



**Draft for Planning Commission review  
on November 22, 2010**

**Council Date: December 14, 2010**

**SUBJECT: 2010-7279- Medical Marijuana Distribution Facilities (Study Issue)**

**REPORT IN BRIEF**

In 1996, the California voters passed Proposition 215, the Compassionate Use Act (CUA), decriminalizing, upon a physician's recommendation, the cultivation and use of marijuana by seriously ill individuals. The bill 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." Sunnyvale code does not allow medical marijuana distribution facilities (MMDs); Council directed staff to study this issue and return with recommendations on whether or not to allow distribution facilities, and if so to provide zoning options (Study Issue paper, Attachment A).

MMDs include cooperatives, collectives and dispensaries. MMDs have no oversight from Federal or State agencies, and it falls to local agencies to provide the regulations and enforcement to ensure MMDs meet State laws. The responsibility for oversight, sales and distribution of medical marijuana is difficult for local jurisdictions to accomplish because of differences in State and Federal policies and the demands on public safety staff.

If MMDs were allowed in Sunnyvale, it would be the only city in the County which specifically permits these uses. Although there are existing MMDs in San Jose (opened without permits), members of the public have expressed the need for outlets in Sunnyvale to provide access to marijuana for medical purposes.

Staff recommends the Council adopt the draft ordinance (Attachment B) to prohibit the distribution of medical marijuana through any outlet in the city, except licensed health care clinics and other State licensed facilities. Staff recommends a prohibition at this time for the following reasons:

- Significant staff costs and time would be anticipated to ensure that MMDs meet State and City requirements. Although permit and regulatory fees could be assessed, those fees may not cover the full cost for enforcement;

- There is continuing uncertainty between state and federal enforcement policies that could further complicate local enforcement efforts;
- Based on the recent proliferation of MMDs and associated problems, staff anticipates an increase in crime if these facilities are allowed in the city;
- Land use concerns could result from MMDs, specifically relating to traffic, odors, and neighborhood compatibility.

If Council chooses not to prohibit MMDs, but to allow them, staff would return in January, 2011 with a draft ordinance. The list shown in Attachment M provides a suggested outline for Council to give staff direction on how to regulate these uses.

### **BACKGROUND**

As discussed in this report, there are Federal and State laws regarding this subject, as well as case law and local agency responses in dealing with the implementation of Proposition 215. Although the State ballot measure was passed in 1996, the issue lay dormant for most cities until the U.S. Department of Justice stated, in 2009, that it would not enforce Federal law as it relates to medical marijuana distribution facilities that meet state law. The effect of that change in Federal policy, along with recent legal decisions by California courts, has brought the issue front and center for most California cities.

In April, 2010, the Sunnyvale Community Development Department received a request from an interested MMD for determination that a “medical marijuana collective” is a use similar to others allowed in the city. The request was for the Director of Community Development to make that determination and allow the collective to be located in the city (pursuant to Sunnyvale Municipal Code 19.98.220). In June 2010 the Council considered an urgency ordinance to place a moratorium on land use applications for medical marijuana establishments. That moratorium was passed, and then extended until the end of March 2011, to allow a thorough study of the issues and outreach to the community on possible land use options. The matter of determining similarity to other permitted uses was put on hold.

Every city in California has the right to decide whether to allow MMDs in their city, and what policies and procedures to implement should they be considered.

In the past few years, some cities (e.g. San Jose, Los Angeles) have experienced a rapid increase in the number of MMDs that have opened within their jurisdiction. This occurred during the time these cities did not have clear regulations in place to review the use.

The original intent of Proposition 215 and follow up State legislation was to allow people to grow marijuana individually and collectively for medical purposes, and to ensure they are safe from criminal prosecution. Over time, this has grown into the presence of large member-based distribution outlets of marijuana, with the product purchased from outside sources.

Given the lack of State and Federal oversight, it has fallen to the cities to regulate and oversee these establishments, and to ensure they meet the criteria of State law and guidelines. The oversight of MMDs includes the following:

- Ensuring the collectives/cooperatives are non-profit organizations,
- Tracking the marijuana to make sure it is supplied only from members of the collective/cooperative,
- Ensuring the product is laboratory-tested to ensure it is free from molds, pesticides, or harmful additives,
- Assuring the marijuana is dispensed legally.

## **EXISTING POLICY**

### **Socio-economic Sub-element**

*Goal 5.1A:* Preserve and enhance the physical and social environment and facilitate positive relations and a sense of well-being among all community members, including residents, workers and businesses.

*Goal 5.1G:* Enhance the provisions of health and social services to Sunnyvale residents by providing opportunities for the private marketplace to meet the health and social service needs of City residents.

*Goal 5.1H:* Identify pressing health and social needs of the Sunnyvale community, encouraging appropriate agencies to address these needs in an adequate and timely manner.

Policy 5.1H.10: Encourage adequate provision of health care services to Sunnyvale residents.

### **Federal Law**

Federal Controlled Substance Act (CSA) which was adopted in 1970

### **State Law and Guidelines**

Prop 215- Compassionate Use Act of 1996 (CUA)

SB 420- Medical Marijuana Program Act (MMPA), signed by the Governor on October 12, 2003, effective January 1, 2004

Attorney General Guidelines- issued October 2008

## **DISCUSSION**

### **Overview**

The issue of whether to allow medical marijuana distribution facilities (MMDs) in Sunnyvale is complicated and controversial, and passionate arguments are presented from those who either support or oppose their allowance. This study considered the following issues:

- Current laws and enforcement;
- The intent of the State Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA);
- The role of a local agency in implementing the CUA and MMPA;
- The impact of marijuana on the community, and the possible increase of those impacts if MMDs are allowed to locate in the city;
- Public safety concerns, including a possible increase in violent crime;
- Land use compatibility concerns regarding MMDs in the city;
- Balancing the concerns that easier access to marijuana could increase usage in undesirable ways versus the desire to provide this compassionate care alternative to Sunnyvale residents; and
- Possible regulations and procedures to consider, should the decision be made to allow MMDs in the city.

The advantage of allowing MMDs in Sunnyvale would be that patients could more easily obtain marijuana in legally-operating facilities in the city. While MMDs would provide assistance to Sunnyvale residents and people from outside the city, regulating them is difficult and a potentially expensive responsibility. In addition to the concern that MMDs are for-profit businesses, rather than non-profit, “compassionate care” facilities as anticipated in Proposition 215, law enforcement agencies are concerned that MMDs can introduce criminal activity to the community. There is also concern that many MMDs sell marijuana to recreational users and loosely apply the compassionate use criteria. These issues will be discussed further in this report and in the attachments.

### **Factors to Consider**

#### **Federal Laws and Enforcement**

In general, the Federal Drug Enforcement Agency sets the guidelines and standards for drug policy in the country and the U.S. Attorney General decides what laws to enforce. The following is a brief description of those federal parameters (more detail is shown in Attachment C):

- The Federal Controlled Substance Act (CSA) was adopted in 1970. It states that it is unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Federal Government’s view is that

marijuana is a Schedule I substance, which is classified as having a high potential for abuse. Further, the federal view is that use of marijuana for medicinal purposes is not an accepted treatment method in the United States, and it has not been accepted that marijuana is safe to prescribe as a drug or other substance under medical supervision. Because of this position, marijuana cannot be prescribed or dispensed in the same way as legal drugs, which is why marijuana is not available from doctors or pharmacies.

- In March 2009, U.S. Attorney General Eric Holder Jr. announced it would no longer enforce the federal laws prohibiting distribution or possession of marijuana for medicinal purposes, allowing states to have the final say in the matter. It was also stated that dispensaries that use medical marijuana as a storefront for dealers of illegal drugs would be prosecuted. In a more recent announcement, Attorney General Holder's office stated they will prosecute people for growing, selling, and possessing marijuana in California if they are not in compliance with State law.

### **State Laws**

California has passed laws and general regulations allowing the cultivation, distribution, possession, and use of marijuana for specific medical purposes, as detailed below:

- In 1996, the voters of California passed Proposition 215, known as the Compassionate Use Act (CUA). The purpose of the CUA was to give individuals the right to obtain and use medical marijuana as deemed appropriate and as recommended by a physician (Attachment D).
- The CUA ensures patients and primary caregivers will not be subject to state or local criminal prosecution for the possession or cultivation of marijuana for medical purposes.
- In 2003, the State Senate passed and the Governor signed into law SB 420, the Medical Marijuana Program Act (MMPA), which codified the regulations for the possession, distribution, and use of marijuana for medical purposes, as described in the CUA (Attachment E).
- In 2008, California Attorney General Edmund Brown published guidelines for the security and non-diversion of marijuana grown for medical use. These guidelines are a helpful tool for law enforcement to perform duties effectively and in accordance with California law. It assists patients and caregivers on how they may cultivate, transport, possess, and use medical marijuana under California law. In addition, it provides the framework for "collective/cooperatives" and provides greater direction to ensure marijuana used for medical purposes is secure and does not find its way to non-patients or illicit markets. (Attachment F).

**Sunnyvale Regulations**

- The Sunnyvale Municipal Code contains no provisions expressly permitting or prohibiting the operation of a place of distribution for medical marijuana. The Code provides that if a land use is not specifically permitted, it is prohibited.
- On June 29, 2010, the City Council extended an interim ordinance to specifically prohibit MMDs in the city. This created a moratorium to allow staff to complete the study on whether or not to allow MMDs in the city. The moratorium is in effect until March 31, 2011.

**Frequently Asked Questions Relating to the MMPA and AG Guidelines**

Attachment G lists several frequently asked questions (FAQ's) to address this issue, including:

- What medical conditions can marijuana relieve?
- How much marijuana can an individual have?
- How does a patient get a recommendation from a doctor?
- Who is a primary caregiver?
- What is a medical marijuana ID card and how are they issued?
- Can the sale of medical marijuana be taxed?
- How can medical marijuana be distributed?
- What is a cooperative, collective or dispensary?
- Who can cultivate marijuana for medical purposes?

**Affect of Recent Court Cases on City Consideration**

There have been several important court cases regarding medical marijuana that have bearing for the City. A recent court case, *Qualified Patients Ass'n. v. City of Anaheim*, was closely watched by cities and proponents: it is summarized in Attachment H.

In general, the case involved a legal challenge to the City of Anaheim's ordinance banning MMD's. The plaintiffs, Qualified Patients Association, sought to overturn the ordinance on the ground that it was preempted by the CUA and MMPA. The City of Anaheim filed a motion to dismiss the complaint arguing, among other things, that the plaintiffs had no standing to bring a suit to overturn the ordinance because their planned activities would be illegal under federal law.

With regard to the first question, the court ruled that the CUA and MMPA are not preempted by federal law. In the matter of interest to the City of Sunnyvale, the court concluded that it was too early in the litigation to decide on the plaintiff's challenge whether state law precludes cities from banning MMD's. It is important to emphasize that the court did not decide this issue, and that question will probably not be finally resolved by the courts for at least another 2 to 3 years, if not longer.

**Other Cities**

Medical Marijuana cooperatives, collectives and dispensaries have recently been a hot topic for California cities. For years after Proposition 215 was passed, only a few cities in the state allowed these facilities, while others followed the federal rules that made cultivation, possession and distribution illegal. This changed in the past couple years, most likely in response to the current Presidential administration's decision regarding enforcement of marijuana offenses. As a result, most cities in the state have taken specific action to either prohibit the distribution facilities, adopt moratoriums to allow time to study the issue; or pass ordinances that allow them under specific conditions.

In Santa Clara County, four of the 15 cities explicitly ban MMDs. As shown in Attachment I, five other cities are relying on current code language which doesn't specify the use as allowed (thereby making it not allowed), and four cities have moratoria in place while studying the issue. The County of Santa Clara has an ordinance allowing MMDs in specific zones of the unincorporated areas of the County, subject to a permit.

San Jose has approximately 80 dispensaries that opened in the city during a time when the uses were not specifically disallowed. San Jose is currently reviewing their position, and is considering options for how to handle both operating MMDs, and future requests for permits for MMDs. A moratorium is not in place in San Jose, but they are currently reviewing options to allow them with specific requirements (limiting locations, size, hours of operation, etc.).

If Sunnyvale chooses to allow one or several MMDs while adjacent cities continue to prohibit the use, it would be expected that these facilities would serve not only Sunnyvale clients but many customers from surrounding communities.

Attachment I also lists other cities throughout the state that have passed ordinances regulating MMDs. In reviewing all the cities listed, some cities have reversed their policies from allowing MMDs to either banning them, or to place a moratorium while they restudy the issue.

**Medical Marijuana Availability**

One issue raised by proponents, patients and caregivers in Sunnyvale is to make medical marijuana easier to obtain by city residents. For years, individuals have had to travel to Oakland, San Francisco or Santa Cruz to obtain marijuana for their medical needs. More recently, with the large number of locations open in San Jose, availability to Sunnyvale residents has become easier.

In reviewing advertisements in local newspapers, there are several MMDs in San Jose within 10 driving miles of Sunnyvale. Attachment J is a map that shows locations for several MMDs in San Jose, and approximate distances from Sunnyvale.

### **Cultivation**

State law allows individuals with a physician's recommendation to cultivate marijuana for their personal use. The law allows each person with a doctor's recommendation to maintain no more than six mature or 12 immature plants. A person cannot sell the marijuana they grow, but can provide it to their cooperative or collective. Currently, no permit is required for medical marijuana cultivation in Sunnyvale.

Cultivation is a greater concern when marijuana is grown in large quantities in residential homes in what are known as "grow houses." There are many safety issues associated with grow houses; such as: dangerous electrical wiring, unsafe changes to the structure, and the possible safety concerns on the surrounding residents from having a large amount of an illegal substance grown in residential locations. Public Safety staff is particularly concerned that the recent fires and robberies have occurred at residential grow houses.

MMDs are required by State law to obtain their marijuana from their members, which could mean allowing homeowners to cultivate the plant. Cultivation is also possible in larger commercial operations, such as those recently allowed in Oakland.

Cultivation requirements and restrictions would be included in an ordinance, should MMDs be allowed in Sunnyvale; otherwise, the State law minimums allowed for plant cultivation would be the standard.

### **Legal Alternatives to Marijuana**

The ingredient in marijuana that provides relief for those with serious medical conditions is THC. According to the U.S. Drug Enforcement Administration, a pharmaceutically-available, FDA approved product called "Marinol" is available, which contains synthetic THC as the active ingredient. Marinol comes in the form of a pill, and is available at pharmacies.

Although proponents of medical marijuana claim that Marinol does not help all medical conditions, and may not be as effective as marijuana, it does have value in that it can be distributed through existing, legally operating pharmacies, meaning separate MMDs would not be necessary for its distribution. This is important because pharmacies are located throughout the city and are required to store, distribute and track what is dispensed.

**Criminal Activity Concerns**

Public Safety staff is concerned with the secondary effects and adverse impacts related to medical marijuana. These impacts have been documented in a report written by the California Police Chiefs Association, White Paper (Attachment K). Recent negative impacts in Santa Clara County have been directly linked to marijuana dispensaries and marijuana growers. There have been three armed takeover style robberies at San Jose marijuana dispensaries this year. These violent crimes are similarly patterned after the robberies Southern California marijuana dispensaries have experienced over the past few years; several robberies resulted in the homicide of dispensary employees.

Recently in Santa Clara County, Superior Court Judges issued warrants established by probable cause based upon illegal sales and distribution of marijuana for profit. These warrants were served by officers from the Santa Clara County Special Enforcement Team (SCCSET), the Attorney General's Bureau of Narcotic Enforcement (BNE), along with several other law enforcement agencies. These warrants were served and resulted in numerous arrests, seizures of marijuana (possession and cultivation), weapons, and money.

The U.S. Drug Enforcement Agency and other federal, state, and local law enforcement agencies enforcement efforts have shown medical marijuana dispensaries routinely underreport revenues, resulting in the need to aggressively regulate their businesses. It is anticipated that public safety will be asked to provide assistance to regulatory agencies to investigate marijuana dispensaries. In order to provide minimum regulation, it will be necessary to make regular unscheduled inspections of its facilities to ensure compliance with the city's municipal code, the states Penal Code, fire code, and the health and safety code. Regulation should include random audits to ensure accurate record keeping and compliance.

Efforts to investigate and enforce crimes associated with marijuana dispensaries will vary depending upon crime type. Marijuana dispensaries have been linked to a variety of crimes that range in severity from loitering and disturbing the peace, to robbery and homicide. If crime occurs as a direct result of marijuana dispensaries, the cost per hour for public safety services would follow the same methodology as detailed in the annual fee schedule adopted by City Council. The salary for Public Safety Officer is \$123.99 per hour and Public Safety Lieutenant is \$144.36 per hour.

**Adverse Secondary Effects**

Several secondary effects are associated with the distribution and use of marijuana. These include criminal acts, driving under the influence, white collar crimes, and negative impacts on our youth. This issue is discussed in greater detail in Attachment L.

### **Public Health**

All medicines distributed by pharmacies are regulated by the United States Food and Drug Administration (FDA). FDA approval is required in order for a specific, finished medication to be marketed and distributed to patients. Scientific testing of marijuana for medical use is not performed at professionally recognized and regulated laboratories. The FDA is responsible for protecting and promoting public health. They have a safety protocol in place to alert and protect consumers of possible product contamination. This program results in the ability to recall products should they present health or safety concerns for the consumer. Marijuana growers and dispensary operators have no oversight and cannot validate the safety of their product.

### **Land Use Concerns**

Land use comparisons for MMDs range from a facility similar to a retail outlet with frequent customer turnaround, to facilities similar to a place of assembly where people go to socialize, take classes, etc. The land use considerations vary depending on the characteristics of the use. Sunnyvale has no experience with MMDs, but staff visited 15 MMD locations and was given a tour of a large MMD in order to understand how they fit into an area, and to better understand their operations.

