

LAST MINUTE AGENDA INFORMATION

04/21/10 Regular Meeting

(Agenda Related Writings/Documents provided to a majority of the City Council after distribution of the Agenda Packet for the April 21, 2010 Regular meeting.)

<u>ITEM NO.</u>	<u>DESCRIPTION</u>
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6.5	<p>MEDICAL MARIJUANA UPDATE. Correspondence received from Marcus Boyd, received 4/16/10:</p> <ul style="list-style-type: none">a. Americans for Safe Access letter, dated 3/30/10b. American Civil Liberties Union Foundation, dated 4/2/10c. E-mail correspondence from Marcus Boyd, dated 8/16/09d. Letter from Marcus Boyd, dated 10/7/09e. Letter from Marcus Boyd, dated 12/16/09f. Case Law interpreting California Health & Safety Code 11362.775
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From: Marcus W. Boyd [
Sent: Friday, April 16, 2010 7:30 AM
To: Jennifer Lyon; ibcmanager; Jim Janney; loriebraggib@aol.com; mcco4ib@aol.com;
jimkingforib@gmail.com; rose4ib@aol.com
Subject: Impending status report on Interim Ordinance No. 2009-1091

RECEIVED
2010 APR 16 P 3:38

Good morning Imperial Beach city staff and council,

Regarding the impending delivery of the Second Status Report on Interim Ordinance No. 2009-1091 to the Imperial Beach City Council ("council"), please consider that previous staff reports concerning this issue have contained inconsistent findings, hostility and resistance to state medical marijuana laws similar in nature to those expressed by the County of San Diego ("county").

CITY MANAGER/PERSONNEL
CITY CLERK OFFICE

Although the city staff and council were made aware of the initial staff report inconsistencies at the beginning of this process, inconsistencies nevertheless continued to exist at key points in the findings of subsequent staff reports. The inconsistent findings appear, in whole or part, to be provided by the county and through the training(s) offered by the county sponsored group Health Advocates Rejecting Marijuana ("H.A.R.M.") which were admittedly attended by the prior Imperial Beach City Attorney, Mr. Lough.

Attached to this email is a letter dated April 2, 2010 from the American Civil Liberties Union of San Diego and Imperial Counties ("ACLU") which was sent to the county regarding the Draft Medical Marijuana Collectives County Code and Zoning Ordinance amendments ("county draft ordinance"). The county draft ordinance, dated March 3, 2010 was quietly released on March 8, 2010 through the county's "new" Twitter account. The draft was only discovered by the community at large when a reporter with the North County Times received a related public information request and proceeded to call San Diego Americans for Safe Access ("SDASA") for a comment on March 25, 2010. SDASA then successfully involved the ACLU and mobilized the local community in stiff opposition to the county draft ordinance.

The letter from the ACLU begins by exemplifying the county's consistent hostility and resistance to state medical marijuana laws and continues with a list of the most "troubling issues" with the draft ordinance. As to each of the issues listed with respect to specific provisions of the draft ordinance, the letter clearly explains and provides legal citation as to why the proposed provision, if enacted, would be unlawful.

Additionally attached for your consideration are suggested changes to the county draft ordinance proposed in a letter, dated March 30, 2010, from the California Director of Americans for Safe Access, Mr. Don Duncan. As the council record will show, Mr. Duncan, who is also a principal of Harborside Management has been retained to consult with the proposed South Bay Organic Co-op in Imperial Beach. In an opportunity assessment, Harborside Management has agreed to partner with South Bay Organic Co-op and the City of Imperial Beach to provide the resources necessary to offer Imperial Beach residents with safe and legal access.

