, April 1997, Vol. LXIV, Number 4
- *The ADA: Psych Evaluation; Background Investigation; Conditional Offer of Employment; Grievance Procedure California Peace Officer, 1994*
- *ADA: Some Questions & Answers*
California Peace Officer, Vol. 13, No. 4, 1993
- *Americans With Disabilities Act: Some Do's and Don'ts*
Journal of California Law Enforcement, Vol. 26, No.1, 1992
- *Penal Code Section 618--A Reason for Concern?*
Journal of California Law Enforcement, Vol. 24 No. 3, 1990
- *To Provide or Not to Provide: No Longer a Question for Internal Affairs Investigations*
Journal of California Law Enforcement, Vol. 24 No. 4, 1990
- *The Special Relationship Syndrome*
California Peace Officer, December 1989
- *Officer Involved Shootings: A Procedural and Legal Analysis*
Journal of California Law Enforcement, Vol. 23, No. 2, 1989

Speaking Engagements (Examples)

- *California Commission on Peace Officer's Standards & Training (POST)* 1980 - present
Executive Development Program / Police Mid-Management Course
County Chiefs and Sheriff's Associations Annual Training Retreats

- *California Peace Officer's Association (CPOA)* 1979 - present
 Discipline and Due Process
 Legal Update (2 day session)
 American's With Disabilities Act (ADA)
- *California Police Chief's Association (CPCA)* 1979 - present
Role of the Chief of Police
- *American's for Effective Law Enforcement (AELE)* 1989 - 2006
 Civil Liability Issues Affecting Law Enforcement
 Discipline and Law Enforcement
- *Labor Relations Information System (LRIS)* 1995 - 2005
 Labor Relations and Disciplinary Procedures
- *International Association of Chiefs of Police (IACP)* 1997 - present
 Police Psychologist Committee - "Impact of Psychologists on
 Law Enforcement Legal Officer's Section - "Union Impact on
 Internal Affairs Investigations"
- *California State Sheriff's Association (CSSA)* 1990 - present
 Legal Update at Annual Conference
- *California State University at Long Beach, Department of Criminal Justice* 1992 - 2000
 Legal Issues Affecting Internal Affairs Investigations
- *California Association of Law Enforcement Background Investigators* 1997 - 2000
 Legal Update Impacting Upon Background Investigations
- *League of California Cities Annual Conference* 1998
 Chief of Police Department - Legal Update
 City Attorney Department - Civilian Review Boards

MEDICAL MARIJUANA ARRESTS

July 22, 2002

Last Thursday, July 18, 2002, the California Supreme Court issued an opinion in the case of *People v. Mower*, 2002 DJDAR 8025, unanimously holding that possession of marijuana for medical use is not punishable under California law.

Furthermore, the Court held that one arrested for possession need not go through a trial, but can move to dismiss the charge before proceeding to trial.

Proposition 215, codified as P.C. 11362.5(d), "...not only allows a defense at trial, but also permits a motion to set aside an indictment or information prior to trial." The Court went on to state that "...section 11362.5(d) renders... possession and cultivation of the marijuana noncriminal for a qualified patient or primary caregiver."

In order to be successful, "...a defendant must show that...he or she was indicted or committed 'without reasonable or probable cause' to believe that he or she was guilty ... in view of his or her status as a qualified patient or primary caregiver." In other words, one who claims the possession of marijuana is for medical reasons, must prove that he or she is using the substance based on a doctor's recommendation.

Does this mean that law enforcement should no longer arrest one in possession of marijuana if, for example, he or she has a note, letter, or prescription from a doctor? Absolutely not! The Court stated that section 11362.5(d) should not "...be interpreted to grant such persons immunity from arrest."

"Even when law enforcement officers believe that a person who 'possesses or cultivates marijuana' is a 'patient' or 'primary caregiver' acting on the 'recommendation or approval of a physician,' they may - as in this case - have reason to believe that the person does not possess or cultivate the substance for the personal medical purposes of the patient." Proposition 215 created a defense to the charge of illegal possession of marijuana - it did NOT create immunity from arrest.

In addition, neither Prop. 215 nor this case decision has any impact on federal law. In the case of *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, the United States Supreme Court upheld the federal prohibition on possessing marijuana and ruled that there was no "medical necessity" defense under the Controlled Substances Act (21 U.S.C. 801 et seq.). It is still a felony under federal law.

Jones & Mayer is pleased and honored to provide this support to law enforcement. We will continue to monitor these cases and keep you all apprised of their progress. As always, should you wish to discuss these matters in greater detail, please feel free to call or e-mail Martin Mayer at 714-446-1400 or mjm@jones-mayer.com. [The Law Offices of Jones & Mayer located in Fullerton, California focus its practice on representing the interests of public entities as its City Attorney, in labor negotiations, in defending tort litigation and civil rights litigation. Martin Mayer focuses his practice in the area of representing cities, counties and the State on matters arising out of their respective agencies.]

MEDICAL MARIJUANA DISTRIBUTION CENTERS

June 28, 2004

As the law currently stands, California permits the establishment of dispensaries where people can secure marijuana for medicinal purposes. It is imperative that all communities, within their zoning ordinance, address these types of commercial properties. Although the law is still evolving in the conflict between federal and state laws regarding the use of marijuana for medical purposes, it appears to have stabilized somewhat, therefore, leading to the establishment of the distribution centers.

Pursuant to Proposition 215, the Compassionate Use Act, approved by a vast majority of voters in California in 1996, the use of marijuana for medical purposes was, for all intents and purposes, legalized. The law merely requires that a doctor "recommend" the marijuana, and there is no requirement for a prescription or even anything in writing. The legitimacy of this new law was challenged and ultimately decided by the California Supreme Court in the case of *People v. Mower* (2002) 28 Cal. 4th 457, wherein the California Supreme Court ruled that not only was the possession of marijuana for medical purposes a defense to the charge that one possess an illegal drug, but it could also be used pre-trial in the motion to dismiss the underlying prosecution. The Court stated, in part, that the Act "...operates to render non-criminal certain conduct which would otherwise be criminal."

Unfortunately, the United States Supreme Court in the case of *United States v. Oakland Cannabis Buyer's Cooperative* (2001) 532 U.S. 483, had ruled that no such medical necessity exception existed in federal laws and the Controlled Substances Act prohibits the possession, use or transfer of marijuana and classifies it as a Schedule 1 drug, equivalent to cocaine or heroin.

The federal law also prohibits doctors from prescribing the use of marijuana and, at one point, the U.S. Attorney General threatened doctors with loss of their privilege to prescribe controlled substances, if any of them recommended marijuana to their patients. The federal court recently ruled that such action was an unlawful infringement on the doctor's rights, pursuant to the First Amendment as well as an interference with the doctor/patient privileged communication and, therefore, unenforceable.

Recently, the 9th Circuit U.S. Court of Appeals restricted, further, the ability of the federal government to interfere with the implementation of Proposition 215. The Court ruled, in the case of *Raich v. Ashcroft* (2003) 352 F.3d 1222, that, unless there was interstate transfer of marijuana involved, the cultivation was non-commercial and the marijuana was for personal use, the Compassionate Use Act fell outside the powers of the federal Commerce Clause.

Absent the use of that law, the court said there was no other way for the federal government to be involved with the growth, use and/or transfer of marijuana which was occurring exclusively within the State of California. The "...intrastate, noncommercial, possession and use of marijuana for personal medical purposes on the advice of a physician..." is different from drug trafficking and is beyond the reach of the federal government's power to regulate interstate commerce. (Two months ago, the U.S. Justice Department asked the high court to accept the case for review and reverse the

9th Circuit's decision. The Supreme Court is currently deciding whether to review the case and may decide as soon as today, June 28, 2004.)

Add all of those cases together and it brings us to this point in time and the advent of medical marijuana distribution centers.

HOW THIS AFFECTS YOUR AGENCY

It is important for all cities and counties to have in their zoning ordinances sections applying to these specific enterprises.

Please visit the following link to view both the City of Roseville and the City of Jackson's ordinances (<http://www.jones-mayer.com/clientalerts/ca1907062804.asp>) which shows their attempts to reasonably regulate the location, hours of service, amount of product to be distributed, etc. in centers opening facilities in their city. (We want to thank Roseville Police Chief Joel Neves and Jackson Police Chief Scott Morrison for their assistance in this matter and for their permitting us to share this information with all of you.)

Obviously, each city and county must have its own city attorney or county counsel draft an ordinance to meet the specific needs and legal regulations of its own jurisdiction. Providing these samples is not meant as an endorsement of the language or provisions of the respective ordinances. Our sole purpose is to provide examples of what has already been done. The legality of the provisions must be determined by your city and/or county's legal counsel.

Keep in mind, however, that absent some type of ordinance being in place, the ability of any jurisdiction to reasonably regulate, what Roseville refers to as, a "sole source pharmacy," within its city limits would be significantly limited. As always, if you have any questions or wish to discuss this matter in greater detail, please do not hesitate to call or e-mail me at 714-446-1400 or mjm@jones-mayer.com.

MEDICAL MARIJUANA DISPENSARIES

July 19, 2004

CORRECTION! CORRECTION!

In a Client Alert Memo, dated July 9, 2004, we stated, incorrectly, that California law permits medical marijuana dispensaries. In fact, there is no such authorization in Prop. 215, nor in the ensuing legislation. We apologize for any inconvenience caused by this error and want to thank those who brought it to our attention.

Unfortunately, that one sentence has become the focus of our memo, when the actual purpose of our memo was to alert jurisdictions to what IS occurring. The opening, or attempted opening, of such dispensaries, as in the cities of Roseville, Jackson and Rocklin, is a reality. If your jurisdiction is going to permit such enterprises, and wants to regulate their need to secure a conditional use permit, location, hours of operation, use of "medication" on site, etc., it is necessary to have an ordinance in place in your city or county zoning code.

There is still an ongoing legal controversy between those states which permit medical use of marijuana and the federal government, as a result of the federal law which still prohibits the use and/or possession of marijuana for any purpose. It is the position of, for example, the Rocklin City Attorney that a city can prohibit the operation of such an enterprise for a variety of reasons, not the least of which is that it violates federal laws. If you wish to deny a permit to such enterprises, it is would be easier to defend if ordinances are already in place and justification is articulated.

HOW THIS AFFECTS YOUR AGENCY:

We still suggest that this issue be brought to the attention of your city attorney or county counsel, for advice and guidance. It might also be appropriate to confer with the county's District Attorney to secure guidance from him or her, as well. Once again, we apologize for our error.

CALIFORNIA MEDICAL MARIJUANA LAW "TRUMPED" BY THE FEDERAL LAW

June 9, 2005

On Monday, June 6, 2005 the United States Supreme Court, in the case of Gonzalez v. Raich, ruled that California's law allowing marijuana to be used for medical purposes violates the U.S. Constitution's Commerce Clause. The Commerce Clause gives the federal government the authority to "regulate commerce...among the...states" and that includes items which are locally produced and not distributed through interstate commerce.

The Supreme Court overruled the Ninth Circuit U.S. Court of Appeal, which had held that the commerce clause did NOT apply in cases involving "...intrastate, noncommercial cultivation and possession of cannabis for personal medical purposes..." The Supreme Court disagreed, stating that "...Congress devised a closed regulatory system making it unlawful to manufacture, distribute, dispense or possess any controlled substance except as authorized by the (federal) Controlled Substances Act (CSA)."

The Court stated that federal regulation is appropriate due to the "...enforcement difficulties that attend distinguishing between marijuana cultivation locally and marijuana grown elsewhere, and concerns about diversion into illicit channels..." The Court said that "...failure to regulate (marijuana) would leave a gaping hole in the CSA."

As a result, the federal government's prohibition on the possession and/or use of the drug is still law. Marijuana is still subject to seizure, and the holder subject to prosecution, by federal agencies. Additionally, the Supreme Court recently ruled that the use of the marijuana for medical purposes does not provide a defense to prosecution under the CSA.

The case **DOES NOT** hold that Proposition 215 is unconstitutional, nor does it prohibit California from continuing to honor the procedures and protections set forth in Prop. 215. What the case **DOES** say is that following California law will not protect a person from prosecution under federal laws.

A big problem for law enforcement is that this legal conflict puts it between the proverbial "rock and a hard place." The conflict between California law, which basically decriminalizes possession of marijuana for medical use, and the federal law which still makes it a felony to possess it, even for medical use, creates a quandary for the California law enforcement officer. Which law governs?

This decision adds to the concerns we have expressed in the past regarding actions which might be taken by the federal government to enforce the CSA. In correspondence last year from the Director of the federal Drug Enforcement Agency, to the California Attorney General, he stated explicitly that DEA is obligated to enforce existing, lawful, federal laws, even if they conflict with state laws on the same subject.

An example of a potential conflict can be seen with the proliferation of medical marijuana distribution centers throughout the state. Cities and counties are enacting (or not) zoning ordinances addressing the issue. In some jurisdictions the centers are permitted, but regulated as to location,

operating hours, etc. In others, they are prohibited. Even though Prop. 215 doesn't explicitly authorize such centers, local law enforcement has taken no action to close them.

However, the Raich decision raises the question of whether FEDERAL law enforcement will be raiding those centers, as they have cannabis clubs in the past (e.g. the Oakland and Santa Cruz Cannabis Clubs)? It would appear that they have that authority.

Still another concern is what law enforcement should do when a California judge dismisses a cultivation and/or possession charge against a defendant, based on Prop 215, and the judge then orders law enforcement to return the marijuana to the defendant?

Under the federal Controlled Substances Act, it is a felony to transfer or give marijuana to one not lawfully entitled to possess it. It is illogical to argue that a state court judge can ORDER a California peace officer to violate federal law by compelling the officer to transfer or give the marijuana back to the defendant.

Returning the marijuana appears to be a felony under federal law and, therefore, the court's order would be unlawful. The Raich decision seems to reinforce that position since it clearly states that the federal law trumps California law on this subject. It is logical, therefore, that a challenge to such an order would be best fought in the federal courts. A petition, by the city or county, to the federal court to review the actions of a state court, as it pertains to federal law, is probably the way to proceed.

HOW THIS AFFECTS YOUR AGENCY:

State and local peace officers are not obligated to enforce federal law (although they may do so) and, therefore, this decision places no additional burden on them. It does, however, put California law enforcement in a difficult position since there is a direct conflict between California law and the federal law. If California peace officers enforce the state law, they violate federal law; conversely, if they enforce the federal law, they go contrary to their own state law.

Although federal agents have the authority to arrest an individual for possession or use of marijuana for personal, medical reasons, that is highly unlikely. Statistics show that federal agents rarely, if ever, make such arrests. It is local law enforcement which is normally involved.

In California, therefore, local law enforcement can still rely on Prop 215 which, in essence, makes possession for medical purposes lawful if it is based on a doctor's recommendation. In fact, the California Attorney General has apparently stated that the Raich decision doesn't change police priorities, nor the law of California, and basically that it will have no negative impact. That is probably true but only time (and the actions of the federal government) will tell.

We believe, in any event, that it is more important than ever for cities and counties to develop and adopt a zoning regulation regarding medical marijuana distribution centers opening in their communities. Raich supports a jurisdiction's decision to prohibit such centers, since allowing them would require "permitting" a venture which, the U.S. Supreme Court has just ruled, violates federal law.

What, in fact, is needed to resolve this conflict is congressional action. It is the decision for Congress to make, as to whether it wants to amend the CSA. To conform these two inconsistent laws requires that the marijuana be deleted from the CSA's list of prohibited drugs, or California rescinds Proposition 215.

Neither action appears likely to occur - nonetheless, that is what is necessary. The Supreme Court's decision is the final word on the subject, absent legislative action either by Congress or by California.

As always, we urge law enforcement management to confer with legal counsel before undertaking action which requires legal interpretation. If you wish to discuss this matter in greater detail, please feel free to contact me by phone (714 - 446-1400) or by e-mail mjm@jones-mayer.com.

MARIJUANA AND THE CHP

August 31, 2005

As most of you are probably aware, last week the California Highway Patrol issued an updated medical marijuana policy to all CHP officers. The new policy states that, when making a traffic stop, no enforcement action shall be taken against an individual who is in possession of marijuana, if that person claims the Health & Safety (H&S) Code exemption, pursuant to sections 11362.5 and/or 11362.7, and he/she possesses a state or local governmental medical marijuana ID card, or a signed letter from a physician recommending the use of marijuana.

The H&S exemption allows a patient or primary care giver to possess eight ounces of dried marijuana, and no more than six mature or twelve immature marijuana plants. The CHP policy points out that "the state limit of eight ounces does not apply if there is a higher limit in the locality in which the individual is stopped. Authorized local limits supersede the state limit." Obviously, the CHP officer will need to know what limits, if any, have been set by that local community, in order to determine whether a violation has occurred.

The policy requires an officer to (1) review the state ID card for validity; and (2) contact, through dispatch, the Department of Health Services internet website for verification; or (3) call the phone number on a local government ID card to verify its validity; or (4) contact the physician who provided the written authorization. There is no guidance in the policy regarding what the officer should do with the motorist while these efforts are underway, nor does the policy state what should occur if the officer is unable to verify the validity of the documents.

What, for example, happens at 2:00 a.m. when none of the persons/agencies identified are open for business? The CHP policy provides that "officers shall use sound professional judgment to determine the validity of the person's medical claim." Again, what does an officer do if he or she is unable to obtain verification?

HOW THIS AFFECTS YOUR AGENCY

The news articles reporting the implementation of this policy stated that advocates for medical marijuana use intend to utilize the CHP policy as a standard for all law enforcement agencies in California. If a local agency continues to confiscate marijuana, when someone has an ID card or letter from a doctor, that agency will be confronted with the CHP policy. There is no reference in the CHP policy to the recent United States Supreme Court decision, in Raich v. Gonzalez (see J&M website Client Alerts, June 9, 2005), which held that possession of marijuana, even for medical purposes, is still a felony under federal law.

Does this policy have any impact on your agency? Unfortunately, it might. The CHP policy is NOT binding on any other law enforcement agency; however, it will be used as a model or standard by those suing law enforcement agencies, when they seize marijuana which is claimed to be for medical use. It is more important than ever, therefore, for each agency to develop its own policy regarding seizure of marijuana under these circumstances.

The on-going conflict between the ten (10) states which have laws authorizing marijuana for medical purposes, and the federal government which prohibits it, continues to bedevil law enforcement. It is a classic example of being between "a rock and a hard place."

As always, and especially in a matter as complicated as this, legal advice and guidance is imperative. Written advice and guidance from the agency's legal advisor will be vital to assist in defending against such suits. As always, if you wish to discuss this in greater detail, please feel free to call us at (714) 446-1400 or contact me by e-mail at mjm@jones-mayer.com.

"RENT TO A POT DISPENSARY-GO TO JAIL"

July 18, 2007

Recently, the Federal Drug Enforcement Administration notified approximately 150 Los Angeles landlords that if they rent properties for use as medical marijuana dispensaries they face arrest, incarceration and loss of those properties.

Timothy J. Landrum, DEA special agent in charge of the Los Angeles office, sent a letter to landlords who have rented properties for use as medical marijuana dispensaries, informing them that they were aiding and abetting in the commission of a federal crime. Currently, there are approximately 400 medical marijuana dispensaries located in the City of Los Angeles.

It would appear that, even under California's Proposition 215, codified as the Marijuana Compassionate Use Act, such dispensaries are illegal. Senate Bill 420, which was enacted to implement Proposition 215, makes reference to "collectives" being permitted in order to grow and distribute medical marijuana, but the law specifically prohibits making a profit – which is exactly what marijuana dispensaries do.

In fact, on July 17, 2007, the DEA announced the indictment of nearly a dozen medical marijuana dispensaries, alleging that they profited from the illegal distribution of marijuana. Profiting from such distribution is illegal under California law, as well.

Zoning Regulations May Violate California Law

It must also be noted that when cities issue zoning regulations which permit the establishment of such dispensaries, even though regulating locations to commercial or industrial areas, such zoning regulations are in violation of California law.

Government Code Section 37100 prohibits local governments from promulgating ordinances which are in violation of the U.S. Constitution or state or federal law. Since the U.S. Supreme Court, in the case of Gonzalez v. Raich, ruled that the federal Controlled Substances Act (CSA) supersedes California's Compassionate Use Act, and that there is no medical exception under the CSA, the use, possession or distribution of marijuana continues to be a felony under federal law.

HOW THIS AFFECTS YOUR AGENCY

The conflict between state and federal law regarding the use of marijuana for medical purposes creates an ongoing problem for California law enforcement. As has been pointed out on numerous occasions all that Proposition 215 established was a possible defense against prosecution for possession of marijuana by those who qualify under state law to use it for medical purposes. It did not legalize possession of marijuana in the state of California nor did it effect the prohibition which exists under federal law. All Proposition 215 established was that, under California law, one would not be prosecuted for possession and use of the drug if that individual was determined to be a qualified medical user.

This latest action by the federal Drug Enforcement Administration reinforces the fact that distribution of marijuana constitutes a felony under federal law. In this case, landlords who knowingly rent property for dispensaries are aiding and abetting in the commission of a crime. As such, those individuals are subject to arrest (by federal agents) and prosecution (under federal law).

This action does not appear to have a direct impact upon California law enforcement, other than to reinforce that marijuana dispensaries are still considered illegal under federal law and, therefore, pursuant to Government Code Section 37100 cannot be permitted through zoning regulations to be operated within the state of California.

As always, we urge that law enforcement agencies receive advice, guidance and direction from their designated legal advisors before taking any actions as a result of information generated in these Client Alert Memos. Should you wish to discuss this matter in greater detail, please feel free to contact me at 714 – 446-1400 or via e-mail, mjm@jones-mayer.com.

SMOKING MEDICAL MARIJUANA CAN COST YOU YOUR JOB

January 28, 2008

The California Supreme Court ruled, on January 24, 2008, in the case of Ross v. Ragingwire Telecommunications, Inc., that it does not violate one's right of privacy, nor is it discriminatory, to fire an employee who uses marijuana for medical reasons. Ross' doctor recommended marijuana to treat chronic back pain and he used it while off duty, at home. He was terminated after a pre-employment drug test came back positive for marijuana. Ross sued his employer claiming disability discrimination under the California Fair Employment and Housing Act (FEHA) and a violation of public policy.

FEHA, Privacy and Illegal Drugs

The plaintiff argued that Proposition 215, codified as Gov. Code §11362.5, the Compassionate Use Act (CUA), gave him protections under FEHA, which prohibits an employer from discriminating against a person because of a physical disability or medical condition. He argued that "just as it would violate FEHA to fire an employee who uses insulin or Zoloft, it violated [the] statute to terminate an employee who uses a medicine deemed legal by the California electorate upon the recommendation of his physician." The Court noted, however, that the CUA does not "address the respective rights and obligations of employers and employees."

Furthermore, the Court ruled that the CUA did not give "marijuana the same status as any legal prescription drug," and "no state law could completely legalize marijuana for medical purposes because *the drug remains illegal under federal law.*" (Emphasis added.) The Court noted that marijuana use conflicts with the employer's policies and that "FEHA does not require employers to accommodate the use of illegal drugs." Additionally, referring to an earlier Supreme Court decision, Loder v. City of Glendale (1997) 14 Cal.4th 846, the Court stated that "the employer's legitimate concern about the use of illegal drugs ... also led us ... to reject the claim that pre-employment drug testing violated job applicants' state constitutional right to privacy."

Federal Law and Marijuana

The Court made the specific point that the CUA only creates an exemption from prosecution, under California law, for those who meet the qualifications of medical users of marijuana. "California voters merely exempted medical users and their primary caregivers from criminal liability" The Court returned frequently to the fact that marijuana is illegal under federal law. "Marijuana, as noted, remains illegal under federal law.... Although California voters had no power to change federal law, certainly they were free ... to view the possibility of beneficial medical use as a sufficient basis for exempting from criminal liability under state law patients whose physicians recommended the drug."

California Law and Marijuana

The plaintiff argued that by not requiring employers to accommodate the use of medical marijuana by employees, it "would eviscerate the right promised to the seriously ill by the California electorate." The Supreme Court disagreed, stating that "an employer's refusal to accommodate an employee's use of marijuana does not affect, let alone eviscerate, the immunity to criminal liability provided in the act. We

thus give full effect to the limited right to obtain and use marijuana granted in the act by enforcing it according to its terms."

The Court further noted, in a footnote, that "the voters did not give medical users of marijuana complete immunity from criminal law," and went on to point out examples, such as the prohibition of driving under the influence of marijuana and possessing large quantities of the drug. The Court also identified that "the measure did not purport to change the laws affecting public intoxication with controlled substances or the law addressing controlled substances in such places as schools and parks." The Court also noted that "police officers can still arrest anyone for marijuana offenses. Proposition 215 simply gives those arrested a defense in court, *if they can prove they used marijuana with a doctor's approval.*" (Emphasis in original.)

HOW THIS AFFECTS YOUR AGENCY

One question which has been raised on a number of occasions is what can a police chief or sheriff do if an officer informs him/her that the officer is using marijuana, off duty, on the advice of a doctor. This case makes it clear that such activity is *not* protected and potentially subjects the officer to discipline, up to and including termination of employment.

This decision also adds to the argument, made by many of us who represent law enforcement agencies, that when a superior court judge dismisses a case pursuant to Proposition 215, and then orders the arresting officer to return the marijuana to the defendant, the order violates federal law. The Supreme Court has stated, in this case, in several places, that "the drug remains illegal under federal law." Since that is true, we continue to contend that an order to return an illegal drug to a person who is not authorized to possess it, is an illegal order.

As many of you know, the City of Garden Grove has been litigating this issue in the case of Garden Grove v. Superior Court (Kha). The California Court of Appeal recently ruled that the order was lawful, since the drug is legal under California law, and the City had to return the dope. That decision is being appealed by the City to the California Supreme Court and we believe this decision should be beneficial. The firm of Jones & Mayer submitted an amicus brief to the Court of Appeal, supporting the City, on behalf of the California State Sheriffs' Association (CSSA), the California Police Chiefs' Association (CPCA), and the California Peace Officers' Association (CPOA). We will do so again, this time to the California Supreme Court.

As always, we urge that you confer with your agency's legal counsel before taking action based on information set forth in this Client Alert. If you wish to discuss the case in greater detail, please feel free to contact me at (714) 446 - 1400 or by e-mail at mjm@jones-mayer.com.

“CALIFORNIA’S MEDICAL MARIJUANA ID CARD PROGRAM IS NOT UNCONSTITUTIONAL”

August 4, 2008

On July 31, 2008, the California Court of Appeal ruled, in *County of San Diego v. San Diego NORML*, that the requirement of the Medical Marijuana Program (“MMP”), that counties provide medicinal marijuana identification cards to qualified patients, did not violate the Federal Controlled Substances Act (“CSA”). The MMP was created, pursuant to SB 420, to assist in the implementation of Proposition 215.

The case was initiated by the counties of San Bernardino, Merced, and San Diego when they challenged the constitutionality of the MMP, arguing that the CSA preempted California’s medical marijuana law. The trial court rejected the counties’ argument holding that the law neither conflicted with, nor posed a significant obstacle, to the CSA. San Bernardino and San Diego counties appealed the trial court’s determination.

While the counties’ initial lawsuit was a wholesale attack on the constitutionality of the MMP, the Court of Appeal significantly limited the scope of issues on appeal. The Court decided that the counties only had standing to challenge those provisions of the MMP which imposed duties and/or obligations on the counties. As such, the sole issue properly before the court was whether the MMP requirement, that counties provide identification cards to qualified users, conflicts with, and was preempted by, federal law.