The land use concerns for MMDs are briefly discussed below:

- Compatibility. The MMDs observed by staff tended to be in multi-tenant Class C industrial buildings, near other office and R&D businesses. Two of the 15 MMDs visited were located near commercial uses, as well. In general, the facilities were low-key, with no obvious sign of activity beyond the typical use. At the large MMD that staff toured, however, there was constant turnover of cars, with people congregating at the entrance and waiting in cars. Staff visited two businesses adjacent to that MMD, and asked if they had any concern about the MMD. Those adjacent tenants complained of an increase in traffic, loitering, and crime since the MMD began operation.
- Odors. Marijuana has a distinctive smell: as a plant, a bud and while smoked. MMDs tend to have large ventilation systems in place to remove odors from the premises. Even with those systems, odors can still be pervasive. This has been an issue described by other cities and businesses near existing MMDs.
- Traffic and parking. At the MMD at which staff was given a tour, the manager of the business stated there were 30,000 members at that facility. That number is not typical, but many operators mention they have 1,000 or more members. What is not known, nor easily controlled, is whether members use the MMD daily, weekly or monthly. If the MMD has a high turnover rate where clients spend little time on site and pick up what they need and leave, then a high turnover would have less

parking concerns, but may have greater traffic and circulation issues may arise depending on whether the members use the MMD during peak periods. Sometimes high turnover creates more parking concerns, not less (e.g. fast food restaurants versus sit down restaurants).

After visiting 15 MMDs, and touring one large MMD, staff concluded that, although large, well-trafficked facilities have the potential to negatively impact surrounding uses and areas, it is possible that smaller MMDs can exist with little impact to nearby businesses with proper regulations. This use is relatively new, and use patterns are not well known. It is possible that MMDs have similar impacts as any other business in an area. It is also possible that an MMD could disrupt an existing neighborhood with more traffic and a possible increase in crime due to the presence of an illegal drug (when not used for medical purposes).

Proponents claim that those cities with safety and compatibility concerns are typically those without adequate regulations in place (e.g. Los Angeles and San Jose). Proponents claim that cities like Oakland, which has concise regulations in place, have fewer safety and compatibility problems.

## **APPROACHES**

There are two broad options that can be chosen with this issue: either prohibit MMDs in the city or allow them with clear criteria, regulations and conditions. Both options have positive and negative effects and, based on the community workshops held by staff, opinions from members of the community on both options have been diverse.

### **Option A: Prohibit MMDs in Sunnyvale**

This option would require the Council to introduce and adopt an ordinance that specifically prohibits MMDs in the city. The zoning code would need to be changed to specify that MMDs are a prohibited use.

#### Positive Effects

- Removes the possibility of illegal activity at MMDs, including profit-oriented dispensaries.
- Reduces secondary negative social impacts that could arise by restricting the ability to obtain marijuana in the City.
- Avoids land use compatibility issues between MMDs and surrounding uses and businesses.
- Avoids complicated and potentially-expensive enforcement efforts.

#### Negative Effects

- Does not respond to the “compassionate care” concerns of Proposition 215.

- Removes the ability for Sunnyvale patients to obtain medical marijuana from collectives or cooperatives in their own city.
- Prevents cooperatives or collectives that could meet State laws from operating in city and providing assistance to those in need.

The proposed ordinance to prohibit MMDs defines a MMD as a facility with two or more qualified patients. This would allow a patient to receive medical marijuana from a primary caregiver in the patient's home, but would prohibit the distribution to any other person. In addition, the proposed ordinance would allow patients to receive medical marijuana at a licensed medical clinic, hospice, or similar facility.

**Option B: Allow MMDs in Sunnyvale, subject to regulations and controls**

This option would allow MMDs in the city at limited or defined locations with conditions and restrictions. There are various approaches and issues that should be evaluated and resolved if this option is chosen. Whereas Option A to prohibit MMDs requires a relatively straightforward ordinance, Option B is more complex and requires decisions on the appropriate location, necessary use restrictions, public review process, and degree of oversight by the City in the operations of a MMD.

The effects of allowing MMDs in Sunnyvale could include:

Positive Effects

- Allows local, legal access to medical marijuana for authorized patients in the community.
- Accommodates alternative approaches to the treatment of illnesses, including the use of medical marijuana.
- Responds to an expressed desire for such facilities by some Sunnyvale residents.

Negative Effects

- Possible rise in crime activity with possibly easier access to marijuana by unauthorized users such as youths.
- Secondary negative social impacts and costs associated with more prevalent marijuana use.
- Potentially expensive enforcement required by the city and school districts to ensure the community does not experience a rise in crime from MMDs in the city.
- Difficult to apply conditions on approved MMDs because of the intrusive nature of the options necessary to ensure adherence to State laws.
- Possibility of profit-oriented MMDs in the city.

Cities have addressed the issue of permitting MMDs in different ways. Most cities have amended their zoning code to require the equivalent of a Use Permit with a public hearing. Other cities allow MMDs with a staff level approval, City

Manager approval, or Public Safety permit. The option of a competitive Request for Proposals approach has also been adopted to allow one or several MMDs in a community when several applications are received (to ensure the best-run MMD is allowed to make application, not just the first to make application).

There are also different approaches to the type and extent of information necessary for a MMD application, regulations to control land use aspects, and conditions of approval and operating standards to ensure a MMD meets the goals and requirements of the city.

### **Draft Ordinance**

Staff recommends adopting the draft ordinance included with this report (Attachment B) if Council chooses to *prohibit* MMDs in the City.

If Council decides to *allow* MMDs, staff would proceed to prepare a draft ordinance for the City Council to review and possibly adopt by the end of January. The list shown in Attachment M provides a suggested outline for Council to give staff direction on how to regulate these uses.

### **FISCAL IMPACT**

If Council introduces the ordinance to prohibit MMDs in the City, the costs to the City to implement this would be minimal.

If Council were to direct staff to introduce an ordinance to permit MMDs in the City, it is estimated that staff time for the audits and inspections could cost up to \$60,000 annually (this estimate is based on a fee study used by the City of Oakland to implement charges for auditing and inspecting operating MMDs). Some cities require significant fees paid by MMD operators for the review of plans and operations, as well as to enforce specific regulations. Attachment N shows how a few cities approach application and on-going fees for MMDs. With Council direction, staff could also investigate regulatory fees for MMDs. Although fees could possibly cover the costs for regulating MMDs, secondary costs associated with regulating marijuana sale, cultivation, and use would be difficult to capture, such as legal and enforcement costs related to criminal activity and business violations.

### **PUBLIC CONTACT**

Significant public contact was made through the usual posting of the Planning Commission and City Council agendas on the City's official-notice bulletin board, on the City's Web site, and the availability of the agenda and report in the Office of the City Clerk. The meetings were also advertised on the Quarterly Report, the City Website, the *Sunnyvale Sun* newspaper and KSUN.

There has also been multiple public outreach meetings held, at which over 200 people have attended. Public outreach notices were sent to businesses in Sunnyvale, neighborhood associations, the Chamber of Commerce, all school districts with schools in Sunnyvale, mobile home parks, places of worship and assembly, the Downtown Association, and interested parties. Public outreach included two public meetings, meetings with the proponents of MMDs, the Chamber of Commerce, the Fremont High School PTA, the Moffett Park Business and Transportation Association, a joint Study Session with the City Council and Planning Commission, and a separate Study Session with the Planning Commission.

A web page was set up, and updated regularly to include information about the study, a link to an e-mail address, and public hearing schedules. Also, an on-line survey was provided in order to give members of the community the ability to state their opinion. Results of the on-line survey are shown in Attachment O, but in general, nearly 600 people responded with 55% in favor versus 45% opposed to allowing MMDs in the city. The survey was intended to provide members of the community an opportunity to express their opinion on this issue. It was an informal survey not intended to be statistically controlled or sampled.

Additionally, included in Attachment P is a list of comments received from the public by e-mail, and from the two public outreach meetings.

### **ALTERNATIVES**

1. Introduce an ordinance to prohibit MMDs in the City (Attachment B).
2. Direct staff to return with a draft ordinance by the end of January 2011 to include new procedures, processes, regulations, and fees to allow MMDs in the City with direction on appropriate options (options listed in Attachment M).

### **RECOMMENDATION**

Alternative 1.

Staff recommends adoption of the attached ordinance to prohibit medical marijuana distribution facilities in the City. The attached ordinance would prohibit distribution of medical marijuana to two or more people, thereby allowing patients to receive assistance from a primary caregiver. The ordinance would also allow patients to receive medical marijuana at a licensed medical clinic, hospice, or other state licensed medical facility.

List below are a few key reasons staff recommends prohibiting MMDs (see Attachment Q for additional staff concerns):

- Although the City has the right to consider whether or not to allow MMDs in the city, it would be difficult and expensive to ensure that these facilities comply with all laws, including those imposed by the City. The uncertainty between state and federal laws would further complicate and impede the effectiveness of local regulation.
- Time consuming and intrusive controls and regulations would be required to ensure that MMDs operate as non-profit “compassionate care” facilities as anticipated in Proposition 215.
- Allowing MMDs in Sunnyvale could raise the possibility of criminal activity in the city.
- There are social and public safety concerns associated with allowing the sale of a substance that is only legal when used for medical purposes, but are otherwise illegal to possess, grow or use.

The original intent of the CUA was to allow individuals to grow marijuana individually and collectively for medical purposes, and to ensure they are safe from prosecution. In 2003, SB 420 expanded that by allowing distribution outlets of marijuana. By doing so, the State placed the entire burden on each city to ensure these facilities meet all aspects of State law.

If Council chooses to allow MMDs in Sunnyvale, staff would return to the Planning Commission and City Council by the end of January with a draft ordinance that includes those items necessary to ensure that any MMD located in Sunnyvale will meet the intent of State law and the Compassionate Use Act. A suggested outline of the contents of an ordinance that can be used if Council decides to allow MMDs is included in Attachment M.

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### **Attachments**

- A. Study Issue paper
- B. Draft Ordinance prohibiting medical marijuana distribution facilities
- C. Federal laws and Federal enforcement summary
- D. Proposition 215, the Compassionate Use Act (CUA)
- E. SB 420, the Medical Marijuana Program Act (MMPA)
- F. Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Purposes
- G. Frequently Asked Questions (FAQ's)
- H. Recent court case review
- I. Review of approaches of other cities
- J. Map of nearby medical marijuana distribution facilities
- K. California Police Chief's Association research
- L. Summary of adverse secondary effects
- M. Potential regulatory outline and options
- N. List of fees from other cities
- O. On-line survey results
- P. Public comments
- Q. Additional comments on recommendation

## Proposed 2010 Council Study Issue

## CDD 10-03 Framework for Permitting and Regulating Medical Marijuana Dispensaries

<b>Lead Department</b>	Community Development		
<b>Element or Sub-element</b>	Socio-economic Element		
<b>New or Previous</b>	New		
<b>Status</b>	Pending	<b>History</b> 1 year ago	None
		2 years ago	None

### 1. What are the key elements of the issue? What precipitated it?

In recent years, City staff has received inquiries from individuals about whether medicinal marijuana can be sold from businesses in the city. There is currently no express provision for this type of use in the Zoning Code, which has the effect of not allowing them in the City. As a result, these businesses have not been able to locate in the city, and individuals desiring this type of medical assistance have had to travel to other cities for this service.

This study issue would consider the possible framework for permitting and regulating marijuana dispensaries in the city. The staff analysis would evaluate the legal issues related to a dispensary for medical marijuana, including State and Federal laws and applicable case law. Additionally, staff would research how other cities are regulating marijuana dispensaries where such uses are allowed. Staff recognizes the problems other cities have had with regulating and compliance of these uses, and will bring these to the Council's attention as part of this study.

The study would consider the appropriateness and desirability of the use in Sunnyvale. The study would also explore zoning options for appropriate locations for these dispensaries and would define operational limitations, standards of review, and standard conditions of approval.

The study issue would include significant input from the City Attorney's Office and Department of Public Safety.

### 2. How does this relate to the General Plan or existing City Policy?

#### Socio-economic Element

*Goal 5.1A:* Preserve and enhance the physical and social environment and facilitate positive relations and a sense of well-being among all community members, including residents, workers and businesses.

*Goal 5.1G:* Enhance the provisions of health and social services to Sunnyvale residents by providing opportunities for the private marketplace to meet the health and social service needs of City residents.

*Goal 5.1H:* Identify pressing health and social needs of the Sunnyvale community, encouraging appropriate agencies to address these needs in an adequate and timely manner.

*Policy 5.1H.10:* Encourage adequate provision of health care services to Sunnyvale residents.

**3. Origin of issue**

**Council Member(s)** Whittum, Hamilton and Spitaleri  
**General Plan**  
**City Staff**  
**Public**  
**Board or Commission** none

**4. Multiple Year Project? No Planned Completion Year 2010**

**5. Expected participation involved in the study issue process?**

**Does Council need to approve a work plan?** No  
**Does this issue require review by a Board/Commission?** Yes  
**If so, which?**  
Planning Commission  
**Is a Council Study Session anticipated?** No  
**What is the public participation process?**  
Outreach to specific types of businesses, neighborhood groups and the Chamber of Commerce. Public hearings with the Planning Commission and City Council.

**6. Cost of Study**

**Operating Budget Program covering costs**  
242- Land Use Planning  
**Project Budget covering costs**  
**Budget modification \$ amount needed for study**  
**Explain below what the additional funding will be used for**

**7. Potential fiscal impact to implement recommendations in the Study approved by Council**

**Capital expenditure range** None  
**Operating expenditure range** None  
**New revenues/savings range** None  
**Explain impact briefly**

**8. Staff Recommendation**

**Staff Recommendation** Against Study

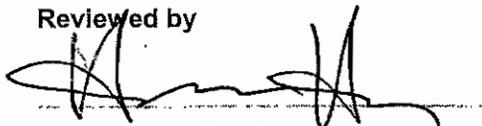
**If 'For Study' or 'Against Study', explain**

Staff is concerned about the number of issues and potential problems associated with these types of uses in the City. These include concerns about how the local rules relate to State and Federal laws pertaining to the issue. Additionally, there is a significant concern about enforcement issues with these uses. Other cities have reported concerns with the unauthorized sale of the product and increased crime rates as a result of the facilities. Staff does not support the study issue because of these significant concerns.

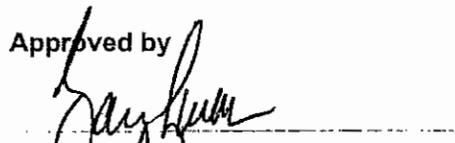
**9. Estimated consultant hours for completion of the study issue**

Managers	Role	Manager	Hours	
	Lead	Ryan, Trudi	Mgr CY1: 30	Mgr CY2: 0
			Staff CY1: 240	Staff CY2: 0
	Interdep	Berry, Kathryn	Mgr CY1: 60	Mgr CY2: 0
			Staff CY1: 0	Staff CY2: 0
	Interdep	Fitzgerald, Kelly	Mgr CY1: 60	Mgr CY2: 0
			Staff CY1: 0	Staff CY2: 0
<b>Total Hours CY1: 390</b>				
<b>Total Hours CY2: 0</b>				

**Note: If staff's recommendation is 'For Study' or 'Against Study', the Director should note the relative importance of this Study to other major projects that the Department is currently working on or that are soon to begin, and the impact on existing services/priorities.**

Reviewed by  
  
 Department Director

10/15/09  
 Date

Approved by  
  
 City Manager

10/16/09  
 Date

**Addendum**

**A. Board / Commission Recommendation**

Issue Created Too Late for B/C Ranking

Board or Commission	Rank	Rank
	1 year ago	2 years ago
Arts Commission		
Bicycle and Pedestrian Advisory Committee		
Board of Building Code Appeals		
Board of Library Trustees		
Child Care Advisory Board		
Heritage Preservation Commission		
Housing and Human Services Commission		
Parks and Recreation Commission		
Personnel Board		
Planning Commission		
<b>Board or Commission ranking comments</b>		

**B. Council**

**Council Rank** (no rank yet)  
**Start Date** (blank)  
**Work Plan Review Date** (blank)  
**Study Session Date** (blank)  
**RTC Date** (blank)  
**Actual Complete Date** (blank)  
**Staff Contact**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SUNNYVALE ADDING CHAPTER 9.86 AND CHAPTER 19.62 TO THE SUNNYVALE MUNICIPAL CODE RELATING TO MEDICAL MARIJUANA DISTRIBUTION FACILITIES; AND AMENDING TABLE 19.18.030, TABLE 19.20.030, TABLE 19.22.030, TABLE 19.24.030, TABLE 19.28.070, TABLE 19.28.080, AND TABLE 19.29.050 RELATED TO PERMITTED, CONDITIONALLY PERMITTED AND PROHIBITED USES IN CITY ZONING DISTRICTS.**

WHEREAS, in 1970, Congress enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana in the United States; and

WHEREAS, in 1996, the voters of the State of California approved Proposition 215, known as the Compassionate Use Act ("CUA") (codified as Health and Safety (H&S) Code Section 11362.5 et seq.); and

WHEREAS, the CUA creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances; and

WHEREAS, on January 1, 2004, the "Medical Marijuana Program" (MMPA), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the state Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMPA; and

WHEREAS, the CUA expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section 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." (H&S Code Section 11362.5); and

WHEREAS, the city council takes legislative notice of the fact that several California cities and counties which have permitted the establishment of medical marijuana distribution facilities or "dispensaries" have experienced serious adverse impacts associated with and resulting from such uses. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana distribution facilities. The city council reasonably anticipates that the City of Sunnyvale will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such secondary impacts is contained in a 2009 white paper report located at <http://www.procon.org/sourcefiles/CAPCAWhitePaperonMarijuanaDispensaries.pdf>; and