Going forward with the assumption that Second Status Report on Interim Ordinance No. 2009-1091 to the Imperial Beach City Council will continue to be comprised of information and findings provided by the county, as a reference, provided below is a list of inconsistencies found in previous staff reports that were exemplified by the attached rebuttals. They include, but are not limited to, the following;

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- The 6.6 Staff Report on August 19, 2009 contains 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)) (attachment: ContinuanaceWithdrawl&LandUseAppeal2IB.pdf)
- The 6.6 Staff Report on August 19, 2009 purposefully misquotes a pivotal paragraph found in the California Attorney General Guidelines; 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."* (attachment: ContinuanaceWithdrawl&LandUseAppeal2IB.pdf)
- The 3.1 Staff Report on September 23, 2009 contains far too many inconsistencies to reference here, *please reference the attached CityCoucil_LateRebuttal.pdf*. (attachment: CityCouncil_LateRubuttal.pdf)
- The Staff Report 6.3 on December 16, 2009 (Collectives section); purposefully misquotes pivotal wording from the Compassionate Use Act (CUA) when it replaces the word *"cultivate"* with *"grow"* while describing collective/cooperative operations in what clearly appars to be an effort to infer that monetary donations do not constitute cultivation. (attachment: RebuttalTo6.3StaffReport121609.pdf)
- The only laws and decisions subsequent to the CUA and MMP referenced in the 6.3 Staff Report on December 16, 2009 were those that would attempt to persuade the city council to severely limit patient access to medicine. However, consider that all Appellate and Supreme Court decisions have leaned in favor of the CUA and in favor of collective/cooperative operations under Cal. Health & Safety Code § 11362.775, and not against. (See attached list of related case law) (attachment: RebuttalTo6.3StaffReport121609.pdf)

In conclusion, I/we again offer my/our service and the extensive resources of Americans for Safe Access in drafting an ordinance that both (1) addresses valid land use concerns and (2) complies with clearly established state law and the United States Constitution. Working together we can *set the example* in San Diego County in moving earnestly toward an ordinance that would aim to provide the seriously ill with safe and legal access to marijuana for therapeutic use as intended by the Compassionate Use Act (Cal. Health & Safety Code § 11362.5) and Medical Marijuana Program Act (Cal. Health & Safety. Code § 11362.7 *etseq.*; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 785.).

Sincerely at your service,
 Marcus Boyd
 Advisory Board Member
 San Diego Chapter of
 Americans for Safe Access
 619-303-1918
 619-540-7172 cellular
 619-374-2319 fax



March 30th, 2010

Chairman Pam Slater-Price and
San Diego County Board of Supervisors
200 E Santa Clarita St.
San Jose, CA 95113

Dear Chairman Price

The County of San Diego is considering a new ordinance regulating medical cannabis collectives and cooperatives. I am writing to suggest some changes in the proposed ordinance that will place regulatory control under the appropriate department, provide for workable location criteria, and protect patient privacy.

Most of California's legal medical cannabis patients rely on dispensing collectives or cooperatives to obtain the doctor-recommended medicine they need to treat the symptoms of HIV/AIDS, cancer, Multiple Sclerosis, chronic pain, and other serious illnesses. These patients' associations are legal under California law, and California Attorney General Jerry Brown published guidelines in August 2008 that state "a properly organized and operated collective of cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with the guidelines.

1. The Police Department Should Not Regulate Collectives

Most of the recent ordinances adopted in California employ departments of health or other non-law enforcement agencies to administer their local medical cannabis collective and cooperatives laws. This is not the case with this ordinance. The licensing authority should not be the Sheriff's Department, and should be replaced by the County Department of Health or other more appropriate agency.

One of the main reasons for authorizing departments of health to administer such programs is for the importance of patient's needs and privacy, i.e. patient records, financial transaction records, and records indicating the source of the supply of medicine. Such provisions place both patient and providers at risk of unnecessary local and federal interference.

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2. Unreasonable Buffer Zones Are Not Necessary

Well-operated and regulated storefront collectives 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 collectives 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 run contrary to the will of voters, who called on elected officials "to implement a plan for the safe and affordable distribution of marijuana to all patients in medical need of marijuana" when they approved the Compassionate Use Act in 1996. While 1,000-foot buffer zones between collectives may be appropriate to prevent clustering in certain neighborhoods, other location requirements should be reasonable and, when warranted, flexible.

3. Patient Privacy Must Be Protected

Legal collectives and cooperatives only receive medicine from their registered members and provide it to other members. This arrangement ensures a closed circuit of medicine, isolated from the illicit market. Requiring the patients association to disclose the names and addresses of members who supply medicine is unnecessary and places the patient-cultivator at undue legal risk from inappropriate law enforcement activity, rouge police officers, and federal interference. Collective records are already available by subpoena, court order, or other due process of law.