Preemption

Normally if there is a conflict between a federal law and a state law, the federal law will prevail. As the Court noted, “the supremacy clause of article VI of the United States Constitution grants Congress the power to preempt state law. State law that conflicts with a federal statute is ‘without effect.’ ”

The Court noted that “the California Supreme Court has identified ‘four species of federal preemption: express, conflict, obstacle and field.’” The parties agreed that Congress did not indicate an intent “to occupy the field” involving marijuana “to the exclusion of any State law on the same subject,” thereby indicating that it “intended to reject express and field preemption of state laws concerning controlled substances.”

“Conflict preemption will be found when ‘simultaneous compliance with both state and federal directives is impossible.’” The Court noted that in order for the MMP’s identification card program to be preempted by federal law there would have to be a positive conflict between the state and federal law.

A positive conflict exists where state and federal laws “cannot consistently stand together” or where “compliance with both federal and state regulations is a physical impossibility.” In rejecting the counties’ argument that such a conflict exists, the Court noted:

“Counties appear to argue there is a positive conflict between the identification laws and the CSA because the card issued by a county confirms that its bearer may violate or is immunized from federal laws. However, the applications for the card expressly state the card will not insulate the bearer from

federal laws, and the card itself does not imply the holder is immune from prosecution for federal offenses; instead, *the card merely identifies those persons California has elected to exempt from California's sanctions*. Because the CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA." (Emphasis added.)

MMP Violations of the CSA

The Court held that the counties failed to identify any provisions of the CSA which are violated when counties issue the ID cards called for under the MMP. "The identification laws obligate a county only to process applications for, and maintain records of, and issue cards to, those individuals entitled to claim the exemption [from prosecution under state law]."

The Court points out that the "CSA law does not compel the states to impose criminal penalties for marijuana possession, the requirement that counties issue cards identifying those against whom California has opted not to impose criminal penalties does not positively conflict with the CSA."

The Court noted, further, that the County of San Diego cited numerous parts of the MMP which "contain a variety of provisions allegedly authorizing or permitting persons to engage in conduct expressly barred by the CSA.... However, none of the cited subdivisions are contained in the statutes that Counties have standing to challenge...."

HOW THIS AFFECTS YOUR AGENCY

This is an unsurprising and very limited decision. It must be emphasized that the sole issue decided on appeal was that the medicinal marijuana identification card program is not preempted by federal law. For county governments, the opinion confirms its obligation, under California law, to provide identification cards to qualified users who apply for them.

For city and county law enforcement, there is now a need to recognize the identification card program, and the use of the cards by qualified users. The ID card program merely provides "a mechanism allowing California citizens, if they so elect, to obtain a form of identification that informs state law enforcement officers and others that they are medically exempted from the state's criminal sanctions for marijuana possession and use."

The Court ruled that "the identification card laws do not pose a significant impediment to specific federal objectives embodied in the CSA. The purpose of the CSA is to combat recreational drug use, not to regulate a state's medical practices." As such, and unless the California Supreme Court rules to the contrary, the MMP identification card program is not in violation of federal law.

As always we urge you to confer with your agency's legal advisor to secure guidance in complying with new decisions, in order to reduce the potential for liability. If you wish to discuss this case in greater detail please feel free to contact Martin Mayer at mjm@jones-mayer.com or at (714) 446-1400.

AG GUIDELINES REGARDING MEDICAL MARIJUANA

August 27, 2008

The California Attorney General has just released guidelines regarding California's medical marijuana law, under the authority of Health & Safety Code section 11362.81(d). After the passage of Proposition 215, the Legislature passed SB 420, which created the Medical Marijuana Program Act (MMP), which was codified in the Health & Safety Code. Among other things, it required the Attorney General to generate guidelines in order to clarify the rights and obligations under the MMP. The guidelines are also intended to assist law enforcement officers and the public to understand what is, and is not, permitted under the MMP. The guidelines are designed to reduce the likelihood of medical marijuana finding its way to non-qualified patients and into the illicit market.

As the guidelines were being developed, input was sought from a variety of sources, including law enforcement. As general counsel to the California Police Chiefs Association (CPCA), the California State Sheriffs Association (CSSA), and the California Peace Officers Association (CPOA) I was privileged to be consulted and to participate in their development. Although, as in virtually all matters, reasonable minds can differ regarding different issues, the Attorney General must be commended on the effort expended and the ultimate product generated. It will provide guidance and direction to all those involved with the state's medical marijuana program.

Summary of the Law

Proposition 215 was passed in 1996 and was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana." The Proposition did NOT legalize marijuana in California, but merely exempts from criminal prosecution and sanctions, under California law, those who are "qualified users" and/or their "primary caregivers."

As the Attorney General notes, the federal Controlled Substances Act (CSA) makes it unlawful to "manufacture, distribute, dispense, or possess any controlled substance," and that includes marijuana. However, he states that the MMP is not unconstitutional, nor does it conflict with the federal CSA, because "California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition." It is imperative to remember that marijuana is still a prohibited, controlled, substance under federal law and complying with Proposition 215 does not, in any way, protect one from prosecution by federal law enforcement.

Key Provisions of MMP

The law requires the California Department of Public Health (DPH) to establish a statewide identification card system. It further mandates that all counties participate in the program by, among other things, issuing the DPH identification cards. Those cards will be issued after the applicant proves that he or she is a qualified patient or primary caregiver. The Attorney General states that the "identification cards offer the holder protection from arrest" by California law enforcement. Participation in the program is voluntary. Qualified patients and caregivers, who are not cardholders, still can raise a defense against

prosecution but will be required to prove, at that time, that they are among those eligible for immunity from prosecution.

Marijuana transactions are subject to tax by the California State Board of Equalization (BOE) and businesses engaging in such transactions must secure a Seller's Permit from the BOE.

Although the MMP prohibits punishing physicians for recommending marijuana as a medicine, the Medical Board of California can take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana as a medicine. The guidelines set forth those Medical Board standards and they include, among others, that the physicians take an appropriate history and conduct a good faith examination of the patient; that they develop a treatment plan with objectives; that they periodically review the treatment's efficacy; and that they keep proper records supporting the decision to recommend the use of medical marijuana. Complaints about doctors who fail to follow those standards should be filed with the Medical Board.

The guidelines define what constitutes a physician's recommendation, who is a primary caregiver (and it is not one who merely provides a source of marijuana but must be one "who has consistently assumed responsibility for the housing, health or safety" of that person), and who is a "qualified patient."

The guidelines state that medical marijuana, which was seized by law enforcement, must be returned to the person IF he or she successfully establishes a medical marijuana defense in court, AND the court grants his or her motion for the return of the marijuana, AND the court orders its return. Prior to such a court order, however, there does not appear to be any duty to return the drug since there is no such requirement in Proposition 215, nor in SB 420.

Cooperatives vs. Dispensaries

One of the most important provisions of the guidelines is that which defines cooperative or collectives as set forth in the MMP. The law allows patients and primary caregivers to "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." The guidelines state that a cooperative must file articles of incorporation, must not make a profit, must use its earnings for the general welfare of its members, and must "not purchase marijuana from, or sell to, non-members...." The guidelines set forth various rules and obligations for the cooperatives, including membership application and verification "to ensure that marijuana grown for medical purposes is not diverted to illicit markets."

The guidelines state that "dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B),...are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law." What is important to note is that such dispensaries violate both federal and state law and should not be permitted by cities or counties to operate within their jurisdictions.

HOW THIS AFFECTS YOUR AGENCY

It is, obviously, important to review the Attorney General's guidelines in detail. It is crucial to be aware of how the law applies to dispensaries which are, or may be, in your community; how it impacts on use of marijuana by employees; where and under what circumstances medical marijuana can be used; etc. It is important for officers to be aware of these guidelines and how they should be applied, especially when confronted with an issue on the streets.

It is not a matter of whether one agrees or disagrees with the law – the California Supreme Court ruled, in People v. Mower, that the law is constitutional. Furthermore, the California Court of Appeal ruled, in Garden Grove v. Superior Court (Kha), that the medical marijuana shall be returned after the court so orders. As such, and until there are other decisions to the contrary, the law must be followed.

In this situation, as in all matters involving the law, it is imperative that you secure advice and guidance from you agency's legal advisor. As always, if you wish to discuss this matter in greater detail, please feel free to contact me at (714) 446-1400 or via e-mail at mjm@jones-mayer.com.

NEWEST MEDICAL MARIJUANA DECISION

October 22, 2008

On October 16, 2008, the California Supreme Court unanimously denied an application to review a Court of Appeal decision, in the case of San Diego County v. San Diego NORML. San Diego and San Bernardino counties had sued the state of California claiming that Proposition 215 was unconstitutional since, among other things, it requires counties to issue identification cards to individuals who have a doctor's recommendation to use marijuana for medical purposes. The counties argued that California's Medical Marijuana Program (MMP) authorized persons to engage in conduct which is prohibited under federal law. The California Supreme Court disagreed.

In fact, all that Proposition 215, and its enabling legislation, accomplished was to declare that "qualified users" of medical marijuana, and/or their "caregivers," would not be prosecuted *under state law*, for the cultivation, possession, transfer or use of the drug. It does not legalize marijuana (even for medical use), nor does it authorize its use. It merely states that California has decided to not prosecute certain individuals if they provide proof that a physician recommended marijuana for medicinal use. Any such person is still subject to prosecution under federal law.

Other cases have held that Proposition 215 merely created a defense to such prosecution, and that the user of the drug has the burden of proving that he or she is a qualified user. The possession of a county issued identification card accomplishes that under the MMP. The card is issued to an individual after he or she provides proof to the county that he/she has a recommendation from a licensed physician to use marijuana for medical purposes. The counties argued that the requirement that they issue such cards was in violation of the federal law.

In an earlier decision, in the case of Gonzales v. Raich, the United States Supreme Court concluded that Proposition 215 has no impact on the federal law and, therefore, federal authorities are still free to prosecute medical marijuana patients, their suppliers, and dispensaries which provide the drug. However, the U.S. Supreme Court noted that individual states are allowed to decide which drugs will be prohibited and subject to prosecution, under their own laws. The federal government does not require the states to prosecute anyone for the possession of drugs ... that is the choice of the states.

Previously, the California Supreme Court also refused to review a Court of Appeal decision, in the case of City of Garden Grove v. Superior Court (Kha), and the City petitioned the U.S. Supreme Court for review. However, that case involves a much different set of circumstances – that case requires an affirmative act by law enforcement officials which, in our opinion, *does violate* the federal law.

In the Garden Grove case, an officer was ordered by a superior court judge to return marijuana to a defendant after the court dismissed the prosecution pursuant to Proposition 215. The transfer of the marijuana is in direct violation of a federal law which prohibits providing marijuana to a person not authorized under federal law to be in possession of the drug. In the San Diego case, however, the only action required of the counties is the issuance of an ID card which states the holder is not to be prosecuted under California law. The card merely protects the holder from arrest, by state or local police, for the possession of medical marijuana. It doesn't require law enforcement to provide marijuana to the person, as was the case in the Garden Grove matter.

HOW THIS AFFECTS YOUR AGENCY

Based upon the decision in the Court of Appeal, and articulated in the recently issued Attorney General's Guidelines, counties are obligated to issue photo identification cards to persons who provide documentation of a physician's recommendation to use marijuana for medical purposes. Under the MMP, that is sufficient proof, when presented to a peace officer, to protect them from arrest for such possession.

Unfortunately, it still remains unclear what the officer should do if the person is in possession of more than eight (8) ounces of cured marijuana (or six mature plants or twelve immature plants). The MMP established those amounts as the maximum amount qualified patients could possess, *unless* their doctor recommended more, or the county in which they resided permitted more. Confusion reigns supreme since, in the case of People v. Kelly, the Court of Appeal declared such limits unconstitutional – that case, however, has been accepted by the California Supreme Court for review.

As always, we urge that you confer with your agency's attorney for legal advice and guidance on this matter. Should you wish to discuss it in greater detail, please feel free to contact me at (714) 446-1400 or via e-mail at mjm@jones-mayer.com.



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White Paper on Medical Marijuana Dispensaries

Prepared for FixLosAngeles.com

July 26th, 2009

by Scott McNeely & James O'Sullivan

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Addendum

The following addenda reflect materials not available, known or decided upon in a court of law at the time of the previously published July 10, 2009 paper. For the purposes of this paper, the terms "Proposition 215" and the "Compassionate Use Act" ("CUA") are interchangeable, and the terms "SB420", "MMP" and "MMPA" are interchangeable.

VI. Legal Questions

Below are brief summaries of cases that have been decided upon by the courts or are in the appeals process under the Compassionate Use Act. These cases are relevant to how a city attempts to regulate medical marijuana through zoning standards. The points addressed in these cases include:

- The right of a municipality to ban dispensaries
- The legality of SB 420 (Medical Marijuana Program) to amend Prop 215 without voter approval, as stipulated by the California State Constitution (unless authority is granted in the proposition)
- Federal law superseding State law
- Right of possession and transportation of medical marijuana (as outlined in SB 420)

The court challenges, in effect, will further define the legality of Prop 215 and the subsequent Medical Marijuana Program created by SB 420. These and future challenges will more than likely question the legal nature of establishing a business entity whose purpose is to grow and distribute marijuana, which is in direct conflict with federal law as written, regardless of its intended use or the political climate of federal enforcement agencies. Neither Proposition 215 or SB 420 adequately address this question.

Although some court decisions *at a state level* may be found to be favorably argued and addressed in Proposition 215 and SB 420, the underlying legal foundation as applied to federal law may invalidate the lower courts findings on appeal.

Of particular interest is *Qualified Patients v City of Anaheim*. Case No. G040077, 4th District Court of Appeals, Division 3. The case results from the adoption of an ordinance by the City of Anaheim banning the operation of medical marijuana dispensaries. Qualified Patients Association who sought to operate a medical marijuana dispensary, sued in court to challenge the ordinance. The court found that such a ban did not violate the CUA because the CUA was not intended to occupy all areas of law concerning medical marijuana. Rather, the CUA merely exempted certain medical marijuana users from criminal liability under two specific California statutes. The Qualified Patients Association has appealed this decision. Several cities with similar ordinances have joined the City of Anaheim on appeal.

It will also be interesting to see if the Appeals Court decides, as in *People v Kelly*, that the legislature overstepped their bounds with the MMP. The lower court stated Section 11362.77 amends the CUA, and therefore it is unconstitutional. Legislative acts, such as the MMP, are entitled to a strong presumption of constitutionality. The Legislature nonetheless cannot amend an initiative, such as the CUA, unless the initiative grants the Legislature authority to do so. (Cal. Const., art. II, § 10, subd. (c);8 *People v. Cooper* (2002) 27 Cal.4th 38, 44; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251-1253, 1256.) The CUA does not grant the Legislature the authority to amend it without voter approval. Therefore, if section 11362.77, which was enacted without voter approval, amends the CUA, then it is unconstitutional. The legislature's effort to clarify what is a "reasonable" personal medical supply of marijuana is unconstitutional because the Proposition 215 initiative did not authorize the legislature to tamper with its statutes. California. Attorney General Brown has appealed this case.

Since Prop 215, the CUA never addressed dispensaries one wonders if people would have voted for prop 215 had there been language detailing dispensaries as a commercial enterprise?

U.S. Supreme Court

Gonzales v. Raich, (2005) 125 S. Ct. 2195. The United States Supreme Court held in this decision that the possession, growing, sales and use of marijuana continues to be illegal since it is classified as a Schedule I drug under Federal law. Further, under the supremacy and commerce clauses of the Constitution, federal regulation of marijuana supersedes the Compassionate Use Act. As a Schedule I drug, the manufacture, distribution, or possession of marijuana is a criminal offense, with the sole exception being use of the drug as part of a FDA pre-approved research study.

U.S. v. Oakland Cannabis Buyers' Cooperative, (2001) 532 US 483, 121 S. Ct. 1711. The United States Supreme Court held in this case that there is no medical necessity exception to the Federal Controlled Substances Act's prohibitions on manufacturing and distributing marijuana.

California Supreme Court

Ross v. Raging Wire Telecommunications, Inc., (2008) 42 Cal 4th 920; In this case; the California Supreme Court ruled-that an employer may require pre-employment drug "tests and may make employment decisions based on the use of medical marijuana even if such use is not at the workplace., The California Fair Employment Housing' Act (FEHA) does not require employers to accommodate the use of illegal drugs, which marijuana remains under federal law.

People v. Wright, (2004) 40 Cal. 4th 81. The California Supreme Court ruled in this case that under the MMP, the CUA medical marijuana cultivation and possession defense may include transportation.

People v. Mower, (2002) 28 Cal. 4th 457. The California Supreme Court in this case concluded that the use of the medical marijuana defense provided by the Compassionate Use Act requires that the defendant raise a reasonable doubt as to the facts underlying the defense, as opposed to requiring that the defendant prove the medical need by a preponderance of evidence. In order to use the defense of primary caregiver status, the defendant has to present that he or she consistently has assumed responsibility for either one's housing, health or safety before asserting a defense.

California Courts of Appeal

People v. Kelly, (2008) Cal. 4th App. _____ May 22, 2008, Slip Op B195624. The Court of Appeals ruled in this case that the portion of the Medical Marijuana Program, which imposes limits on the amount of marijuana a qualified patient can possess (8 dry ounces, 6 mature plants or 12 immature plants, See Health and Safety Code 11362.77); impermissibly amended the Compassionate Use Act. Because the Compassionate Use Act was adopted by initiative, it may be amended only by voter approval and not the legislature. The Court of Appeals was careful to state that only Section 11362.77 of the Medical Marijuana Program was adopted improperly. It is not known at this point whether all of SB 420 is unconstitutional, and what the impact on the Compassionate Use Act will be. The State through the Attorney General's Office has asked the California Supreme Court to review this decision.

City of Garden Grove v. Superior Court of Orange County. (2007) ____ Cal. App. 4th ____ (Slip Op G036250, November 28, 2007. This Court of Appeals case held that medical marijuana seized as evidence must be

returned to the defendant who establishes that he/she legally possessed medical marijuana. Federal law does not preempt the due process right to return of property lawfully held, even if it is held lawfully only in accordance with state law.

People v. Urziceanu (2005) 132 Cal. App. 4th 747, 881. The Court of Appeals acknowledges in this case that the Compassionate Use Act did not authorize the collective cultivation and distribution of medical marijuana. This activity was authorized instead by the Medical Marijuana Program later enacted, which represents a dramatic change in the prohibitions on the use, distribution and cultivation of marijuana for qualified patients and primary caregivers.

People v. Tilebkoob (2003) 13 Cal. App. 4th 1433. The Court of Appeals held in this case that the Compassionate Use Act provides a defense to probation revocation. Additionally, the Court stated that California courts do not enforce federal criminal statutes, particularly the federal marijuana possession laws.

California Trial Courts

Qualified Patients Association v. Anaheim (2008) Orange County Superior Court. Case #07CC09524. The trial court in this case upheld the City of Anaheim's ordinance banning all medical marijuana dispensaries from operating in the City. This decision has been appealed.

I. Introduction

“[Proposition 215](#), an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature’s enactment in 2003 of the [Medical Marijuana Program Act](#) (“MMPA”) (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 et seq.

The legislature also required the [Attorney General to adopt “guidelines](#) to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Safety Code, § 11362.81(d).1) Among other requirements, it purports to direct all California counties to set up and administer a *voluntary* identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have unsuccessfully challenged provisions of the Act. In May 2009, the United States Supreme court refused to hear a case brought by San Diego and Riverside Counties involving compliance with MMPA. Both are now moving to comply with SB420.

With respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have permitted such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community.

This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. Potential recommendations, scenarios and community suggestions will also be included. Lastly, it also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.”¹

¹ California Police Chiefs Association. (<http://www.californiapolicechiefs.org/>)

II. Federal Law

“Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana — even with a physician’s recommendation for medical use.”²

The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government’s view that marijuana is a drug with “no currently accepted medical use.” (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

On March 18, 2009, U.S. Attorney General Eric Holder stated the position of the Obama administration and the more relaxed enforcement policy of the DEA as follows: “The policy is to go after those people who violate both federal and state law, to the extent that people do that and try to use medical marijuana laws as a shield for activity that is not designed to comport with what the intention was of the state law. Those are the organizations, the people, that we will target.”³

III. California Law

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative ([Proposition 215](#)) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician’s recommendation *or* their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued [guidelines](#) that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California state law. Additionally, a [primary caregiver](#) must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—*for profit*.

California’s Medical Marijuana Program Act ([Senate Bill 420](#)) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana.

a. [Proposition 215](#)

The proposition ensures that seriously ill patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal

² California Police Chiefs Association. (<http://www.californiapolicechiefs.org/>)

³ *Los Angeles Times*, “U.S. won’t prosecute medical pot sales; Atty. Gen. Holder’s statement is hailed as a landmark change in policy and echoes a pledge by Obama”, Josh Meyer; Scott Glover, March 19, 2009.

prosecution or sanction. “Primary caregiver” is defined as the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

b. SB420

i. MMPA registry

California’s Medical Marijuana Program (MMP), established to provide a voluntary medical marijuana identification card, issuance and registry program for qualified patients and their caregivers has, to date, issued 31,205 cards, in the entire state. A Medical Marijuana Identification Card is usually valid for one year, and helps “...law enforcement identify the cardholder as being able to legally possess certain amounts of medical marijuana under specific conditions.”

Cards Issued – Fiscal Years	Total	Patient	Caregiver	Medi-Cal*
2008/09	8,304	7,302	1,002	2,681
2007/08	8,393	7,359	1,034	3,076
2006/07	10,273	8,980	1,293	3,260
2005/06	4,150	3,593	557	1,346
2004/05	85	70	15	No Data
Total Issued To Date	31,205	27,304	3,901	10,363

**Medi-Cal Numbers are a subset of and included in the Patient Totals.*
<http://www.cdph.ca.gov/programs/mmp/Pages/Medical%20Marijuana%20Program.aspx>
Note: It is unknown if the yearly figures above represent cumulative or new application submissions.

c. Attorney General’s Guidelines

Guidelines Regarding Collectives and Cooperatives

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes.”

Statutory Cooperatives: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.)

No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.”

Collectives: California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.”

A collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues.

d. Primary Caregivers

A primary caregiver is a person who is designated by a qualified patient and “has consistently assumed responsibility for the housing, health, or safety” of the patient. ([§ 11362.5\(e\)](#).) “Consistency” is the key to meeting this definition.

California courts have emphasized the consistency element of the patient-caregiver relationship. Although a “primary caregiver who consistently grows and supplies medicinal marijuana for a section 11362.5 patient is serving a health need of the patient,” someone who merely maintains a source of marijuana does not automatically become the party “who has consistently assumed responsibility for the housing, health, or safety” of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.)

A person may serve as primary caregiver to “more than one” patient, provided that the patients and caregiver all reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age. ([§ 11362.7\(d\)\(2\)](#).)

Nothing in the law authorizes any individual or group to cultivate or distribute marijuana for *profit*. (Cal. H&S Code sec. 11362.765(a).) The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) ([§ 11362.765\(c\)](#)) “A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution” for possessing or transporting marijuana.)

It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana. He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “consistently had assumed responsibility for either one’s housing, health, or safety” before he could assert the defense.

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. ([People v. Mentch](#) (2008) 45 Cal.4th 274, 283. Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

IV. Laws in Other Municipalities

The following table provides a comparison of the types of restrictions and/or guidelines adopted by a sampling of other cities in regards to regulating medical marijuana dispensaries.

	West Hollywood	San Francisco	Oakland	Laguna Beach
Caps on Number of Dispensaries	Yes / 4	No	Yes/4	No
Location Restrictions by Zoning	Yes	Yes	Yes	Yes
Application Review Panel	No	No	Yes	Yes
Security Requirements (Store / Area / Both)	Both	Yes	Yes	Yes
Onsite Consumption	No	Yes	Yes	No
Onsite Sale of other products	No	Yes	No	No
Physician documentation of recommendation	Yes	Yes	Yes	Yes
Limit on amount of product per transaction	Yes	Yes	Yes	Yes
Limit on in-store cash amount	Yes	No	No	No cash
Background checks of dispensary operators and staff	Yes	Yes	Yes	Yes
Regular periodic training of dispensary staff by police or regulatory body	Yes	No	No	No
Unrestricted access for law enforcement	Yes	Yes	City Mgr.	Yes
Advertising allowed	No	Yes	Yes	No
Allows on-site recommendation of marijuana	No	No	No	No
Restrictions on locations to sensitive use	Yes	Yes	Yes	Yes
Broadening of “sensitive uses” as it applies to MMDs	Yes	Yes	Yes	Yes
Only cooperatives and/or collectives can apply to open an MMD	NA	Yes	No	Yes

V. Situation Overview

a. History

The approach that Los Angeles has taken regarding marijuana dispensaries has allowed their number to balloon from 4 in 2005 to approximately 880 at the time of this writing. As early as 2005, it was apparent that there was a need to deal with dispensaries.

On May 3, 2005 Council Member Dennis Zine’s [motion](#) asked that the LAPD, with the assistance of the City Attorney’s office, report to the Public Safety Committee within 60-days regarding facilities that distribute medical marijuana located within the City of Los Angeles, complaints received regarding such facilities, criminal activity concerns, and recommended actions necessary to ensure that facilities are operated in a legal manner and that City zoning appropriately addresses the unique citing considerations for such facilities.

On July 27, 2005 the Los Angeles Police commission approved a [LAPD report](#) with recommendations on Medical Marijuana dispensaries.

On October 19, 2006 the City Attorney’s office presented a [report](#) to the City Council Public Safety Committee giving their opinion on the options open to the City. It stated that (A) the City could move to ban dispensaries but might possibly be sued by proponent groups of Medical Marijuana. It also stated that 30 cities and counties in the State had banned dispensaries including Monterey Park, Pasadena, Torrance and Riverside.

(B) They could move to regulate dispensaries by imposing a moratorium as other cities had done by issuing an Interim ordinance prohibiting land uses that may be in conflict with a contemplated zoning proposal when necessary to protect the public safety, health and welfare. The report went on to state that if dispensaries were to be allowed in Los Angeles they must be Collectives allowed under State law, profits are prohibited and only qualified patients and primary caregivers may cultivate marijuana within specified limits- is critical.

On January 18, 2007, the Police Commission approved yet another report by the LAPD on Medical Marijuana dispensaries recommending that it be sent to the City Council Public Safety and Planning and Land Use Management Committee. The report recommended that the City Council enact a moratorium on any further medical marijuana dispensaries and immediately restrict current and future dispensaries from being located within 1,000 feet of any school, day care facility, church or house of worship, nursery, public park, or any location utilized for the exclusive care of children between the ages of 0-18 years old, and the hours of operation be restricted to the hours of 10:00 A.M. until 6:00 P.M. No facility shall be grandfathered in and all must comply with these conditions within six months of the adoption of the moratorium. Also that the City Council approve and impose the list of restrictions defined in this report on all existing and future medical marijuana dispensaries.

On August 1, 2007 an [Interim Control Ordinance](#) (ICO) was passed by City Council to halt further applications of Medical Marijuana dispensaries. Unfortunately it contained a Hardship Exemption stating that the City Council, acting in its legislative capacity and by resolution, may grant an exemption from this Ordinance in cases of hardship duly established to the satisfaction of the City Council. An application for a hardship exemption shall be obtained from and filed with the City Clerk.