WHEREAS, the city council further takes legislative notice that as of February 2010, according to at least one compilation, 85 cities and 8 counties in California have adopted

moratoria or interim ordinances prohibiting medical marijuana dispensaries. The city council further takes legislative notice that 121 cities and 8 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org>; and

WHEREAS, the city council further takes legislative notice that the California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)." ([http://ag.ca.gov/cms\\_attachments/press/pdfs/n1601\\_medicalmarijuanaguidelines.pdf](http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf)) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law"; and

WHEREAS, the city council further takes legislative notice that the experience of other cities has been that many medical marijuana distribution facilities or "dispensaries" do not operate as true cooperatives or collectives in compliance with the MMPA and the Attorney General Guidelines, and thus these businesses are engaged in cultivation, distribution and sale of marijuana in a manner that remains illegal under both California and federal law; as a result, the city would be obligated to commit substantial resources to regulating and overseeing the operation of medical marijuana distribution facilities to ensure that the facilities operate lawfully and are not fronts for illegal drug trafficking; and, furthermore, it is uncertain whether even with the dedication of significant resources to the problem, the city would be able to prevent illegal conduct associated with medical marijuana distribution facilities, such as illegal cultivation and transport of marijuana and the distribution of marijuana between persons who are not qualified patients or caregivers under the CUA and MMPA; and

WHEREAS, the city council further takes legislative notice that concerns about nonmedical marijuana use arising in connection with the CUA and the MMPA also have been recognized by state and federal courts. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1); and

WHEREAS, the city council further takes legislative notice that the use, possession, distribution and sale of marijuana remain illegal under the CSA (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588); that the federal courts have recognized that despite California's CUA and MMPA, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the CUA and MMPA (*Gonzales v. Raich*, 545 U.S. 1); and,

WHEREAS, the city council further takes legislative notice that the United States Attorney General in 2008 announced its intention to ease enforcement of federal laws as applied to medical marijuana dispensaries which otherwise comply with state law. There is no certainty how long this uncodified policy will remain in effect, and the underlying conflict between federal and state statutes still remains; and

WHEREAS, an ordinance prohibiting medical marijuana distribution facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana distribution facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Sunnyvale.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SUNNYVALE DOES ORDAIN AS FOLLOWS:

SECTION 1. CHAPTER 9.86 ADDED. Chapter 9.86 (Distribution of Medical Marijuana) of Title 9 (Public Peace, Safety or Welfare) is hereby added to the Sunnyvale Municipal Code as follows:

**Chapter 9.86. Medical Marijuana Distribution Facilities**

**9.86.010. Definitions.**

(a) A “medical marijuana distribution facility” is any facility or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides marijuana to two or more persons with identification cards or qualified patients, as defined in California Health and Safety Code section 11362.5 et. seq., or any facility where qualified patients, persons with identification cards and primary caregivers meet or congregate collectively and cooperatively to cultivate or distribute marijuana for medical purposes under the purported authority of California Health and Safety Code section 11362.5 et. seq.

(b) “Medical marijuana distribution facility” shall not include the following uses, so long as such uses comply with this Code, Health and Safety Code Section 11362.5 et seq., and other applicable law:

(1) A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code.

(2) A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

(3) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

(4) A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(5) A hospice or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

**9.86.020. Operation of medical marijuana distribution facilities prohibited.**

Medical marijuana distribution facilities, as defined in this chapter, are prohibited uses in all zoning districts in the City of Sunnyvale.

**9.86.030. Violation – Penalty.**

(a) Any person found to be in violation of any provision of this chapter shall be subject to the enforcement remedies set forth in Title 1, at the discretion of the city, including, but not limited to, prosecution as a misdemeanor violation punishable as set forth in Chapter 1.04.

(b) Each violation of this chapter and each day of violation of this chapter shall be considered as separate and distinct violations thereof and the imposition of a penalty shall be as set forth in subsection (a) of this section for each and every separate violation and each and every day of violation.

**9.86.040. Public Nuisance**

Any use or condition caused or permitted to exist in violation of any of the provisions of this chapter shall be and is hereby declared a public nuisance and may be abated by the City pursuant to the procedures set forth in Chapter 9.26.

**9.86.050. Severability.**

If any section, subsection, subdivision, paragraph, sentence, clause, or phrase in this chapter or any part thereof is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this chapter or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional, or invalid, or ineffective.

SECTION 2. CHAPTER 19.62 ADDED. Chapter 19.62 (Distribution of Medical Marijuana) of Title 19 (Zoning) is hereby added to the Sunnyvale Municipal Code as follows:

**Chapter 19.62. Medical Marijuana Distribution Facilities**

Medical marijuana distribution facilities, as defined in Chapter 9.86, are prohibited uses in all zoning districts in the City of Sunnyvale.

SECTION 3. TABLE 19.18.030 AMENDED. Table 19.18.030 of Chapter 19.18 (Residential Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

RESIDENTIAL ZONING DISTRICTS	R-0/R-1	R-1.5	R-1.7/ PD	R-2	R-3	R-4	R-5	R-MH
1. - 6.	[text unchanged]							
7. Other Uses A. – M.	[text unchanged]							
N. Medical Marijuana Distribution Facility	N	N	N	N	N	N	N	N

**SECTION 4. TABLE 19.20.030 AMENDED.** Table 19.20.030 of Chapter 19.20 (Commercial Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

COMMERCIAL ZONING DISTRICTS	C-1	C-2	C-3	C-4
1. - 9.	[text unchanged]			
10. Other A. - J.	[text unchanged]			
<u>K. Medical Marijuana Distribution Facility</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

**SECTION 5. TABLE 19.22.030 AMENDED.** Table 19.22.030 of Chapter 19.22 (Industrial Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

Use Regulations by Zoning District USE	M-S Zoning Districts FAR	M-S Zoning Districts	M-S/POA Zoning Districts	M-3 Zoning Districts FAR	M-3 Zoning Districts
1. - 5.	[text unchanged]				
6. Other A. - P.	[text unchanged]				
<u>Q. Medical Marijuana Distribution Facility</u>	<u>N/A</u>	<u>N</u>	<u>N</u>	<u>N/A</u>	<u>N</u>

**SECTION 6. TABLE 19.24.030 AMENDED.** Table 19.24.030 of Chapter 19.24 (Office and Public Facilities Zoning Districts) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

OFFICE AND PUBLIC FACILITY ZONING DISTRICTS	O	P-F
1. - 5.	[text unchanged]	
6. Other A. - L.	[text unchanged]	
<u>M. Medical Marijuana Distribution Facilities</u>	<u>N</u>	<u>N</u>

**SECTION 7. TABLE 19.28.070 AMENDED.** Table 19.28.070 of Chapter 19.28 (Downtown Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

DSP MIXED USE, COMMERCIAL AND OFFICE BLOCKS	1	1a	2	3	7	13	18	20
1. - 5.	[text unchanged]							
6. Other A. - N.	[text unchanged]							
<u>O. Medical Marijuana Distribution Facility</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

**SECTION 8. TABLE 19.28.080 AMENDED.** Table 19.28.080 of Chapter 19.28 (Downtown Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

DSP RESIDENTIAL BLOCKS	4, 5, 14, 15, 16	6, 10a	8, 9, 10, 11, 12 and 17	8a	8b, 9a
1. – 5.	[text unchanged]				
6. Other Uses A. – K.	[text unchanged]				
<u>L. Medical Marijuana Distribution Facility</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>

**SECTION 9. TABLE 19.29.050 AMENDED.** Table 19.29.050 of Chapter 19.29 (Moffett Park Specific Plan District) of the Sunnyvale Municipal Code is hereby amended to read, as follows:

Use	Specific Plan Subdistrict		
	MP-TOD	MP-I	MP-C
1. – 7.	[text unchanged]		
8. Other A. – T.	[text unchanged]		
<u>U. Medical Marijuana Distribution Facility</u>	<u>N</u>	<u>N</u>	<u>N</u>

**SECTION 10. CONSTITUTIONALITY; SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

**SECTION 11. CEQA EXEMPTION.** The City Council finds, pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), that this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a Project which has the potential for causing a significant effect on the environment. The Council therefore directs that the Planning Division may file a Notice of Exemption with the Santa Clara County Clerk in accordance with the Sunnyvale Guidelines for the implementation of CEQA adopted by Resolution No. 118-04.

**SECTION 12. EFFECTIVE DATE.** This ordinance shall be in full force and effect thirty (30) days from and after the date of its adoption.

**SECTION 13. POSTING AND PUBLICATION.** The City Clerk is directed to cause copies of this ordinance to be posted in three (3) prominent places in the City of Sunnyvale and to cause publication once in *The Sun*, the official newspaper for publication of legal notices of the City of Sunnyvale, of a notice setting forth the date of adoption, the title of this ordinance, and a list of places where copies of this ordinance are posted, within fifteen (15) days after adoption of this ordinance.

Introduced at a regular meeting of the City Council held on \_\_\_\_\_, 2010, and adopted as an ordinance of the City of Sunnyvale at a regular meeting of the City Council held on \_\_\_\_\_, 2010, by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk  
Date of Attestation: \_\_\_\_\_

\_\_\_\_\_  
Mayor

(SEAL)

APPROVED AS TO FORM AND LEGALITY:

\_\_\_\_\_  
David E. Kahn, City Attorney

**FEDERAL LAWS AND ENFORCEMENT**

**Federal Laws**

In general, the Federal Drug Enforcement Agency sets the guidelines and standards for drug policy in the country and the U.S. Attorney General decides what laws to enforce. The following is a brief description of those federal parameters:

- The Federal Controlled Substance Act (CSA) was adopted in 1970. It states that it is unlawful to manufacture, distribute, dispense, or possess any controlled substance. The Federal Government's view is that marijuana is a Schedule I substance, which is classified as having a high potential for abuse. Further, the federal view is that use of marijuana for medicinal purposes is not an accepted treatment method in the United States, and it has not been accepted that marijuana is safe to prescribe as a drug or other substance under medical supervision.
- As a result of this standard, marijuana cannot be prescribed or dispensed in the same way as legal drugs, which is why they are not available from doctors or pharmacies.
- The Federal Drug Enforcement Agency has stated the following on its web site:
  1. Marijuana is a dangerous, addictive drug that poses significant health threats to users.
  2. Marijuana has no medical value that can't be met more effectively by legal drugs.
  3. Marijuana users are far more likely to use other drugs like cocaine and heroin than non-marijuana users.
  4. Drug proponents use "medical marijuana" as red herring in effort to advocate broader legalization of drug use.
- In March 2009, U.S. Attorney General Eric Holder Jr. announced it would no longer enforce the federal laws prohibiting distribution or possession of marijuana for medicinal purposes, allowing states to have the final say in the matter. It was also stated that dispensaries that use medical marijuana as a storefront for dealers of illegal drugs would be prosecuted. In a more recent announcement, Attorney General Holder's office stated they will prosecute people for growing, selling, and possessing marijuana in California.

## Proposition 215 Text

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This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds a section to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

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)(1) 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 section 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 section who has consistently assumed responsibility for the housing, health, or safety of that person.*

SEC. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

CHAPTER 875  
FILED WITH SECRETARY OF STATE OCTOBER 12, 2003  
APPROVED BY GOVERNOR OCTOBER 12, 2003  
PASSED THE SENATE SEPTEMBER 11, 2003  
PASSED THE ASSEMBLY SEPTEMBER 10, 2003  
AMENDED IN ASSEMBLY SEPTEMBER 9, 2003  
AMENDED IN ASSEMBLY SEPTEMBER 4, 2003  
AMENDED IN ASSEMBLY AUGUST 18, 2003  
AMENDED IN SENATE MAY 27, 2003

INTRODUCED BY Senator Vasconcellos  
(Principal coauthor: Assembly Member Leno)  
(Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

FEBRUARY 20, 2003

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.

SEC. 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 decision maker 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.

EDMUND G. BROWN JR.  
Attorney General



DEPARTMENT OF JUSTICE  
State of California

**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).<sup>1</sup>) 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

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<sup>1</sup> Unless otherwise noted, all statutory references are to the Health & Safety Code.

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](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](http://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](http://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:**<sup>2</sup> 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

<sup>2</sup> 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.calmmmp.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 non-medical 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.

**FREQUENTLY ASKED QUESTIONS- MMPA AND AG GUIDELINES**

The following discussion provides an overview of the intention of the State rules and regulations as it relates to the consideration whether to allow MMDs in the city:

- What medical conditions can medical marijuana relieve?
  - “Cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief” (State Health and Safety Code 11362.5).
- How much marijuana can an individual have?
  - Qualified patients and primary caregivers may possess 8 oz. of dried marijuana, and may maintain no more than six mature or 12 immature plants per qualified patient.
- How does a patient get recommendation from a doctor?
  - “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” (AG Guidelines). Also, the Medical Board of California provides standards for a physician recommending marijuana for medical conditions.
- Who is a 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” (AG Guidelines). The courts have decided that dispensary operators generally do not meet the definition of primary caregiver.
- What is a medical marijuana ID card and how are they issued?
  - The AG Guidelines describe that it is mandatory for county health agencies to participate in the identification card program; however, participation by patients and primary caregivers in that program is voluntary. The purpose of the card is to help law enforcement officers to identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest. MMDs also issue their own ID cards to members to ensure they have a recommendation from a medical doctor before dispensing marijuana.

- Can the sale of medical marijuana be taxed?
  - “In February 2007, the California State Board of Equalization (BOE) confirmed its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit” (AG Guidelines).
- How can medical marijuana be distributed?
  - Under State law, patients may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes” (11362.775). The AG Guidelines then provide a description of the types of acceptable business forms that can cultivate and distribute marijuana for medical purposes, mainly describing cooperatives and collectives.
  - “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” (AG Guidelines).
- What is a cooperative, collective or dispensary?
  - A cooperative must be properly organized and registered as such under the law. They must be “democratically controlled and not organized to make a profit for themselves or their members. Cooperatives should only provide a means for facilitating or coordinating transactions between members, and not purchase marijuana from, or sell to non-members” (AG Guidelines).
  - Although California law does not define a collective, the AG Guidelines applies the following definition: “a business, farm, etc., jointly owned and operated by the members of a group.” A collective only facilitates collaborative efforts of patients and primary caregiver members- including the allocation of costs and revenues. They are not for-profit enterprises. Similar to a cooperative, collectives should only provide a means for facilitating or coordinating transactions between members, and not purchase marijuana from, or sell to non-members.
  - Dispensaries are not recognized under state law, but recent court cases have shown that a dispensary is allowed if it operates as a collective or cooperative. The AG Guidelines does state that, the storefront dispensaries “do not substantially comply with the guidelines of a Cooperative/Collective, unless they are organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all State and local laws.” The Attorney General further opines,

“Dispensaries that merely require patients to complete a form summarily designating a business owner as their primary caregiver- and then offering marijuana in exchange for cash ‘donations’- are unlawful.”

- In December 2008, the California Supreme Court issued a landmark medical marijuana decision in *People v. Mentch*. The Supreme Court focused on the “patient-primary caregiver relationship.” As to who qualifies as primary caregiver, the Court held: The primary caregiver who the patient designates must be one “who has consistently assumed responsibility for housing, health, or safety of the patient.” The Court held that a defendant whose caregiving consisted principally of supplying marijuana and instruction on its use, and who otherwise only sporadically took some patients to medical appointments, cannot qualify as a primary caregiver under the Compassionate Use Act and was not entitled to an affirmative defense. The Medical Marijuana Program Act (MMPA), defines the role of a “primary caregiver-patient relationship.” The MMPA indicates that primary caregivers may receive “reasonable compensation” for the services provided to enable the patient to use marijuana. They may also receive reasonable compensation for out of pocket expenses incurred in providing those services (i.e. being reimbursed for costs incurred in growing marijuana). The misconception of many collectives, cooperatives, and dispensary operators is that a medical marijuana collective/cooperative supplier and/or dispensary operators are entitled to immunity for selling marijuana to dispensaries or patients. That misconception is limited by a thorough review of the facts and records before the Supreme Court in *Mentch*. The case reflects summary rejection of MMPA compensation immunity to anyone other than primary caregivers. This immunity simply conveys the ability of the patient and primary caregivers to engage in group cultivation, such as in a community garden or community greenhouses. There is no immunity provided for any exchange of money for marijuana, and there is no immunity provided for any compensation to members of group cultivation or individuals paid to cultivate for other members of the group. The specific conduct of possession for sale of marijuana and the specific conduct of selling marijuana remain without immunity and are illegal.
- The AG Guidelines list “indicia of unlawful operation”, which include having law enforcement officers being alert for signs of mass production or illegal sales, including excessive amounts of marijuana, excessive amounts of cash; failure to

follow state and local laws, and purchases from, or sale or distribution to, non-members.

- Who can cultivate marijuana for medical purposes?
  - Any person with a recommendation from a doctor can cultivate their own marijuana pursuant to limitations listed above.
  - MMDs should acquire marijuana only from their constituent members, “because only marijuana grown by a qualified patient or their primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. 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.” (AG Guidelines).
  - The guidelines also state that MMDs should document each member’s contribution of labor, resources, or money to the effort, and they should track and record the source of their marijuana.



**CITY OF SUNNYVALE**  
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**MEMORANDUM**

TO: Andrew Miner, Principal Planner  
FROM: Rebecca L. Moon, Assistant City Attorney  
DATE: November 3, 2010  
RE: *Qualified Patients Association v. City of Anaheim*

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**Case Update**

On August 18, 2010, the California Court of Appeal, Fourth District, issued its long-anticipated decision in *Qualified Patients Association v. City of Anaheim* (2010) 187 Cal.App.4th 734. The case involved a legal challenge to the City of Anaheim's ordinance banning medical marijuana dispensaries.