Some reports have suggested that storefront patients' associations are magnets for criminal activity or other behavior that is a problem for the community, but the experience of those cities with regulations says otherwise. Crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of a collective; and complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations. In Oakland, where collectives have been licensed since 2004, City Administrator Barbara Killey, notes that "The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed."

The historic election of President Barack Obama and the expanded Democratic majority in Congress signal an opportunity for change in federal policy concerning medical cannabis, and recent developments indicate that this change may already be underway. Last year, US Attorney General Eric Holder made comments indicating an evolving federal policy on medical cannabis. A memo from Deputy Attorney General David W. Ogden on October 20, 2009, finally helped to clarify the new federal policy. While leaving US Attorneys plenary authority to make decisions in prosecution, the memo advises prosecutors and federal law enforcement that cases in which suspects are in

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clear and unambiguous compliance with state law should not be a priority. While narrow in its scope, the political significance of the new policy is tremendous. This marks a substantial departure from the previous Administration's adversarial posture. As the federal threat to legitimate medical cannabis providers recedes, the importance of sensible local regulations for providing safe access to medicine grows.

Americans for Safe Access is the nation's largest organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic use and research. Our staff is ready and willing to help you develop and implement regulations. You may reach me at don@safeaccessnow.org or (323) 326-6347 if you need additional information.

Thank you,



Don Duncan
California Director

cc: Members of the Board of Supervisors

For additional information:

Attorney General's Guidelines for Medical Marijuana
<http://www.safeaccessnow.org/agguidelines>

Medical Cannabis Dispensing Collectives and Local Regulation (PDF)
<http://www.safeaccessnow.org/downloads/dispensaries.pdf>

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April 2, 2010

VIA ELECTRONIC MAIL AND REGULAR MAIL

Mr. Joseph Farace
County of San Diego
Department of Planning and Land Use
5201 Ruffin Rd., Suite B
San Diego, CA 92123-1666

Re: Draft Medical Marijuana Collectives County Code and Zoning Ordinance amendments

Dear Mr. Farace:

I am writing to provide comments on the above-referenced ordinance. While the ACLU respects the legitimate exercise of the County's zoning and land use powers, the proposed ordinance violates state law and imposes undue burdens on qualified patients and primary caregivers. This letter covers the most extreme violations without waiving the right to address any other legal problems with the ordinance at a later time, in litigation or otherwise.

The County has consistently demonstrated its hostility and resistance to state law on medical marijuana. Though the state legislature enacted the MMPA in 2003, directing counties to implement the identification card program, San Diego County refused to comply until July 2009, after pursuing a futile legal challenge that was rejected at every level of the judicial system, from the Superior Court to the United States Supreme Court.

It now appears the County is continuing its resistance by other means. The proposed ordinance would illegally deter qualified patients from exercising their rights and effectively ban collectives and cooperatives expressly authorized by the MMPA. The County cannot use its zoning powers to violate state law and frustrate the lawful will of the people as expressed in the CUA and MMPA.

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1. The problems begin with the findings. They violate state law in restricting medical marijuana to persons with a “serious medical condition,” with a definition apparently patterned on the MMPA. Draft § 21.2501(g). While only a person with a “serious medical condition” is eligible for a voluntary identification card, Health & Safety Code § 11362.715(a)(2), the definition of “qualified patient” is significantly broader. It includes any person “entitled to the protections of Section 11362.5.” Health & Safety Code § 11362.7(f). Under section 11362.5, a qualified patient may possess or cultivate medical marijuana for “the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.” Health & Safety Code § 11362.5(b)(1)(A).

2. The draft conflicts with state law in requiring “a copy of a physician’s recommendation of medical marijuana,” § 21.2505(c)(11), presumably a written copy. State law expressly allows medical marijuana possession or cultivation on the “written or oral recommendation or approval of a physician.” Health & Safety Code § 11362.5(d).