This Exemption opened the flood gates and hundreds of applications were submitted to the City Clerk's office. What the City Council did not do was establish any guidelines as to what constituted a hardship. The Planning and Land Use Management Committee, which has jurisdiction over these applications, did not hold hearings on any applications for a hardship exemption until June 2009. During that period of time over 750 applications piled up as dispensary after dispensary filed their hardship exemption papers and opened their doors.

b. L.A.'s Response to Proliferation

The City of Los Angeles on June 19, 2009 adopted Ordinance number 108749 amending Ordinance No. 179027, commonly referred to as the Medical Marijuana Dispensaries Interim Control Ordinance.

Sec. 4. **URGENCY CLAUSE.** The City Council finds and declares that this ordinance is required for the immediate preservation of the public peace, health and safety for the following reasons. Ordinance No. 179027 prohibited the establishment of new Medical Marijuana Dispensaries unless a hardship exemption was adopted by the City Council. During the pendency of Ordinance No. 179027 several hundred Medical Marijuana Dispensaries filed requests for hardship exemptions with the City Clerk's Office. The effect of all of these requests for hardship exemption is to encourage the unregulated proliferation of Medical Marijuana Dispensaries. The recommendations of a permanent ordinance reflecting the spirit and intent of the Compassionate Use Act could be undermined if new dispensaries are allowed. The number of dispensaries operating within the City is escalating. The Los Angeles Police Department has received complaints from neighbors, business owners, and concerned citizens regarding the negative impacts of dispensaries, including flyers, leaflets and stickers advertising dispensaries being placed on school grounds; smoking marijuana outdoors within 1,000 feet from schools; operating near sensitive uses; and constant activity around dispensaries at all hours. Citizens have raised concerns that children will have access to marijuana for recreational use, and that there will be an increase in crime particularly in areas in close proximity to residences, schools, places of worship and other sensitive uses, as well as concerns regarding a lack of regulations for the hours of operation. Without regulations for the location of a dispensary and hours of operation, the result has been the establishment of dispensaries in close proximity to sensitive uses operating at all hours. This ordinance will delete the hardship exemption provision of Ordinance No.

179027 in order to prevent unregulated proliferation of new dispensaries and provide the City time to develop regulations relative to distances from sensitive uses, hours of operation, compatibility to surrounding uses, and other related land use issues.

Now the City of Los Angeles is proposing to add, Article 6.6 to Chapter IV of the Los Angeles Municipal Code in order to regulate medical marijuana dispensaries operating within the City of Los Angeles, and to establish regulatory fees. We believe that in order for stakeholders to fully understand, appreciate and give input on this issue soon to be before the City Council it is necessary to understand the laws and policies currently regulating Medical Marijuana.

c. Do We Need Them?

Are medical marijuana storefronts necessary?

The California Police Chiefs Association does not think so. They state in their [White Paper](#) that “Neither California’s voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court:⁴ “The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients’ medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious.” (*Gonzales v. Raich, supra, 125 S.Ct. at p. 2214.*)

How many people actually need medical marijuana?

While the actual number is unknown it would be instructive to examine the growth of Medical Marijuana Dispensaries and the number of people that have sought the protection SB 420 offers and availed themselves of [Medical Marijuana Identification Cards](#) (“MMIC”).

That information has been difficult to come by as has information on marinol use, legal marijuana in pill form. Conflicting stories abound. There is a war of words between the DEA and recreational marijuana users that is really interesting but at the end of the day, not helpful. USA Today in a 4/08/07 story (Employers grapple with medical marijuana use), stated that 300,000 people in the USA use medical marijuana. This was based on estimates from data on registered medical users from Americans for Safe Access (ASA), a non-profit based in Oakland, that has pushed for greater acceptance of medical marijuana. We will go with that number for this paper. In 2007 the population of the United States was 306,000,000. Using that number 300,000 users of medical marijuana are less than .001% of the population.

The population of Los Angeles is currently around 4,100,000. Based on the above assumption, there could be approximately 4,100 patients requiring medical marijuana in Los Angeles. It is unknown how many of those patients or their caregivers are growing their own marijuana, individually or as a part of a cooperative. What is known is that 31,205 applications, including renewals, have been submitted under SB 420 to obtain a Medical Marijuana Identification Card throughout California.

d. Storefront Dispensaries & Cooperatives / Collectives

“On November 10, 2005, there were 4 known medical marijuana dispensaries operating (legal or illegal) in the City of Los Angeles. On November 30, 2006, there were 98 known dispensaries. This is an increase of

⁴ California Police Chiefs Association. (<http://www.californiapolicechiefs.org/>)
http://www.californiapolicechiefs.org/nav_files/marijuana_files/MarijuanaDispensariesWhitePaper_042209.pdf

2,350%.²⁵ Today the current number of hardship applications filed for MMDs is estimated to be over 880. This does not include MMDs that have not filed or are operating illegally. It's clear due to the lack of supporting documentation from medical marijuana dispensary applicants seeking protection under the hardship exemption that the primary caregiver/patient relationship is not being observed as set forth by the State.

e. Harvest/Consumption

The California Attorney General has suggested limits in the guidelines on the amount of marijuana allowed to be on-hand at any given time *per patient*. The limit is stated as 8oz of dried marijuana, or 6 mature plants, or 12 immature plants. Although there is a stated limit, the guidelines also state that there is nothing to prohibit possessing a larger amount if there is a patient need, as recommended by a physician.

The Table below extrapolates the potential yield and value of 'on-hand' marijuana crop using the guidelines suggested by the California Attorney General. It's conceivable to estimate the number of cooperatives necessary to service an existing population that requires medical marijuana by applying these figures to the number of registered medical marijuana cardholders, if the program was made mandatory.

	6 mature plants ⁽²⁾			
	1 oz	8 oz	Indoor (3.5oz / plant)	Outdoor (7oz / plant)
Marijuana Cigarettes (.02 oz = 1 cigarette)	56	448	1,176	2,352
\$ / oz ⁽¹⁾	\$ 173.93	\$ 1,391.5	\$ 3,652.53	\$ 7,305.06

(1) <http://www.drugscience.org/Archive/bcr2/estproc.html>

(2) The yields for *immature* plants cannot be accurately estimated without knowing number of plants per planting time. It's assumed that with 12 immature plants with a growing period of 6-8 weeks, the on-hand amount of marijuana would be greater than estimated above. However, the lower yield will be used here for discussion purposes.

Based on court cases, one being *People v. Mentch*, as well as averages compiled from a sampling of cannabis user groups, medical organizations and state studies, the average patient would consume between 1 to 4 marijuana cigarettes per day. The Attorney General guidelines (as reflected in the table above) appear to be more than adequate to fulfill the needs of an average patient while still accommodating potential increased usage to treat pain, as recommended by a physician. The monetary value of the crop would also indicate the immense potential of inviting criminal activity if strong regulations are not crafted and good practices are not put into place.

f. Liability Issues

Marijuana is still classified as a Schedule 1 drug. City officials will probably not be held liable should they pass an ordinance supporting Medical Marijuana Cooperative Dispensaries. If the Ordinance has a Zoning element the exchange between Councilmember Parks and the City Attorney should be explored.

On October 5, 2007, Councilmember Parks asked for clarification on several issues concerning Medical Marijuana Dispensaries. On May 5, 2008, the City Attorney answered those questions in a [letter to the City Council Public Safety Committee](#).

Question 3 from Council Member Parks:

“The legality of the City through land use regulations to enable businesses to engage in illegal activities as defined by Federal Law.”

⁵ L.A. Police Chief Intradepartmental Correspondence, "[Report on Facilities that Distribute Medical Marijuana within the City of Los Angeles](#)", December 2006. *This document can also be on [FixLosAngeles.com](#).

Answer to Question 3 from the City Attorney:

“Land use regulations do not exempt someone from complying with federal or state law. To the extent that federal law prohibits the possession, cultivation, distribution, and sale of marijuana, land use regulations cannot permit these activities, nor can they "legalize" business activities that are illegal under state law, including the sale of marijuana in violation of Health and Safety Code section 11360.”

Given their answer, it is unclear how the City Council can amend the Municipal Code to include these Cooperative Dispensaries.

g. Adverse secondary impacts**i. Ancillary crimes****Armed robberies and murders**

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home invasion robbery targeting medical marijuana. And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison. And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout. He did not survive.

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen. Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana. More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.

On October 1, 2008, Security guard Noe Campos Gonzalez, 25, a Latino man from Los Angeles, died after he was shot while working at a medical marijuana clinic in the 800 block of South La Brea Avenue in the Miracle Mile, about 3:45 p.m. Two men were arrested the next day in connection with the apparent robbery attempt at the La Brea Collective, a medical marijuana dispensary, said Officer April Harding of the Los Angeles Police Department.

Gonzalez was working when "several armed" men walked into the business "with the intent to rob the dispensary," Lopez said. A struggle started, and one of the men pulled out a handgun and shot Gonzalez multiple times. The men ran off, Lopez said. Gonzalez was taken to a hospital, where he died at 4:20 p.m., according to the Los Angeles County coroner's office.

Burglaries

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries "crime magnets" after a burglary occurred in one in Claremont, California. On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders. Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006. After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was "prompted by incidents of armed burglary at some of the city's eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise"

June 19, 2009. The Los Angeles Police Department is looking for four people who robbed at gunpoint a West Los Angeles medical marijuana dispensary, the second such incident in L.A. this week. The suspects robbed the dispensary on Cotner Avenue around 11 p.m. Thursday, getting away with pot and \$15,000 cash, according to a LAPD spokesman. They fled in a Cadillac. It's unclear whether the case is related to a robbery of a dispensary Wednesday in Reseda. But police are looking for links in both cases.

ii. Other adverse secondary impacts in the immediate vicinity of dispensaries

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.

iii. Secondary adverse impacts in the community at large

Unjustified and Fictitious Physician Recommendations

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop." Other individuals just make up their own phony doctor recommendations, which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake

medical marijuana recommendations were readily able to purchase marijuana from a clinic. Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.

Proliferation of Grow Houses in Residential Areas

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . ." Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas. In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire. Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels. Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year. With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year . . ." The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.

Life Safety Hazards Created by Grow Houses

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500- square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

Increased Organized Gang Activities

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington. In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.

Exposure of Minors to Marijuana

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations. Dispensaries also sell marijuana to minors.

Impaired Public Health

Indoor marijuana grow operations emit a skunk-like odor, and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold, all of which are dangerous to any children or adults who may be living in the residence, although many grow houses are uninhabited.

Loss of Business Tax Revenue

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

Decreased Quality of Life in Deteriorating Neighborhoods

Both business and residential Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans, and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.

iv. Ultimate conclusions regarding adverse secondary effects

On balance, any utility to medical marijuana patients in care-giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

VI. Legal Questions

From the Attorney General's Guidelines

The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.)

Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

VII. Conclusion & Recommendations

About 4 weeks prior to the passage of Proposition 215, the initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician, Senator Diane Feinstein said that it was so poorly written that “you’ll be able to drive a truckload of marijuana through the holes in it. While it seems simple, the devil is in the details or, in this particular bill, the lack of details.” Senator Feinstein’s words proved to be extremely prophetic.

What was and is still missing is a program that will safely deliver medical marijuana to patients who need it. The State could not “legalize” marijuana because it would be in conflict with the Controlled Substance Act. SB 420 helped somewhat but still did not go far enough. The State should have followed up with a *mandatory* ID Card system, not a voluntary one, and taken control of distribution to qualified patients. Instead what we have is an ill-conceived plan that depends on the Drug Enforcement Agency not interfering with patients while those same patients are left scrambling to acquire marijuana through friends and relatives, who themselves risk prosecution to help loved ones. Not only is this an example of inhumane law, it is not good law.

It now appears from the Attorney General’s report that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront “may be” lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in [Sections IV\(A\) and \(B\)](#) of his letter are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. It also appears that the DEA will now not interfere with Cooperatives that are properly organized.

The City of Los Angeles stands ready to draft an ordinance creating such Cooperatives and will enshrine them into the municipal code between article 6.5 (*Regulation of over the counter drugs.*) and article 6.8 (*Alcoholic beverages – Warning signs*). A question Councilmembers should address before voting for any ordinance is why the Attorney General thinks these Cooperatives “may be” lawful under California law. Is “may be” enough of a clarification to change our municipal code? The City Attorney should also be asked to explain why issuing permits to Cooperatives does not violate Federal law? Sticking in a disclaimer that the operators of cooperatives can not violate State and Federal law may legally get the City off the hook but it also may not. At the very least, there exists the strong possibility that the City will be exposed to further lawsuits.

The City Council, if voting on an ordinance, should take steps to empower the LAPD, and thereby the law abiding citizenry. One way that can be done is to *require* that medical marijuana patients or their caregivers file for a State ID card within 30 days of being issued a letter from a doctor. Although SB 420 states the MMPA is a voluntary program, it does not speak to the implementation of this program as applied to dispensaries. State ID cards provide police officers with a better tool for determining that a person with marijuana in their possession or under their control is a person falling under the protection of Proposition 215 and SB 420. Requiring mandatory ID cards would also allow the State to better chart the number of patients who need and use Medical Marijuana. This would make it easier to make changes to current Ordinances to benefit patients.

What Prop 215 and SB 420 lack most of all is the means for patients to legally acquire medical marijuana. It holds out a false hope that has yet to be fulfilled. What the State did was create a system that encouraged illegal activity. The criminal element did what it always does; it provided what Government couldn’t or wouldn’t provide. Patients with true life-threatening and debilitating illnesses were forced to find a connection who would make good on the promise of Proposition 215.

It appears from the Attorney General report that Medical Marijuana cooperatives, properly organized may be lawful in the State of California. Should the City Council signal their intent to approve an Ordinance regulating Medical Marijuana Cooperative Dispensaries, our task is to make sure that all applications for a Medical Marijuana Collective or Cooperative are properly organized and regulated.

The goal here is to maintain accessibility of medical marijuana for those seriously ill patients who require it. However, with unchecked potential for profit and illegal activity it's imperative that the physician, caregiver and patient relationship be made clear, simple and ongoing.

State law is clear in its intent in providing marijuana to those who are considered seriously ill. The language is also clearly favoring a virtually unenforceable environment due to the weak connection of the primary physician, primary caregiver and patient to the actual procurement of medical marijuana. We point to the following dilutive language that weakens enforcement possibilities:

1. The ID card program is voluntary.
2. The recommendation of the physician can be undocumented.
3. The ability to grow or obtain varying amounts of marijuana is determined by the patient in determining their own needs.
4. Lack of direct accountability for the physician in recommending medical marijuana.

Prop 215 and SB420 remain silent on the following and could provide an opportunity to strengthen accountability, maintain and make evident the physician-caregiver- patient relationship, and maximize enforcement with the least amount of encumbrances:

1. Mandate that only cooperatives, a legally recognized state entity, operating as a non-profit, be the only entity that is allowed to open a dispensary.
2. Mandate that primary physicians giving direct care to patients be an administrative member of the cooperative.
3. Members of cooperatives must have a MMIC card.
4. Limit the number of cooperatives that any individual can join (this includes physicians as well as patients).
5. Maintain a county database of cooperative membership and meet the fulfillment requirements of SB420.
6. Require a police panel review of potential applicants seeking to open a cooperative.
7. Maintain a financial review board to review financial records on a quarterly basis.
8. Require that dispensaries be cashless.
9. Require community input before permitting the opening of a dispensary.
10. Use zoning restrictions to maintain distances from sensitive uses as well as control density.
11. Make stronger penalties for violations and shorter review periods.
12. Regularly review updated medical research from the AMA, NIH and local and state studies that address the use of medical marijuana. This includes statistical analysis of the population that would benefit from medical marijuana use.

Scenario I – Prohibition

One option is to ban MMDs altogether. Nothing in the law mandates storefront dispensaries. Their very nature speaks to a business model which was never the intent of Prop 215 or SB 420.

According to the Attorney General's guidelines, Non Profit Cooperatives or Collectives could be employed. However, the guidelines distributed by the Attorney General in August 2008 do not specifically guarantee protection from prosecution under current federal law.

The city council, if deciding to proceed in adopting changes to the city code should seek indemnification from the city attorney and the California Attorney General, that organized dispensaries, per the Attorney General's guidelines, are legal under California law. Currently, no such indemnification exists. Including protection language within city code that, in essence, sanctions potentially illegal activity is not enough to protect the city from future litigation.

If this is the direction in which the city wants to proceed, the City Council should move immediately to revoke any permits already issued to dispensaries if they have violated State or Federal law.

Scenario II - Zoning Regulations

Should the Council proceed to adopt an ordinance that allows for the formation of MMDs the following are concerns raised by members of the community in several meetings of stakeholders in the Central Planning Area:

1. Cooperatives should only be allowed to operate in manufacturing, industrial and possibly in some commercial zones. However any commercial property that has a residential component should not be allowed. Ground floor commercial in a mixed use building should be prohibited.
2. There should be a cap on the number of cooperatives in Los Angeles. Oakland and West Hollywood currently have caps. Although Los Angeles has a larger population than these cities, there exists no compelling rationale for having 800 or more Cooperatives, especially when it is clear to observers that much of the marijuana dispensed is being re-sold for recreational use. (*Author's note: as mentioned in [Section V\(d\) Harvest/Consumption.](#)*)
3. There should be no grandfathering of dispensaries. All existing dispensaries should have to reapply as non-profit cooperatives adhering to the guidelines stated by the Attorney General.
4. Marijuana MMDs should be required to go through a Conditional Use Permit (CUP) process. Approval should be conditional for one (1) year with a review at that time. Permits can then be issued for a longer period of 2 to 5 years.
5. Failure to shut down an illegal or unregulated marijuana dispensary should be prosecuted to the full extent of the law. The City Attorney's office should coordinate with the County District Attorney's office in these prosecutions in order to be able to pursue felony prosecutions where appropriate.
6. If the LAPD has a "hands off" policy in regards to enforcement of regulating MMDs, it should be removed.

7. Neighborhood Councils must be included in the CUP process for applicants of MMDs. Each applicant should make a presentation to its Neighborhood Council of residency, which would provide a recommendation to their council district.
8. MMDs should be required to have strict security protocols, including security guards and security cameras. Security cameras should be in use 24 hours a day. MMDs should provide a neighborhood security guard patrol for a two-block radius surrounding the dispensary during all hours of operation.
9. MMDs should have limited hours of 9:00 am to 8:00 pm.
10. No dispensary should be allowed to operate within 1,000 feet of a public school, private school, library, educational facility, youth center, day care center, youth club, youth camp, church, synagogue, temple, mosque, or religious facility of any kind. The 1,000 feet should be measured from lot line-to-lot line.
11. No dispensary should be allowed to operate within 1,000 feet of another dispensary. The 1,000 feet should be measured from lot line-to-lot line. This regulation will prevent the type of over-concentration that threatens the health of Los Angeles neighborhoods.
12. No dispensary should be allowed to operate within 1,000 feet of any store that sells instruments or paraphernalia necessary for inhaling cannabis, including, but not limited to, rolling papers and related tools, pipes, water pipes, and vaporizers. The 1,000 feet should be measured from lot line-to-lot line.
13. No dispensary should be allowed to operate within 1,000 feet of a bar, nightclub, or liquor store. The 1,000 feet should be measured from lot line-to-lot line.
14. No dispensary should be allowed to have an entrance within 300 feet of the lot line of a residential property.
15. No marijuana should be grown at any dispensary. Allowing a dispensary to be a “grow house” creates serious crime and environmental health risks, according to the California Police Chiefs Association. (*Author’s note: it’s unclear where the community expects the cultivation of marijuana to take place if not onsite.*)
16. No marijuana, alcohol, or other intoxicating substances should be allowed to be consumed inside any dispensary. Cooperatives should be barred from selling alcohol and intoxicating substances other than marijuana.
17. Each dispensary should be required to have two indoor signs posted saying, “It is illegal to use marijuana on the street, in public places, and in vehicles. It is illegal to drive while under the influence. It is illegal to re-sell medical marijuana. Such activities can lead to arrest.” Each dispensary should also be required to have two indoor signs posted saying, “Loitering on and around this dispensary site is prohibited by California Penal Code section 674(e).”
18. MMDs should be required to remove litter in front of their locations, and on the sidewalk and curb within 100 feet of their location. MMDs should be required to remove any graffiti from their premises within 24 hours of its occurrence.
19. MMDs should not be allowed to dispense more than 1 oz. of marijuana per patient per day.
20. MMDs should not be allowed to provide recommendations for medical marijuana on-site, or to allow physicians to write such recommendations on-site. MMDs also should not be allowed to

- provide lists of physicians who will write recommendations for medical marijuana, or referrals to such physicians.
21. MMDs should not be allowed to accept cash at any time, for any item, or for any reason. All purchases should be made by credit card or debit card or check. This regulation will greatly reduce the risk of armed robberies and violent crime in and near Collectives. It will also create a clear paper trail of who uses each dispensary, so that illegal transactions can be investigated and prosecuted.
 22. Each dispensary should be required to have at least one transparent window on its front door or front wall, so that police and community members can see if illegal activities are taking place inside the dispensary.
 23. No person under the age of 18 years should be allowed on the premises of a dispensary at any time, for any reason unless they are a patient and accompanied by a caregiver.
 24. Each dispensary should be required to post its name, address, and telephone number on the front door or front exterior wall of its business, in letters at least two inches in height. Each dispensary should also be required to post an exterior sign saying “For complaints about this establishment, contact the L.A. Department of Building and Safety” along with a DBS phone number, in letters at least two inches in height. No other signage of any kind should be allowed on the exterior of the dispensary. *(Author’s note: due to the variation of signage requirements in different zones, it’s probably more likely that this requirement will be relegated to interior signage requirements.)*
 25. MMDs should not be allowed to place paid advertising in publications or on web sites, or to distribute or post flyers and advertising materials by hand. They should also not be allowed to engage in marketing tactics including the offer of coupons, “free samples,” “two-for-one deals,” “bring a friend deals,” and rewards for finding new customers. Because marijuana is still illegal under federal law, and because even under California law medical marijuana is only supposed to be provided by non-profit “caregivers,” advertising the sale of marijuana is not covered under First Amendment free speech grounds, and it should not be permitted.
 26. Dispensary owners and staff should submit to and pass background investigation by the Los Angeles Police Department. No person with a felony record should be allowed to be an owner or staff member of any dispensary.
 27. Each dispensary must be a registered 501(c)3 nonprofit organization. Annual 501(c)3 documents should be submitted to the City of Los Angeles in a timely manner, and posted on the City Clerk’s web site.
 28. MMDs should not be allowed to move any of their operations to any other location, or to be sold to any other individual or organization. If a dispensary remains closed to its members/customers for more than one week, it should lose its registration, and not be allowed to re-open in any format.

VIII. Exhibits

a. Ordinances in other municipalities

i. *San Francisco*

CITY & COUNTY OF SAN FRANCISCO HEALTH CODE

ARTICLE 33: MEDICAL CANNABIS ACT

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SEC. 3301. DEFINITIONS.

For the purposes of this Article:

- (a) "Cannabis" means marijuana and all parts of the plant Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It includes marijuana infused in foodstuff. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.
- (b) "City" means the City and County of San Francisco.
- (c) "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.
- (d) "Director" means the Director of Public Health or any individual designated by the Director to act on his or her behalf, including but not limited to inspectors.
- (e) [*Reserved.*]
- (f) "Medical cannabis dispensary" means a cooperative or collective of ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and distribution of cannabis for medical purposes and operates not for profit, consistent with California Health & Safety Code Sections 11362.5 et seq., with the Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and with this ordinance. A cooperative must be organized and registered as a Consumer Cooperative Corporation under the Corporations Code, Sections 12300, et seq., or a Nonprofit Cooperative Association under the Food and Agricultural Code, Sections 54002, et seq. A collective may be organized as a corporation, partnership or other legal entity under state law but must be jointly owned and operated by its members. As set forth in Section 3308(q), a medical cannabis dispensary may purchase or obtain cannabis only from members of the cooperative or collective and may sell or distribute cannabis only to members of the cooperative or collective. As set forth in Section 3308(c), a medical cannabis dispensary may operate only on a not for profit basis and pay only reasonable compensation to itself and its members and pay only reasonable out-of-pocket expenses.
- (g) "Medical Cannabis Identification Card" or "Identification Card" means a document issued by the State Department of Health Services pursuant to California Health and Safety Code Sections 11362.7 et seq. or the City pursuant to Health Code Article 28 that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any, or identifies a person as a primary caregiver for a medical cannabis patient.
- (h) "Permittee" means the owner, proprietor, manager, or operator of a medical cannabis dispensary or other individual, corporation, or partnership who obtains a permit pursuant to this Article.
- (i) "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "primary caregiver" as an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed clinic, a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1-3).

- (j) "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which states that a "qualified patient" means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have a valid medical cannabis identification card. For the purposes of this Article, a "qualified patient who has a valid identification card" shall mean a person who fulfills all of the requirements to be a "qualified patient" under California Health and Safety Code Section 11362.7 et seq. and also has a valid medical cannabis identification card

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3302. MEDICAL CANNABIS GUIDELINES.

Pursuant to the authority granted under Health and Safety Code section 11362.77, the City and County of San Francisco enacts the following medical cannabis guidelines:

- (a) A qualified patient, person with a valid identification card, or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient, person with a valid identification card, or primary caregiver may also maintain no more than twenty-four (24) cannabis plants per qualified patient or up to 25 square feet of total garden canopy measured by the combined vegetative growth area.
- (b) If a qualified patient, person with an identification card, or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient, person with an identification card, or primary caregiver may possess an amount of cannabis consistent with the patient's needs.
- (c) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3303. PERMIT REQUIRED FOR MEDICAL CANNABIS DISPENSARY.

Except for research facilities, it is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary without first obtaining a final permit pursuant to this Article. It is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary with a provisional permit issued pursuant to this Article.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3304. APPLICATION FOR MEDICAL CANNABIS DISPENSARY PERMIT.

- (a) Every applicant for a medical cannabis dispensary permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable permit application fee of \$8,459 to cover the costs to all City departments of investigating and processing the application and any applicable surcharges, exclusive of filing fees for appeals before the Board of Appeals. Beginning with fiscal year 2008-2009, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other

information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

- (b) The permit application form shall provide clear notice to applicants that the California Fire Code includes a requirement, among others that may apply, that an establishment obtain a place of assembly permit if it will accommodate 50 or more persons based on its square footage.
- (c) The applicant for a medical cannabis dispensary permit shall set forth, under penalty of perjury, following on the permit application:
 - 1. The proposed location of the medical cannabis dispensary;
 - 2. The name and residence address of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
 - 3. A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport for of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
 - 4. Written evidence that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary is at least 18 years of age;
 - 5. All felony convictions of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;
 - 6. Whether cultivation of medical cannabis shall occur on the premises of the medical cannabis dispensary;
 - 7. Whether smoking of medical cannabis shall occur on the premises of the medical cannabis dispensary;
 - 8. Whether food will be prepared, dispensed or sold on the premises of the medical cannabis dispensary; and
 - 9. Proposed security measures for the medical cannabis dispensary, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.
- (d) (NA).
- (e) Applicants must be a cooperative or a collective. If the applicant is a cooperative organized under the Corporations Code, Sections 12300, et seq., or the Food and Agricultural Code, Sections 54002, et seq., the applicant shall set forth the name of the cooperative exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a

collective organized as a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a collective organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. If a corporation or a partnership is a stockholder owning more than 10 percent of the stock of a corporation or is one or more of the partners in a partnership, the provisions of this Section pertaining to the disclosure required for a corporation or partnership, as applicable, shall also apply to that entity.