The plaintiffs, Qualified Patients Association, sought to overturn the ordinance on the ground that it was preempted by the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA). The City of Anaheim filed a "demurrer," i.e. motion to dismiss the complaint, arguing, among other things, that the plaintiffs had no standing to bring a suit to overturn the ordinance because their planned activities would be illegal under federal law. "Standing" is a legal concept which means the right to file a lawsuit.

The trial court sustained the demurrer and dismissed the complaint. On appeal, the appellate court was asked to decide four key legal questions: (1) whether the MMPA unconstitutionally amended the CUA; (2) whether federal drug laws preempt the State of California's legalization of medical marijuana through the CUA and MMPA, (3) whether the CUA and MMPA preempt the City of Anaheim's ordinance totally banning medical marijuana dispensaries, and (4) whether prohibition of medical marijuana dispensaries violates California's Unruh Civil Rights Act.

The court ruled against the City's first two legal arguments, finding that the MMPA did not unconstitutionally amend the CUA and that California's decision to legalize marijuana for medical purposes is not preempted by federal law. The court basically found that the CUA and MMPA simply provide an immunity from prosecution under state drug laws, which is within the state's jurisdiction. The court also held that a City can permit medical marijuana dispensaries to operate without incurring criminal liability for "aiding and abetting" violations of federal law.

With regard to the third question, the court concluded that it was too early in the litigation to decide whether state law precludes cities from banning MMD's. The court specifically noted that it could not decide, on a demurrer, whether or not the Qualified Patients Association planned to open a "properly organized and operated collective or cooperative" as allowed by the MMPA or whether (as alleged by the city) its activities would be illegal. (*Id.* at 9.) On a demurrer, the court must assume that all properly pled allegations in the complaint are true. Therefore, the case must go back to the trial court for further proceedings and submission of evidence via a summary judgment motion or trial.

On the fourth question, the court found that banning medical marijuana dispensaries does not violate the plaintiffs' civil rights under the Unruh Act.

In the wake of *Qualified Patients Association*, medical marijuana advocates have continued to argue that the CUA and MMPA preempt the ability of cities and other local public entities to ban medical marijuana dispensaries. The court did note, "viewing the allegations of the complaint most favorably to the plaintiffs, as is required on demurrer, it appears incongruous at first glance to conclude a city may criminalize as a misdemeanor a particular use of property the state expressly has exempted from 'criminal liability' . . ." (*Id.* at 754.) However, the court went on to say, "in supplemental briefing at our invitation, the city and its amici curiae demonstrate the issue of state preemption under the MMPA is by no means clear-cut or easily resolved on first impressions." (*Id.*) The court expressly states, "we express no opinion on . . . whether state law preempts the city's ordinance", emphasizing "[w]hether the MMPA bars local governments from using nuisance abatement law and penal legislation to prohibit the use of property for medical marijuana purposes remains to be determined".

Unfortunately, the question may not be finally resolved by the courts for at least another 2 to 3 years, if not longer. Until a court rules otherwise, the city can exercise its traditional authority over zoning and land use to regulate or ban facilities that distribute medical marijuana in certain zones or in all zones in the city.

**Cities with Medical Marijuana Codes in Place**

<b>Santa Clara County</b>	<b>Current Status</b>	<b>Specific Aspects of Code</b>
Campbell	No ordinance	
Cupertino	No ordinance	
Gilroy	Banned	13.65 Medical marijuana dispensary as a prohibited use (1/25/10)
Los Altos	Banned	4.45.010 Medical marijuana dispensary as a prohibited use (12/8/09)
Los Altos Hills	No ordinance	
Los Gatos	Moratorium	
Milpitas	Banned	XI-5-2.00 - Medical marijuana dispensaries are prohibited in all zones (6/19/07)
Monte Sereno	No ordinance	
Morgan Hill	No ordinance	
Mountain View	Moratorium	
Palo Alto	Banned	Medical marijuana operations banned several years ago through an "uncodified" ordinance.
San Jose	Under review	
Santa Clara	Moratorium	1854 12/8/2009 Extends moratorium on medicinal marijuana dispensaries (Special)- back to Council in November
Saratoga	Moratorium	
Sunnyvale	Moratorium	
<b>California City</b>	<b>Current Status</b>	<b>Specific Aspects of Code</b>
Albany	x	
Angels Camp	x	
Arcata	x	
Atascadero	x	
Chico	x	
Citrus Heights	x	
Cotati	x	
Elk Grove	Repealed	Agenda Item No. 6.9: Ordinance No. 28-2009 adopted repealing Elk Grove Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries"
Fort Bragg	x	Municipal Code Chapter 4.16, "Medical Cannabis Dispensaries" (Second Reading)
Jackson	Repealed	4/26/10- City adopted an ordinance prohibiting MMD in city
La Puente	Repealed	Repealed on 8/10/10- an amortization period for legal non-conforming facilities was provided (including fees)
Laguna Woods	x	
Long Beach	x	
Los Angeles	x	Recent action limits # to 70 (now 150) and sets distance requirements
Malibu	x	Decision to reduce distance limits from 1,000' to 500' set for 7/26
Martinez	x	Looking to revise code simplifying process for dispensary
Napa	x	
Palm Springs	x	
Placerville	Moratorium	Moratorium in place suspending allowed MMDs pending decision in Anaheim case
Plymouth	x	
Redding	x	
Ripon	x	
Sacramento	x	
Santa Barbara	x	New ordinance passed 6/29/10 with greater limitations
Santa Rosa	x	
Sebastapol	x	
Selma	Repealed	January 2010 new ord appears
Stockton	x	
Sutter Creek	x	
Tulare	x	
Visalia	x	
West Hollywood	x	Moratorium passed in 6/2010 re operating w/o permit
Whittier	Moratorium	1/12/10 a 10 m 15 d moratorium passed banning MMDs in city- Ord 2947
Santa Cruz	x	

Berkeley	x	
Oakland	x	
San Francisco	x	
Millbrae	Moratorium	
San Carlos	x	
Redwood City	Moratorium	1/25/10 for 22 months 15 days
San Mateo	x	With Use Permit
South SF	Moratorium	
Burlingame	x	
Daly City	Moratorium	



MAP ID	DISPENSARY NAME	ADDRESS	CITY	STATE	ZIP
1	Pharmers	3131 S. Bascom Ave	Campbell	CA	95008
2	Holistic Herbal Healers	5406 Thornwood Dt	San Jose	CA	95123
3	Elemental Wellness	711 Charcot Ave	San Jose	CA	95131
4	Mana Leaf Collective	3039 Monterey Highway	San Jose	CA	
5	Fortune Wellness	2231 Fortune Dr	San Jose	CA	95131
6	Sesi Herbal Care	21 Post St	San Jose	CA	
7	ARC Healing Center	885 W. Julian St	San Jose	CA	
8	LeafLab	855 Commercial St	San Jose	CA	95112
9	Garden House Remedies	156 S. Jackson Ave	San Jose	CA	
10	Cinnabar	910 Cinnabar St	San Jose	CA	
11	Proper Treatment	1837 Monterey Rd	San Jose	CA	
12	SJCBC	1082 Stockton Ave	San Jose	CA	
13	Holistic Pain Management Institute	1850 S. 10th St	San Jose	CA	95112
14	Magic Health Inc	1999 Monterey Highway	San Jose	CA	
15	Yerba Buena Collective	2365 Quimby Rd	San Jose	CA	95122
16	Southbay Natural Remedies Dispensary, Inc	2950 Daylight Way	San Jose	CA	
17	Blue Mango	450 Drake St	San Jose	CA	
18	Elixir	2417 Stevens Creek	San Jose	CA	95128
19	Silicon Valley Veterans Care Collective	282 San Jose Ave	San Jose	CA	
20	Golden State Care Collective	20 N. 1st St	San Jose	CA	
21	Holistic Health Care Co-Operative	88 Tully Rd	San Jose	CA	95111
22	Emerald Crossings	560 Gish Road	San Jose	CA	
23	Natural Herbal Pain Relief	519 Parrott St	San Jose	CA	95112
24	A Better Way Collective	3851 Charter Park Dr	San Jose	CA	
25	Double Dynamite	80 Keyes St	San Jose	CA	
26	All Bay Cooperative	351 Lincoln Ave	San Jose	CA	95126
27	San Jose Patients Group	824 The Alameda	San Jose	CA	
28	Nirvana Wellness Center	1855 O'Toole Ave	San Jose	CA	
29	SV Care Collective	1711 Hamilton Ave	San Jose	CA	
30	New Age Healing Collective	914 S. Bascom Ave	San Jose	CA	95128
31	MedEx	2000 Senter Rd	San Jose	CA	95112
32	Harborside Health Center	2106 Ringwood Ave	San Jose	CA	95131
33	University Avenue Wellness Center	630 University Ave	San Jose	CA	
34	MediLeaf	1340 Meridian Ave	San Jose	CA	
35	MediLeaf	2129 S. 10th St	San Jose	CA	

**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 bidden 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.

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April 22, 2009

Dennis Tilton, Editor

WHITE PAPER ON MARIJUANA DISPENSARIES

by

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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 9<sup>th</sup> 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.<sup>1</sup> 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.”<sup>2</sup>

*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.<sup>3</sup> “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.”<sup>4</sup> (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.<sup>5</sup> 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.<sup>6</sup>

## 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.<sup>7</sup> 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 . . .”<sup>8</sup> The codified section is known as the Compassionate Use Act of 1996.<sup>9</sup> Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.<sup>10</sup> This act expanded the definitions of “patient” and “primary caregiver”<sup>11</sup> and created guidelines for identification cards.<sup>12</sup> It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.<sup>13</sup> It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>

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*.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup> (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."<sup>20</sup> 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.<sup>21</sup>

## STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.”<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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.”<sup>30</sup> 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.**”<sup>31</sup> 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.<sup>32</sup> 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.”<sup>33</sup>

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.<sup>34</sup> 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.<sup>35</sup> He did not survive.<sup>36</sup>

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.<sup>37</sup>

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.<sup>38</sup> 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.<sup>39</sup>

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.<sup>40</sup>

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.<sup>41</sup>

## **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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> 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 . . . .”<sup>46</sup>

## **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,<sup>47</sup> 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.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> 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 . . . .”<sup>52</sup> 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.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup> 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,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **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.<sup>66</sup> 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.<sup>67</sup>

**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.<sup>68</sup>

**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."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

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 . . ." <sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas. <sup>74</sup> 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. <sup>75</sup> 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. <sup>76</sup> 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. <sup>77</sup> 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 . . ." <sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana. <sup>79</sup>

## **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. <sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

#### **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.<sup>85</sup> 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.<sup>86</sup>

#### **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.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> 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,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> 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,<sup>92</sup> 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.<sup>93</sup>

**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.<sup>94</sup>

**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.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> 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.<sup>100</sup>

**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 (CO<sub>2</sub>, 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.

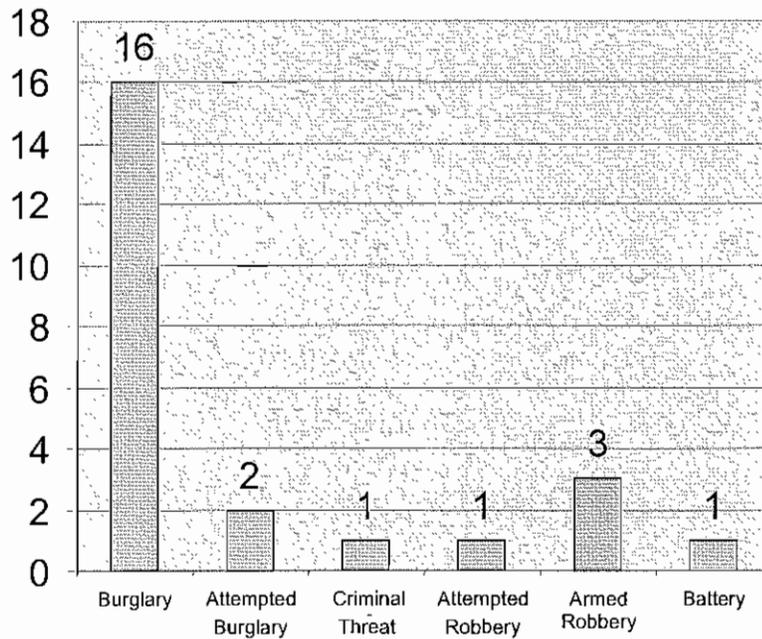
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

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:

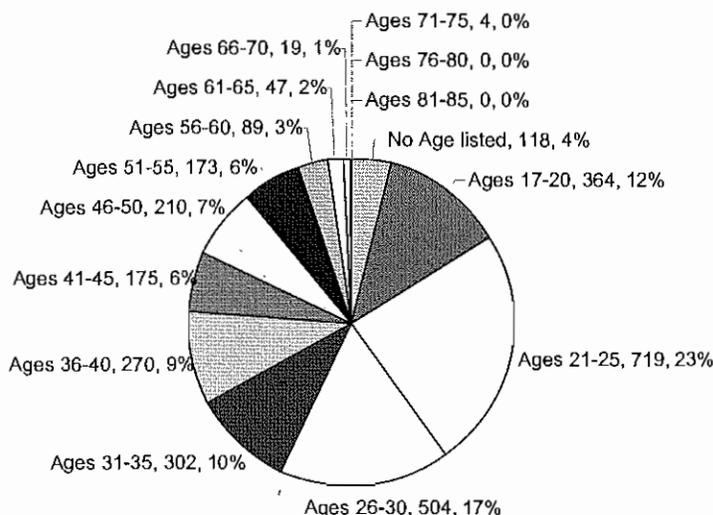
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- 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 12<sup>th</sup> 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.<sup>101</sup> 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.<sup>1</sup> 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).)

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<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup>

#### 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

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>4</sup> 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).)<sup>5</sup> 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

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<sup>5</sup> 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 1111.)

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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.

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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.<sup>6 102</sup>

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.

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<sup>6</sup> 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.<sup>103</sup> 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

- <sup>1</sup> U.S. Const., art. VI, cl. 2.
- <sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.
- <sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- <sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- <sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- <sup>6</sup> 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>
- <sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- <sup>8</sup> Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- <sup>9</sup> H&S Code sec. 11362.5(a).
- <sup>10</sup> H&S Code sec. 11362.7 *et. seq.*
- <sup>11</sup> H&S Code sec. 11362.7.
- <sup>12</sup> H&S Code secs. 11362.71–11362.76.
- <sup>13</sup> H&S Code sec. 11362.77.
- <sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747 at p. 786.
- <sup>15</sup> 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.
- <sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- <sup>17</sup> 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.
- <sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- <sup>19</sup> *Id.* Emphasis added.
- <sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- <sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- <sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- <sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
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**DPS CONCERNS**

**Adverse Secondary Effects**

The California Police Chiefs Association Task Force on Marijuana Dispensaries prepared a report that clearly outlined the adverse secondary effects of storefront dispensaries and similarly operated cooperatives. Most notable of these effects are the criminal acts that stem from medical marijuana, ranging from murder, robbery, burglary, organized crime, to tax evasion. The California Police Chiefs Association compiled a list medical marijuana related crimes including seven homicides from April 2008 to March 2009.

Data and supporting documentation from other cities indicates that the opening of the dispensaries have coincided with increases in calls for public safety services. Comparisons between those cities and Sunnyvale indicate that Sunnyvale DPS also would realize an increase in calls for services. Specifically, there may be an increase in calls related to fire alarms, medical calls, as well as person-to-person crimes ranging from loitering to homicide, driving under the influence, and traffic collisions (resulting from Driving Under the Influence).

A recent study by Al Crancer Jr., a retired research analyst for the National Highway Traffic Safety Administration, showed the largest increases in fatalities in fatal crashes where the driver tested positive for marijuana occurred over the 5 years following the legalization of medical marijuana in Jan. 2004. There were 1,240 fatalities in fatal crashes where the driver tested positive for marijuana for the following five years, compared to the 631 fatalities for the five years before 2004; an increase of almost 100%. Based on the data from 2008 there were eight counties in California with 16% or more of the drivers in fatal crashes testing positive for marijuana and five of the eight counties had 20% or more.

Drugged driving is 7 times more prevalent than drunk driving. Almost 27% of seriously injured drivers test positive for marijuana. Thirty-three percent of drivers arrested at the scene of an accident test positive for marijuana, and another 12 % test positive for both marijuana and cocaine.

The California Department of Motor Vehicles website describes the effect of marijuana by saying that it lessens coordination, distorts sense of distance, and causes hallucinations, panic, depression, and fear.

Data from other cities also indicate increases in the reported number of white-collar crimes, including embezzlement and tax evasion.

**Fire Suppression Issues**

Destructive fires from unsafe indoor marijuana grows have become commonplace. Sunnyvale has recently experienced two such fires. On August 16, 2010 an apartment fire was caused by an electrical overload stemming from a marijuana grow. On October 14, 2009, a duplex fire was caused by an electrical overload at an indoor marijuana grow. A firefighter was injured and transported to the hospital in this incident.

It is legal to grow up to six mature or 12 immature marijuana plants for personal medical use, and it is possible that limiting grows to that amount would be less likely to create dangerous fire hazards. However, growers commonly use numerous 1000 watt bulbs from the same circuit which can result in fires, along with faulty wiring (not up to code), the use of extension cords, and illegally bypassing PG&E meters, which can all cause fires.