3. Furthermore, section 21.2505(c)(11) improperly requires the recommendation to “specify an amount of medical marijuana that is consistent with the patient’s needs.” Under the CUA, qualified patients and primary caregivers “are not subject to any specific limits . . . [I]nstead they may possess an amount of medical marijuana reasonably necessary for their, or their charges’, personal medical needs.”¹ *People v. Kelly*, 47 Cal.4th 1008, 1043 (2010). Therefore, a physician’s recommendation need not specify a particular quantity. Indeed, refusing to recommend specific amounts of marijuana is a legitimate—and standard—medical practice. As recognized in *Kelly*, the California Medical Association advises physicians not “to specify the amount of cannabis that would be consistent with the patient’s needs.” *Id.* at 1018 n.10. To require physicians to specify a quantity would effectively ban collectives or cooperatives, because virtually no physician specifies a quantity in making a recommendation to use medical marijuana.

4. The prohibition on ingesting marijuana at a collective facility, Draft § 21.2505(g), conflicts with state law because it effectively disallows qualified patients without identification cards from participating in a collective or cooperative, as expressly authorized by Health & Safety Code § 11362.775. Qualified patients without identification cards are exempt from prosecution only for possession or cultivation of marijuana, not transportation. Health & Safety Code § 11362.5(d). If such patients cannot ingest medical marijuana at the facility, they would have to face the threat of prosecution for transporting it to another location. Similarly, the prohibition on “food or drink containing marijuana,” Draft § 21.2505(f), may illegally preclude qualified patients

¹ I presume that the reference to “court decisions” in section 21.2505(d) acknowledges that *Kelly* struck down the “maximum quantity limits” contained in Health & Safety Code § 11362.77. If construed otherwise, section 21.2505(d) would conflict with state law.

Mr. Joseph Farace
County of San Diego
Department of Planning and Land Use
April 2, 2010
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from using medical marijuana if they have a disability or condition preventing them from otherwise ingesting it.

The foregoing provisions directly conflict with state law and thus violate Article XI, section 7 of the California Constitution. *O'Connell v. City of Stockton*, 41 Cal.4th 1061, 1067-68 (2007); *Suter v. City of Lafayette*, 57 Cal.App.4th 1109, 1124 (1997). While counties have limited authority to regulate in the area of medical marijuana, they may not do so in any way that "would directly contradict state law" or otherwise "be inconsistent with state law." Attorney General Opinion No. 04-709 at pp. 7-8, 88 Ops. Cal. Atty. Gen. 113 (2005).

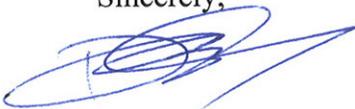
Other provisions of the draft ordinance are also troubling. An applicant cannot reasonably be required to warrant that "[n]o illegal activities" of any kind "will occur on or at the Collective Facility." Draft § 21.2503(e)(1). Such broad language wrongly includes matters as trivial as occasional parking violations.

Moreover, the requirements for video and written records, which are available to law enforcement on request, Draft §§ 21.2504, 21.2505, as well as the rule requiring that exchange or distribution of marijuana must be open and visible to the public street, raise significant and troubling privacy concerns under Article I, section 1 of the California Constitution, if not the Fourth Amendment. These provisions go beyond legitimate governmental concerns and wrongly deter qualified patients and caregivers from participating in collectives.

Finally, the limitation of exterior signs "to site addressing only" raises First Amendment concerns. Because a collective is not operated for profit, Health & Safety Code § 11362.765(a), and is limited to a "closed circuit" between its members, speech regarding the collective's activities is not commercial speech. The ban exterior signs other than a site address is content-based, because it singles out particular speakers based on the substance of their speech. As a result, it is unconstitutional unless narrowly tailored to serve a compelling state interest – a strict standard that virtually no speech restriction can withstand.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or concerns.

Sincerely,



David Blair-Loy
Legal Director

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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

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 Imperil 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

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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 reduces 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." ~~transparency~~

Although I have referenced the generous non-profit, neighborhood oriented and community supporting reasons to allow the

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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
 619-540-7172

1. See <http://www.safeaccessnow.org/article.php?id=5774#1>

From the desk of
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The text of the paragraph goes on to directly attack the legal opinion and credibility of the California Attorney General as it states; "...the conflict ... has left cities in the *unfortunate position* of making legislative decisions without clearly defined legal authority". Considering the Attorney General Guidelines have been written by the foremost legal authority in the State of California and were given much more consideration than the city attorney's or the county DA's office ever could. Furthermore, both the prior and current San Diego City Attorney's have released legal opinions that collective/cooperative storefronts are legal.