- (f) The Director is hereby authorized to require in the permit application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.
- (g) The Department of Public Health shall make reasonable efforts to arrange with the Department of Justice and with DOJ-certified fingerprinting agencies for fingerprinting services and criminal background checks for the purposes of verifying the information provided under Section 3304(c)(5) and certifying the listed individuals as required by Section 3307(c)(4). The applicant or each person listed in Section 3304(c)(5) shall assume the cost of fingerprinting and background checks, and shall execute all forms and releases required by the DOJ and the DOJ-certified fingerprinting agency.

(Added by Ord. 271-05, File No. 051747, App. 11/30/2005; amended by Ord. 273-05, File No. 051748, App. 11/30/2005; Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3305. REFERRAL TO OTHER DEPARTMENTS.

- (a) Upon receiving a completed medical cannabis dispensary permit application and permit application fee, the Director shall immediately refer the permit application to the City's Planning Department, Department of Building Inspection, Mayor's Office on Disability, and Fire Department.
- (b) Said departments shall inspect the premises proposed to be operated as a medical cannabis dispensary and confirm the information provided in the application and shall make separate written recommendations to the Director concerning compliance with the codes that they administer.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3306. NOTICE OF HEARING ON PERMIT APPLICATION.

- (a) After receiving written approval of the permit application from other City Departments as set out in Section 3305, and notice from the Department of Building Inspection that it has approved a building permit, the Director shall fix a time and place for a public hearing on the application, which date shall not be more than 45 days after the Director's receipt of the written approval of the permit application from other City Departments.
- (b) No fewer than 10 days before the date of the hearing, the permit applicant shall cause to be posted a notice of such hearing in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated. The applicant shall comply with any requirements regarding the size and type of notice specified by the Director. The applicant shall maintain the notice as posted the required number of days.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3307. ISSUANCE OF MEDICAL CANNABIS DISPENSARY PERMIT.

- (a) Within 14 days following a hearing, the Director shall either issue a provisional permit or mail a written statement of his or her reasons for denial thereof to the applicant.
- (b) In recommending the granting or denying of a provisional permit and in granting or denying the same, the Director shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion he or she deems necessary to the peace and order and welfare of the public. In addition, prior to granting a provisional permit, the Director shall review criminal history information provided by the Department of Justice for the purpose of certifying that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary has not been convicted of a violent felony within the State of California, as defined in Penal Code section 667.5(c), or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may certify and issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit
- (c) No medical cannabis dispensary provisional permit shall be issued if the Director finds:
 - 1. That the applicant has provided materially false documents or testimony; or
 - 2. That the applicant has not complied fully with the provisions of this Article; or
 - 3. That the operation as proposed by the applicant, if permitted, would not have complied will all applicable laws, including, but not limited to, the Building, Planning, Housing, Police, Fire, and Health Codes of the City, including the provisions of this Article and regulations issued by the Director pursuant to this Article; or
 - 4. That the permit applicant or any other person who will be engaged in the management of the medical cannabis dispensary has been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit application and, that no subsequent felony convictions of any nature have occurred; or
 - 5. That a permit for the operation of a medical cannabis dispensary, which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary, has been revoked, unless more than five years have passed from the date of the revocation to the date of the application; or
 - 6. That the City has revoked a permit for the operation of a business in the City which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary unless more than five years have passed from the date of the application to the date of the revocation.

- (d) Applicants with provisional permits shall secure a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 307 and present it to the Director, and the Director shall issue the applicant a final permit.
- (e) The Director shall notify the Police Department of all approved permit applications.
- (f) The final permit shall contain the following language: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of State or Federal law."

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3308. OPERATING REQUIREMENTS FOR MEDICAL CANNABIS DISPENSARY.

- (a) Medical cannabis dispensaries shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.7 et seq., by this Article, by the Director's administrative regulations for the permitting and operation of medical cannabis dispensaries and by the AG's Guidelines.
- (b) Medical cannabis dispensaries shall be operated only as collectives or cooperatives in accordance this ordinance. All patients or caregivers served by a medical cannabis dispensary shall be members of that medical cannabis dispensary's collective or cooperative. Medical cannabis dispensaries shall maintain membership records on-site or have them reasonably available.
- (c) The medical cannabis dispensary shall operate on a not for profit basis. It shall receive only compensation for the reasonable costs of operating the dispensary, including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-of-pocket expenses incurred in providing those services, or both. Reasonable out-of-pocket expenses may include reasonable expenses for patient services, rent or mortgage, utilities, employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited. Once a year, commencing in March 2008, each medical cannabis dispensary shall provide to the Department a written statement by the dispensary's permittee made under penalty of perjury attesting to the dispensary's compliance with this paragraph. Upon request by the Department, based on reasonable suspicion of noncompliance, the medical cannabis dispensary shall provide the Department copies of, or access to, such financial records as the Department determines are necessary to show compliance with this paragraph. Reasonable suspicion is defined as possession of specific and articulate facts warranting a reasonable belief that the dispensary is not complying with the requirement that it be not for profit. Financial records are records of revenues and expenses for the organization, including but not limited to Board of Equalization returns, payroll records, business expense records and income tax returns. The Director only shall disclose these financial records to those City and County departments necessary to support the Director's review of the records. Upon completion of the Director's review, and provided that the Director no longer has any need for the records, the Director shall return any financial records, and copies thereof, to the medical cannabis dispensary.
- (d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the State of California that has not left the State before arriving at the medical cannabis dispensary.
- (e) It is unlawful for any person or association operating a medical cannabis dispensary under the provisions of this Article to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such

dispensary to remain open, or patrons to remain upon the premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department shall issue permits to two medical cannabis dispensaries permitting them to remain open 24 hours per day. These medical cannabis dispensaries shall be located in order to provide services to the population most in need of 24 hour access to medical cannabis. These medical cannabis dispensaries shall be located at least one mile from each other and shall be accessible by late night public transportation services. However, in no event shall a medical cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two medical cannabis dispensaries permitted to remain open 24 hours per day.

- (f) Medical cannabis dispensaries may not dispense more than one ounce of dried cannabis per qualified patient to a qualified patient or primary caregiver per visit to the medical cannabis dispensary. Medical cannabis dispensaries may not maintain more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area. Medical cannabis dispensaries shall use medical cannabis identification card numbers to ensure compliance with this provision. If a qualified patient or a primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or the primary caregiver may possess and the medical cannabis dispensary may dispense an amount of dried cannabis and maintain a number cannabis plants consistent with those needs. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this Section.
- (g) No medical cannabis shall be smoked, ingested or otherwise consumed in the public right-of-way within fifty (50) feet of a medical cannabis dispensary. Any person violating this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of \$100. Medical cannabis dispensaries shall post a sign near their entrances and exits providing notice of this policy.
- (h) Any cultivation of medical cannabis on the premises of a medical cannabis dispensary must be conducted indoors.
- (i) All sales and dispensing of medical cannabis shall be conducted on the premises of the medical cannabis dispensary. However, delivery of cannabis to qualified patients with valid identification cards or a verifiable, written recommendation from a physician for medical cannabis and primary caregivers with a valid identification card outside the premises of the medical cannabis dispensary is permitted if the person delivering the cannabis is a qualified patient with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis or a primary caregiver with a valid identification card who is a member of the medical cannabis dispensary.
- (j) The medical cannabis dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Nor shall alcoholic beverages be consumed on the premises or on in the public right-of-way within fifty feet of a medical cannabis dispensary.
- (k) In order to protect confidentiality, the medical cannabis dispensary shall maintain records of all qualified patients with a valid identification card and primary caregivers with a valid identification card using only the identification card number issued by the State or City pursuant to California Health and Safety Code Section 11362.7 et seq. and City Health Code Article 28.
- (l) The medical cannabis dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

- (m) The medical cannabis dispensary shall provide and maintain adequate security on the premises, including lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft.
- (n) Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.
- (o) All print and electronic advertisements for medical cannabis dispensaries, including but not limited to flyers, general advertising signs, and newspaper and magazine advertisements, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height except in the case of general advertising signs where it shall be a minimum of six inches in height. Oral advertisements for medical cannabis dispensaries, including but not limited to radio and television advertisements shall include the same language. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary carver.
- (p) The medical cannabis dispensary shall provide the Director and all neighbors located within 50 feet of the establishment with the name phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The medical cannabis dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other City officials.
- (q) Medical cannabis dispensaries may purchase or obtain cannabis only from members of the medical cannabis dispensary's cooperative or collective and may sell or distribute cannabis only to members of the medical cannabis dispensary's cooperative or collective.
- (r) Medical cannabis dispensaries may sell or distribute cannabis only to those members with a medical cannabis identification card or a verifiable, written recommendation from a physician for medical cannabis. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.
- (s) It shall be unlawful for any medical cannabis dispensary to employ any person who is not at least 18 years of age.
- (t) It shall be unlawful for any medical cannabis dispensary to allow any person who is not at least 18 years of age on the premises during hours of operation unless that person is a qualified patient with a valid identification card or primary caregiver with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis.
- (u) Medical cannabis dispensaries that display or sell drug paraphernalia must do so in compliance with California Health and Safety Code §§ 11364.5 and 11364.7.

- (v) Medical cannabis dispensaries shall maintain all scales and weighing mechanisms on the premises in good working order. Scales and weighing mechanisms used by medical cannabis dispensaries are subject to inspection and certification by the Director.
- (w) Medical cannabis dispensaries that prepare, dispense or sell food must comply with and are subject to the provisions of all relevant State and local laws regarding the preparation, distribution and sale of food.
- (x) The medical cannabis dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Director in order to insure that the operation of the medical cannabis dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.
- (y) Medical cannabis dispensaries shall be accessible as required under the California Building Code. Notwithstanding the foregoing, if a medical cannabis dispensary cannot show that it will be able to meet the disabled access standard for new construction, it shall meet the following minimum standards:
 1. An accessible entrance;
 2. Any ground floor service area must be accessible, including an accessible reception counter and access aisle to the employee workspace behind; and,
 3. An accessible bathroom, with a toilet and sink, if a bathroom is provided, except where an unreasonable hardship exemption is granted.
 4. A "limited use/limited access" (LULA) elevator that complies with ASME A17.1 Part XXV, an Article 15 elevator may be used on any accessible path of travel. A vertical or inclined platform lift may be used if an elevator is not feasible and the ramp would require more than thirty percent (30%) of the available floor space.
 5. Any medical cannabis dispensary that distributes medical cannabis solely through delivery to qualified patients or primary caregivers and does not engage in on-site distribution or sales of medical cannabis shall be exempt from the requirements of this subsection 3308(y).
- (z) Any medical cannabis dispensary in a building that began the Landmark Initiation process (as codified by Article 10 of the San Francisco Planning Code) by August 13, 2007 is exempt from the requirements set forth in section 3308(y) of this legislation until September 1, 2008.
- (aa) Prior to submission of a building permit application, the applicant shall submit its application to the Mayor's Office on Disability. The Mayor's Office on Disability shall review the application for access compliance and forward recommendations to the Department of Building Inspection.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 318-08, File No. 081230, 12/19/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3309. PROHIBITED OPERATIONS.

All medical cannabis dispensaries operating in violation of California Health and Safety Code Sections 11362.5 and 11326.7 et seq., or this Article are expressly prohibited. No entity that distributed medical cannabis prior to the enactment of this Article shall be deemed to have been a legally established use under the provisions of this Article, and such use shall not be entitled to claim legal nonconforming status for the purposes of permitting,

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3310. DISPLAY OF PERMIT.

Every permit to operate a medical cannabis dispensary shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3311. SALE OR TRANSFER OF PERMITS.

- (a) Upon sale, transfer or relocation of a medical cannabis dispensary, the permit and license for the establishment shall be null and void unless another permit has been issued pursuant to this Article; provided, however, that upon the death or incapacity of the permittee, the medical cannabis dispensary may continue in business for six months to allow for an orderly transfer of the permit.
- (b) If the permittee is a corporation, a transfer of 25 percent of the stock ownership of the permittee will be deemed to be a sale or transfer and the permit and license for the establishment shall be null and void unless a permit has been issued pursuant to this Article; provided, however that this subsection shall not apply to a permittee corporation, the stock of which is listed on a stock exchange in this State or in the City of New York, State of New York, or which is required by law, to file periodic reports with the Securities and Exchange Commission.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3312. RULES AND REGULATIONS.

- (a) The Director shall issue rules and regulations regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries.
- (b) The Director may issue regulations governing the operation of medical cannabis dispensaries. These regulations shall include, but need not be limited to:
 - 1. A requirement that the operator provide patients and customers with information regarding those activities that are prohibited on the premises;
 - 2. A requirement that the operator prohibit patrons from entering or remaining on the premises if they are in possession of or are consuming alcoholic beverages or are under the influence of alcohol;
 - 3. A requirement that the operator require employees to wash hands and use sanitary utensils when handling cannabis;
 - 4. A description of the size and type of notice of hearing to be posted in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated and the number of days said notice shall remain posted; and
 - 5. A description of the size and type of sign posted near the entrances and exits of medical cannabis dispensaries providing notice that no medical cannabis shall be smoked, ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical cannabis dispensary and that any person violating this policy shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of \$100.

- (c) Failure by an operator to do either of the following shall be grounds for suspension or revocation of a medical cannabis dispensary permit: (1) comply with any regulation adopted by the Director under this Article, or (2) give free access to areas of the establishment to which patrons have access during the hours the establishment is open to the public, and at all other reasonable times, at the direction of the Director, or at the direction of any City fire, planning, or building official or inspector for inspection with respect to the laws that they are responsible for enforcing.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3313. INSPECTION AND NOTICES OF VIOLATION.

- (a) The Director may inspect each medical cannabis dispensary regularly and based on complaints, but in no event fewer than two times annually, for the purpose of determining compliance with the provisions of this Article and/or the rules and regulations adopted pursuant to this Article. If informal attempts by the Director to obtain compliance with the provisions of this Article fail, the Director may take the following steps:
1. The Director may send written notice of noncompliance with the provisions of this Article to the operator of the medical cannabis dispensary. The notice shall specify the steps that must be taken to bring the establishment into compliance. The notice shall specify that the operator has 10 days in which to bring the establishment into compliance.
 2. If the Director inspector determines that the operator has corrected the problem and is in compliance with the provisions of this Article, the Director may so inform the operator.
 3. If the Director determines that the operator failed to make the necessary changes in order to come into compliance with the provisions of this Article, the Director may issue a notice of violation.
- (b) The Director may not suspend or revoke a permit issued pursuant to this Article, impose an administrative penalty, or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.
- (c) If the Director concludes that announced inspections are inadequate to ascertain compliance with this Article (based on public complaints or other relevant circumstances), the Director may use other appropriate means to inspect the areas of the establishment to which patrons have access. If such additional inspection shows noncompliance, the Director may issue either a notice of noncompliance or a notice of violation, as the Director deems appropriate.
- (d) Every person to whom a permit shall have been granted pursuant to this Article shall post a sign in a conspicuous place in the medical cannabis dispensary. The sign shall state that it is unlawful to refuse to permit an inspection by the Department of Public Health, or any City peace, fire, planning, or building official or inspector, conducted during the hours the establishment is open to the public and at all other reasonable times, of the areas of the establishment to which patrons have access.
- (e) Nothing in this Section shall limit or restrict the authority of a Police Officer to enter premises licensed or permitted under this Article (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3314. VIOLATIONS AND PENALTIES.

- (a) Any dispensary, dispensary operator or dispensary manager who violates any provision of this Article or any rule or regulation adopted pursuant to this Article may, after being provided notice and an opportunity to be heard, be subject to an administrative penalty not to exceed \$1,000 for the first violation of a provision or regulation in a 12-month period, \$2,500 for the second violation of the same provision or regulation in a 12-month period; and \$5,000 for the third and subsequent violations of the same provision or regulation in a 12-month period.
- (b) The Director may not impose an administrative penalty or take other enforcement action under this Article against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.
- (c) Nothing herein shall prohibit the District Attorney from exercising the sole discretion vested in that officer by law to charge an operator, employee, or any other person associated with a medical cannabis dispensary with violating this or any other local or State law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3315. REVOCATION AND SUSPENSION OF PERMIT.

- (a) Any permit issued for a medical cannabis dispensary may be revoked, or suspended for up to 30 days, by the Director if the Director determines that:
 - 1. the manager, operator or any employee has violated any provision of this Article or any regulation issued pursuant to this Article;
 - 2. the permittee has engaged in any conduct in connection with the operation of the medical cannabis dispensary that violates any State or local laws, or any employee of the permittee has engaged in any conduct that violates any State or local laws at permittee's medical cannabis dispensary, and the permittee had or should have had actual or constructive knowledge by due diligence that the illegal conduct was occurring;
 - 3. the permittee has engaged in any material misrepresentation when applying for a permit;
 - 4. the medical cannabis dispensary is being managed, conducted, or maintained without regard for the public health or the health of patrons;
 - 5. the manager, operator or any employee has refused to allow any duly authorized City official to inspect the premises or the operations of the medical cannabis dispensary;
 - 6. based on a determination by another City department, including the Department of Building Inspections, the Fire Department, the Police Department, and the Planning Department, that the medical cannabis dispensary is not in compliance with the laws under the jurisdiction of the Department.
- (b) The Director may not suspend or revoke a permit issued pursuant to this Article or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.
- (c) Notwithstanding paragraph (b), the Director may suspend summarily any medical cannabis dispensary permit issued under this Article pending a noticed hearing on revocation or suspension

when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter.

- (d) If a permit is revoked no application for a medical cannabis dispensary may be submitted by the same person for three years.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3316. NOTICE AND HEARING FOR ADMINISTRATIVE PENALTY AND/OR REVOCATION OR SUSPENSION.

- (a) If the Director determines that a medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article, he or she shall issue a notice of violation to the operator of the medical cannabis dispensary.
- (b) The notice of violation shall include a copy of this Section and the rules and regulations adopted pursuant to this Article regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries. The notice of violation shall include a statement of any informal attempts by the Director to obtain compliance with the provisions of this Article pursuant to Section 3313(a). The notice of violation shall inform the operator that:
1. The Director has made an initial determination that the medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article; and
 2. The alleged acts or failures to act that constitute the basis for the Director's initial determination; and
 3. That the Director intends to take enforcement action against the operator, and the nature of that action including the administrative penalty to be imposed, if any, and/or the suspension or revocation of the operator's permit; and
 4. That the operator has the right to request a hearing before the Director within fifteen (15) days of receipt of the notice of violation in order to allow the operator an opportunity to show that the medical cannabis dispensary is operating in compliance with this Article and/or the rules and regulations adopted pursuant to this Article.
- (c) If no request for a hearing is filed with the Director within the appropriate period, the initial determination shall be deemed final and shall be effective fifteen (15) days after the notice of initial determination was served on the alleged violator. The Director shall issue an Order imposing the enforcement action and serve it upon the party served with the notice of initial determination. Payment of any administrative penalty is due within 30 days of service of the Director's Order. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.
- (d) If the alleged violator files a timely request for a hearing, within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. The Director shall make available all documentary evidence against the medical cannabis dispensary no later than fifteen (15) days prior to the hearing. Such hearing shall be held no later than forty-five

(45) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.

- (e) At the hearing, the medical cannabis dispensary shall be provided an opportunity to refute all evidence against it. The Director shall conduct the hearing. The hearing shall be conducted pursuant to rules and regulations adopted by the Director.
- (f) Within twenty (20) days of the conclusion of the hearing, the Director shall serve written notice of the Director's decision on the alleged violation. If the Director's decision is that the alleged violator must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3317. APPEALS TO BOARD OF APPEALS.

- (a) Right of Appeal. The final decision of the Director to grant, deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article 1 of the San Francisco Business and Tax Relations Code. An appeal shall stay the action of the Director.
- (b) Hearing. The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article 1 of the San Francisco Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

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SEC. 3318. BUSINESS LICENSE AND BUSINESS REGISTRATION CERTIFICATE.

- (a) Every medical cannabis dispensary shall be required to obtain a business license from the City in compliance with Article 2 of the Business and Tax Regulations Code.
- (b) Every medical cannabis dispensary shall be required to obtain a business registration certificate from the City in compliance with Article 12 of the Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3319. DISCLAIMERS AND LIABILITY.

By regulating medical cannabis dispensaries, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and licensing provisions of this Article, or for the activities of any medical cannabis dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Article shall not become a personal liability of any public officer or employee of the City. This Article (the "Medical Cannabis Act") does not authorize the violation of state or federal law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3320. SEVERABILITY.

If any provision of this Article or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3321. ANNUAL REPORT BY DIRECTOR.

- (a) Once a year, commencing in January 2007, the Director shall make a report to the Board of Supervisors that:
1. sets forth the number and location of medical cannabis dispensaries currently permitted and operating in the City;
 2. sets forth an estimate of the number of medical cannabis patients currently active in the City;
 3. provides an analysis of the adequacy of the currently permitted and operating medical cannabis dispensaries in the City in meeting the medical needs of patients;
 4. provides a summary of the past year's violations of this Article and penalties assessed.
- (b) Upon receipt of this Report, the Board of Supervisors shall hold a hearing to consider whether any changes to City law, including but not limited to amendments to the Health Code or Planning Code, are warranted.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

*ii. Oakland***OAKLAND CANNABIS REGULATION AND REVENUE ORDINANCE**

(Text of Oakland Measure Z Tax and Regulate Lowest Enforcement Priority ballot initiative submitted to City Clerk Feb 19, 2004; approved by 65% of Oakland Voters Nov.2, 2004)

Section 1: TITLE

Oakland Cannabis Regulation and Revenue Ordinance

Section 2: FINDINGS

The people of Oakland, California find as follows:

WHEREAS* it is a goal of the people of Oakland to keep drugs off the streets and away from children, and to eliminate street dealing and violent crime; and

WHEREAS* each year California spends over \$150 million enforcing cannabis (marijuana) laws, expending valuable law enforcement resources that would be better spent on fighting violent and serious crimes; and

WHEREAS* medical and governmental studies have consistently found cannabis to be less dangerous than alcohol, tobacco and other drugs; and

WHEREAS* otherwise law-abiding adults are being arrested or imprisoned for nonviolent cannabis offenses, clogging our courts and jails; and

WHEREAS* controlling and regulating cannabis so that it is only sold by licensed businesses would undermine the hold of street dealers on our neighborhoods; and

WHEREAS* in the face of the severe state and local budget crises, the revenues from taxing and licensing cannabis would help fund vital Oakland city services; and

WHEREAS* the current laws against cannabis have needlessly harmed patients who need it for medical purposes, and impeded the development of hemp for fiber, oil, and other industrial purposes; and

WHEREAS* it is the hope of the people of Oakland that there will be state and federal law reform that will eliminate the problems and costs caused by cannabis prohibition;

THEREFORE* the people of the City of Oakland do hereby enact the following ordinance establishing the cannabis policy of the city.

Section 3: DEFINITION

"Cannabis" - Means "marijuana" as currently defined in California Health & Safety Code Section 11018.

Section 4: PURPOSE

The purpose of this ordinance is:

- a) To direct the City of Oakland to tax and regulate the sale of cannabis for adult use, so as to keep it off the streets and away from children and to raise revenue for the city, as soon as possible under state law.

- b) To direct the Oakland Police Department to make investigation, citation, and arrest for private adult cannabis offenses the lowest law enforcement priority, effective immediately upon passage of this ordinance. c) To advocate for changes in state law (and at other levels as necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.

Section 5: REGULATION

The City of Oakland shall establish a system to license, tax and regulate cannabis for adult use as soon as possible under California law. At that time, the City Council shall promulgate regulations that include, but are not limited to, the following provisions consistent with California law:

- a) The sale and distribution to minors will be strictly prohibited;
- b) The city shall establish a licensing system for cannabis businesses, with regulations to assure good business practices, compliance with health and safety standards, access for persons with disabilities, and nuisance abatement;
- c) Minors shall not be permitted in areas where cannabis is sold, nor shall minors be employed by licensed cannabis businesses;
- d) No business licensed to sell cannabis will be located within 600 feet of a school;
- e) Cannabis businesses shall be required to pay taxes and licensing fees;
- f) The public advertising of cannabis through television, radio, or billboards will be prohibited; and
- g) Onsite consumption shall be licensed so as to keep cannabis off the streets and away from children, subject to reasonable air quality standards.

Section 6: LOWEST LAW ENFORCEMENT PRIORITY

- a) The Oakland Police Department shall make investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority.
- b) This "lowest law enforcement priority" policy shall/ not/ apply to distribution of cannabis to minors, distribution or consumption of cannabis on streets or other public places, or motor vehicle violations.

Section 7: COMMUNITY OVERSIGHT COMMITTEE

A Community Oversight Committee shall be appointed to oversee the implementation of the Oakland Cannabis Regulation and Revenue Ordinance. The Committee will be composed of:

1 community member appointed by each member of the Oakland City Council,

1 community member appointed by the Mayor of Oakland,

1 representative of the Oakland City Auditor,

1 representative of the Oakland City Manager.

Responsibilities of the Committee shall include:

- a) Ensure timely implementation of this ordinance;
- b) Oversee the implementation of the Lowest Law Enforcement Priority policy;
- c) Make recommendations to the Oakland City Council regarding appropriate regulations, in accordance with Section 5 above;
- d) Oversee the disbursement of revenues generated through the sale of cannabis by licensed cannabis businesses to ensure that funds go to vital city services such as schools, libraries and youth programs; and
- e) Report annually to the Council on implementation of this ordinance.

Section 8: ADVOCACY FOR LEGISLATIVE REFORM

The City of Oakland shall advocate, through its lobbyist and other city officers, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include:

- a) Allow for the taxation and regulation of cannabis for adults;
- b) Grant local control to cities and counties to license and regulate cannabis businesses, and collect appropriate fees and/or taxes; and
- c) End the prosecution, arrest, investigation and imprisonment for adult, private cannabis offenses.

Section 9: SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

*iii. West Hollywood***Code 19.36.165 Medical Marijuana Dispensaries.**

- A. Applicability.** The standards and criteria established in this section apply to any site, facility, location, use, cooperative or entity in the City of West Hollywood that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof. Nothing in this section shall be interpreted to conflict with provisions of Health & Safety Code Section 11362.5 et seq.
- B. Definitions.** For purposes of the ordinance codified in this section, a "medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health & Safety Code Section 11362.5. The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018.
- C. Permit Required.** A major conditional use permit shall be required to establish a medical marijuana dispensary.
- D. Location Criteria.** A proposed medical marijuana dispensary shall be located in compliance with the following requirements:
1. The use shall not be located within a 1,000-foot radius of any other medical marijuana dispensary located within or outside the city.
 2. The use shall not be located within a 500-foot radius of a church, temple, or other places used exclusively for religious worship, or a playground, park, child day care facility, or school that is located within or outside the city. For the purposes of this requirement, "school" shall mean any property containing a structure which is used for education or instruction, whether public or private, at grade levels preschool and kindergarten through 12.
 3. The dispensary shall have its primary frontage on one of the following commercial streets: Santa Monica Boulevard, Sunset Boulevard, La Cienega Boulevard, Melrose Avenue, Beverly Avenue, La Brea Avenue or Fairfax Avenue. The use shall not have its primary frontage on a local residential street providing local circulation.
- E. Development and Performance Standards.** All dispensaries in the City of West Hollywood shall operate in conformance with the following standards to assure that the operations of medical marijuana dispensaries are in compliance with California law and to mitigate the adverse secondary effects from operations of dispensaries.
1. Dispensaries shall provide adequate security and lighting on-site to ensure the safety of persons and protect the premises from theft at all times.
 2. All security guards employed by dispensaries shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess firearms or tazers.
 3. Dispensaries shall provide a neighborhood security guard patrol for a two block radius surrounding the dispensary during all hours of operation.
 4. No recommendations for medical marijuana shall be issued on-site.