Mexican Drug Cartels are the leading producers of marijuana in the U.S. The "Botello" Cartel is responsible for grows in California, Oregon, Washington, and Arizona. These Drug Cartels have been directly implicated in a recent California wildfire. In August 2009 an illegal marijuana operation being operated by Mexican drug cartel burned more than 88,650 acres (Santa Barbara County Wildfire).

**Negative Effects on Our Youth**

There are numerous studies that report the negative effects associated with adolescent use of marijuana. The effects include lower education and graduation rates, lower college attendance, lower employment, increased treatment for addiction/dependency, teen pregnancy, increased involvement in criminal activity, and an increased use of other addictive substances.

In June 2008, the National Center on Addiction and Substance Abuse reported that over the prior 15 years, there had been a 188% increase in the proportion of teen treatment admissions with a medical diagnosis of marijuana dependence, compared with a 54% decline for all other substances of abuse.

The correlation of marijuana and mental illness has been known for decades, but recent brain imaging research by UCLA helps explain why marijuana is a cause of the problem. The Study found that marijuana use, particularly during adolescence, interrupts the white matter development in the brain and is a major cause of schizophrenia in youth.

Former Director John P. Walters, of the Federal Office of Narcotics and Drug Control presented studies to the California legislature that proves

marijuana does impair the development of the teenage brain and that more than 80% of teens being treated for substance abuse are addicted to marijuana.

Marijuana negatively affects all users, including adolescent users in many ways. In several studies, prolonged use of marijuana has been associated with lower test scores and lower educational attainment during periods of intoxication. The drug affects the ability to learn and process information, thus influencing attention, concentration, and short-term memory.

**POTENTIAL REGULATORY OUTLINE AND OPTIONS**

If Council decides to allow and regulate MMDs in Sunnyvale, an ordinance would be required. Included in this attachment is a brief discussion of options, an outline of the ordinance, and a list of options that can be considered.

**Limiting the Number and Time Period for MMDs in the City**

If Council decides to allow MMDs in the city, it would be prudent to restrict the number allowed to receive permits. Options for this include limiting the number to one or two initially, which allows the City to work with a reasonable number while ensuring the uses do not increase crime or create land use incompatibilities, operate pursuant to all regulations, and do not become too difficult to regulate and enforce conditions.

It may also prudent to limit the permit time frame to a short period of time (i.e. one year) in order to ensure the MMDs operate according to their permit, and to ensure the City does not commit to a long-term and expensive enforcement operation.

Given the keen interest from different groups (at least 20 different people have shown an interest), it would be difficult to chose the limited number of MMDs to allow in Sunnyvale. One option is to have a first come, first served process; however, this could be difficult to manage if applications were submitted at the same time.

An option used in other cities in the State (i.e. Napa and Eureka) is to require a competitive bid process to determine which MMDs could apply for the limited number of permit allowed in the City. Factors to consider as part of that process could include details of the operation, location, size, adherence to compassionate use considerations, etc. City staff or Council could consider each proposal and make the decision which will be allowed to submit a planning application.

If MMDs are allowed to apply for a permit, a Use Permit with a one-year limitation should be required, after which time a new permit will be required.

**Standard Submittal Requirements**

Applications for MMDs would likely be more technical and complex than typical land use projects. This is because of the complex information necessary for this unique use. An ordinance should provide several key requirements as part of an application, including:

- Permit fee to cover cost of processing applications, specifically for CDD and DPS efforts;

- Background information for those owning, operating or working at a MMD, including criminal, employment and tax records. This information would assist in determining the credibility of the applicant, and whether the MMD would be likely to meet the intent of the City;
- Plan of operations showing:
  1. Where marijuana is grown and transported,
  2. How membership will be managed to ensure work towards the MMD meets the definition of a collective or cooperative.
  3. Security Plan, site plan, floor plans, odor control plan, cultivation plan, financial plan;
- Application sign-off from adjacent tenants, if use is located in a multi-tenant building.

The required amount of information necessary will depend on the detail in which Council decides staff should go in reviewing each application. A future ordinance should include a thorough list of items necessary to review an application. It is possible to reduce the amount of information necessary to submit, but the consequence of that would be to have fewer controls in place regarding MMD's meeting the intent of the CUA.

### **Fees**

The permit fee to cover the costs of this review is intended to be a cost recovering amount. It is difficult at the time to determine the amount of the fee until the final decision is made regarding the level of requirements.

Currently the City of Oakland is charging \$30,000 for annual medical marijuana permit plus a \$5,000 one-time non-refundable application fee, and in November 2011, they will decide whether to raise the annual medical marijuana permit to \$60,000 per year. The application fee is used to pay for City staff to conduct background checks, review security, review of business and building checks. The City of San Jose is proposing an annual fee of \$95,016. These fees are used to hire administrative, financial, and code enforcement staff to monitor, audit, and regulate the dispensaries. This oversight is to ensure there is no diversion of marijuana sales and that the business functions of the dispensaries operate as permitted.

### **Distance Requirements**

A key aspect to determining appropriate locations is to decide where MMDs should be allowed. Many cities, and the new State law, require a specific distance from schools, parks and other sensitive uses. The first step in determining this distance is to define "sensitive use" in this context. A future ordinance can include the following uses in the definition of "sensitive use": residential, school, park, places of assembly,

and child care uses. Different cities have used different definitions for sensitive uses; some include residential uses, while others exclude that use.

Those that include residential uses in the distance limitations use different distances for residential uses (typically 300-1,000 feet).

The map at the end of this attachment shows the effect a 1,000 foot buffer of MMDs from sensitive uses, including residential, would have on possible locations.

An option that can be used is to follow a newly passed State law (AB 2650), which requires a 600-foot radius to any public or private school providing instruction in kindergarten or grades 1 to 12. This law takes effect January 1, 2011, and cities may adopt regulations more restrictive, but not less restrictive than the new law.

Another distance requirement is to control the distance between each MMD facility. Cities take different approaches, from no limit to 1,000 foot requirements.

The purpose of the distance requirements is to ensure MMDs are not near locations where the general public congregate, and are not near locations where young people are present.

The result of a 1,000 foot buffer between these sensitive uses and other MMDs is that MMDs would end up in the north part of the City, primarily in industrially-zoned areas (and in Moffett Park). The advantage of these locations is that these uses fit well in basic Class C industrial buildings where there is typically a front office area with storage areas behind. Also, these locations ensure they are not near areas used by children or the general population of the city.

The disadvantage of these locations is as follows:

1. The resulting locations are not all well-served by transit, which many patient would use to access the MMDs- except large portions of Moffett Park and the Woods industrial areas.
2. These locations are more remote, and would have less police presence than areas in the heart of the city.
3. The Moffett Park Business and Transportation Association which represents businesses in the Moffett Park area have requested the City not allow MMD locations in that area (their letter is included in Attachment P).

### On-site Cultivation

The issue of where the marijuana should be cultivated is complex and contradictory. If the City encourages MMDs to obtain all its marijuana from its members, then that requires specific standards on how and where it can be grown, and will require a permit for that cultivation (residential or otherwise). A proposed ordinance could include both residential and non-residential cultivation requirements, should this option be taken.

On-site cultivation can increase the danger to those at or near the property because the large presence of marijuana can become a target for crime. Allowing the purchase of marijuana from outside sources, however, is contradictory to State law, and can result in the involvement of criminal elements.

### Decision-maker

If Council chooses to allow MMDs to locate in the city, any necessary permit would be reviewed by a decision-maker. That body could be staff, the City Manager, Planning Commission, or City Council. There can be public hearing requirements, or administrative allowances for decision. A reasonable requirement is to require any MMD application to be considered at a noticed public hearing, with appeal possible to the Council. This would give the public ample opportunity to participate in the process.

### **Path Forward**

Included in this attachment is a general outline of an ordinance, should Council ask staff to return with options to allow MMDs. Also included is a list of possible processes and requirements that can be included in a future ordinance.

An ordinance would detail the review process and standards, findings for approval, and operating standards necessary to ensure the use is compatible in the community, does not increase crime, and ensures it meets the strict requirements of State law.

The suggested outline of the ordinance provides an approach that can be considered "aggressive." There are other less aggressive approaches possible, and other options beyond that which can be considered. Included in this attachment is a checklist of other options. The Council can direct staff to include other elements in a future ordinance, should that be their decision.

**PROPOSED ORDINANCE SHOULD SUNNYVALE ALLOW MEDICAL MARIJUANA DISTRIBUTION FACILITIES**

**A. Purpose, Scope and Intent**

1. Basic text for purpose of ordinance

**B. Applicability**

1. Nothing in code is intended to make legal what is otherwise prohibited by California law

**C. Definitions**

1. Include in Municipal Code clear definitions of use and associated aspects of the distribution

**D. Covered Projects**

1. Facilities defined as Medical Marijuana Distribution facilities in the code
2. Cultivation for non-personal use, residential or non-residential

**E. Process**

1. Use Permit or Special Development Permit with noticed public hearing
2. Allow appeals of any permit to Planning Commission and Council
3. Limit permit to one year in length
4. Selection process for multiple proposals
5. If changes to surrounding uses places a sensitive uses (park, school, day care center, place of assembly) within the required distance limitation, permit will not be extended
6. If zoning changes to a Residential or Public Facility zoning designation within the required distance limitation, permit shall not be extended
7. If changes occur to federal policy on enforcement of marijuana for medical purposes, permit will not be approved or extended
8. Once planning review is completed, DPS will be required to approve operator's background checks, security plans, etc.

**F. Prohibited Activities**

1. Shall not accessory to any other permitted use
2. Commercial sale of any product, good, or service is prohibited
3. No alcohol or tobacco sold or consumed on site

4. Marijuana shall not be smoked, ingested or otherwise consumed on site or in public places
5. Attending physicians shall not be on premises
6. No off-site sale of marijuana
7. Any other type of project that does not meet the covered project definition is prohibited

**G. Applications and Permit Requirements**

1. Standard Submittal Requirements section
2. Require a statement of qualifications, including business plan, salary, wages, etc.
3. Require applications to include sign-off from adjacent tenants of a multi-tenant building
4. All MMD operators and employees must pass background checks by DPS prior to operation and must be updated yearly
5. A security plan must be approved by DPS and in place before operation, and must be updated yearly
6. MMDs shall provide the City with the name, location and operator of each cultivator and/or processing facility
7. Allow holistic services as part of MMD in order to assure the MMD is a compassionate care facility and not a profit center

**H. Fees**

1. Require fees for permit processing to cover City review costs
2. Require fees for on-going operations to cover City costs

**I. Noticing**

1. Notification to properties owners and residents/tenants within 1,000 foot radius of subject property line

**J. Permit Findings**

1. Facility meets zoning requirements
2. Facility meets all requirements of State laws
3. Operator has demonstrated the ability and commitment to provide adequate security
4. Facility will not be detrimental to public health, safety or welfare
5. Facility will be compatible with surrounding land uses

**K. Standards for Compliance/Specific MMD Requirements**

**1. Location, Size and Number**

- a. No MMDs facility shall exceed 5,000 square feet in size
- b. Don't allow in locations identified by DPS as "increased or high crime areas"
- c. Specify in Municipal Code where MMDs are allowed and where they are precluded
- d. Require distance limitations of 1,000 feet from residential uses, schools, places of assembly, recovery centers, day care centers
- e. Use straight line measurement option for determining the method of determining distance requirements
- f. Require a 1,000 foot distance from another MMD
- g. Limit zoning district options to M-S, MP-I, MP-TOD
- h. Interior floor plan, to ensure employees can see their surroundings and that there is visibility into the MMD

**2. Operating Standards and Restrictions**

- a. No MMD can operate for profit. All costs must go towards actual expenses for growth, cultivation and processing
- b. Dispense medical needs monthly to discourage daily/weekly visits to MMD
- c. Each MMD shall be required to identify a community communications contact, who shall be available during normal business hours
- d. No physicians on site can provide medical recommendations necessary to obtain medical marijuana card from MMD
- e. All MMD facilities must include odor control mechanisms
- f. MMD must obtain a Sunnyvale business license
- g. MMDs must be registered by the State of California as a non-profit organization
- h. MMD must provide a lobby to ensure there is no loitering outside facility
- i. Limited hours of operation of 10 am to 8 pm, Monday-Saturday
- j. Sale of edibles would require permit from County Health Department
- k. Money collected by MMD shall cover overhead costs and operating expenses only

- l. Reasonable compensation for directors, officers and staff is allowed, subject to approval by collective members, and shall be reported to City
- m. Memberships limited to residents of Sunnyvale or County of Santa Clara ("residents" as defined by IRS as primary residence)

**3. Non-residential Cultivation**

- a. Cultivation could occur on site with specific approval from City
- b. Permit for cultivation shall be limited to amount necessary for the MMD, and not for widespread distribution
- c. No more than 50% of marijuana can be obtained from non-member or off-site nursery
- d. On-site cultivation must not be visible from outside and must be stored in an area secured from public access
- e. A permit shall be obtained prior to any cultivation for purposes other than personal use, including a building permit for improvements
- f. Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for wider distribution

**4. Residential Cultivation**

- a. Residential cultivation shall be for personal use, or available for grower's collective or cooperative for no profit
- b. Outdoor cultivation shall not be visible from public areas
- c. Residential cultivators shall not sell product to cooperatives, collectives or MMDs
- d. Total on-site cultivation shall not exceed 50 square feet in total size
- e. Outdoor cultivation shall occur in rear or side yard, no less than 5 feet from property line
- f. Indoor cultivation shall be used only if outside cultivation is not feasible, as determined through permit process
- g. Indoor cultivation shall include lighting not to exceed 1,200 watts, not in kitchen, bathroom or primary bedroom
- h. Residential cultivators for non-personal purposes shall maintain records showing amount grown and MMD to which it was distributed

**5. On-going Requirements- Place of Distribution  
Limitations and Requirements**

- a. Each MMD shall be required to identify a community communications contact, who shall be available during normal business hours
- b. Business sign shall be limited to business name, and shall not include graphics or text advertising marijuana
- c. No alcohol sold, consumed or present on site
- d. No smoking or consumption of marijuana on site or in parking lot of MMD
- e. MMDs shall provide and maintain parking spaces as required by the Zoning Code
- f. Security guard must on site whenever MMD is open or operating
- g. Storage areas must be away from locations open to general public and must be secured at all times
- h. Payment by check or credit card only, no cash sales
- i. No sales or "giveaways" allowed
- j. Limit number of members according to community need (no more than 150 members per MMD?)
- k. Restrict retail sales on site for pipes, vaporizers and drug paraphernalia
- l. No person under 18 years old are allowed in a MMD, unless accompanied by parent or legal guardian
- m. No reselling of product is allowed
- n. No deliveries allowed from MMDs
- o. Limit retail sales of items to ensure facility is maintained as a cooperative or collective, not a retail facility
- p. Ban use of cell phones in MMD facility
- q. Prohibit non-member from working in MMD
- r. Patients cannot belong to more than one MMD
- s. No advertising in local papers- focus on maintaining a reasonable membership, not maximizing number of members

**6. Enforcement and Monitoring**

- a. All product shall include the MMD name, the location and operator of the product, the strain and species
- b. MMDs must have process for tracking marijuana from source to member, which shall be available for inspection by the City

- c. Source of marijuana, the cost to purchase and the amount sold
- d. Maintain record of transactions of each cardholder using the County Medical Marijuana card or other entity approved by DPS
- e. Issue quarterly earning statements to members of MMD and City

**L. Conditions of Approval**

1. Conditions may be imposed for any application

**M. Appeals**

1. Appeal of any decision shall follow Title 19 appeal requirements

**N. Expiration**

1. Permit shall expire one year after approval by hearing body

**O. Renewal**

1. An applicant can request a permit be renewed provided the decision on the renewal is made prior to expiration of prior permit

**P. Business License**

1. A business license is required

**Q. Extension**

1. No extension of any permit shall be made without an application for consideration of a new permit

**R. Enforcement**

1. All records associated with a MMD shall be available for inspection by the City with advanced notice
2. All inspection of records shall be made with confidentiality
3. Maintain books listing:
  - a. All members of the MMD
  - b. Amount of marijuana sold or given to each member per month
  - c. Salary and compensation for operators, employees and partners
  - d. All overhead costs

**S. Violations**

**T. Revocation/Suspension**

**U. Non-transferability**

**V. Severability**

The attached sheets include lists of possible approaches  
to regulate medical marijuana distribution facilities

ATTACHMENT M  
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CITY OF SUNNYVALE  
Medical Marijuana Study Issue

<b>PROCEDURES</b>	
1	Limit the number allowed in the City
2	Limit permit to one year in length
3	If changes to surrounding uses or zoning occurs, permit may not be extended
4	Require public hearings for MMDs
5	Restrict size allowance for MMDs facilities (square footage)
6	Create clear definitions of use and associated aspects of the distribution
7	Require significant permit fees to cover City review costs
8	Allow appeals to use to Council
9	Include provision for deviations from requirements as part of permit process
10	Require a two-step permit process- CDD for use and DPS for operations
11	Require a fee to defray costs for enforcement
12	Application requires detailing location where marijuana is grown and cultivated
13	Require a competitive RFP process with detailed list of expectations
14	Detail residential grow requirements and allowances
15	Require a permit for marijuana grown for medical purposes for non-personal use (residential and commercial)
16	Require applications to include sign-off from adjacent tenants of a multi-tenant building
17	Require a state of qualifications, including business plan, salary and wages, etc.