DISCUSSION REBUTTAL:

The first and second paragraphs both contain the same "politics" the council requested to have left at the door in order to consider the "land use issue". The emphasis added to the words "*recommendation*" and "*any other illness*" as well as the sentence "*People have asserted the right to use marijuana for everything from life-threatening cancer to minor injuries*" are clear indications that the city attorney has personal unresolved political issues with the terms and assertion, however, the terms are exact excerpts from Prop 215, a California State Voter Initiative and the assertion is legally protected by the initiative.

More importantly, the council and the city attorney should be made aware that the California Constitution, Article 2, requires changes to a voter initiative to be submitted to the voters of the state and approved by them. Thus, no Board of Supervisors, nor Sheriff, nor District Attorney, **nor Imperial Beach City Attorney**, nor Legislature, nor Attorney General, nor Governor has the legal right to change the state's medical marijuana law. Only the voters can change or modify this law. (Source: <http://www.leginfo.ca.gov/cgi-bin/waisgate>)

The third paragraph attempts to have the council consider the failed legal position of the county as a valid legal position, even though the legal position has fail all the way to the California Supreme Court. Presumably because the city attorney personally feels the legal position is valid and at this point is politically questioning the findings and legal position of the California Supreme Court.

The fourth paragraph contains excerpts of the Health & Safety Code sections 11362.765 and 11362.775. Then, the first word of paragraph five is "Nonetheless".

Definition of nonetheless; despite anything to the contrary (usually following a concession)

(Definition: Princeton University)

So apparently, the city attorney believes the law is "to the contrary" or a "concession", but to what? Is it the city attorney's own personal opinions or the personal opinions of the San Diego County level associate(s) of the city attorney?

Paragraph five is Attorney General Guideline information that the city attorney would like the council to pay attention to. However, the guidelines are the same guidelines that the city attorney was attacking the legal opinion of in the third paragraph in the BACKGROUND section of the staff report. The city attorney is using the AG's Guidelines as a guideline only when it furthers his argument to not allow the land use.

The sixth and last paragraph of the DISCUSSION section let's the council know that the land use is legal "*but under very narrow restrictions*" and can be zoned by the council. Since ^{4/21/10 Regular Meeting} banning was not the majority of the council's direction, the final sentence seems to support the direction given to staff on ^{Item No. 6.5} 8/19/09, which was to move forward with an ordinance and not a ban. Additionally, the ^{Last Minute Agenda Information} submitted by M. Boyd

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obviously and purposefully fails to provide any further information regarding the “*very narrow restrictions*”, information that would allow the council to use in order to further the ordinance that was the direction to the city staff on 8/19/09.

FEDERAL LAW REBUTTAL

The first paragraph does not take into account the Presidential Memoranda regarding preemption released 5/20/09 in which the federal government does in fact, make exception for state legalized medical marijuana when no other crime is alleged to be committed.

(Source: http://www.whitehouse.gov/the_press_office/Presidential-Memorandum-Regarding-Preemption)

The second paragraph is in direct conflict and violation with the highest law of our land, the California Constitution, specifically Article 3, Section 3.5 (c).

The third paragraph is not entirely true. When the city attorney asserts “*it is something the state will not prosecute*” he fails to mention that in fact, medical marijuana is “legal” as there is an “assertive defense” allowed under the law. The city attorney is very careful to put the word ‘strictly’ in front of the word “legal” to allow for a plausible denial of relaying misrepresented law to the council.

The final sentence provides evidence of the city attorney attacking the credibility and legal resources of the California Attorney General by stating; “... *it is difficult at this point to say whether the Attorney General got this right or not.*”

The fourth paragraph is further proof of the city attorney attacking the credibility and intent of the Attorney General guidelines by phrasing the initial sentence; “*Even if the Attorney General’s guidelines are right...*”.

PENDING LEGAL DEVELOPMENTS REBUTTAL

In the first paragraph, our city attorney actually calls on the federal government to “*use the power it has to aggressively fight medical marijuana cooperatives or collectives*”.... and goes on to praise the Bush administration for its successful efforts at circumventing the will of the California voters.