5. There shall be no on-site sales of alcohol or tobacco, and no on-site consumption of food, alcohol, tobacco or marijuana by patrons.
6. Hours of operation shall be limited to: Monday - Saturday, 10.00 a.m. - 8.00 p.m. and Sunday noon - 7.00 p.m.
7. Dispensaries shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code Section 11362.5 (Proposition 215). This shall include possession of a valid doctor's recommendation, not more than one-year old, for medical marijuana use by the patient.
8. Dispensaries shall notify patrons of the following verbally and through posting of a sign in a conspicuous location:
 - i. Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.
 - ii. Patrons must immediately leave the site and not consume medical marijuana until at home or in an equivalent private location. Dispensary staff shall monitor the site and vicinity to ensure compliance.
 - iii. Forgery of medical documents is a felony crime.
9. Dispensaries shall not provide marijuana to any individual in an amount not consistent with personal medical use.
10. Dispensaries shall not store more than two hundred dollars (\$200.00) in cash reserves overnight on the premises and shall make at least one daily bank drop that includes all cash collected on that business day.
11. Any patient under 18 years of age shall be accompanied by a parent or legal guardian.
12. Dispensaries shall provide law enforcement and all neighbors within 100 feet of the dispensary with the name and phone number of an on-site community relations staff person to notify if there are operational problems with the establishment.
13. Each dispensary operator(s) shall complete a criminal background check.
14. Dispensary operator(s) must attend the bi-monthly coordination meetings with the Los Angeles County Sheriff's Department and City staff which are organized by the City's Public Safety Division.
15. The exterior appearance of the structure shall be compatible with commercial structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity.
16. West Hollywood City Code Enforcement Officers, West Hollywood Sheriff's Deputies or other agents or employees of the City requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.
17. The proposed use shall comply with all other applicable property development and design standards of the Municipal Code and with the provisions of Health & Safety Code Section

11362.5 (adopted as Proposition 215, the “Compassionate Use Act of 1996”) or any State regulations adopted in furtherance thereof.

- F. Numerical Limit.** No more than four (4) medical marijuana dispensaries shall be permitted to operate in the City at any time. Notwithstanding the foregoing, a medical marijuana dispensary that was open and in operation on January 16, 2007 and does not meet the location requirements of this section shall be allowed to continue operation in accordance with the regulations for non-conforming land uses in Section 19.72.050 until December 31, 2009 at which time it shall cease all operations at the location; however, until that time such dispensaries shall comply with all other standards of Section 19.36.165. Any dispensary that does not meet the location requirements of this section and is discontinued or has ceased operations for 30 days or more shall not be re-established on the site and any further use of the site shall comply with all applicable provisions of the Municipal Code.

iv. Laguna Beach

Laguna Beach's proposed ordinance can be found [here](#).

b. Proposition 215

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5.(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (l) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this act shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this act who has consistently assumed responsibility for the housing, health, or safety of that person.

SECTION 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

c. SB 420**INTRODUCED FEBRUARY 20, 2003 BY Senator Vasconcellos****PASSED SENATE SEPTEMBER 11, 2003****PASSED ASSEMBLY SEPTEMBER 10, 2003***(Principal coauthor: Assembly Member Leno. Coauthors: Assembly Members Goldberg, Hancock, and Koretz)*

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and nondiversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**SECTION 1.**

- (a) The Legislature finds and declares all of the following:
 - (1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written

approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

- (2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.
 - (3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.
 - (4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.
- (b) It is the intent of the Legislature, therefore, to do all of the following:
- (1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.
 - (2) Promote uniform and consistent application of the act among the counties within the state.
 - (3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.
- (c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.
- (d) The Legislature further finds and declares both of the following:
- (1) A state identification card program will further the goals outlined in this section.
 - (2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.
- (e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SECTION. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

- (a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care,

treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

- (b) "Department" means the State Department of Health Services.
- (c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.
- (d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:
 - (1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
 - (2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
 - (3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.
- (e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.
- (f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.
- (g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.
- (h) "Serious medical condition" means all of the following medical conditions:
 - (1) Acquired immune deficiency syndrome (AIDS).
 - (2) Anorexia.

- (3) Arthritis.
 - (4) Cachexia.
 - (5) Cancer.
 - (6) Chronic pain.
 - (7) Glaucoma.
 - (8) Migraine.
 - (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
 - (10) Seizures, including, but not limited to, seizures associated with epilepsy.
 - (11) Severe nausea.
 - (12) Any other chronic or persistent medical symptom that either:
 - (A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - (B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.
- (i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

- (1) Provide applications upon request to individuals seeking to join the identification card program.
- (2) Receive and process completed applications in accordance with Section 11362.72.
- (3) Maintain records of identification card programs.
- (4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).
- (5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed. (c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

- (A) Updated written documentation of the person's serious medical condition.
- (B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.
- (b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.
- (c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.
- (d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

- (1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.
- (2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.
- (3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars (\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.

* Footnotes to the above:

11366. Every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

11366.5. (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide and who obtains excessive profits from the use of the building, room, space, or enclosure shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who violates subdivision (a) after previously being convicted of a violation of subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years.

(d) For the purposes of this section, "excessive profits" means the receipt of consideration of a value substantially higher than fair market value.

11570. Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

Medical Marijuana Research program

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program. (2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana. (b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

(1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.

(2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.

(3) Proposals shall contain provisions for a patient registry. (4) Proposals shall contain provisions for an information system

that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.

(6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

- (7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.
- (c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:
- (1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.
 - (2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.
- (d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.
- (e) It is the intent of the Legislature that the program be established as follows:
- (1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.
 - (2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.
 - (3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.
 - (4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.
 - (5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.
- (f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

- (g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.
- (h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.
- (i) The marijuana studies shall employ state-of-the-art research methodologies.
- (j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.
- (k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.
- (l) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.
- (2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.
- (3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.
- (m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.
- (2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.
- (n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:
- (1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section. (r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act..

d. Attorney General Guidelines

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt “guidelines to ensure the security and nondiversion of marijuana grown for medical use.” (Health & Saf. Code, § 11362.81(d).1) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician’s recommendation. (§ 11362.5.) Proposition 215 was enacted to “ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person’s health would benefit from the use of marijuana,” and to “ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (People v. Trippet (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification

cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use. In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.) Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (Id. at §§ 841(a)(1), 844(a).)

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.)

Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. Physician's Recommendation: Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. Primary Caregiver: A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) ["A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana].)

C. **Qualified Patient:** A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. **Recommending Physician:** A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. **Physician Recommendation:** Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. **State of California Medical Marijuana Identification Card:** Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date.

(§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. **Proof of Qualified Patient Status:** Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) MMP:2 Qualified patients and primary caregivers who possess a state issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient.

(§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.”

(§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) Local Possession Guidelines: Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess 2 On May 22, 2008, California’s Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute’s possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient

may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*. Medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

c) Proposition 215: Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. Location of Use: Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. Use of Medical Marijuana in the Workplace or at Correctional Facilities: The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. Criminal Defendants, Probationers, and Parolees: Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court's decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. State of California Medical Marijuana Identification Cardholders:

When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH's card verification website (<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. Non-Cardholders: When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person's medical-use claim:

- a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.
 - b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.
 - c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.
 - d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.
 - e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.
6. Exceeding Possession Guidelines: If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. Return of Seized Medical Marijuana: If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. Statutory Cooperatives: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Id. at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (Id. at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (Ibid.) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual

members each year. (See *id.* at § 12200, *et seq.*) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, *et seq.*) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. Collectives: California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (Random House Unabridged Dictionary; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. Non-Profit Operation: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”].)

2. Business Licenses, Sales Tax, and Seller’s Permits: The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. Membership Application and Verification: When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members’ medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. Collectives Should Acquire, Possess, and Distribute Only Lawfully

Cultivated Marijuana: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to nonmedical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should track and record the source of their marijuana.

5. Distribution and Sales to Non-Members are Prohibited: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. Permissible Reimbursements and Allocations: Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. Possession and Cultivation Guidelines: If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. Security: Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. Enforcement Guidelines: Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. Storefront Dispensaries: Although medical marijuana “dispensaries” have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§ 11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (Peron, *supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. Indicia of Unlawful Operation: When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

e. L.A. County Code

Medical Marijuana Dispensary Development Standards

Section 22.56.196 requires a medical marijuana dispensary to comply with the following development standards:

- **Location.** A dispensary may not be located within a 1,000 foot radius of sensitive uses such as schools or places of religious worship or within 1,000 foot radius of another dispensary.

The proposed dispensary is not located within a 1,000 foot radius of sensitive uses. The two schools in the neighborhood are both approximately 2,500 foot away from the proposed project site. Another dispensary does not exist within a 1,000 foot radius of the proposed project site.

- **Signs.** A sign for a dispensary is limited to one wall sign not to exceed 10 square feet and one building identification sign not to exceed 2 square feet. These signs may not be lit. Additionally, the dispensary would be required to post an indoor sign with the following warnings: diversion is illegal, the use of marijuana may impair a person’s ability to drive a motor vehicle or operate machinery, loitering is prohibited.

The applicant has not submitted a sign proposal to date.

- **Hours of Operation.** The County Code limits operation from 7a.m. to 8 p.m.

The applicant’s operations manual states that the hours of operation would be from 7 a.m. to 8 p.m. (See operations manual section 1.)

- **Lighting.** The County Code requires lighting of the premises to the director’s satisfaction.

The applicant's operations manual states that lighting of the premises would be provided during business hours for visibility and safety, but deflected away from residential areas. Staff recommends that lighting be provided during non-business hours as well. (See operations manual 2.c and 4.c)

- **Graffiti.** The County Code requires the removal of graffiti from the premises within 24 hours of its occurrence.

This requirement would be a condition of approval.

- **Litter.** The County Code requires the removal of litter twice each day.

This requirement would be a condition of approval.

- **Prohibition of alcohol.** The County Code requires the prohibition of the sale or consumption of alcoholic beverages on the grounds of the dispensary.

This prohibition and its enforcement should be addressed in the applicant's operations manual.

- **Edibles.** The County Code allows a dispensary to dispense edible forms of medical marijuana.

The applicant does not intend to provide edibles at the project site. This intent should be included in the operations manual.

- **On-site consumption.** The County Code allows on-site consumption of medical marijuana if specific standards are met.

The applicant does not intend to provide facilities for onsite consumption. This intent should be included in the operations manual.

- **Devices for inhalation.** The County Code allows devices for taking medical marijuana to be dispensed to qualified patients in accordance with state law. State law requires that such devices be provided in a separate enclosure that is not accessible to persons under 18 years old.

The operations manual states that minors would not be allowed in the dispensary. This complies with state requirements for separate enclosure and age limitation. The applicant does not intend to provide devices for inhalation, but may provide rolling papers.

- **Security.** The County Code requires a security camera and a licensed security guard.

The applicant's operations manual states that a security system, including a security camera and licensed security guards would be provided during business hours.

- **Cultivation and cuttings.** State law allows qualified patients and primary caregivers to cultivate a limited number of marijuana plants for medical purposes. The County Code does not allow dispensaries to cultivate marijuana on-site; it does allow the provision of cuttings to patient who may want to cultivate marijuana in accordance with state law.

The applicant does not intend to provide cuttings. This intent should be included in the operations manual.

- **Loitering.** The County Code requires dispensaries to ensure that there is no loitering.

The operations manual states that the dispensary would not allow loitering in the parking lot or the surrounding neighborhood. This intent should be strengthened by adding that one of the security guard's duties would be to walk around the premises and ensure that no patrons loiter in the residential streets.

- **Distribution of emergency phone number.** The County Code requires the dispensary operator to distribute the name and emergency contact number to those who request it.

The operations manual provides for community outreach. The dispensary operator proposes to meet quarterly with the President of the Del Aire Homeowners Association. Staff recommends that this provision be strengthened by requiring the applicant to distribute the dispensary emergency contact number to residents and not just to those who request it. The emergency contact number should also be posted on the outside of the building.

- **Minors.** The County Code prohibits the provision of medical marijuana to persons under the age of 18.

The operations manual specifies that minors would not be admitted into the dispensary. The term “minor” should be clarified to refer to anyone under 18 years old.

- **Liability and indemnification.** The County Code states that the owners and permittees must indemnify the County and assume liability that may result from the establishment and operation of the dispensary.

Staff recommends that County Counsel draft an agreement, which the applicant must sign as a condition of approval, which releases the county and its agents from injuries, damages, or liabilities that may result from the operation of the dispensary and indemnifies the County should any liabilities and claims be brought against the dispensary. Under the Business Licenses Code, a medical marijuana dispensary must carry a liability insurance of \$1 million dollars.

f. FAQs

What are Proposition 215 (Prop 215), the Compassionate Use Act of 1996, and Senate Bill (SB) 420?

Prop 215 is another term for the Compassionate Use Act of 1996. Prop 215 was the first statewide medical marijuana measure voted into law in the United States. Prop 215 provides protections to seriously ill persons who have their doctor's recommendation to use marijuana for medical purposes. Prop 215 also provides protections to the physicians and primary caregivers who assist these seriously ill persons, who are known as "qualified patients" under SB 420 (Chapter 875, Statutes of 2003). SB 420 was enacted into the Health and Safety Code of California (Sections 11362.7 through 11362.83) to address problems with Prop 215. SB 420 requires the California Department of Health Services to create the Medical Marijuana Program (MMP). The state MMP is responsible for developing and maintaining an online registry and verification system for Medical Marijuana Identification Cards or "MMICs." MMICs are available to qualified patients and their primary caregivers. The intent of SB 420 is to help law enforcement and qualified patients by creating a form of identification for qualified patients that is official and uniform throughout the State. The online registry allows law enforcement to verify that a MMIC is valid. For more information see the MMP's home page.

What is the Medical Marijuana Program (MMP) and what does it do?

The California Department of Health Services (CDHS) manages the State's MMP as authorized by SB 420. Several counties also use the term "MMP" for their programs. The MMP developed the "Medical Marijuana Identification Card" or "MMIC" and operates the internet system to verify these MMICs.

What is a Medical Marijuana Identification Card (MMIC) and how can it help me?

The MMIC identifies the cardholder as a person protected under the provisions of Prop 215 and SB 420. It is used to help law enforcement identify the cardholder as being able to legally possess certain amounts of medical marijuana under specific conditions.

How do I know if I qualify for a MMIC?

You will need to discuss this with your attending physician. In order to qualify for the protections of Prop 215 and SB 420, you will need to be diagnosed with a serious medical condition. The diagnosis and your physician's recommendation that the use of medical marijuana is appropriate for you must be documented in your medical records.

What serious medical condition(s) do I need to have to qualify for a MMIC?

A serious medical condition, as defined by SB 420, is any of the following: AIDS; anorexia; arthritis; cachexia (wasting syndrome); cancer; chronic pain; glaucoma; migraine; persistent muscle spasms (i.e., spasms associated with multiple sclerosis); seizures (i.e., epileptic seizures); severe nausea; any other chronic or persistent medical symptom that either substantially limits a person's ability to conduct one or more of major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the person's safety, physical, or mental health.

When and where can I apply for a MMIC?

The state MMP will begin with its pilot program in May of 2005, and will begin statewide implementation by late summer of 2005. Four counties are participating in the pilot phase. To learn if your county has started accepting applications, view the list of county programs web page. Hours of operation, fees, and application locations will vary. You may need to contact your county's program for more information.

Are medical marijuana patients and their primary caregivers required to enroll in the MMP?

No. Participation in the MMP is voluntary.

I am a qualified patient. How do I apply for a MMIC?

In order to see if your county is accepting applications you will need to view the list of county programs. When your county begins accepting applications for MMICs, you will need to fill out an Application/Renewal Form. You must reside in the California county where the application is submitted. You will need to provide current documentation with your application as follows:

A copy of your medical records that documents the use of medical marijuana is appropriate for you.

Proof of identity. This can be a California Department of Motor Vehicles (DMV) driver's license or identification (ID) card or other government-issued photo ID card.

Proof of residency which can be:

- Rent or mortgage receipt.
- Utility bill
- California DMV motor vehicle registration.

You must apply in person at your county's program. There you will be asked to:

- Pay the fee required by your county program. Medi-Cal beneficiaries will receive a 50 percent reduction in the application fee.
- Have your photo taken at the county's program office. This photo will appear on your MMIC.

Is it necessary to include copies of my medical records with my application?

Yes. To simplify this requirement, the state MMP offers a form to serve this purpose. It is the Written Documentation of Patients Medical Records form. It is simply a form your physician can use to state in writing that you have a serious medical condition and that the use of medical marijuana is appropriate. The original is submitted with your application and a copy must be kept in your medical records at your physician's office.

How much does it cost to apply for a card?

Fees vary by county. You will need to contact your county's program to find out the fee your county charges for a MMIC application. Also, if you request the 50 percent Medi-Cal reduction, you will need to provide proof of participation in the Medi-Cal Program. Your county's program will provide you with information on what type of proof you need to qualify for the reduction.

What is a primary caregiver?

A primary caregiver is a person who is consistently responsible for the housing, health, or safety of a qualified patient. A primary caregiver must be at least 18 years of age, unless the primary caregiver is an emancipated minor or the parent of a minor child who is a qualified patient. A primary caregiver can also be an owner, operator, or up to three employees of a clinic, facility, hospice, or home health agency. For more information please visit the Responsibilities: Applicant, Primary Caregiver, and Physician web page.

I am a primary caregiver for a qualified patient. How do I apply for a MMIC?

As a primary caregiver you cannot apply for a MMIC. The patient you care for is responsible for applying for your MMIC. Your patient will need to fill out an Application/Renewal Form and check the appropriate

box on the top of page one to include primary caregiver. You do not need to reside in the California county where the application is submitted, but you must provide information on your residence. If you are the primary caregiver for more than one qualified patient you must reside in the same county as them. You will need to provide proof of identity which can be a California DMV driver's license or California ID card or other government-issued photo ID card. You must apply in person at your county's program. There you will be asked to:

- Pay the fee required by your county program. Medi-Cal beneficiaries and their primary caregivers will receive a 50 percent reduction to the application fee.
- Have your photo taken at the county office. This photo will appear on your MMIC.

How long will it take to get my MMIC?

Once you submit your completed and signed application form with the required documents (proof of residency, medical documentation, etc.) to your county's program, the county program has 30 days to approve or deny your application. Once the application is approved, the county program has five days to make the MMIC available to you. It can take 35 days to receive your MMIC if the application is complete and the county program finds no reason to deny your application. If any information or documents are missing, this may delay processing your application. If this is the case, your county's program will contact you within 30 days from the day you submit your application. If you do not receive your MMIC in 35 days, contact your county's program.

How long is a MMIC valid?

Generally, one year.

How do I renew my MMIC?

Renewing a MMIC requires the same process as when you originally applied. This includes verifying your information and giving you a new MMIC and new number. If your medical documentation is still valid, you may use this for your renewal. It may not be necessary for you to obtain new medical documentation. Your county's program will verify any information they feel is necessary. You will need to contact their office for more information.

Is my MMIC valid outside of California?

No.

Is my MMIC valid in other California counties?

Yes. This is a statewide identification card and registry program.

Do I need to let my county's program know when I change my attending physician or primary caregiver?

Yes. You need to contact them within seven days. Failure to do so may result in the invalidation of your MMIC.

Can the state MMP refer me to a doctor?

No. The MMP does not maintain lists of physicians nor is it a referral service.

What happens to my application and other private health information after I give it to my county's MMP?

Your application will be kept confidential and secure. The only release of your application will be with your written permission. This includes appeals of denied applications to the state MMP. (The Appeals Form contains a declaration and signature block regarding this release.)

I am a legal representative for a qualified patient who cannot make their own medical decisions. Can I apply for them?

Yes. A conservator with authority to make medical decisions, surrogate decision maker authorized under an advanced health care directive, an attorney-in-fact under durable power of attorney for healthcare, or any other individual authorized by statutory or decisional law to make medical decisions for the qualified patient may apply for that patient.

Why do I need to apply for my MMIC in person?

You will need to have your photo taken which will appear on the MMIC. Also, certain verifications will need to be completed in person.

I am a caregiver for a bedridden qualified patient. What can I do to help my patient apply for a MMIC?

Check with your county's program for information.

Why does my primary caregiver need to come to my county's program office with me to apply for our cards?

Only a patient can apply for either type of card, and both the patient and the primary caregiver must provide certain personal information to the county program. You both need to apply in person at the county program office because you will both be photographed for each MMIC.

My primary caregiver lives in a different county than I do. Which county program do we apply in?

The county the patient resides in.

Can a minor apply for a MMIC?

Yes. A minor can apply as a patient or caregiver under certain conditions. Minors may apply for themselves as qualified patients if they are lawfully emancipated or have declared self-sufficiency status. If the minor has not declared self-sufficient status or is not emancipated, the county's program is required to contact the minor's parent, legal guardian, or person with legal authority to make medical decisions for the minor. This is to verify information on the Application/Renewal Form. An emancipated minor or the minor's parent of a qualified patient may apply as a primary caregiver. If a minor declares status as a self-sufficient minor or is an emancipated minor, his or her county program may require additional documentation. Contact your county's program for more information on additional required documentation.

What can be proof of identity for a minor?

Minors may use government-issued photo identification, such as a California driver's license or a California ID card. A certified copy of a birth certificate can be sufficient proof of identity for a minor.

My application for a MMIC was denied. How can I appeal this decision?

Please see the Appeals web page for more information on appealing a county's decision to deny your application.

What information will appear on the MMIC?

A unique user identification number of the cardholder

Date of expiration of the identification card

Name and telephone number of the county program that has approved the application

Internet address used to verify the validity of the MMIC

Photo identification of the cardholder

“Patient” or “Primary Caregiver” to specify the cardholder

How do I replace my MMIC if it is lost, stolen, or damaged?

Please contact your county's program for more details and fees.

How much marijuana can I have in my possession?

For information on possession limits please visit the Health and Safety Code Section 11362.77 or contact your local law enforcement authority.

Where can I get the seeds or plants to start growing marijuana for my medical use? How can I get related products?

The MMP is not authorized to provide information on acquiring marijuana or other related products.

For further reading of council file on the medical marijuana issue, please visit

<http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=05-0872>

Narcotic Educational Foundation of America

Drug Abuse Education Provider of the:

California Narcotic Officers' Association

USE OF MARIJUANA AS A "MEDICINE"

QUICK FACTS:

Marijuana, a plant from the cannabis family, is illegal and highly psychoactive. Marijuana and its associated compounds can seriously affect the human body. The acute cannabis drug influence, accelerates (speeds up) certain body functions. This class of drugs causes an "artificial" state of stimulation. Some of the signs of these body functions are increased heart and respiratory rate, elevated blood pressure, and the dilation of the pupils of the eyes. High doses have also caused very rapid and / or irregular heart beats, tremors, loss of coordination, and in some cases a stroke.

Cannabis addictive qualities are exerted on that region of the brain and central nervous system that is responsible for pain relief, endurance, muscle relaxation, and tranquilizer effects. The brain's neurochemicals associated with cannabis have a direct effect upon impairment as expressed with judgment and decision making. The presence of non-convergence (ability to cross eyes) and non-reactive pupils of the eye, can impair visual tracking ability which may produce accidents and injuries. The elimination of the metabolic products of cannabis from the body is slow, as it stores in the fatty tissue. In chronic users it can be detected in the urine for 30 to 45 days after

MARIJUANA IS NOT A MEDICINE

There currently exists controversy concerning smoking marijuana as a medicine. Many well-intentioned leaders and members of the public have been misled, by the well-financed and organized pro-drug legalization lobby, into believing there is merit to their argument that smoking marijuana is a safe and effective medicine. A review of the scientific research, expert medical testimony, and government agency findings, shows this to be erroneous. There is *no* justification for using marijuana as a medicine.

The California Narcotics Officers' Association consists of over 7,000 criminal justice professionals who are dedicated to protecting the public from the devastating effects of substance abuse, whether cocaine, methamphetamine, or marijuana. We have seen first hand the debilitating and often tragic results, both psychologically and physically, of those who choose intoxication as a part of their lifestyle. We have studied the medicinal use of marijuana issue, compiling information from medical experts to present to those we are sworn to protect. It is our firm belief that any movement that liberalizes or legalizes substance abuse laws

would set us back to the days of the 70's, when we experienced this country's worst drug problem, and the subsequent consequences. In the 80's, through the combined and concerted effort of law enforcement, education, prevention, and treatment professionals, illicit drug use was reduced by 50 percent. Teenagers graduating from the class of 1992 had a 50 percent less likely chance of using drugs than those who graduated in the class of 1979.

Substance abuse rises whenever public attitude is more tolerant toward drugs, i.e., they are safe and harmless. Other factors that contribute to a rise in use include increased availability, reduced risk associated with using or selling, and lower prices. In 1993, or the first time after 12 years of steady decline, illicit drug use rose and continues to climb. A major contributing factor is a message that drugs "aren't so bad." To counter this "just say yes" campaign, we feel compelled to provide the facts on the use of smoking marijuana as a medicine. These well documented facts will prove beyond a doubt that

MARIJUANA IS NOT A
MEDICINE.

FACT: The movement to legitimize smoking marijuana as a medicine is NOT encouraged by the pharmaceutical companies, Federal Food and Drug Administration (FDA), health and medical associations, or medical experts; but instead by groups such as National Organization for the Reform of Marijuana Laws (NORML) and the Drug Policy Foundation (DPF). These organizations have little medical expertise and favor various forms of legalizing illicit drugs.

FACT: Pro-legalization organizations have admitted that their strategy to legalize marijuana begins with legitimizing smoking marijuana as a medicine. As reported in HIGH TIMES magazine, the Director of NORML expressly stated that the medicinal use of marijuana is an integral part of the strategy to legalize marijuana. Tony Serra, a criminal defense attorney associated with the pro-legalization groups, stated that medicinal marijuana is the "chink in the administration's armor that will lead to society's seeing pot's mystical effects of peace, sisterhood, and brotherhood." He is also the one who

(continued on page 2)

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said, "if you kill a cop, I'll pay to take the case." and "my sustenance is drugs and murder." A former Director of NORML, Keith Stroup, told an Emory University audience that NORML would be using the issue of medicinal marijuana as a red herring to give marijuana a good name. The Director of NORML, Dick Cowan, is quoted, "The key is medical access. Because once you have hundreds of thousands of people using marijuana under medical supervision, the whole scam is going to be brought up... then we will get medical, then we will get full legalization." Is there any doubt about the motive while they play this cruel hoax on people with legitimate illnesses?