CITY OF SUNNYVALE  
Medical Marijuana Study Issue

<b>LOCATION REGULATIONS</b>	
1	Require distance limitations for MMDs from sensitive uses:
2	- Options: 600 or 1,000 feet for schools, places of assembly, recovery centers, day care
3	- Options: 300, 600 or 1,000 feet for residential
4	Provide options for determining the method of determining distance requirements
5	- Option: straight line
6	- Option: As accessible from sensitive uses (amend distance if a barrier [e.g. freeway] separates uses)
7	Require a minimum distance from another MMD (600 or 1,000 feet)
8	Limit zoning district options
9	Specify locations in City to allow MMDs, not using distance requirements
10	Storefront locations must have visibility to street and parking areas
11	Require locations with easy access to transit options
12	Don't allow in locations identified by DPS as "increased or high crime areas"
13	Detail requirements if an identified "sensitive use" is located near permitted MMD- i.e. POA, day care, residential
14	Require in centralized locations (near DPS building?)
15	Make any code specific where MMDs are allowed and where they are precluded
16	Provide option for decision-makers to allow MMDs in areas discouraged or not meeting distance requirements

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CITY OF SUNNYVALE  
Medical Marijuana Study Issue

<b>OPERATIONAL REQUIREMENTS</b>	
<b>Compassionate care</b>	
1	- No MMD can operate for profit. All costs must go towards actual expenses for growth, cultivation and processing
2	- Dispense medical needs monthly to discourage daily/weekly visits to MMD
<b>Place of distribution limitations and requirements</b>	
3	- Limited hours of operation
4	- Require community communications contact
5	- Include odor control mechanisms
6	- Business sign limited to business name, and shall not include graphics or text advertising marijuana
7	- No physicians on site can provide medical recommendations necessary to obtain medical marijuana card from MMD
8	- No alcohol sold, consumed or present on site
9	- No smoking or consumption of marijuana on site or in parking lot of MMD
10	- Must maintain required parking spaces
11	- Sale of edibles would require permit from County Health Department
12	- Payment by check or credit card only, no cash sales
13	- Security guard must on site whenever MMD is open or operating
14	- No sales or "giveaways" allowed
15	- Storage areas must be away from areas open to general public and secured at all times
16	- All MMD operators and employees must pass background checks by DPS prior to operation and must be updated yearly
17	- A security plan must be approved by DPS and in place before operation, and must be updated yearly
18	- Limit number of members according to community need
19	- Limit or restrict retail sales on site, especially for pipes, vaporizers and drug paraphernalia
20	- MMD must obtain a Sunnyvale business license
21	- MMDs must be registered by the State of California as a non-profit organization
22	- MMD must provide a lobby to ensure there is no loitering outside facility

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CITY OF SUNNYVALE  
Medical Marijuana Study Issue

	<b>Cultivation- business</b>
23	- Cultivation could occur at dispensary with specific approval from City
24	- No more than 50% of marijuana can be obtained from non-member or nursery
25	- MMDs shall provide the name, location and operator of cultivator and/or processing facility
26	- All product shall include the MMD name, the location and operator of the product, the strain and species
27	- MMDs must have process for tracking marijuana from source to member
28	- Cultivation on-site must not be visible from outside and must be stored in an area secured from public access
29	- A MMD shall include cultivation in the permit for the use
30	- Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for widespread distribution
	<b>Cultivation- residential</b>
31	- A permit shall be obtained prior to any cultivation for purposes other than personal use, including a building permit for improvements
32	- Residential cultivation shall be for personal use, or available for grower's collective or cooperative for no profit
33	- Permit for cultivation shall be limited to specific amounts to ensure it is used by a specific MMD and not for wider distribution
34	- Outdoor cultivation shall not exceed 50 square feet in total size
35	- Outdoor cultivation shall occur in rear or sideyard, no less than 5 feet from property line and shall not be visible from public areas
36	- Indoor cultivation shall be used only if outside cultivation is not feasible
37	- Indoor cultivation shall include lighting not to exceed 1,200 watts, not in kitchen, bathroom or primary bedroom
38	- Indoor cultivation shall not exceed 50 square feet in total size
39	- Residential cultivators shall not sell product to cooperatives, collectives or dispensaries
40	- Residential cultivators for non-personal purposes shall maintain records showing amount grown and MMD to which it was distributed

ATTACHMENT M  
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CITY OF SUNNYVALE  
Medical Marijuana Study Issue

<b>Enforcement and Monitoring</b>	
41	- Maintain books listing:
42	- All members of the MMD
43	- Amount of marijuana sold or given to each member per month
44	- Salary and compensation for operators, employees and partners
45	- All overhead costs
46	- Source of marijuana, its cost and the amount sold
47	- All records associated with a MMD shall be available for inspection with advanced notice
48	- Maintain record of transactions of each cardholder using the County Medical Marijuana card or other entity approved by DPS
49	- All inspection of records shall be made with confidentiality

CITY OF SUNNYVALE  
Medical Marijuana Study Issue

<b>BUSINESS REQUIREMENTS</b>	
1	Limit retail sales of items to ensure facility is maintained as a cooperative or collective, not a retail facility
2	Ban use of cell phones in MMD facility
3	Prohibit non-member from working in collective
4	Patients cannot belong to more than one collective or cooperative
5	No children allowed in MMD (may be allowed if accompanied by parent or guardian)
6	Money collected by MMD shall cover overhead costs and operating expenses only
7	Reasonable compensation for directors, officers and staff is allowed (subject to approval by collective members?)
8	Permissible reimbursements and allocations (from AG guidelines)- Marijuana from an MMD may be:
9	- Provided free to qualified patients and primary caregivers members of the MMD
10	- Provided in exchange for services rendered to the MMD
11	- Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses
12	- Any combination of the above.
13	Avoid profiteering by:
14	- No partners or investors of MMD
15	- Reasonable salaries
16	- Profits must be reinvested in MMD
17	Require quarterly earning statements to members of MMD and City of Sunnyvale
18	No reselling of product is allowed
19	No deliveries allowed from MMDs
20	Memberships limited to residents of Sunnyvale or County of Santa Clara (as defined by IRS)
21	No advertising in local papers- focus on maintaining a reasonable membership, not maximizing number of members
22	Holistic services as part of MMD:
23	- Require in order to assure the MMD is a compassionate care facility and not a profit center, OR
24	- Disallow in order to minimize the size and scope of the facilities
25	Keep in mind AG Guidelines of "Indica of Unlawful operation":
26	- Excessive amounts of cash
27	- Not following State and local laws
28	- Presence of weapons and illegal drugs
29	- Distribution to or from California

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FEES				
(In dollars)				
City	Permit Fee	Dispensary Fee	Preferred Application Fee	Other
Oakland	5,000	30,000 (proposing 60,000)		211,000 Industrial cultivation fee
Stockton	3,500	30,000		
Napa	8,000	TBD	7,000	
Palm Springs	7,500			
Redding	800			
Sacramento	20,000 (approx.)	13,000 (approx.)		
San Carlos	2,311 (same as other uses)			

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**PAGE: MAIN SURVEY QUESTIONS**

**1. Should medical marijuana facilities (collectives, cooperatives or dispensaries) be allowed in Sunnyvale?**

	Response Percent	Response Count
Yes <input type="text"/>	54.8%	323
No <input type="text"/>	45.2%	266
<b>answered question</b>		<b>589</b>
<b>skipped question</b>		<b>5</b>

**2. Do you think there is an appropriate location for medical marijuana facilities in Sunnyvale? (You may choose more than one):**

	Response Percent	Response Count
Office/industrial areas <input type="text"/>	57.6%	260
<b>answered question</b>		<b>451</b>
<b>skipped question</b>		<b>143</b>

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 Page 1 of 6

2. Do you think there is an appropriate location for medical marijuana facilities in Sunnyvale? (You may choose more than one):

Properties along El Camino Real or downtown	<input type="checkbox"/>	49.4%	223
Neighborhood shopping centers	<input type="checkbox"/>	23.5%	106
Residential areas	<input type="checkbox"/>	6.4%	29
Don't know / No opinion	<input type="checkbox"/>	23.1%	104
		<b>answered question</b>	<b>451</b>
		<b>skipped question</b>	<b>143</b>

3. Do you think the City should restrict the number of medical marijuana facilities allowed in Sunnyvale?

		Response Percent	Response Count
Yes	<input type="checkbox"/>	65.5%	355
No	<input type="checkbox"/>	27.5%	149
Don't know / No opinion	<input type="checkbox"/>	7.0%	38
		<b>answered question</b>	<b>542</b>
		<b>skipped question</b>	<b>52</b>

ATTACHMENT 0  
 Page 2 of 6

4. Do you think the City should require medical marijuana facilities to be located a minimum distance from residential uses, schools and parks? If so, by what distance?

	Response Percent	Response Count
No <input type="checkbox"/>	15.7%	84
600 feet <input type="checkbox"/>	13.1%	70
1,000 feet <input type="checkbox"/>	25.1%	134
Don't know / No opinion <input type="checkbox"/>	8.8%	47
<input checked="" type="checkbox"/> Show replies Other distance (please specify below) <input type="text"/>	37.3%	199
answered question		534
skipped question		60

PAGE: ADDITIONAL QUESTIONS

ATTACHMENT 0  
Page 3 of 6

1. Are you a Sunnyvale resident?

	Response Percent	Response Count
Yes <input type="text"/>	84.1%	475
No <input type="text"/>	15.9%	90
	answered question	565
	skipped question	29

2. Have you or any family members used marijuana for medical purposes?

	Response Percent	Response Count
Yes <input type="text"/>	29.6%	168
No <input type="text"/>	70.4%	399
	answered question	567
	skipped question	27

ATTACHMENT 0  
 Page 4 of 6

3. Do you think that you or a household member would use a collective, cooperative or dispensary located in Sunnyvale to obtain marijuana for medical purposes?

	Response Percent	Response Count
Yes <input type="text"/>	37.9%	212
No <input type="text"/>	62.1%	347
	answered question	559
	skipped question	35

4. Please tell us about yourself. Your Gender:

	Response Percent	Response Count
Male <input type="text"/>	54.1%	303
Female <input type="text"/>	45.9%	257
	answered question	560
	skipped question	34

ATTACHMENT 0  
 Page 5 of 6

5. Your age:

	Response Percent	Response Count
Under 21 <input type="checkbox"/>	2.5%	14
22 – 35 <input type="checkbox"/>	25.1%	140
36 – 55 <input type="checkbox"/>	45.2%	252
Over 55 <input type="checkbox"/>	27.1%	151
	<b>answered question</b>	<b>557</b>
	<b>skipped question</b>	<b>37</b>

6. Comment section

	Response Count
Show replies	261
<b>answered question</b>	<b>261</b>
<b>skipped question</b>	<b>333</b>

ATTACHMENT 0  
 Page 6 of 6

ATTACHMENT P  
Page 1 of 52**MOFFETT PARK**

BUSINESS &amp; TRANSPORTATION ASSOCIATION

October 29, 2010

Mr. Andrew Miner  
Principal Planner  
City of Sunnyvale  
456 W. Olive Avenue  
Sunnyvale, CA 94088-3707

Subject: Opposition of Medical Marijuana Dispensaries Located in the Moffett Park Area

Dear Mr. Miner:

I write on behalf of the Moffett Park Business and Transportation Association (MPBTA) to express our opposition of medical marijuana dispensaries locating their businesses in the Moffett Park area.

By way of reference, the MPBTA is a non-profit, membership-based organization that promotes the sustainability and economic health of our members in the Moffett Park area. We achieve this through mutual cooperation and advocacy. MPBTA, which includes Detati, Infinera, Jay Paul, Juniper Networks, Labcyte, Lockheed Martin Space Systems, NetApp, and Yahoo, represents over 12,000 Sunnyvale employees in the Moffett Park area. For these employers the long-term viability of the Moffett Park area is intricately linked with the sustainability and economic health of their organization.

The prospect of medical marijuana dispensaries opening doors in the Moffett Park area raises concerns among the MPBTA members. Many of our companies have made major investments in the area, and question how a dispensary would benefit the existing businesses and preserve the Moffett Park's viability. As you reported to us, dispensaries in San Jose have resulted in frequent visits from the police department due to excessive noise and criminal activity. It is critical that Moffett Park remain a strong and solid business area where companies will want to locate and where employees will want to work.

For these reasons, the MPBTA strongly urges the City of Sunnyvale to oppose medical marijuana dispensaries locating in the Moffett Park area. Thank you for your consideration.

Sincerely,

Kerry Haywood  
Executive Director

Cc: MPBTA Board of Directors

P.O. Box 60995, Sunnyvale, CA 94088-0995

Phone: 408.822.6115 / Fax: 408.822.4463

WWW.MPBTA.ORG

RECEIVED 11/8/10

Sunnyvale Cooperative Association presented a comprehensive preliminary application package to the City to open a medical cannabis cooperative. In the application, we describe how we intend to operate in strict accordance with guidelines established by the Attorney General. We feel that by complying with these guidelines, that our facility will enhance the community with regards to public health and safety. We support the creation of an Ordinance allowing medical cannabis cooperatives or collectives, and encourage the City to adopt the necessary regulations as soon as possible. We want to create a professional environment for medical cannabis patients, where they feel safe and can obtain medicine. This will be a sustainable facility for Sunnyvale's residents because the closest legal facility is in Oakland, San Francisco, or Santa Cruz. Sunnyvale is a central location, with ample public transportation, and has proven to be one of the safest communities in the country. We will be active community stakeholders and add value to the community. We believe in contributing to and supporting a health community. Medical cannabis patients in and around Sunnyvale deserve a legally permitted facility, where their rights under proposition 215 can be realized in a compassionate and safe manner.

Sunnyvale Cooperative Association

LAW OFFICES OF  
PATRICK D. GOGGIN

870 MARKET STREET, SUITE 1148  
SAN FRANCISCO, CA 94102  
415.981.9290 PHONE

PATRICKDGOGGIN@GMAIL.COM  
PATRICKDGOGGIN.COM  
415.981.9291 FAX

November 16, 2010

Chair Nick Travis & Planning Commission  
Mayor Melinda Hamilton & Sunnyvale City Council  
City of Sunnyvale  
456 W. Olive Ave.  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Re: Medical Cannabis Dispensary Ordinance

Dear Mayor and City Council/Chair and Planning Commission:

We write to urge your support for the proposed Sunnyvale medical cannabis dispensary ordinance on the Planning Commission's agenda for its November 22, 2010 meeting.

Initially, we thank the City of Sunnyvale for addressing this very important public safety issue – the most responsible course of action the City can take is to regulate. We have worked in a number of Northern Californian jurisdictions that have undertaken this process including, but not limited to, the cities of Napa and Stockton. While their approaches were different, these relatively conservative jurisdictions adopted ordinances permitting medical cannabis dispensing collectives (MCDCs) in a reasonable manner tailored to balance the interests of all of their city's constituencies.

Indeed, Napa and Stockton chose to provide medical cannabis patients with safe access to their medicine while establishing strict controls and operational guidelines to ensure compliance with state law and mitigate neighborhood impacts while enabling them to capture a critical revenue stream. Now, through a deliberative process, Sunnyvale too can strike a similar balance for its citizens, medical cannabis patients and the general public alike. Doing so will maximize the City's public safety by strictly regulating this sensitive use rather than allowing it to evolve unfettered.

Presently, there are no cities in the South Bay that have passed a balanced ordinance facilitating the responsible integration of an MCDC into the community. One need look only to San Jose for an example of where the situation got out of control because no ordinance was adopted regulating MCDCs. This presents an opportunity to Sunnyvale to provide a model for neighboring jurisdictions to follow. Failing to seize this opportunity will be a loss for the City and its citizens.

We look forward to your November 22 meeting and providing testimony on the responsible integration of a permitted MCDC(s) within the City of Sunnyvale. Good luck with your deliberations.

Very truly yours,

/x/

Patrick D. Goggin, Esq.

/x/

Stephanie Tucker  
Consultant

**Andrew Miner - [BULK] Re: [SunnyvalePolitics] Medical Marijuana dispensaries in Sunnyvale**

**From:** Andrew Mendelsohn <[REDACTED]>  
**To:** Sunnyvale Politics <[REDACTED]>  
**Date:** 8/27/2010 12:08 PM  
**Subject:** [BULK] Re: [SunnyvalePolitics] Medical Marijuana dispensaries in Sunnyvale  
**CC:** PNFS PutNeighborhoodsFirst <[REDACTED]>

ATTACHMENT P  
Page 5 of 52

On 8/27/2010 11:21 AM, Tappan Merrick wrote:

My solution is to vote against medical marijuana dispensaries in Sunnyvale until, only package-able options can be developed (say liquid or powdered THC with precise measurements), the Food and Drug Administration approves a prescription process that limits the monthly purchase of this product to a reasonable amount, warning labels can be applied to the packaging, and maybe even requiring an education course for users to ensure proper handling, safekeeping and keeping out of the reach of children, regardless of age.

This is at best disingenuous. What you're really saying is that you'll never vote for dispensaries in Sunnyvale because the Feds and the FDA are not in a million years going to regulate and allow medical marijuana as you require. In fact the entire California medical marijuana initiative was designed as an end-run around the absurd federal regulations.

Now having said this I have to admit that from what I hear, the entire "medical" requirement seems to be a sham in actual practice. High school students have told me that everyone knows where to go to get a medical marijuana form and that no actual checking is done for an actual medical condition.

Now having said that, what's so bad about it? As the speaker at the meeting said marijuana is incredibly safe as drugs go, far safer than alcohol, and I don't see anyone clamoring to eliminate alcohol sales in Sunnyvale. We don't require child-protective caps on whiskey bottles, so why for marijuana?

If having a dispensary in Sunnyvale means its easier for people to get their pot, for medical reasons, or just because they want to relax a bit, I don't see what's wrong with that or why we need to grab the pitchforks and torches to prevent it.