The second paragraph goes into the banning option further by suggesting the council should wait until the Anaheim case is settled so the council can ban the land use that the council directed the city staff to create an ordinance for...very confusing...? The city attorney is clearly not working with the directions that were given by the council on 8/19/09 and is in desperate need of reiteration of direction by the council...

The definition of “seriously ill” is irrelevant considering Prop 215, a California Initiative, contains the text “*any other illness for which marijuana provides relief*” and cannot be change by an ordinance, only by a voter initiative.

The third paragraph refers to pending initiatives that have no barring on the immediate need on medial cannabis patients and is an obvious attempt at delaying the ordinance process indefinitely, waiting for any court decision that will allow a ban or otherwise derail efforts to provide a city ordinance for the “land use issue”.

From the desk of
Marcus W. Boyd

WHAT CAN A CITY DO ABOUT MEDICAL MARIJUANA REBUTTAL

The title of the section alone is proof the staff report is prejudicial and did not comply with the city council decision to move forward with an ordinance. The entire section is taken directly from cynical special interest group propaganda.

Where is the section; HOW CAN A CITY ADD AN ORDINANCE AFTER IT'S BEEN REQUESTED BY THE COUNCIL?

HOW DO MORATORIA WORK REBUTTAL

This section is clearly single sided and does not touch on an ordinance. What happened to the direction given by the city council? Where is the section; HOW DO ORDANANCES GET ADDED WHEN REQUESTED BY THE COUNCIL?

INITIAL REPORT ON PROGRESS REBUTTAL:

Finally on page five we get to the "ordinance and the issue of land use"... NOT!

The first and second paragraphs assert that many cities regulatory policies were investigated and that MOST do not attempt to strictly enforce the "primary caregiver" definition in the Compassionate Use Act.

Then council, please ask the city attorney, "what of the "OTHER" cities that do have regulatory policies that strictly enforce the "primary caregiver" definition in the Compassionate Use Act?" Why was the council not given the option to review any of the "OTHER" city regulations?

The use of the pivotal word "most" by the city attorney in the staff report is clear indication that the information that was requested by the council on 8/19/09 is being withheld by the city attorney's very prejudicial and non complying staff report.

CONCLUSION REBUTTAL:

If it is the Imperial Beach City Council's desire to provide a city ordinance as indicated by the majority in regular session of the city council meeting on 8/19/09, the council must rely on the council it's self to attend and monitor the task force, else, the council will be presented with the same prejudicial text that has been politically presented to you twice regarding this "*land use issue*" and going forward shows no signs of being presented with any due diligence to move forward with the ordinance that was overwhelmingly requested by the council on 8/19/09.

Thank you for taking the time to read and consider this rebuttal.

At your service,
Marcus Boyd
619-549-7172

From the desk of
Marcus W. Boyd

Wednesday, December 16, 2009

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

From: Marcus Boyd
Re: Agenda Item 6.3
First Status Report on Interim Ordinance No. 2009-1091...

The 6.3 Staff Report is again attempting to shine a more confusing light on the subject of collective/cooperative law than actually exists. I believe the terminology used in the 6.3 Staff Report to describe the laws is a continued attempt to stall the ordinance process.

The laws referenced in the Staff Report were only those that would attempt to persuade the city council limit access to medical marijuana, however, there are far more appellate court decisions in favor of collectives/cooperatives than against. Please take the time to review the attached list of additional related case laws which should have also been referenced in the 6.3 Staff Report for your consideration.

Although San Diego Superior Court verdicts are not published law and carry no legal precedence, the People V. Jackson verdict on December 1, 2009 was nonetheless a historic case. This particular case should be taken into consideration by the city attorney, staff and council members because of what the jury said regarding their verdict.

To give you a brief history of the case; Mr. Jovan Jackson was arrested in 2008 and the first case to be heard by a jury in California for operating a medical marijuana storefront in San Diego. Mr. Jackson was arrested along with various other targeted San Diego City and County collectives/cooperative operations, in a case dubbed Operation Green Rx by the county predator's office.