FACT: A leader of the medicinal use of marijuana movement, Dr. Lester Grinspoon, is an associate professor of psychiatry at Harvard as well as chairman of the Board of NORML. He has made absurd claims such as marijuana, like aspirin, is "usually safe," using cocaine two or three times a week "creates no serious problems," and "chronic cocaine abuse usually does not appear as a medical problem." He wrote a book called Marijuana: The Forbidden Medicine, which is the bible for pro-marijuana advocates.

FACT: The studies cited by the marijuana advocates have been found to be unscientific, poorly researched, or involved pharmaceutical THC, not marijuana. One of their "experts", who testified at the 1987 Federal hearings to reschedule marijuana, was a wellness counselor at a health spa who admitted under oath to using every illegal mind-altering drug he ever studied. Another expert admitted he had not kept up with new medical or scientific information on marijuana for over 18 years. Another doctor claimed there was voluminous medical research on the effectiveness of marijuana, but under oath when asked to cite the number of the studies, he replied, "I would doubt very few." The fact is that there is not one reliable scientific study that shows smoking marijuana to be a safe and effective drug.

FACT: The majority of marijuana advocate's "evidence" comes from unscientific, non scrutinized or analyzed anecdotal

statements from people with a variety of illnesses. It is unknown whether these individuals used marijuana prior to their illness or are using marijuana in combination with other medicines. It is also unknown whether they have had recent medical examinations, are justi-

*"Medicinal Marijuana is
the chink in the
administration's armor"*
-
*"If you kill a cop, I'll pay
to take the case"*
-
*"My sustenance is drugs
and murder."*
-
**These are all quotes from
one of the pro-marijuana
attorneys.**

fying their use of marijuana, experiencing a placebo effect, or experiencing the intoxicating effect of smoking marijuana.

FACT: The main psychoactive ingredient in marijuana (THC) is already legally available in pharmaceutical capsule form by prescription from medical doctors. This drug, Marinol, is less often prescribed because of the potential adverse effects, and there are more effective new medicines currently available. Marinol differs from the crude plant marijuana because it consists of



one pure, well-studied, FDA-approved pharmaceutical, in stable known dosages. Marijuana is an unstable mixture of over 400 chemicals including many toxic psychoactive chemicals, which are largely unstudied and appear in uncontrolled strengths.

FACT: The manufacturers of Marinol, Roxane Laboratories Incorporated, do not agree with the pro-marijuana advocates that THC is safe and harmless. In the Physician's Desk Reference (PDR), a good portion of the description of Marinol includes warnings about the adverse effects.

FACT: Common sense dictates that it is not good medical practice to allow a substance to be used as a medicine if that product is:

1. Not FDA-approved.
2. Ingested by smoking.
3. Made up of hundreds of different chemicals.
4. Not subject to product liability regulations.
5. Exempt from quality control standards.
6. Not governed by daily dose criteria.
7. Offered in unknown strengths of (THC) from 1 to 26 percent.
8. Self-prescribed and self administered by the patient.

FACT: The Federal government over the last 20 years, involving a number of administrations from both political parties, has determined that smoking marijuana has no redeeming medicinal value, and is in fact harmful to health. These government agencies include the Drug Enforcement Administration (DEA), and the U. S. Public Health Service. Their latest findings, as recently as 1994, was affirmed in a decision by the U.S. Court of Appeals in Washington D.C.

(continued on page 3)

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FACT: Since the pro-marijuana lobby has been unsuccessful in dealing with the federal government, they have targeted state and local governments to legitimize smoking marijuana as a medicine. A careful examination of their legislative and/or ballot proposals reveals they are written to effectively neutralize the enforcement of most marijuana laws. Crude, intoxicating marijuana, under their proposals, would be easier to obtain and use than even the most harmless low-level prescription drug.

FACT: Major medical and health organizations, as well as the vast majority of nationally recognized expert medical doctors, scientists, and researchers, have concluded that smoking marijuana is not a safe and effective medicine. These organizations include: The American Medical Association, The American Cancer Society, National Sclerosis Association, The American Glaucoma Association, American Academy of Ophthalmology, National Eye Institute, National Cancer Institute, National Institute for Neurological Disorders and Stroke, National Institute of Dental Research, and the National Institute on Allergy and Infectious Diseases.

FACT: There are over 10,000 studies available documenting the harmful physical and psychological effects of smoking marijuana. The harmful consequences include, but are not limited to, premature cancer, addiction, coordination and perception impairment, a number of mental disorders; including depression, hostility, and increased aggressiveness, general apathy, memory loss, reproductive disabilities, impairment to the immune system, numerous airway injuries, and other general problems associated with intoxication.

FACT: The medicinal marijuana movement and its media campaign have helped contribute to the changing attitude among our youth that marijuana is harmless, therefore contributing to the increase of marijuana use among our young people after 12 years of steady decline.

RISKS OF CONTINUED USE OF MARIJUANA

INCREASED RESPIRATORY PROBLEMS

Smoke from a joint and THC have been shown to damage the lungs, impede brain function and hamper the immune system.

(University of Arizona study)

One joint causes the absorption of five times more carbon monoxide and four times the tar into the blood than one cigarette.

(The New England Journal of Medicine)

Microscopic cell damage of the airway lining caused by 3 joints per day equals the damage caused by one pack of cigarettes.

(University of California at Los Angeles study)

BEHAVIORAL CHANGES

The continued use of THC interferes with the normal function of a portion of the brain, the hippocampus, and the cortex. These are believed to be related to marijuana's reported detrimental effect on memory.

(Pfizer Central Research)

BLOOD FLOW PATTERNS IN BRAIN

The use of THC seems to shut down or restrict blood flow patterns to the frontal lobe of the brain where thinking and memory occurs. Continued use may be detrimental in school age young adults, as this has a direct effect on learning and memory.

(Brigham and Women's Hospital - Boston, Mass., study.)

CELLULAR ACTIVITY

THC has been shown to depress cell division and synthesis of DNA. It has been further shown that it suppresses the immune response of the blood lymphocytes, and alters the structure of the brain cell membrane. Alteration of cell structure in the lung air passages has also been observed.

(Dr. Forrest S. Tennant Jr. study)

The overriding objective behind this movement is to allow a minority (less than five percent) of our society to get "stoned" with impunity. This small minority is willing to put our citizens at risk from all the negative and disastrous effects caused to and by those who are intoxicated. What we don't need in this society is more intoxicated people on our highways, in our workplaces, in our schools and colleges, or in our homes.



MARIJUANA SMOKING PIPE

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

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Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthful mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal **or** state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety**.”³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to “high priced McMansions . . .”⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the “THC-rich ‘B.C. bud’ strain” of marijuana originally produced in British Columbia “can be grown only in controlled indoor environments,” and the Canadian market is now reportedly saturated with the product of “competing Canadian gangs,” often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound” for high-potency marijuana, and such multiple harvests, “a successful grow house can bring in between \$4.5 million and \$10 million a year . . .”⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift “no code” electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, “Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord.” Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, “We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints.” House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a “sin no more” view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

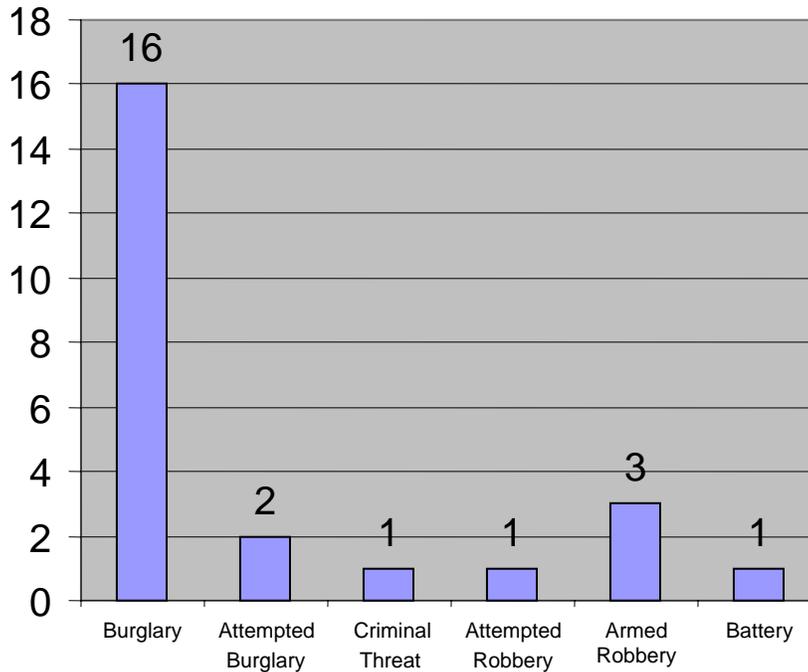
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

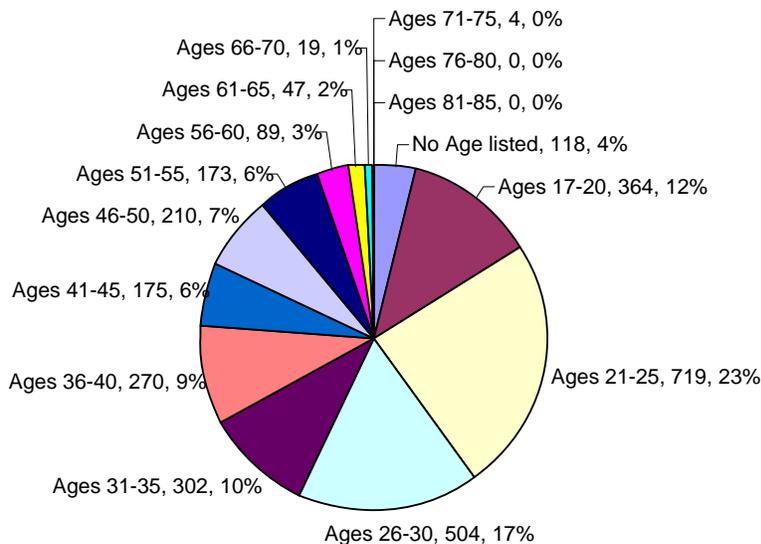
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars “as a joke.” They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend “Brandon,” who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a “blunt” (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician’s recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing “honey oil” for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special “honey oil” extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the “honey oil” with marijuana and butane that they brought up from one of Estes’ San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the “designated driver.” When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. State Law

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.") By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

¹ U.S. Const., art. VI, cl. 2.

² U.S. Const., art. I, sec. 8, cl. 3.

³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.

⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

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⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0.4987571.story>

⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

⁹ H&S Code sec. 11362.5(a).

¹⁰ H&S Code sec. 11362.7 *et. seq.*

¹¹ H&S Code sec. 11362.7.

¹² H&S Code secs. 11362.71–11362.76.

¹³ H&S Code sec. 11362.77.

¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.

¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.

¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.

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²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.

²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.

²⁷ Israel Packel, 4-5. Italics added.

²⁸ H&S Code sec. 11362.7(d)(1).

²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.

³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

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U. S. Department of Justice
Drug Enforcement Administration
San Francisco Field Division
450 Golden Gate Ave., 14th Floor
San Francisco, CA 94102

www.dea.gov

NOV 26 2007

Dear [REDACTED]

Sacramento, CA 95852

NOTICE

The Drug Enforcement Administration (DEA) has determined you own, or have under your management or control, a building located at [REDACTED] Sacramento, California 95833. The DEA has determined there is a marijuana dispensary, [REDACTED] operating on the property. This is a violation of federal law. Federal law 21 U.S.C. § 856(a) states:

"It shall be unlawful to knowingly and intentionally rent, lease, or make available for use, with or without compensation, [a] building, room, or enclosure for the purpose of unlawfully manufacturing, storing, distributing or using a controlled substance."

Federal law takes precedence over State law. It is not a defense to this crime or to the seizure of the property that the facility operating on the property is providing "medical marijuana" under California law including the provisions of California Proposition 215. Violation of this law is a felony crime, and carries with it a penalty of up to 20 years in prison.

In addition, federal law allows for the seizure of assets, including real property, which have been used in conjunction with the distribution of controlled substances. Specifically, 21 U.S.C. § 881(a)(7) states:

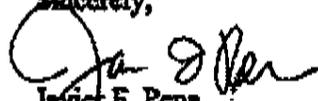
"The following shall be subject to forfeiture to the United States and no property right shall exist in them: All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land which is used in any manner or part, to commit, or to facilitate the commission of, a violation of this sub-chapter."

**Drug Enforcement Administration
Notice Letter
Page Two**

This letter shall serve as notice that, after a thorough investigation, the DEA has determined there is a marijuana dispensary operating on the above described property. By this notice, you have been made aware of the purposes for which the property is being used. You are further advised that violations of federal laws relating to marijuana may result in criminal prosecution, imprisonment, fines and forfeiture of assets.

For further information, please contact Group Supervisor Jeffrey Hoyt at (415) 436-7798.

Sincerely,



Javier F. Pena
Special Agent in Charge



Inland Valley
Drug Free
Community Coalition

www.ivdfc.org

Serving Riverside and San Bernardino County

youth • parents • schools • law enforcement • health care • media • businesses • government •
non profits • community groups • religious entities • fraternal and service organizations

April 21, 2009

City of Beaumont
City Council

Dear City Council Members:

Shortly, you will vote on whether or not to ban pot dispensaries in your city. We strongly encourage you to move forward with a ban.

We are parents, teachers, cops, youth, business leaders, health care providers, and others who are helping the Inland Empire push back against a pro-marijuana movement that has set its sights on a number of cities and towns in the Inland Empire region.

Within the last two-years, over a dozen cities in the Inland Empire have taken up the issue of medical pot dispensaries, co-ops, etc, and all but one (Palm Springs) have voted them down. These cities did so only after they learned of the fallacies with so-called medical pot.

Pot shops are common on the streets of San Francisco and West Los Angeles and that is because a pro-drug legalization movement has succeeded in those neighborhoods.

Recently, Fox News O'reilly Factor reported on the ruse that medical marijuana has become in California. He cited children being sold pot from those who possess medical marijuana ID cards. In fact, there are now more pot shops on the streets of S.F. and West L.A. than Starbucks.

If Beaumont City allows any type of pot store to exist within its boundaries, it will, without a doubt, open the door to yet another way for children to find drugs; through the hands of someone holding a marijuana ID card who purchase the Federally unlawful drug from a local pot store.

The desert area is known around the region as a headquarters for the most outspoken pro-marijuana organization in the area. It's no surprise that you will see them in your council chambers touting the benefits of marijuana use.

Strengthening community action for the safety of our children
12223 Highland Ave #106-305
Rancho Cucamonga, CA 91739
info@ivdfc.org (909) 457-4229

Let's remember: Prop 215 was passed in 1996 by a marginal 55% of the vote. And those who voted for it thought the marijuana would be given only to the most seriously/terminally ill. It was a ruse. The small print of that law, as described by pro-drug groups (who funded but failed to convince the electorate this November to pass Prop 5 – another pro drug effort) allows anybody to get pot for any condition, whatsoever.

We encourage city leaders to take a tour of the West Los Angeles and San Francisco. By opening to the door to just one shop (co-op) will be enough for the pro-drug movement to come crashing through as they have in other areas – and when that happens, it's virtually impossible to turn back (again, look at S.F and West L.A).

Beaumont is a beautiful city and doing anything other than voting down pot will immediately tarnish the city.

We understand that initially, this may have seemed confusing. You want to do the right thing; you want to help patients in need of medicine. But smoked marijuana is not medicine, and it's against Federal law. What you should consider is a law mandating that all businesses that operate within the city must abide by local, state and federal laws. As such, never again would you be harassed by pro-drugs wanting to set up a marijuana shop. Meds like marinol already exist in pill form, which is approved by the FDA (and is not a violation of Federal law and not sought after by youth for abuse).

Thank you for your leadership on this issue. Together, we can protect our children from the harm of illegal drug use.

Yours truly,
//s//
Roger Anderson
Coalition Chair

(see attached)

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What's Wrong With Permitting the Use of Smoked Marijuana?

- Simply put, the smoked form of marijuana is not considered modern medicine. On April 20th, 2006, the FDA issued an advisory concluding that no sound scientific studies have supported medical use of smoked marijuana for treatment in the United States, and no animal or human data support the safety or efficacy of smoked marijuana for general medical use.
- A number of states have passed voter referenda or legislative actions making smoked marijuana available for a variety of medical conditions upon a doctor's recommendation. According to the Food and Drug Administration (FDA), these measures are inconsistent with efforts to ensure medications undergo the rigorous scientific scrutiny of the FDA approval process and are proven safe and effective under the standards of the FD&C Act.
- While smoking marijuana may allow patients to temporarily feel better, the medical community makes an important distinction between inebriation and the controlled delivery of pure pharmaceutical medication. The raw (leaf) form of marijuana contains a complex mixture of compounds in uncertain concentrations, the majority of which have unknown pharmacological effects.
- The Institute of Medicine (IOM) has concluded that smoking marijuana is not recommended for any long-term medical use, and a subsequent IOM report declared that, "marijuana is not modern medicine." Additionally, the American Medical Association, the National Cancer Institute, the American Cancer Society, and the National Multiple Sclerosis Society do not support the smoked form of marijuana as medicine.

"We created Prop. 215 so that patients would not have to deal with black market profiteers. But today it is all about the money. Most of the dispensaries operating in California are little more than dope dealers with store fronts."
—Rev. Scott Imler *Co-Founder of Prop. 215, California's Medical Marijuana Law*
Source: *Alternatives Magazine* Fall, 2006 Issue 39

Smoking Marijuana May Unintentionally Cause Serious Harm to Patients

- The delicate immune systems of seriously ill patients may become compromised by the smoking of marijuana. Additionally, the daily use of marijuana compromises lung function and increases the risk for respiratory diseases, similar to those associated with nicotine cigarettes.
- Marijuana has a high potential for abuse and can incur addiction. Frequent use of marijuana leads to tolerance to the psychoactive effects and smokers compensate by smoking more often or seeking higher potency marijuana.
- In people with psychotic or other problems, the use of marijuana can precipitate severe emotional disorders. Chronic use of marijuana may increase the risk of psychotic symptoms in people with a past history of schizophrenia. Marijuana smoking by young people may lead to severe impairment of higher brain function and neuropsychiatric disorders, as well as a higher risk for addiction and polydrug abuse problems.

Existing Legal Drugs Provide Superior Treatment for Serious Medical Conditions

- The FDA has approved safe and effective medication for the treatment of glaucoma, nausea, wasting syndrome, cancer, and multiple sclerosis.
- Marinol, the synthetic form of THC (the psychoactive ingredient contained in marijuana), is already legally available for prescription by physicians whose patients suffer from pain and chronic illness.

"Medical marijuana was supposed to be for the truly ill cancer victims and AIDS patients who could use the drug to relieve pain or restore their appetites. Yet the number of dispensaries has skyrocketed from five in 2005 to 143 by

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the end of 2006. In North Hollywood alone, there are more pot clinics than Starbucks.”

—Pasadena Star-News, January 21st, 2007

In Their Words: *What the Experts Say:*

The American Academy of Ophthalmology:

“Based on reviews by the National Eye Institute (NEI) and the Institute of Medicine and on available scientific evidence, the Task Force on Complementary Therapies believes that **no scientific evidence has been found that demonstrates increased benefits and/or diminished risks of marijuana use to treat glaucoma compared with the wide variety of pharmaceutical agents now available.**”

Complementary Therapy Assessment: Marijuana in the Treatment of Glaucoma, American Academy of Ophthalmology, May 2003

The American Medical Association:

“...AMA recommends that marijuana be retained in Schedule I of the Controlled Substances Act...AMA believes that the NIH should use its resources and influence to support the development of a smoke-free inhaled delivery system for marijuana or delta-9-tetrahydrocannabinol (THC) to reduce the health hazards associated with the combustion and inhalation of marijuana...”

Policy Statement H-95.952, American Medical Association, <http://www.ama-assn.org>

The National Multiple Sclerosis Society:

“Studies completed thus far have not provided convincing evidence that marijuana or its derivatives provide substantiated benefits for symptoms of MS.”

The MS Information Sourcebook, Marijuana (Cannabis), National Multiple Sclerosis Society, September 18th, 2006

The Institute of Medicine (IOM):

“Because of the health risks associated with smoking, smoked marijuana should generally not be recommended for long-term medical use.”

Marijuana and Medicine: Assessing the Science Base, Institute of Medicine, 1999

The Marijuana Vending Machine and Legalizing Pot Under the Guise of Medicine

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A few years ago, the FDA issued an Interagency Advisory asserting that claims of marijuana as "medicine" are inconsistent with efforts to ensure the safety and efficacy of medical treatment.

The *Oakland Press* has now posted video of Director Walters' public remarks in Southfield, Michigan regarding the state's smoked medical marijuana ballot initiative. Also in the video: the so-called marijuana "vending machine" that was seized recently in California. The vending machine illustrates how smoked medical marijuana ballot initiatives are not about medicine, but instead about legalizing marijuana.

By BILL O'REILLY

March 23, 2008

It seemed like a good idea at the time, the Compassionate Use Act of 1996, which allowed Californians to use marijuana with a doctor's permission to alleviate pain. Golden State voters passed the ballot measure into law by 56 percent to 44 percent.

The biggest bankroller of the referendum was George Soros, the billionaire who champions drug legalization. He pumped about \$350,000 into pro-medpot ads, according to published reports.

Since the act was passed into law, thousands of pot "clinics" have opened across the state. In San Francisco, things got so out of control that Mayor Gavin Newsom, a very liberal guy, had to close many of the "clinics" because drug addicts were clustering around them, causing fear among city residents.

In San Diego, there's another problem: Some high school kids have found a loophole in the Compassion Act. Incredibly, there is no age requirement to secure medical marijuana in California - and no physical exam needed, either. So some kids tell a doctor they have a headache, pay him \$150 for a card, and then buy all the pot they want. Unbelievable, but true.

Catherine Martin, a school official in San Diego, actually sent letters to parents in the Grossmont Union School District warning that some students are getting the medical-MJ cards and then selling them to other students. The result: an increasing number of kids arriving at school stoned. Martin warned parents to supervise their children.

San Diego DA Bonnie Dumanis told me that some "clinics" are even marketing medical marijuana under names like "Reefer's Peanut Butter Cup," and "Baby Jane." Cheech and Chong would be proud.

Now, I'm sure George Soros doesn't give a hoot about this, but the unintended consequence of non-prescription medical-marijuana legalization is that some kids are making an industry out of it. Sure, pot is available illegally in most places, but now children have a legal option. Why work at Burger King when you can sell pot cards?

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California Narcotic Officers Association

There currently exists some controversy concerning smoking marijuana as a medicine. Many well-intentioned leaders and members of the public have been misled by the well-financed and organized pro-drug legalization lobby into believing there is merit to their argument that smoking marijuana is a safe and effective medicine. A review of the scientific research, expert medical testimony, and government agency findings shows this to be erroneous. There is no justification for using marijuana as a medicine.

The California Narcotic Officers' Association consists of over 7,000 criminal justice professionals who are dedicated to protecting the public from the devastating effects of substance abuse, whether cocaine, methamphetamine, or marijuana. We have seen first hand the debilitating and often tragic results, both psychologically and physically, of those who choose intoxication as part of their lifestyle. We have studied the medicinal use of marijuana issue, compiling information from medical experts to present to those we are sworn to protect. It is our firm belief that any movement that liberalizes or legalizes substance abuse laws would set us back to the days of the '70s when we experienced this country's worst drug problem and the subsequent consequences. In the '80s, through the combined and concerted efforts of law enforcement, prevention and treatment professionals, illicit drug use was reduced by 50 percent. Teenagers graduating from the class of 1992 had a 50 percent less likely chance of using drugs than those who graduated in the class of 1979.

Substance abuse rises whenever public attitude is more tolerant toward drugs, i.e., they are safe and harmless. Other factors that contribute to a rise in use include increased availability, reduced risk associated with using or selling, and lower prices. In 1993, for the first time after 12 years of steady decline, illicit drug use rose and continues to climb. A major contributing factor is a message that drugs "aren't so bad." To counter this "just say yes" campaign, we feel compelled to provide the facts on the use of smoking marijuana as a medicine. These well-documented facts will prove beyond a doubt that MARIJUANA IS NOT A MEDICINE. FACT: The movement to legitimize smoking marijuana as a medicine is NOT encouraged by the pharmaceutical companies, Federal Food and Drug Administration, health and medical associations, or medical experts; but instead by groups such as the National Organization for the Reform of Marijuana Laws (NORML) and the Drug Policy Foundation (DPF). These organizations have little medical expertise and favor various forms of legalizing illicit drugs.

FACT: Pro-legalization organizations have admitted that their strategy to legalize marijuana begins with legitimizing smoking marijuana as a medicine. As reported in High Times magazine, the Director of NORML expressly stated that the medicinal use of marijuana is an integral part of the strategy to legalize marijuana. Tony Serra, a criminal defense attorney associated with the pro-legalization groups, stated that medicinal marijuana is the "chink in the administration's armor" that will lead to society seeing pot's mystical effects of peace, sisterhood and brotherhood. He is also the one who said, "If you kill a cop, I'll pay to take the case;" and "My sustenance is drugs and murder." A former director of NORML, Keith Stroup, told an Emory University audience that NORML would be using the issue of medicinal marijuana as a red herring to give marijuana a good name. The director of NORML, Dick Cowan, is quoted, "The key is medical access. Because once you have hundreds of thousands of people using marijuana under medical supervision, the whole scam is going to be brought up...then we will get medical, then we will get full legalization." Is there any doubt about their true motive while they play this cruel hoax on people with legitimate illnesses?

FACT: A leader of the medicinal use of marijuana movement, Dr. Lester Grinspoon, is an associate professor of psychiatry at Harvard as well as chairman of the board of NORML. He has made absurd claims such as marijuana, like aspirin, is "unusually safe;" using cocaine two or three times a week "creates no serious problems;" and "Chronic cocaine abuse usually does not appear as a medical problem." He wrote a book called Marijuana: The Forbidden Medicine, which is the bible for pro-marijuana advocates.

FACT: The studies cited by the marijuana advocates have been found to be either unscientific, poorly researched, or involved pharmaceutical THC, not marijuana. One of their "experts" who testified at the

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1987 federal hearings to reschedule marijuana was a wellness counselor at a health spa who admitted under oath to using every illegal mind-altering drug he ever studied. Another "expert" admitted he had not kept up with new medical or scientific information on marijuana for over 18 years. Another doctor claimed there was voluminous medical research on the effectiveness of marijuana but under oath, when asked to cite the number of the studies, he replied, "I would doubt very few." The fact is that there is not one reliable scientific study that shows smoking marijuana to be a safe and effective drug.

FACT: The majority of the marijuana advocates' "evidence" comes from unscientific, non-scrutinized or analyzed anecdotal statements from people with a variety of illnesses. It is unknown whether these individuals used marijuana prior to their illness or are using marijuana in combination with other medicines. It is also unknown whether they have had recent medical examinations, are justifying their use of marijuana, experiencing a placebo effect, or experiencing the intoxicating effect of smoking marijuana.

FACT: The main psychoactive ingredient in marijuana (THC) is already legally available in pharmaceutical capsule form by prescription from medical doctors. This drug, Marinol, is less often prescribed because of the potential adverse effects, and there are more effective new medicines currently available. Marinol differs from the crude plant marijuana because it consists of one pure, well-studied, FDA-approved pharmaceutical in stable known dosages. Marijuana is an unstable mixture of over 400 chemicals including many toxic psychoactive chemicals which are largely unstudied and appear in uncontrolled strengths.