Regards,  
Andrew

**From:** Batzi Kuburovich [REDACTED]  
**To:** Andrew Miner <AMiner@ci.sunnyvale.ca.us>  
**CC:** <mayor@ci.sunnyvale.ca.us>  
**Date:** 10/10/2010 6:09 PM  
**Subject:** Re: Letter from Mike Rotkin, Santa Cruz Vice Mayor  
**Attachments:** 001.jpg; 002.jpg

ATTACHMENT P  
Page 6 of 52

Hi Andy,

I hope that all is well.

As per our last meeting, please find attached the letter from Mike Rotkin, Vice Mayor and four term ex Mayor of Santa Cruz, California that was written on 8/2/09. Please notice paragraph three and feel free to contact him as well. He wrote the letter over a weekend when he was out of the office.

Thanks,

Batzi

Batzi Kuburovich, Director  
MediLeaf Collective  
cell 408-218-6139

August 2, 2009

TO WHOM IT MAY CONCERN:

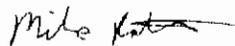
I am writing in support of Batzi Kuburovich's application for a compassionate use Medical Marijuana dispensary in Gilroy. I am writing as the Vice Mayor of Santa Cruz, and a four-time former Mayor and sixth term Councilmember. I do not know Mr. Batzi Kuburovich, but I do have experience with the security company that he is intending to employ at the proposed facility in Gilroy.

D. Scott Wade of Delta Private Security has been responsible for security services at the Greenway medical marijuana facility in Santa Cruz. When the facility was first proposed, there was a huge amount of opposition to having it located in the neighborhood where it was going to be cited. Neighbors were very concerned about a wide range of possible negative impacts on the neighborhood. The Santa Cruz City Council attached a number of important conditions based upon recommendations of our Police Chief and the Planning Department, including a special use permit that allows us to terminate the use if it becomes problematic in the future. On that basis, we approved the facility.

I am happy to report that we have had absolutely not a single complaint filed with respect to the facility for which D. Scott Wade's company has provided security over the past several years. Several neighboring businesses and residents have actually taken the time to email me stating that their initial concerns were not realized once the facility opened and, that in fact, the neighborhood had fewer problems than before the dispensary opened.

Based on this experience in Santa Cruz, I hope you will give the application before you serious consideration. I believe that if Delta Private Security is on the job and if the proposed dispensary in Gilroy is organized on a similar basis to the one in our community, your city and the surrounding neighbors will not have any problems with its operation. Thank you for your consideration.

Sincerely,



Mike Rotkin  
Vice Mayor  
City of Santa Cruz

(Because I am writing this on the weekend, I do not have access to city stationery, but you can confirm my identity by calling our City Clerk at 831-420-5020. I have cc'd her with my letter and would like to have it placed in the official city records.)

Andrew Miner - Sunnyvale embracing MMJ?

**From:** <[REDACTED]>  
**To:** "Andrew Miner" <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/29/2010 11:29 AM  
**Subject:** Sunnyvale embracing MMJ?  
**CC:** "Lauren Vazquez" <[REDACTED]>

Andy,

I hope this note finds you well on this unseasonably hot day. If I may be so bold as to say the city of Sunnyvale seems ready, willing and able to provide safe access to medical cannabis for its community. For this I am happy to provide my 25 years of Cannabis experience and activism to help iron out any questions or concerns above and beyond what was discussed at the meetings as thus far.

I appreciate the time you spent in addressing the concerns of all parties and would hope to work with you for the "pro" side to make this transition as painless and seamless as possible. Your task ahead will be challenging to create compassionate ordinance that fits Sunnyvale's unique diverse community but I know from your professional manor you will prevail at the task at hand. Think Regulation, not Restriction! Use proven models as a template.

May I ask to provide for you comments on the 4 part 5 page document we received on Monday? I feel this may help you see what may be required to regulate and what may be considered overkill. I will get to work on this right away with your blessing. Thanks in advance for all your hard work on this important subject.

Best Regards,

Brian David  
*Executive Director*  
**Shoreline Wellness Collective**  
P.O. Box 352  
Mountain View, CA  
[bd@swcollective.net](mailto:bd@swcollective.net)  
650-669-3903

cc; Lauren Vasquez

**Andrew Miner - FW: Crime/nuisance activity around dispensaries**

**From:** "Carlos Plazola" [REDACTED]  
**To:** "Andrew Miner" <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/27/2010 4:20 PM  
**Subject:** FW: Crime/nuisance activity around dispensaries  
**CC:** "Bryce Berryessa" [REDACTED], [REDACTED]  
**Attachments:** Blue Sky - Crime Analysis 60 days.pdf; Harborside - Crime Analysis 60 days.pdf; Purple Heart - Crime Analysis 60 days.pdf

Mr. Miner, as you can see from this email string, and the attachments, the city of Oakland has found no correlation between the existence of dispensaries and increases in crime in the area surrounding dispensaries.

I hope you will share this information with your planning commission and other city officials as I understand that your lieutenant is under the impression that there exists such a correlation.

Best

Carlos Plazola  
 President  
 Critical Mass Consulting

**From:** Sanchez, Arturo M [mailto:[REDACTED]]  
**Sent:** Monday, July 26, 2010 3:34 PM  
**To:** Carlos Plazola  
**Subject:** RE: Crime/nuisance activity around dispensaries

Mr. Plazola,

In the last 3-5 years this office has not been advised of any crime, nuisance, or blight violations attributable to the permitted cannabis dispensaries. The dispensaries are required to sweep within 100 feet of their dispensary, maintain sufficient number of guards to adequately monitor and control their property, and have all taken additional measures, such as security cameras, alarms, vaults, and controlled access to sensitive areas, to safeguard their dispensary, patients, and employees. In the time I have been administering the cannabis permits for the City of Oakland, the dispensaries have been model businesses and operators.

Attached please find 3 crime maps showing the crimes committed in and around the areas of the dispensary. As you will see there were a varying number of crimes committed around the three lawfully permitted Dispensaries. However none of these crimes have a nexus, or affiliation/connection, with the operation of the dispensaries. That is to say that if there had not been a dispensary in the area the crimes identified in these maps would still have occurred. This has been the consistent pattern since the day the City of Oakland adopted the cannabis permitting process.

I hope this answers all your questions.

AMS

**From:** Carlos Plazola [REDACTED]  
**Sent:** Friday, July 23, 2010 2:03 PM  
**To:** Sanchez, Arturo M  
**Subject:** Crime/nuisance activity around dispensaries

Dear Mr. Sanchez,

Because the city of Oakland is the municipality with the longest history in the State of California in regulating the activities of medicinal cannabis dispensaries, I believe you, as the dispensary enforcement person with the city of Oakland, can provide some valuable experience.

Can you share with me the city's experience with crime, blight, and nuisance activity around the existing dispensaries over the years of their existence? Specifically, I'd like to learn if you have seen crime, blight, and nuisance activity increase, decrease, or stay the same around existing dispensaries over the last 3-5 years.

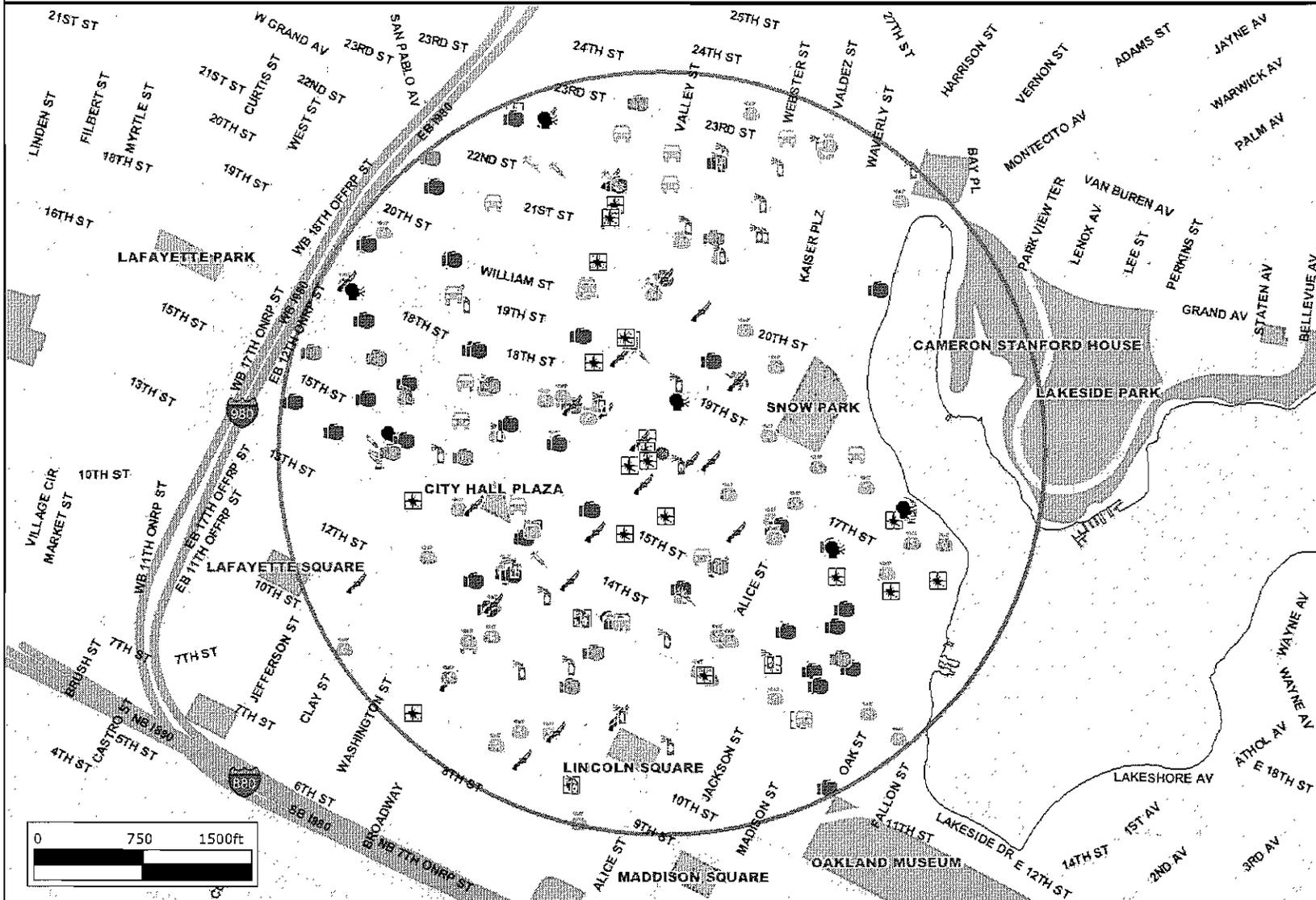
Also, I would appreciate it if you could elaborate on what you have seen as the most effective measures taken by dispensaries to ensure that crime, blight, and nuisance activity is minimized around these dispensaries.

Thank you for your assistance.

Carlos Plazola

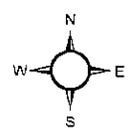
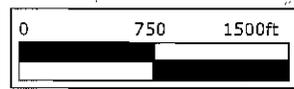
Carlos Plazola  
President  
Critical Mass Consulting  
19 Embarcadero Cove, 2nd Floor  
Oakland, CA 94606  
510-207-7238

# Blue Sky Crime Analysis - 60 days



## Legend

- Incidents**
- Aggravated Assault
- Simple Assault
- Burglary
- Disturbing the Peace
- Narcotics
- Murder
- Robbery
- Theft
- Vandalism
- Vehicle Theft
- Freeways
- Major City Streets
- Streets
- City Streets
- Water
- PARKS
- CITY LIMITS

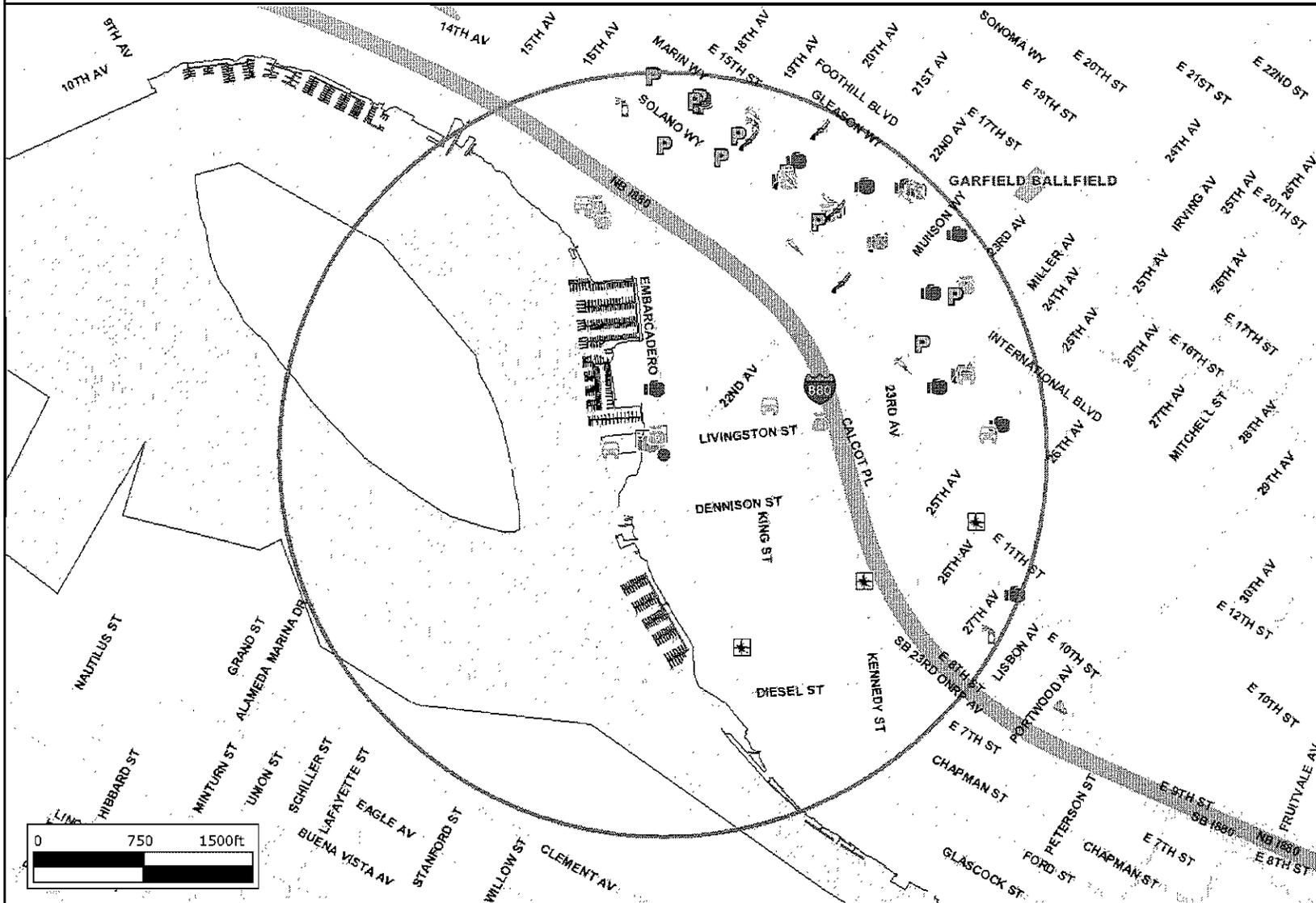


This map application does not reflect official crime index totals as reported to the FBI's Uniform Crime Reporting program. The crime icons do not reflect the exact location of any particular crime. The listed crimes are subject to change for a variety of reasons, including late reporting, reclassification of some offenses and discovery that some offenses were unfounded.