The Jackson case was of great interest to the prosecutor's office. I was in the court room as an observer for the verdict as were approximately 35 members of the prosecutor's office. Despite prosecutor Lindberg presenting his best possible case to convict Mr. Jackson of the operation of a collective/cooperative, the jury took less than four (4) hours to find Mr. Jackson not guilty on all medical marijuana related charges.
(More on the Jackson case here: <http://wp.me/pHeYc-fH> and here; <http://wp.me/pHeYc-gG>)

The comments from the jury following the verdict were not aired on any mainstream media because of the scathing report from the jury with regard to the prosecution of any individual associated with a medical marijuana collective/cooperative.
(See unedited jury comments here: <http://wp.me/pHeYc-qO>) The Jury is the 4th video down.)

In short, when the staff report and other public officials refer to "the law" as being *vague*, what I believe they really mean is, they "*object to the law*" and want to "*change the law*". Please see the Staff Report 6.3 Collectives section; you'll note the city staff uses the word "grow" in place of the word cultivate when describing the law regarding collective/cooperative operations. In essence, insinuating that cultivation has nothing to do with the exchange of money, however, in the case of the People V. Jackson the jury was clear about the law that was presented to them. Cultivation in fact, includes the exchange of money in lue of "*actively growing*" as asserted by the Staff Report.

I respectfully request that you direct the city staff to proceed with a city ordinance with a less prejudicial approach. I've attached an ordinance to this request that does not attempt to change the law, rather the attached ordinance explicitly adheres to the law.

Please instruct the city staff to explain the specific "legal" issues or problems with the attached proposed ordinance in order to move the process forward.
Thank you for consideration.

Marcus Boyd

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Case law interpreting California Health & Safety Code § 11362.775, which provides specific legal protections for the association of qualified persons within the State in order to collectively or cooperatively cultivate marijuana for medical purposes:

(1) *People v. Hochanadel*, 98 Cal.Rptr.3d 347 (filed 8/18/2009) – Court concluded that “the MMPA’s authorization of cooperatives and collectives did not amend the CUA, but rather was a distinct statutory scheme intended to facilitate the transfer of medical marijuana to qualified medical marijuana patients under the CUA....” The court also concluded “that storefront dispensaries that qualify as ‘cooperatives’ or ‘collectives’ under the CUA and MMPA, and otherwise comply with those laws, may operate legally, and defendants may have a defense at trial to the charges in this case based upon the CUA and MMPA.”

(2) *County of Butte v. Superior Court of Butte County*, 96 Cal.Rptr.3d 421 (filed 7/1/2009) – County of Butte was sued by a member of a medical marijuana collective after being ordered by a sheriff to destroy some of the marijuana plants in accordance with the County’s underlying policy to allow qualified patients to grow marijuana collectively only if each member actively participates in the actual cultivation of the marijuana by planting, watering, pruning, or harvesting the marijuana. Trial court sustained the civil lawsuit for money damages against the County and concluded that contrary to the policy of the County, “the [State] legislature intended collective cultivation of medical marijuana would not require physical participation in the gardening process by all members of the collective, but rather would permit that some patients would be able to contribute financially, while others performed the labor and contributed the skills and ‘know-how.’” Court of Appeal upheld the trial court ruling.

(3) *People v. Newcomb et al.*, 2009 WL 1589574 (filed 6/9/2009) (Not Officially Published) – Defendants appealed their convictions based upon the collective/cooperative defense under California Health & Safety Code § 11362.775. Appellate court upheld the convictions, but elaborated that “other than merely purchasing marijuana, not every member must contribute to some aspect of the collective or cooperative; ... Because some patients may be too ill to contribute to the collective or cooperative, requiring them to do so, in order to be part of the collective or cooperative, would be impractical.”

(4) *People v. Urziceanu*, 132 Cal.App.4th 747 (filed 9/12/2005) – Appellate court reversed and remanded a trial court’s determination that a defendant was precluded from raising a “collective, cooperative defense” under Health & Safety Code § 11362.775. The appellate court found that the defendant had presented the trial court with sufficient evidence that: the defendant was a qualified patient; the co-defendants were qualified patients; the procedures of the collective, in question, verified the prescriptions and identities of the various members, making them qualified patients, as well; members paid membership fees and reimbursed the defendant for cost incurred in the cultivation through donations; and members volunteered and participated at the collective, by helping with cultivation, delivery, processing of new applications, etc. The court elaborated that Health & Safety Code § 11362.775’s “specific itemization of the marijuana sales law indicates it 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.”

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Submitted by M. Boyd