FACT: The manufacturers of Marinol, Roxane Laboratories Incorporated, do not agree with the pro-marijuana advocates that THC is safe and harmless. In the Physician's Desk Reference, a good portion of the description of Marinol includes warnings about the adverse effects.

FACT: Common sense dictates that it is not good medical practice to allow a substance to be used as a medicine if that product is:

- not FDA-approved
- ingested by smoking
- made up of hundreds of different chemicals
- not subject to product liability regulations
- exempt from quality control standards
- not governed by daily dose criteria
- offered in unknown strengths (THC) from 1 to 10+ percent
- self-prescribed and self-administered by the patient.

FACT: The federal government, over the last 20 years involving a number of administrations from both political parties, has determined that smoking marijuana has no redeeming medicinal value, and is in fact harmful to health. These governmental agencies include the Drug Enforcement Administration, the Food and Drug Administration, and the U.S. Public Health Service. Their latest finding, as recently as 1994, was affirmed in a decision by the U.S. Court of Appeals in Washington, D.C.

FACT: Since the pro-marijuana lobby has been unsuccessful in dealing with the federal government, they have targeted state and local governments to legitimize smoking marijuana as a medicine. A careful examination of their legislative and/or ballot proposals reveals they are written to effectively neutralize the enforcement of most marijuana laws. Crude, intoxicating marijuana under their proposals would be easier to obtain and use than even the most harmless, low-level prescription drug.

FACT: Major medical and health organizations, as well as the vast majority of nationally recognized expert medical doctors, scientists and researchers, have not accepted smoking marijuana as a safe and effective medicine. These organizations include: the American Medical Association, the American Cancer

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Society, National Sclerosis Association, the American Glaucoma Association, American Academy of Ophthalmology, National Eye Institute, National Cancer Institute, National Institute for Neurological Disorders and Stroke, National Institute of Dental Research, and the National Institute on Allergy and Infectious Diseases.

FACT: There are thousands of studies available documenting the harmful physical and psychological effects of smoking marijuana. The harmful consequences include but are not limited to premature cancer, addiction, coordination and perception impairment, a number of mental disorders including depression, hostility and increased aggressiveness, general apathy, memory loss, reproductive disabilities, impairment to the immune system, numerous airway injuries, and other general problems associated with intoxication.

FACT: The medicinal marijuana movement and its media campaign have helped contribute to the changing attitude among our youth that marijuana is harmless, therefore contributing to the increase of marijuana use among our young people after 12 years of steady decline.

The overriding objective behind this movement is to allow a minority (less than five percent) of our society to get "stoned" with impunity. This small minority is willing to put our citizens at risk from all the negative and disastrous effects caused to and by those who are intoxicated. What we don't need in this society is more intoxicated people on our highways, in workplaces, schools, colleges, or in our homes.

If you would like more information, call the CNOA office at (661) 775-6960

By: Dr. Kevin A. Sabet, Ph.D.
909.457.4229 // info@ivdfc.org

MEDICAL MARIJUANA IS BAD FOR OUR COMMUNITIES

A native of Southern California, Kevin A. Sabet, Ph.D., is an Advisor to the Inland Valley Drug Free Community Coalition (www.ivdfc.org) and has been researching and consulting on drug abuse matters for over fourteen years. A Marshall Scholar, he is a former Office of National Drug Control Policy senior official under the Clinton and Bush Administrations, and is currently working on a book analyzing drug policy.

By Kevin A. Sabet, Ph.D.

RIVERSIDE / SAN BERNARDINO COUNTY, CA - May 21, 2008 - With all of the talk about medical marijuana dispensaries in California, it is hard to separate truth and science from ideology and dogma. In recent years, marijuana activists in the state have donned white coats and exclaimed a new found concern for the seriously ill, while legislators and judges have been left to wrestle with the consequences of a poorly written referendum, Proposition 215. Unfortunately, Proposition 215 has nothing to do with the sick and dying, as a simple read of its text reveals that marijuana can be legally recommended for "any illness for which marijuana provides relief." This has led to a multi-million dollar, state sanctioned drug distribution industry, resulting in a substantial increase in medical fraud (the drug has been recommended for everything from hangnails to fatigue to reduced sex drive), "medical marijuana" use by minors, and increased local crime.

That is why scores of California localities, like the northern cities of San Pablo, San Rafael,

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Concord, Dublin, Fremont, Livermore, Newark, Pleasanton, and the southern cities of San Diego, San Marcos, Anaheim, Oxnard, Rancho Cucamonga, Norco, Hemet, Fontana, Murrieta, Temecula, Colton, Chino (among others), and after thoroughly studying the issue, have come out with a ban on such dispensaries. They should be commended. A recent article in the *Los Angeles Times*, “This bud’s for you, and you, and you” by Joel Stein and a 2007 expose by *60 Minutes* have revealed just how easy it is to obtain marijuana – “sick” or not. So it is also not surprising that the Food and Drug Administration, American Medical Association, and the renowned Mayo Clinic have come out against smoked marijuana as a so-called “medicine.” A landmark study almost ten years ago, conducted by the Institute of Medicine, stated that “...smoked marijuana should generally not be recommended for...medical use.” Smoked marijuana (smoked anything) has never passed basic medical standards of safety and efficacy.

Medical marijuana dispensaries mask as havens for the sick, when in reality they serve as city condoned centers for drug use. Of course there may be some people who genuinely use it to “feel better” from their illness, but smoking a drug as volatile and unstable as marijuana is like chewing on willow bark to partake in the benefits of aspirin. For those whose doctors think that some components of the cannabis plant may be therapeutic, *Marinol*, derived from the plant’s most active ingredient, THC, already exists. Though it’s not often prescribed, doctors have the right to prescribe this drug if they feel it would best serve their patient (though non-cannabis based drugs are almost always chosen as a first resort). Other isolated components in marijuana – delivered in aerosol sprays or patches – are currently being studied and research in this area is important. Cannabis-based drugs could indeed open new pathways to fight obesity, nausea, multiple sclerosis, and other illnesses, but, just as someone should not inject heroin to gain the therapeutic effects of morphine, these drugs need to be used in the proper context and setting.

Legalizing smoked marijuana under the guise of medicine is irresponsible and contradictory to basic scientific standards for therapeutic drugs. Even if smoking marijuana might make someone “feel better,” that is not enough to call it a medicine. If that was the case, then tobacco cigarettes or vodka shots could be called medicine because they are often attributed to making one “feel better.” Furthermore, it is contrary to common sense and established law to have the electorate, influenced by big spending from pro-marijuana interest groups, decide what medicine is.

Serious loopholes exist in Proposition 215 that permit the abuse of current drug laws, and allow drug dealers to avoid arrest and prosecution. These are key reasons why a large, growing number of local city and county governments have moved toward banning medical marijuana identification cards and dispensaries. Other California communities should follow suit. Science needs to be the basis of both our legal and illegal drug policies, not political ploys designed to legalize smoked marijuana for any reason.

Concerned communities, parents, educators and youth can learn more about the dangers of marijuana at www.ivdfc.org. The Inland Valley Drug Free Community Coalition is committed to strengthening community action for the safety of our children.

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Inland Valley
Drug Free
Community Coalition

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POT DISPENSARIES HARM COMMUNITIES

Partial Listing – Created December 2008

1. **Armed Robbers Open Fire at Medical Marijuana Clinic**
<http://www.nbclosangeles.com/news/local/Armed-Robbers-Open-Fire-at-Medical-Marijuana-Clinic.html>
2. **City Scrutinizing Twice-Robbed Marijuana Club**
<http://www.berkeleydailyplanet.com/issue/2001-12-27/article/9213?headline=City-scrutinizing-twice-robbed-marijuana-club>
3. **Teen Faces Adult Trial For Medical Marijuana Robbery**
<http://www.topix.com/city/medford-or/2008/10/teen-faces-adult-trial-for-medical-marijuana-robbery>
4. **Hollywood Medical Marijuana Facility Robbed**
http://www.lapdonline.org/hollywood_news/news_view/33368
5. **Security Guard, 25, Killed at Medical Marijuana Clinic**
<http://latimesblogs.latimes.com/homicidereport/2008/10/miracle-mile-se.html>
6. **Arrests Made After Employees Overpower Armed Men, but now Laguna Niguel Marijuana Dispensary is Being Investigated.**
<http://www.ocregister.com/articles/city-marijuana-ferguson-2146513-inside-robbery>
7. **Teen Arrested for Stealing Medical Marijuana**
<http://www.kmed.com/pages/landing/?TEEN-ARRESTED-FOR-STEALING-MEDICAL-MARIJ=1&blockID=16742&feedID=133>
8. **Medical Marijuana Facility Robbed in Mission Hills:** Police are seeking two armed men who fled the dispensary with cash and an unknown amount of marijuana Friday night.
<http://www.latimes.com/news/local/la-me-robbery30-2008nov30.0.7710232.story?track=rss>
9. **Sacramento-Area Men Arrested for Raiding Mendocino Medical Marijuana Garden**
<http://www.sacbee.com/102/story/1252486.html>
10. **6 Suspects Sought In Marijuana Clinic Heist**
<http://cbs2.com/local/Granada.Hills.marijuana.2.623083.html>
11. **Medical Marijuana said Target of Armed Robbery**
http://www.oregonlive.com/news/index.ssf/2008/11/police_make_arrest_in_burglary.html
12. **Medical Marijuana Robbery**
http://www.liveleak.com/view?i=dfa_1191444723
13. **Four Arrested in Medical Marijuana Robbery**

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<http://www.dailytidings.com/2006/0802/stories/0802robbery.php>

14. Attempted Armed Robbery of Medical Marijuana Shop

<http://sacramento.bizjournals.com/sacramento/stories/2008/04/07/daily60.html>

15. Duo Sought in Armed Robbery of Medical Marijuana Club

http://www.dailynews.com/breakingnews/ci_8139243

Lisa Wolfson

Subject: Continuance Withdrawal & Land Use Appeal

From: South Bay Organic Co-Op
Sent: Tuesday, August 18, 2009 10:10 AM
To: Tyler Foltz; jimjanney@oappkg.com; loriebraggib@aol.com; mccoy4ib@aol.com; jimkingforib@gmail.com; rose4ib@aol.com
Cc: Don Duncan
Subject: Continuance Withdrawal & Land Use Appeal

Good Morning Mr. Foltz and City Council Members,

If at all possible, please reply to this email for confirmation of receipt of this urgent email request and appeal.

To: City Council Members for the City of Imperial Beach
jimjanney@oappkg.com
loriebraggib@aol.com
mccoy4ib@aol.com
jimkingforib@gmail.com
rose4ib@aol.com

RECEIVED
2009 AUG 18 A 10:36
CITY MANAGER'S OFFICE
CITY CLERK'S OFFICE

From: Marcus Boyd
Date: August 18, 2009
Re: Request for Withdrawal of Request for Continuance
Request for Agenda Item 6.6 to be heard prior to 3.1 on 8/19/09
Land Use Determination Appeal

I am writing today to respectfully request the withdrawal of my Request for Continuance. Moreover, I request consideration of the 8/19/2009 council meeting agenda order of the land use appeal item, specifically; I request the land use appeal be heard prior to the moratorium item for the following reasons:

- (1) Establish land use approval prior to moratorium:
The request for a business license was contingent on land use approval; I respectfully request a fair chance to appeal the land use decision prior to any preemptive moratorium on the land use.
- (2) Material misrepresentation:
Written in the 6.6 Staff Report, signed by Mr. Foltz, distributed to the general public and council members is an assertion that South Bay Organic Co-Op "may be in violation of state laws", apparently because...."there is no specific confirmation that the cooperative is duly organized and registered as a cooperative". However, confirmation was never requested by the city staff, if confirmation had been requested, Articles of Incorporation and any other requested "specific confirmation" would have been provided. The last

paragraph of the 6.6 Staff Report represents the cooperative as possibly illegitimate and illegal, based on a “*confirmation*” that was not requested or, by law even required until the cooperative actually began operating a business and “*facilitating transactions*”. (Corp. code 12311(b))

Please know that throughout the land use determination process, there remained, open communication via several emails and phone calls to and from myself and city staff, Tyler Foltz, in which Mr. Foltz asked for and was provided with all requested information; in fact, additional information was provided, thought relevant for our land use determination. At no time did the city staff request information that was not promptly provided.

(3) Misquoted Guidelines with additional use of a play-on-words:

Whereby the 6.6 Staff Report wordplay's, "*means for facilitating or coordinate transactions between the members of the cooperative*", to not mean "*sell or sold*". However, the statement used in the staff report was a misquoted excerpt of a pivotal paragraph found in the California Attorney General guideline, the correct quote reads...

*"Cooperatives should not purchase marijuana from, or sell to, **non-members**; instead, they should only provide a **"means"** for facilitating or coordinating transactions between members."*

Additionally, Section D of the same guideline is entirely devoted to the "*Taxability of Medical Marijuana Transactions*".

Deductive reasoning equates to, "*transactions*" equals "*sales*", if the transactions are subject to state sales tax. Subsequently, the use of the word "*sell or sold*" on the Business Tax Certificate Application does not negate or by any means detour from the non-profit status or the legality status of the cooperative. "Sell or sold" is used to simplify the excerpt "*provide a means for facilitating or coordinating transactions*" without the use of wordplay.

Please carefully review the following excerpt from the 6.6 Staff Report and then, please apply deductive reasoning to the pivotal word "MEANS" and, the misquotation of "MEANS" to "MERELY".

*[...there is no specific confirmation that the cooperative is duly organized and registered as a cooperative or that it will **"merely"** facilitate or coordinate transactions between the members of the cooperative.]*

I am unable to defend the cooperative against the above misquotation of the AG's Guideline text, however if the above excerpt contained the same words as the AG's Guideline, the excerpt would correctly read;

*[...there is no specific confirmation that the cooperative is duly organized and registered as a cooperative or that it will provide a **"means"** for facilitating or coordinating transactions between members.]*

With the above correction to the AG's Guideline text, I am able to defend against the attack on the intent and credibility of the cooperative by explaining to the Council Members, that the cooperative did provide a means for facilitating or coordinating transactions between members, it was outlined correctly on the Business Tax Certificate Applications that were included with your agenda packet.

The misquotation in the 6.6 Staff Report effectively misrepresents the cooperative to appear as though the cooperative may be operating "*in violation of state law*". When in actuality, the cooperative is in full compliance and in accordance with state laws and the California Attorney General's guideline.

The California Attorney General's Guideline should not be misquoted, when it is, the legal parameters change noticeably. Unfortunately for me, the 6.6 Staff Report misquotes the California Attorney General's guideline and misinforms and misguides the city council. As a result, the misquotation of the guideline essentially circumvents the law and the will of the voters for the purpose of defending and upholding the land use determination.

(4) Ex post facto; Proposition 215 is the law and is currently in use in the City of Imperial Beach:

Like city council members, Prop 215 was "voted in" by the people. Any act of "voting out" Proposition 215, ex post facto, with legal "collectives" currently in the city, without the city council allowing to fully hear an opposing side to the moratorium issue before the 3.1 item vote would be unjust, unfair, un-American and completely thwarting the will of the voters as well as turning a deaf ear to the sick and dying patients who are unable to make a stand and speak for themselves.

Please consider my request with urgency.

APPEAL OF LAND USE DETERMINATION TO CITY COUNCIL

California's 1996 Compassionate Use Act (CUA) calls on local, state and federal officials to develop a plan for the safe and affordable distribution of cannabis. Although the federal government has shown no interest in cooperating with the State of California to develop an effective distribution mechanism, local and state officials, patients, and advocates have taken the initiative to do so. Since 2004, more than three-dozen cities and counties have developed regulatory ordinances for medical cannabis collective and cooperative associations, sometimes called "dispensaries." As collectives and cooperatives became well established in California, elected officials and law enforcement realized that sensible regulations reduce crime and complaints, and that neighboring businesses often benefit from collective and cooperative operation. [1]

A substantial majority of Americans support safe and legal access to medical cannabis through public opinion polls, such as, Time/CNN in 2002 showed 80% national support; AARP members in 2004 showed 72% and a western states poll showing 82% in favor.[1]

Choosing to enact a ban on legally formed collectives and cooperatives has been found to be unlawful by California courts. Subsequently, any moratorium should be used to regulate the land use as opposed to attempting to ban the land use. Allowing at least one cooperative to exist in the city for monitoring and reporting purposes would definitely provide reliable "real data" to the city council for consideration and would prevent the law and the will of the voters from being circumvented.

Council Members, please imagine for a moment that you are a sick or dying patient who found relief in the effects of medical cannabis and your only safe legal access is voted away from you, ex post facto and without defense of your legal right or your voiced opinions about the benefits of the legal collective being heard prior to the vote. Or, imagine being voted in to your city council seat, but with a 4/5th's vote from the other Council Members you are prevented from taking or retaining your seat. Would that seem like a fair or due process to you?

There are two (2) paragraphs in the 6.6 Staff Report that are to be considered as the reasons to uphold the land use determination. The second paragraph was scrutinized previously in the above Agenda Order Request. In which the second paragraph relies on misquotation and material misrepresentation to unfairly portraying a legitimate, legally formed group of patients as a group possibly "*in violation of state law*".

Please consider that our appeal was not given forthright representation by the staff report or fair due diligence in order to "*find that this appeal is moot*". The city council members were instead given a 6.6 Staff Report absent of valid due diligence reasons to uphold the land use determination. The misquotation, material misrepresentation and ex post facto used in the staff reports should be grounds to find the Staff Reports to be moot.

I have been studying how the text of the California Attorney General's guideline was misquoted in the 6.6 Staff Report, it is evident to me, that the city staff may be placing blind trust in, and echoing the same misleading information campaign that is guided by the same group of San Diego County medical marijuana prohibitionists that failed, all the way through the California Supreme Court, at preventing mandatory participation in the statewide medical marijuana identification card program.

San Diego County medical marijuana prohibitionists in senior positions of authority have been using verbiage similar to the wordplay verbiage made evident in the 6.6 Staff Report in order to confuse local city councils into enacting urgency moratoriums and subsequent bans effectively circumventing the will of the voters countywide. It appears that although the President of the United States and US Attorney General have officially ordered an end to federal raids on state-legalized medical cannabis patients and facilities, there are still local anti-medical marijuana crusaders that have not stopped fighting, in part by relying on misquotation to attack the credibility and intent of opponents like me.

As some Council Members are aware, I approached you early-on in this land use determination to introduce myself and to outline my intentions with regard to the cooperative, additionally; there is at least one council member that has known me personally for many years as a Palm Avenue, Imperial Beach business owner, a veteran PTA Board Member and lead volunteer at one of our needy, local schools. I do not have a criminal record, nor do I have a criminal mind or a criminal heart and I am not a criminal by California law, I also do not intend to break any laws in this city or state.

I, in fact, agree with most of the reasons outlined in the 3.1 Staff Report that seek to pass a moratorium. Many of the same reasons are why I became involved in the formation of South Bay Organic Co-Op. I too would like to eradicate “dispensaries” like those mentioned in the 3.1 Staff Report that are causing bad publicity that negatively reflects on the collectives and cooperatives that operate within the law and far above the expectations of the critics and the marijuana prohibitionists alike.

There are two legal business forms defined by the AG’s Guideline that are available for patient groups cultivating and distributing medical marijuana, they are called collectives and cooperatives. The overwhelming majority of dispensaries choose the collective model because there are no additional laws or guidelines regarding collectives. However, I chose the cooperative model specifically because cooperatives are dramatically controlled and must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year, so that the organization would remain transparently legal and have open accountability.

The bylaws for South Bay Organic Co-Op Board of Directors currently, tentatively include one open, voting seat for the City of Imperial Beach. The founding board members and I feel very strongly about non-diversion and strict patient membership guidelines and think the city would offer helpful ideas with regard to the initial planning and the ongoing operations of South Bay Organic Co-Op.

The overall non-profit plan for the South Bay Organic Cooperative is not at all like the “dispensaries” referred to in the Agenda Item 3.1 Staff Report. I feel you should know that, at a large expense to the cooperative, the cooperative has begun working with the co-founder of Americans for Safe Access (ASA), Mr. Don Duncan of Harborside Management Associates. Mr. Duncan was instrumental in the writing of the Oakland City Ordinance, the West Hollywood City Ordinance and the Attorney General’s Guidelines. The cooperative is retaining Harborside specifically because we would like to model the cooperative after non-profit organizations like those of Harborside. Harborside locations currently operate successfully, honestly and respectfully through California and offer a very different Staff Report about how their neighbors and cities feel about having a generous and compassionate non-profit organization in their community.

The city council should be made aware that there are highly regarded non-profit organizations who are not mentioned in the 3.1 Staff Report and who are contributing a great deal to their communities by adding jobs during a struggling economy and providing financial support through non-profit donations to the financially strapped neighborhoods where they are located. I would very much like to work with the city council on drafting strict ordinance regarding the land use that could, by precedence, include significant additional city revenue by way of a city tax similar to Oakland's \$18 per \$1,000 of sales "transactions".

Although I have referenced the generous non-profit, neighborhood oriented and community supporting reasons to allow the land use in the paragraphs above, there is still one paragraph regarding the "Permitted Use" from the 6.6 Staff Report that I have not directly addressed in this appeal. According to the staff report paragraph, our land use request "is not comparable to any of the intended uses considered and provided for in the General Plan for the C-1 General Commercial Zone." However, there must be something that will accommodate a legal non-profit, patient-member organization or there should be a provision made for the requested land use since my request is for a legal non-profit, community based organization.

Additionally, the description of operations I provided on the Business Tax Certificate Application is awkwardly similar to a "for-profit" operation that has existed in the City of Imperial Beach since February 1998. Located at 184 Palm Ave, less than two blocks from the beach, is a business with no sign and only allows patient-members. If the Imperial Beach zoning ordinances can continuously allow land use for heron users to get a fix at a methadone clinic, the Council Members absolutely should allow sick and dying Imperial Beach residents to locally obtain the doctor recommended relief they need and, by law, are entitled to.

Deductive reasoning makes it logical for the city council to approve and provided for the opportunity to hear the legitimate "other side" of Agenda Item 3.1 by acting on Agenda Item 6.6 before imposing an urgency measure on item 3.1, considering Proposition 215 passed in 1996, SB 420 passed in 2003 and the California Attorney General's Guidelines were released August 2008.

The only "urgency" is that my land use appeal item is on the same day.

Acting on 6.6 prior to 3.1 would be fair to the cooperative that caused the item to be on the agenda and the collectives that are already established in Imperial Beach, not to mention the voters who voted for Prop 215 so many years ago.

It has been said, "*There are three sides to every story, your side, my side and the truth.*" You'll need to hear my side too, to help you in this land use determination.

Thank you for your time and consideration.

I remain at your service,
Marcus Boyd

1. See <http://www.safeaccessnow.org/article.php?id=5774#1>


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Chapter 1: Federal and State Law

Executive Summary

In 1996, California voters passed the country's first medical cannabis (marijuana) law [1] One of the most significant developments in California since then is the evolution a distribution mechanism to ensure safe and affordable access for the more than 300,000 legal patients in the state. While California moved incrementally to implement its law over the last thirteen years, twelve additional states passed medical cannabis laws of their own. Support for medical cannabis grew nationwide as the number of medical cannabis states increased. Medical cannabis enjoys the support of more than 80% of Americans.[2] This strong support is complemented by ongoing research into

the therapeutic properties of cannabis, including findings that clearly show medical efficacy.[3]

Unfortunately, the federal government still holds that "marijuana has no currently accepted medical use in treatment in the United States," ignoring well established scientific evidence.[4] This position, along with a U.S. Supreme Court ruling in June 2005, has given the government the authority to enforce federal laws against cannabis even in states where its medical use is legal.[5] At the same time, the U.S. Supreme Court's decision not to overturn or invalidate medical cannabis laws in California or elsewhere allowed the continuing implementation of such laws.

California's 1996 Compassionate Use Act (CUA) calls on local, state, and federal officials to develop a plan for the safe and affordable distribution of cannabis. Although the federal government has shown no interest in cooperating with the State of California to develop an effective distribution mechanism, local and state officials, patients, and advocates have taken the initiative to do so. Since 2004, more than three-dozen cities and counties have developed regulatory ordinances for medical cannabis collective or cooperative associations, sometimes called "dispensaries." [6] These facilities have flourished over time with hundreds currently operating across the state. As collective and cooperatives became well established in California, elected officials and law enforcement realized that sensible regulations reduce crime and complaints, and that neighboring businesses often benefit from collective and cooperative operation.[7]

Collectives began to flourish in the Los Angeles area beginning in 2004. This prompted the Los Angeles County Board of Supervisors in 2006 to adopt a regulatory ordinance covering the unincorporated areas of the county. To address the proliferation of collectives inside Los Angeles city limits, the City Council has been working to develop a regulatory ordinance since 2007. The development of a regulatory ordinance in the City of Los Angeles has been a complicated evolutionary process. Unfortunately the first draft proposals for a regulatory ordinance did not meet the expectations of patients and advocates, causing confusion, delays, and a further proliferation of collectives in the city.

Advocates are now calling for a prompt conclusion to the development of a regulatory ordinance in the City of Los Angeles. In addition, advocates have made a series of recommendations that should assist the City Council in expeditiously arriving at an ordinance acceptable to all involved. These recommendations include: adopting safety and operational protocols already in use by local collectives, implementing a process for verifying non-for-profit status, requiring security precautions, protecting the confidentiality of membership records, and establishing reasonable location requirements. Advocates are calling on the City Council to finalize development of a regulatory ordinance as soon as possible. This report provides information for local officials and the public to rapidly adopt an ordinance that will avoid further confusion, delays and possible litigation.

National Political Landscape

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; [8] a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor [9]

This broad support, contrasted with an intransigent federal government that refuses to acknowledge medical uses for cannabis, led Americans to create state-based solutions.

The laws that voters and legislators have adopted are intended to minimize the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference. Beginning with California in 1996, voters passed initiatives in eight states plus the District of Columbia -- Alaska, Colorado, Maine, Montana, Nevada, Oregon, and Washington. State legislatures similarly passed laws to protect patients from criminal penalty in Hawaii, Michigan, New Mexico, Rhode Island, and Vermont.[\[10\]](#)

Momentum for these state-level provisions for compassionate use and safe access has continued to build as more research on the therapeutic uses of cannabis is published. In addition, the public advocacy of well-known cannabis patients such as the Emmy-winning talk show host Montel Williams has increased public awareness and created political pressure for state and local solutions around medical cannabis.

Even though the U.S. Supreme Court ruled in June 2005, in *Gonzales v. Raich*, that the federal government had the discretion to enforce such laws it certainly wasn't required to do so.[\[11\]](#) In fact, the Supreme Court questioned the wisdom of such enforcement efforts. Furthermore, the Court's decision not to invalidate or overturn California's medical cannabis law points to the ability of federal and state laws to coexist, even when they differ. In the wake of the *Raich* decision, the Attorneys General of California, Hawaii, Oregon, and Colorado all issued legal opinions or statements reaffirming their state's medical cannabis laws.[\[12\]](#) The duty of state and local law enforcement is to the enforcement and implementation of state, not federal, law.

California Law and Federal Interference

In 1996, the voters of California adopted Proposition 215, the Compassionate Use Act (CUA), legalizing the medical use of cannabis with a doctor's approval.[\[13\]](#) Since then, the twelve additional states that have passed medical cannabis laws were established despite, and arguably because of, a federal policy that refutes the medical efficacy of cannabis.[\[14\]](#) The current federal position is that "marijuana has no currently accepted medical use in treatment in the United States,"[\[15\]](#) which ignores well established and growing scientific evidence of medical efficacy.[\[16\]](#)

For years, the Bush Administration attempted to undermine California's medical cannabis law by using the Justice Department and the Drug Enforcement Administration (DEA) to raid, arrest and prosecute people who were otherwise in compliance with state law.[\[17\]](#) As a result, thousands of people have been unnecessarily and adversely impacted by the actions of the Bush Administration.

From the passage of the CUA in 1996, both the Clinton and Bush Administrations ignored the recommendation of California voters "To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana."[\[18\]](#) However, in an effort to provide safe access for thousands of California patients who cannot cultivate medical cannabis themselves, a distribution model was successfully developed. Collectively a cooperatively run medical cannabis "dispensaries" began to form and take root as a viable method of distribution.[\[19\]](#)

After the California legislature passed the Medical Marijuana Program Act (SB 420) in 2003, clarifying the right of patients and their primary caregivers to collectively or cooperatively cultivate, several cities adopted ordinances regulating the dispensation of medical cannabis.[\[20\]](#) Then, in 2005, California's appellate court ruled in *People v. Urziceanu* that as long as patients' associations operated collectively or cooperatively they should be protected under state law.[\[21\]](#)

Also in 2005, the State of California established a policy of taxing the sale of medical cannabis at storefront collectives.^[22] In a decision made that year by the Board of Equalization, collectives were required to obtain seller's permits and remit sales tax revenue to the state. This revenue, which was estimated to total \$100 million in 2007, goes to the state's general budget and is a significant funding source for a cash-strapped state such as California.^[23]

In August 2008, further legitimizing storefront medical cannabis collectives, the California Attorney General issued guidelines acknowledging their legality and providing recommendations for complying with state law.^[24] Some of the Attorney General recommendations included: a) collective or cooperative operation; b) non-profit operation; c) membership application and patient/caregiver verification; d) payment of sales tax to the state; and e) prohibition of sales to non-members.

During the implementation of medical cannabis laws in California and the development of safer methods of access for patients, state courts issued several landmark rulings. Appellate court decisions in *City of Garden Grove v. Superior Court*^[25] and *County San Diego v. San Diego NORML*^[26] found that California's medical cannabis law held up to scrutiny and, most importantly, that it was not preempted by federal law. Both decisions underscored the obligation of local officials to uphold state law and that "it is not the job of the local police to enforce the federal drug laws."^[27] Given refusals by the California Supreme Court and the U.S. Supreme Court to review these cases, they were made binding across the state.

Most recently, the Third District Court of Appeal for California ruled in *Butte County Williams* that patients and their primary caregivers have a right to associate collectively and cooperatively and can file suit if that right is violated.^[28] Another case, *Qualified Patients Association v. City of Anaheim*, which is currently pending before the Fourth District Court of Appeal, addresses whether it is lawful for local governments to establish outright bans on collectives.

Now, with better definition around California's medical cannabis laws and an obligation by local officials to uphold state law, advocates are looking to harmonize federal law with the laws of states like California. As the Bush Administration's attempts to undermine California's medical cannabis law recede into historical obsolescence, patients and advocates alike are hopeful that a new policy will be developed and implemented under the Obama Administration. Senator Obama made repeated public statements during his presidential election campaign that he was "not going to be using Justice Department resources to try to circumvent state laws on this issue."^[29] Since taking office, President Obama and his Administration have continued to make declarative statements signaling a new federal policy regarding medical cannabis.^[30]

Risk of Federal Interference Still Remains

Although the Obama Administration has indicated a willingness to change federal medical cannabis policy, patients, providers and advocates are cautiously optimistic. Reasons for such caution include years of DEA raids and Justice Department prosecutions that have resulted in harsh penalties for people complying with state law. Despite repeated statements by the new Administration, more than a half-dozen DEA raids have occurred since President Obama took office.

While many believe that the DEA raids under the Obama Administration are the result of Bush Administration holdovers, the risk of federal interference still remains. The U.S. Attorney General has made public statements, which still reserve the right to enforce federal law against those medical cannabis providers that violate both federal and state law.^[31] Such statements offer significant consolation to collective and

cooperative operators who comply with state law. However, according to advocates and legal experts, Justice Department officials have misinterpreted state law issues in several pending federal cases.^[32] Such misinterpretations have left medical cannabis providers wary of how the federal government may enforce the law and rightfully concerned about future DEA actions.

Chapter 2: Medical Cannabis Collectives and Cooperatives

What Are Medical Cannabis Dispensing Collectives and Why Are They Needed?

A majority of medical cannabis patients are not able to cultivate medicine themselves and cannot find a caregiver to grow it for them. Most of California's estimated 300,000 patients obtain their medicine from Medical Cannabis Dispensing Collectives or Cooperatives (MCDC), sometimes referred to as "dispensaries." MCDCs are typically storefront facilities that provide medical cannabis grown by their legally qualified members to other patient-members in need.^[33] MCDCs do not obtain cannabis from the illicit market, nor do they provide it to anyone who is not a member.

There are currently hundreds of storefront MCDCs operating in California with close memberships allowing only qualified patients and primary caregivers to obtain cannabis and only after memberships are approved (upon verification of patient documentation). Some facilities offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number offer additional services for their patient membership, including massage, acupuncture, legal trainings, free meals, and counseling. MCDCs also provide important social benefits for patients according to research published by the University of California at Berkeley.^[34]

Medical Cannabis Dispensing Collectives Are Legal

The California legislature adopted Senate Bill 420 (SB 420) in 2004, which expressly states that Qualified Patients and Primary Caregivers may associate collectively or cooperatively to cultivate cannabis for medical purposes.^[35] The courts have interpreted this statute to mean that Medical Cannabis Dispensing Collectives and Cooperatives (MCDC), where patients may buy their medicine, are legal entities under state law. California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in 2005 in the case of *People v. Urziceanu*, which held that SB 420, otherwise known as the Medical Marijuana Program Act (MMPA), provides MCDCs defense to cannabis distribution charges. Drawing from the voter's directive in Proposition 215 to implement a plan for the safe and affordable distribution of medical cannabis, the court found that the MMPA and its legalization of MCDCs represented the state government's initial response to this mandate.^[36]

In August of 2008, the California Attorney General published "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" designed to help clarify the laws surrounding medical cannabis. These guidelines make it clear that patients' associations authorized under California Health and Safety Code 11362.775 are legal, and as such, are not subject legal sanctions for possession with intent to sell sales of cannabis under Sections 11359 and 11360, respectively. Part of the function of a patients' association is to allocate the costs and benefits of the collective cultivation effort, and in this context, buying and selling cannabis within the membership of the MCDC is legal.

Section IV(C)(1) of the Attorney General's guidelines specifically recognize that legal collectives and cooperatives may maintain storefronts to provide medicine to members.

"Although medical marijuana 'dispensaries' have been operating in California for

years, dispensaries, as such, are not recognized under the law. As noted above, the or recognized group entities are cooperatives and collectives. (Section 11362.775). **It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law [emphasis added]**, but that dispensaries that do not substantial comply with the guidelines set forth in Section IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and MMP, and that individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver - and then offering marijuana in exchange for cash 'donations' - are likely unlawful."

It is unreasonable to arbitrarily label all of the storefront MCDCs operating in Los Angeles with the Attorney General's term "dispensaries," while ignoring the clear fact that the state's highest ranking law enforcement official specifically concedes that lawful collectives and cooperatives may maintain storefronts.

What *People v. Mentch* Means for Medical Cannabis Dispensing Collectives

Lobbyists representing law enforcement interests and some medical cannabis opponents wrongly assert that the 2009 California Supreme Court decision in *People v. Mentch* makes Medical Cannabis Dispensing Collectives and Cooperatives (MCDC) illegal.[37] This is a clear misreading of the decision, and in some cases, the argument may be propagated to intentionally confuse the issue of legal access under California law. While it is true that the *Mentch* decision upholds a narrow definition of the term "Primary Caregiver" in Proposition 215, the ruling only concerns *an individual's* claim to be a Primary Caregiver under state law; it does not address the legality of patients, collectives and cooperatives. The *Lungren v. Peron* decision from 1997 already stated that MCDCs could not be caregivers.[38] So, applying *Mentch* to MCDCs, including those that maintain storefront facilities in Los Angeles, is misguided and not legally valid.

Medical Cannabis Dispensing Collective Regulations

There are more than three-dozen cities and counties in California that have adopted local laws regulating the operation of Medical Cannabis Dispensing Collectives and Cooperatives (MCDC).[39] The City of Los Angeles is among many additional cities that are currently deliberating how to implement such laws in their own jurisdictions. Americans for Safe Access (ASA) provides legal and political support for local governments in arriving at the most sensible regulations that will meet the needs of patients and address issues raised by local residents and neighborhood businesses.

Given the number of MCDCs around the state, there is ample evidence that regulation have benefited patients and members of the community alike.[40] Regulated MCDCs benefit the community by: a) providing access to medical cannabis for our most vulnerable citizens - the sick and injured; b) offering a safer environment for patients than having to obtain their medicine on the illicit market; c) improving the health of patients through a social support network; and d) helping patients with other social services, such as food and housing. Creating MCDC regulations combats crime because: a) security has been shown to reduce crime in the vicinity; b) street sales of cannabis tend to decrease; and c) patients and operators are vigilant in reporting any criminal activity to police. Because of successful regulations, MCDCs are helping revitalize neighborhoods that bring new customers to neighboring businesses and have generally not been a source of community complaints.

Medical Cannabis Dispensing Collectives Reduce Crime and Improve Public Safety

One of the main concerns of residents and community groups about Medical Cannabis Dispensing Collectives and Cooperatives (MCDC) is the perception that criminal activity is more likely to occur in their vicinity. In fact, evidence shows that collective help to reduce crime and improve public safety. Crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of an MCDC.^[41] In addition, complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations. After adopting a ordinance regulating MCDCs in 2006, the Kern County Sheriff noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." In the year after the Kern regulations took effect, the sheriff specifically pointed out that existing MCDCs have not caused noticeable secondary effects or problems for law enforcement.

The presence of a storefront MCDC in the neighborhood can actually improve public safety and reduce crime. Most MCDCs take security for their members and staff more seriously than other businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security staff serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities will tend to move to a less-monitored area, thereby ensuring a safe environment not only for collective or cooperative members and staff but also for neighbors and businesses in the surrounding area. Residents in areas surrounding MCDCs have reported to Americans for Safe Access marked improvements to the neighborhood. Oakland City Administrator Barbara Killey, who oversees that city's regulatory ordinance, noted, "The areas around the collectives may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc. since the ordinance passed." Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens nor from neighboring businesses."

Those MCDCs that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Cities enacting ordinances for the operation of collectives may even require security measures, but it is a matter of good business practice for MCDC operators since it is in their own best interest. Many local officials surveyed by Americans for Safe Access said collectives operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted. Former Santa Cruz Mayor Mike Rotkin said his city's collectives get cooperation from the local police because they "well run and well regulated and located in an area acceptable to the City. Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."

Chapter 3: Regulating Safe Access in Los Angeles

Medicinal Cannabis Dispensing Collectives in Los Angeles

The first medical cannabis association in Los Angeles started providing medicine to patients suffering from cancer and HIV/AIDS in Venice in 1995, before voters approved Proposition 215. That facility was closed by the Los Angeles County Sheriff Department, and subsequently relocated to West Hollywood. The Los Angeles Cannabis Resource Center operated with the city's blessing until 2001, when Drug

Enforcement Administration (DEA) agents raided and permanently closed the organization.

Medical Cannabis Dispensing Collectives or Cooperatives (MCDC) began to reopen West Hollywood and Los Angeles in 2004. The City of West Hollywood moved quickly to establish a moratorium on new MCDCs in 2005, and then to adopt an ordinance regulating their operation.

The first MCDC in Los Angeles opened on Wilshire Blvd. in 2004, and was raided and closed by the Los Angeles Police Department in 2005. This early police action did not stop other MCDCs from opening in the city. MCDCs found it easy to open in Los Angeles because the municipal code only required operators to obtain a Tax Registration Certificate. MCDCs were not anticipated by the code, and there was no requirement for a business license or permit, or any mechanism to track the establishment of new MCDCs.

Los Angeles City Councilmember Dennis Zine made a motion to study regulations for MCDCs in 2005, after the number of facilities in the city began to rise. The proliferation of new MCDCs continued until September 2007, when the City Council adopted an Interim Control Ordinance (ICO) establishing a moratorium on new facilities until permanent regulations could be developed and adopted. After a brief pause, however, new facilities began to open again in Los Angeles using a loophole in the ICO, which has now been removed.

One hundred and eighty-six collectives registered with the City Clerk's office under the terms of the ICO. These facilities provided documentation establishing that they were operating legally before the effective date of the moratorium. Since that time, some of these facilities have been forced to relocate as a result of Drug Enforcement Administration (DEA) interference and intimidation in the form of paramilitary-style raids or letters threatening property owners who rent to facilities with prosecution and civil asset forfeiture. Patients' associations that registered under the ICO and subsequently relocated filed hardship applications for their new locations with the City Clerk's office.

The Hardship Exemption for Los Angeles Collectives

Today, approximately one hundred and thirty Medical Cannabis Dispensing Collectives (MCDC) operate at the same address at which they registered with the City Clerk's office before the 2007 Interim Control Ordinance (ICO) established a moratorium on new facilities. As a result of the threatening DEA letters sent to landlords, many MCDCs were forced to close or move. In order to ensure that those MCDCs forced to move would still be legitimate in the eyes of the city, advocates supported the former City Attorney's inclusion of a Hardship Exemption in the ICO. Even though the number of Hardship Exemption Applications pending with the city continued to grow at a steady pace, the PLUM Committee failed to begin reviewing any of them until 2009.

A flaw in the Hardship Exemption enabled collectives that had not registered with the City Clerk's office before the effective date of the ICO to file for the exemption. Having noticed the flaw, hundreds of applicants used the loophole to open new storefront collectives in the city. By the summer of 2009, the number of pending Hardship Applications had surpassed 500. In an attempt to stem the tide of a steadily increasing number of MCDCs, City Councilmember Jose Huizar moved to close the loophole in the ordinance.^[42] Just the threat of closing the loophole caused the number of collectives in Los Angeles to increase even further. To this date, hundreds of Hardship Exemption Applications remain pending with the PLUM Committee.

The medical cannabis collectives that complied with the ICO by registering their operations with the city, but were later forced to move due to DEA interference, should promptly be given a thorough and objective evaluation before the PLUM Committee. In reviewing the Hardship Exemptions for these collectives, the PLUM Committee should consider fidelity and compliance in making a recommendation on their applications. In addition, because the city allows for transfers of ownership during the ICO, the PLUM Committee should also properly review which collectives have been sold or otherwise transferred and why. Some applicants that were denied Hardship Exemptions are threatening lawsuits. And, though the merit of such litigation remains unclear, it is important to quickly resolve the Hardship Applications in order to mitigate actions like these and avoid further delay in adopting a permanent regulatory ordinance.

City Attorney's Ordinance Fails to Address the Los Angeles City Council's Request

In 2008, the Planning Department convened a working group with representatives from the patient community and city staff to make recommendations on permanent regulations. This working group based its discussions on the existing medical cannabis ordinance adopted by the Los Angeles County Board of Supervisors in 2006.^[43] City staff terminated the working group meetings in November 2007, saying they had enough input to move forward.

In April of 2008, the Los Angeles City Attorney published an initial draft ordinance for consideration in the Planning and Land Use Management Committee (PLUM).^[44] The draft ordinance was so restrictive that it essentially outlawed the model of storefront Medical Cannabis Dispensing Collectives (MCDC) already operating lawfully in the city. Patients and advocates who served on the Medical Marijuana Working Group, along with other community members, joined City Councilmember Dennis Zine in rejecting the City Attorney's draft and calling on the committee to request a new ordinance based on the existing Los Angeles County model and the working group's input.

In February of 2009, then City Attorney Rocky DelGadillo published a draft ordinance for the City Council's review. Like past versions, this draft failed to address the outline and direction given by City Council. Rather, basic misinterpretations and blatant disregard of input provided by community members led to a draft ordinance that failed to comprehend the reality of the medicinal cannabis community.

In a response to a letter from Councilmember Zine in November 2008, former City Attorney Rocky DelGadillo equated all of the storefront facilities, including those that registered under and complied with the ICO, to that of Attorney General Brown's definition of an illegal "dispensary." While a small fraction of "dispensaries" may run astray of the Attorney General's guidelines the majority operates within the closed circuit, patient organized collective as described and recognized as legal by the California Attorney General.

Provisions for the regulatory process described in the February 2009 draft unnecessarily burdens the overworked city staff by requiring that each collective provide the name, address and other membership information to the City. Providing this personal information would only create more paperwork and time consumed by city staff. Furthermore the February draft requires that each patient cultivator be identified. This presents challenges in patient confidentiality and self-incrimination. It is not wise for collectives to openly identify the patient cultivators given that the LAPD has a history of working in conjunction with the Drug Enforcement Administration (DEA).

Prohibitions on items such as edibles that are discussed in the February 2009 draft are

illogical and unreasonable. Edible products are the primary source of non-smoked cannabis for many patients who either cannot or will not intake smoked cannabis. Edible cannabis preparations are a safe way to ingest cannabis.

Furthermore, the regulations failed to address issues such as diversion of medication, ways to reduce neighborhood impact and most importantly member screening. The February 2009 draft ordinance was yet another attempt by the former City Attorney to stall the process of permanent regulations being adopted. Unfortunately, the City Attorney refused to change the poorly drafted ordinance and the City Council was forced to wait until a new City Attorney took office in 2009.

Recommendations for Regulating Collectives in the City of Los Angeles

Because of the failure by the former City Attorney's office to develop a draft ordinance that meets the needs of both patients and communities, advocates are urging several improvements to the new draft ordinance. Furthermore, patients and advocates support the Interim Control Ordinance (ICO), but have a strong desire to complete the development of regulations for Medical Cannabis Dispensing Collectives in the City of Los Angeles in the near future. In order to avoid further confusion, costly litigation, a delayed implementation, patients and advocates oppose any further extension of the ICO, and recommend completing the permanent regulations as soon as possible.

The areas of focus for recommended changes to the draft ordinance include, safety and operational protocols, verification of not-for-profit status, security requirements, confidentiality of membership records, and location requirements:

1. Adopt safety and operational protocols already in use at MCDCs in Los Angeles.

Local patients' associations in the Greater Los Angeles Collectives Alliance (GLACA) have already adopted effective safety and operational protocols that should be included in the permanent regulations wherever possible. Protocols that guard against diversion of cannabis to non-patients, ensure proper verification of qualified patients, establish a limit on the amount of cannabis dispensed to each patient, and encourage "good neighbor" policies have well served patients, providers and members of the community. A copy of the GLACA safety and operational protocols is included in the Appendix of this report.

2. Verify that MCDCs operate in a not-for-profit manner.

The Medical Marijuana Program Act (SB 420) and the California Attorney General guidelines indicate that patients' associations must operate in a not-for-profit capacity. As such, the city should require proof that MCDCs are incorporated as statutory cooperatives or bona fide nonprofit corporations; or that they are operated in a not-for-profit manner. Operation in a not-for-profit manner might include reinvesting excess revenue in services for members or patient advocacy, or supporting other beneficial community activity.

3. Require MCDCs to maintain an appropriate level of security.

In order to abate criminal activity in the vicinity of licensed MCDCs, the city should require staff training on security, the employment of professional security personnel, well as the use of adequate video cameras and alarms. While input by Los Angeles Police Department (LAPD) on the MCDC Security Plan is warranted, requiring LAPD approval may be problematic. LAPD still regards all collectives or cooperatives, no matter how organized or operated pursuant to state law, as illegal. There must be objective standards set, which can be verified by LAPD without a requirement for subjective evaluations.

4. Keep MCDC membership records confidential, including information about those patients who grow cannabis.

Because medical cannabis remains illegal under federal law, there is still considerable risk to divulging personal information about MCDC members and patient-cultivators. Member patient information is susceptible to federal subpoena and access to this information is tantamount to self-incrimination. In addition, there are requirements under the Health Information Portability and Accountability Act (HIPAA) of 1996 that may prevent local and federal officials from legally obtaining certain patient information. As such, membership information should be kept confidential and proprietary.

Each member of a legally organized and operated MCDC is entitled to bring medicine to the association's storefront facility (or other location) for provision to other members without sufficient amounts of medicine. In this regard, every collective member is a potential cultivator. Requiring disclosure of individual patient-cultivators does not recognize the state of California law, nor does it anticipate legal operation. This misguided approach assumes that MCDCs acquire medicine from the illicit market, and seeks to deter, investigate, and prosecute legal medical cannabis patients whose conduct is appropriate under state law.

5. Make MCDC location requirements reasonable by avoiding large buffer zones around an arbitrary list of "sensitive uses."

Well-operated and regulated storefront MCDCs are good and inconspicuous neighbors and as such need not be forced to comply with onerous location requirements. Requiring a large buffer zone from a laundry list of arbitrary "sensitive uses" will unintentionally prohibit MCDCs by making legal sites impossible to find. This will have an adverse impact on the safety and wellbeing of legal patients, who rely on these facilities for safe access to medication. This *de facto* ban on storefronts runs contrary to the will of voters in Los Angeles and the instructions of the Los Angeles City Council.

Regulated MCDCs belong in commercial and retail zones, just like pharmacies and other health care businesses. Restrictions on these facilities should be at least more lenient than the location regulations required of the city's adult-oriented businesses, which must be located more than 500 feet from schools, churches, and parks.^[45] While larger buffer zones between MCDCs may be appropriate to prevent clustering in certain neighborhoods, other location requirements should be reasonable and, when warranted, flexible.

Conclusion

It has now been established through legislation and litigation, as well as through guidelines issued by the California Attorney General that Medical Cannabis Dispensary Collectives and Cooperatives (MCDC) are legal under state law. There is also plenty of evidence that MCDCs do not attract crime, but instead decrease crime in surrounding areas and are a benefit to community members and neighboring businesses.

While most patients' associations in the City of Los Angeles have done their best to comply with local requirements, the proliferation of MCDCs has been a source of concern. The evolution in the development of a regulatory ordinance for MCDCs in Los Angeles has brought city officials closer to an ordinance satisfactory to all involved. However, further prompt deliberation is still necessary to complete this effort. Patients and advocates are urging the city to finalize a draft ordinance as soon as possible, and avoid any additional extension of the ICO.

Fortunately, there are plenty of experienced advocates assisting the city in this effort

and their recommendations should guide the city in developing the next draft ordinance. Furthermore, the city should incorporate the suggested language defining safety and operational protocols, verification of non-for-profit status, security requirements, confidentiality of membership records, and location requirements. By choosing to incorporate the recommendations of advocates, the city can keep to a minimum future problems related to regulating MCDCs in Los Angeles.

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Greater Los Angeles Collective Alliance

The **Greater Los Angeles Collectives Alliance** (GLACA) is a voluntary association of medical cannabis cooperative and collective operators in Los Angeles who have organized around a shared desire to provide safe access to patients with adherence to a strict code of operational guidelines. GLACA members are working to: (1) protect medical cannabis patients and our community; (2) develop, implement, and monitor compliance with operational and safety protocols for collectives and cooperatives in the Los Angeles area, and (3) educate our community about medical cannabis.

Member collectives conduct a peer-based "secret shopper" program to verify compliance with state law and GLACA operational and safety protocols. Accredited collectives display a GLACA membership logo at their facilities and in printed materials to let patients and the community know they uphold the highest possible legal and professional standards in the field.

Visit www.CaregiversAlliance.org for more information about GLACA.

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Americans for Safe Access

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 30,000 active members with chapters and affiliates in more than 40 states.

ASA provides legal training for and medical information to patients, attorneys, health and medical professionals and policymakers throughout the United States. We also organize media support for court cases, rapid response to law enforcement raids, and capacity-building for advocates. Our successful lobbying, media and legal campaigns have resulted in important court precedents, new sentencing standards, and more compassionate community guidelines.

Visit www.AmericansForSafeAccess.org or call toll free (888) 929-4367 for more information about ASA.

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1. See Proposition 215 or Health & Safety Code Section 11362.5.
2. See <http://www.time.com/time/covers/1101021104/story.html>.
3. See <http://www.cannabis-med.org/studies/study.php>.
4. See <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108643.htm>
5. Gonzales v. Raich, 545 U.S. 1 (2005).
6. See <http://AmericansForSafeAccess.org/regulations>.
7. See Medical Cannabis Dispensing Collectives and Local Regulations; <http://www.americansforsafeaccess.org/downloads/dispensaries.pdf>.
8. See <http://www.time.com/time/covers/1101021104/story.html>.
9. See <http://medicalmarijuana.procon.org/viewadditionalresource.asp?resourceID=000193>.
10. See <http://medicalmarijuana.procon.org/viewresource.asp?resourceID=000881>.
11. Gonzales v. Raich, 545 U.S. 1 (2005).
12. See <http://www.mpp.org/library/gonzales-v-raich-the-impact.html>.
13. See Health & Safety Code Section 11362.5.
14. See <http://medicalmarijuana.procon.org/viewresource.asp?resourceID=000881>.
15. See <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/2006/ucm108643.htm>
16. See <http://www.cannabis-med.org/studies/study.php>.
17. See http://AmericansForSafeAccess.org/downloads/dea_escalation.pdf.
18. See Health & Safety Code Section 11362.5.
19. See Medical Cannabis Dispensing Collectives and Local Regulations; <http://www.americansforsafeaccess.org/downloads/dispensaries.pdf>.
20. See Health & Safety Code Section 11362.775.
21. People v. Urziceanu (3rd Dist 2005) 132 Cal. App. 4th 747.
22. See <http://www.boe.ca.gov/news/pdf/173.pdf>.
23. See http://AmericansForSafeAccess.org/downloads/sales_tax_fact_sheet.pdf.
24. See http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.
25. City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355.
26. County of San Diego v. San Diego NORML (2008) 165 Cal.App.4th 798.
27. See City of Garden Grove v. Superior Court (2007) 157 Cal.App.4th 355.

28. See County of Butte v. Superior Court (2009).

29. See <http://www.washingtontimes.com/news/2009/feb/05/dea-led-by-bush-continues-pot-raids/>.

30. Ibid.

31. See <http://www.foxnews.com/politics/first100days/2009/03/18/holder-signals-administrative-relax-enforcement-policy-medical-marijuana/>.

32. One such case is that of Charles C. Lynch; See <http://friendsofccc.com>.

33. See Medical Cannabis Dispensing Collectives and Local Regulations; <http://www.americansforsafeaccess.org/downloads/dispensaries.pdf>.

34. Ibid.

35. California Health and Safety Code Section 11362.775.

36. People v. Urziceanu (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881.

37. People v. Mentch (2008) 45 Cal.4th 274, 283.

38. Lungren v. Peron (1997) 59 Cal.App.4th 1383.

39. See <http://AmericansForSafeAccess.org/regulations>.

40. See Medical Cannabis Dispensing Collectives and Local Regulations; <http://www.americansforsafeaccess.org/downloads/dispensaries.pdf>.

41. Ibid.

42. See City Council File 05-0872-S1, April 28, 2009.

43. Los Angeles County Code Section 22.08.130.

44. See .Report from City Attorney 04/14/2008. for Council; File 08-0923.

45. Los Angeles Municipal Code 12.70(c).