Printed: 7/26/2010 3:04:43 PM



# Harboside - 60 ay crime analysis



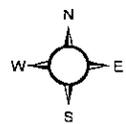
## Legend

- Incidents**
- Aggravated Assault
- Simple Assault
- Burglary
- Narcotics
- Prostitution
- Robbery
- Theft
- Vandallism
- Vehicle Theft
- Freeways
- Major City Streets
- Streets**
- City Streets
- Water
- PARKS
- CITY LIMITS

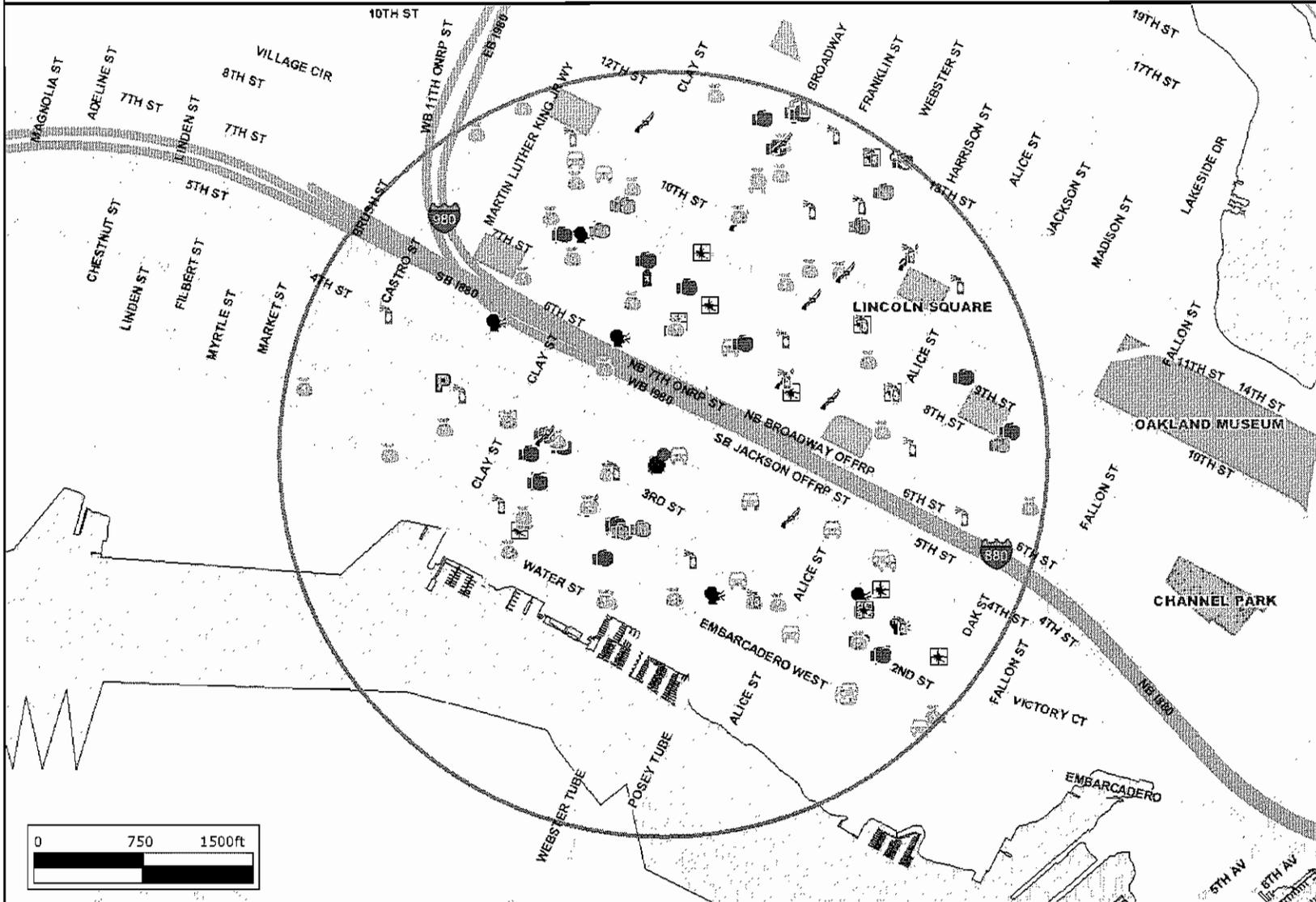
**ATTACHMENT P**  
 Page 13 of 52

This map application does not reflect official crime index totals as reported to the FBI's Uniform Crime Reporting program. The crime icons do not reflect the exact location of any particular crime. The listed crimes are subject to change for a variety of reasons, including late reporting, reclassification of some offenses and discovery that some offenses were unfounded.

Printed: 7/26/2010 3:25:45 PM

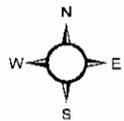
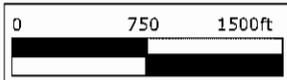


# 415 4th Street



## Legend

- Identified Features
- Incidents
  - Alcohol
  - Aggravated Assault
  - Simple Assault
  - Burglary
  - Disturbing the Peace
  - Narcotics
  - Prostitution
  - Robbery
  - Theft
  - Vandalism
  - Vehicle Theft
- Freeways
- Major City Streets
- Streets
- City Streets
- Water
- PARKS
- CITY LIMITS



This map application does not reflect official crime index totals as reported to the FBI's Uniform Crime Reporting program. The crime icons do not reflect the exact location of any particular crime. The listed crimes are subject to change for a variety of reasons, including late reporting, reclassification of some offenses and discovery that some offenses were unfounded.

Printed: 7/26/2010 3:17:07 PM



Andrew Miner - RE: Planning Commission Study Session 9/27/10

ATTACHMENT P  
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**From:** "Clark, Graham" [REDACTED]  
**To:** Andrew Miner <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/22/2010 8:16 AM  
**Subject:** RE: Planning Commission Study Session 9/27/10  
**CC:** "Bove, Polly" [REDACTED]

Hi Andrew,

Would like people to attend the meeting or is this more of an FYI email?

If you need or want input from the schools or the Fremont Union High School district I am sure that we could find a rep to attend the meeting.

My personal view is that this is likely to increase the number of drug abuse problems that we would be dealing with at Homestead High School. Last year we were able to verify that two of our most prolific pot seller on campus had connections with a club or dispensary in San Jose and then they just blatantly resold the product to other Homestead students. We ended up expelling both of these student for drug sales but it took lots of time and effort.

As a principal the issue for me and for the school is not really just the sale or use of the drug. It is also the associated problems we seem to get such as theft, burglary and violence. Teens that are involved with reselling drugs tend to be loaning money to other students so they can buy the drugs. Often we have issues of this money not being repaid and then this turns into fights etc....

Regards,

Graham Clark

Principal, Homestead High School

**From:** Andrew Miner [mailto:AMiner@ci.sunnyvale.ca.us]  
**Sent:** Tuesday, September 21, 2010 4:52 PM  
**To:** Andrew Miner  
**Subject:** Planning Commission Study Session 9/27/10

Hello-

This e-mail is to notify you that the Planning Commission will consider the Medical Marijuana study at a study session on:

Monday September 27, 2010  
7:00 p.m.  
City West Conference room

**Andrew Miner - Web Request - Reassign 12804 from: Anne Lee to: AMiner,**  
**subject: Medical Marijuana Dispensary Study**

**From:** "Deborah Gorman" <dgorman@ci.sunnyvale.ca.us>  
**To:** Planning <planning@ci.sunnyvale.ca.us>, "Andrew Miner" <aminer@ci.sunnyvale.ca.us>  
**Date:** 8/17/2010 12:19 PM  
**Subject:** Web Request - Reassign 12804 from: Anne Lee to: AMiner, subject: Medical Marijuana Dispensary Study  
**CC:** "Community Development" <comdev@ci.sunnyvale.ca.us>, "Anne Lee" <ailee@ci.sunnyvale.ca.us>

Dear **Andrew Miner**,  
Below is message 12804, no reply is needed.

**From** Martha Plescia <[REDACTED]>

**Reply Needed** No

**Priority** Regular

**Subject** Medical Marijuana Dispensary Study

**Message** Just want to give my opinion. As a physical therapist who specializes in treating chronic pain patients, I would like to see medical marijuana locally available for those who need it. Heaven knows these people need whatever help the community can provide, and marijuana can be extremely effective for some. One chronic pain patient required literally just two inhalations of it a night to enable her to sleep. Martha Plescia, PT

**Andrew Miner - Web Request - Reassign 12927 from: Deborah Gorman to: AMiner, subject: Medical Marijuana Dispensari**

**From:** "Deborah Gorman" <dgorman@ci.sunnyvale.ca.us>  
**To:** Planning <planning@ci.sunnyvale.ca.us>, "Andrew Miner" <aminer@ci.sunnyvale.ca.us>  
**Date:** 8/30/2010 8:08 AM  
**Subject:** Web Request - Reassign 12927 from: Deborah Gorman to: AMiner, subject: Medical Marijuana Dispensari  
**CC:** Planning <planning@ci.sunnyvale.ca.us>, "Deborah Gorman" <dgorman@ci.sunnyvale.ca.us>

Dear **Andrew Miner**,

Please respond to web request **12927** by clicking one of the three buttons below:

**From** George Bell [REDACTED]

**Reply Needed** Yes

**Priority** Regular

**Subject** Medical Marijuana Dispensaries - Attn: Andrew Miner

**Message** Mr Miner, I attended your 8/26/10 meeting about Sunnyvale's Medical Marijuana Dispensary Plans. I have some additional questions and comments I would like to discuss with you. Do you have some time late Monday afternoon 8/30/10 when I could drop by? Alternatively, can I call you sometime this next week? Thanks, George Bell 777 Hollenbeck #22 Sunnyvale

**Andrew Miner - Marinol and Sunnyvale Dispensaries**ATTACHMENT P  
Page 18 of 52

**From:** George Bell [REDACTED]  
**To:** Andy Miner <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/2/2010 9:04 AM  
**Subject:** Marinol and Sunnyvale Dispensaries

Andy,

Thanks again for meeting with me on Monday 8/30/10. I appreciate your willingness to discuss the medical marijuana issue.

Thanks also for catching an error in some my emails and documents. As you pointed out, my sentence should be:

"Teenagers who smoke marijuana 20 or more time (e.g., once a **week** for 5 months) have much less chance of being employed at age 32 - 33."

I incorrectly said "... once a **month** for 5 months....".

I would like to emphasize what we discussed and add some additional information.

Marinol is:

1. Available by a physician's prescription to patients with a legitimate medical need.
2. Available from all the conveniently located pharmacies in Sunnyvale.
2. Available by mail order from Walgreens (I have email confirmation of this).
3. Available by overnight shipping from at least one on-line legitimate pharmacy (drugstore.com).  
<http://www.drugstore.com/pharmacy/prices/drugprice.asp?ndc=00051002121&trx=1Z5006>
4. Covered by Medicare (and probably other insurance plans) as described (along with legitimate medical needs) in this website:  
[https://www.blueshieldca.com/bsc/medicarepartdplans/formulary/pdf/MARINOL\\_Dronabinol\\_MCweb.pdf](https://www.blueshieldca.com/bsc/medicarepartdplans/formulary/pdf/MARINOL_Dronabinol_MCweb.pdf)
5. More pure than Marijuana. (Smoked Marijuana contain 400 different chemicals, including most of the hazardous chemicals found in tobacco smoke and four times the amount of tar than normal cigarettes).  
<http://www.justice.gov/dea/ongoing/marinol.html>

In view of the above:

1. What benefits to patients with legitimate medical needs would the city council be providing with authorized Medical Marijuana Dispensaries in (probably) the northern industrial areas of Sunnyvale (that aren't already available in our conveniently located pharmacies)?
2. Without going into precise language, how do you think the Planning Department report will handle this question?

3. Wouldn't Sunnyvale be (at least partially) catering to the interests of marijuana users with questionable medical needs? (You don't need to answer this question - but I'm sure you see my point.)

Thanks,

George Bell

cc: Dr. Stewart Bell, Lt Carl Rushmeyer

ATTACHMENT P  
Page 20 of 52

**From:** George Bell [REDACTED]  
**To:** "Andrew Miner" <AMiner@ci.sunnyvale.ca.us>  
**CC:** Carl Rushmeyer <CRushmeyer@ci.sunnyvale.ca.us>  
**Date:** 9/3/2010 1:37 PM  
**Subject:** Marijuana Survey

Andy,

In our discussion on 8/30/10, you indicated the city council would be watching the results of the city's on-line Marijuana Survey.

I have some questions about that survey.

1. How will the city ensure that the same people do not submit survey responses multiple times?
2. Will the city, for example, track the email addresses of people submitting the survey and check for duplication?
3. How will the city ensure that people responding to the survey are Sunnyvale residents?

I ask these questions because I suspect it would be very easy for a group or individual to greatly distort the survey results with multiple submissions.

Even if the city tracks email addresses of people submitting responses, the same people could have multiple email addresses. For example, I have four different email addresses. In a few minutes I could probably create a dozen different email addresses and submit a dozen surveys.

While I will not do that, I may have accidentally submitted a second (blank) survey a few minutes ago. I wanted to look at the survey again so I went to your site. Without inserting any answers on the first page, I selected the option to go to the second page. While the system displayed the second page, I saw messages indicating I had already submitted the survey.

So, if your staff sees a second blank survey from me, it was an accident!

George

cc: Lt Rushmeyer

**Andrew Miner - Medical Research on Marijuana**

ATTACHMENT P  
Page 21 of 52

**From:** George Bell [REDACTED]  
**To:** Andy Miner <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/7/2010 2:10 PM  
**Subject:** Medical Research on Marijuana

Andy,

The public can search the on-line medical library of the National Institutes of Health at his website:

<http://www.ncbi.nlm.nih.gov/pubmed>

If you search on the words "marijuana psychosis", you will find 839 peer-reviewed articles that have appeared in medical journals linking marijuana with mental disorders.

Please try it. It only takes a few minutes.

How can someone argue that marijuana is good medicine after scanning the abstracts of any of those 839 articles?

Shouldn't the city council know about this body of research before putting Sunnyvale on the map as a marijuana dispensing city?

Thanks,

George

cc: Lt Rushmeyer, Dr. Stewart Bell

**Andrew Miner - Sunnyvale On-line Survey**ATTACHMENT P  
Page 22 of 52

**From:** George Bell [REDACTED]  
**To:** Andy Miner <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/7/2010 3:23 PM  
**Subject:** Sunnyvale On-line Survey

---

Andy,

I sent an email to 27 people asking them to complete your on-line Marijuana Dispensary Survey.

Here is the response from one Sunnyvale resident (a retired university instructor):

-----  
I completed the survey, however, it is a very poor survey.

First of all, if you answer no to the first question, the next three questions are moot, since they are based on a yes response. This format seems to be set up to shift even 'no' responses to appear to mean yes if you answer the next three questions. (I left them blank)

Second - there doesn't appear to be any limit to the number of surveys a household can complete. Will this result in 'stuffing' the box? Probably!

In either case, the survey appears to be prejudiced in favor of the dispensaries.  
-----

You and I discussed the accidental omission in the survey. I believe you said a sentence like "if you answer "no" to the first question, skip to \_\_\_\_" was accidentally omitted.

Without that sentence, those of us opposed to the dispensaries get a very definite impression (as this person accurately said) that the survey is prejudiced in favor of the dispensaries.

Are you sure you don't want to correct the survey?

You and I have already discussed my fear of ballot box stuffing. Independently, this person thought of the same thing. I think it is a concern.

Thanks,

George

Andrew Miner - Thanks and question

ATTACHMENT P  
Page 23 of 52

**From:** <[REDACTED]>  
**To:** <aminer@ci.sunnyvale.ca.us>  
**Date:** 8/23/2010 1:42 PM  
**Subject:** Thanks and question

Hi Andy,  
many thanks to you and Lt Rushmeyer for an extremely informative community outreach meeting last Thursday regarding Medical Marijuana. I wish more residents had attended since it seemed that many of the audience who were very vocal do not, in fact, live in Sunnyvale. I am relieved that Sunnyvale is doing such a comprehensive evaluation before considering whether or not to recommend allowing collectives in our city - it's such a complex issue.

Did you find out where the city stands regarding zoning for smoke shops please? As a parent of a young child, this is also a major concern for me.

Many thanks and good luck with your report.  
Kim Jelfs

Andrew Miner - A Brrief Background on State & Federal Medicinal Cannabis Laws

ATTACHMENT P  
Page 24 of 52

**From:** [REDACTED]  
**To:** <mayor@ci.sunnyvale.ca.us>, <council@ci.sunnyvale.ca.us>  
**Date:** 9/15/2010 10:12 PM  
**Subject:** A Brrief Background on State & Federal Medicinal Cannabis Laws  
**CC:** <aminerv@ci.sunnyvale.ca.us>, <hhom@ci.sunnyvale.ca.us>

Greetings,

Thought you might find this of interest in light of yesterday's City Council/Planning Commission workshop. As you'll read, much of this comes from a recent far reaching case (*Qualified Patients Association v. the City of Anaheim*) as well as *People v. Urizceanu* and other case law. Please forward to whomever you feel would benefit from this knowledge as it goes a long way towards helping adopt an ordinance with sensible regulations for medicinal cannabis collectives in Sunnyvale.

#### State Law:

State law gives qualified patients and their caregivers limited immunity from criminal prosecution for the possession, cultivation, and transportation of cannabis (CA H&S Code 11362.5; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551). Patients and caregivers may also distribute cannabis to other qualified patients and caregivers so long as they are members of a properly organized collective or cooperative (H&S Code 11362.775; AG Guidelines p. 8).

A collective or cooperative is properly organized if it is a California Cooperative Corporation or a Mutual Benefit Nonprofit Corporation (AG Guidelines p. 8). State law does not allow the sale of medical cannabis for profit (AG Guidelines p. 9). Both of these corporate entities meet this obligation because they require all net retained earnings, aka profits, to be reinvested into the organization and used to benefit members (AG Guidelines p. 8; CA Corp Code 7411(a)). While, directors, officers, and staff are not expected to work for free, they may only receive reasonable compensation for actual work completed (Treas Reg. Section 1.62-7(b)(3), 53.4958-6).

Further, the collective or cooperative must operate in a closed loop system, meaning all transactions occur only between members (AG Guidelines p. 10). Management and/or members cultivate cannabis and the collective or cooperative facilitates the distribution of the medicine to other members (AG Guidelines p. 8). Distribution may occur through storefront dispensaries that charge fees reasonably calculated to cover overhead costs and operating expenses (AG Guidelines p. 10-11; *People v. Urizceanu* (2005) 132 Cal.App.4th 785). Nothing in the law requires members to cultivate cannabis or otherwise participate in the management of the collective or cooperative or any storefront dispensaries they may operate.

Members may contribute either labor, resources, or money to the enterprise (*QPA v. City of Anaheim*, G040077, (CA Ct. App. Aug 18, 2010) 12.) The usual practice of collectives and cooperatives is to receive reimbursements through fees charged as a retail transaction and there is currently no case law prohibiting this activity.

The recent California appellate decision in the case of *Qualified Patients Association v. City of*

*Anaheim* addresses distribution of medical cannabis. It notes that the express purpose of the legislature in adding sections 11362.7 through 11362.83 was to enhance the access of patients and caregivers to medical cannabis through collective, cooperative cultivation projects (*QPA v. City of Anaheim*, (2010) at 7). It also reiterates the statement in the *Urziceanu* case that “[t]his new law [H&S Code 11362.775] represents a dramatic change in the prohibitions on the use, distribution, and cultivation of marijuana for persons who are qualified patients or primary caregivers . . . . Its 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.” (*QPA v. City of Anaheim*, (2010) at 8, citing *People v. Urziceanu*, 132 Cal. App. 4th 747, 785 (2005).)

### **No Federal Preemption:**

It has not yet been established whether state law requires local jurisdictions to allow collectives and cooperatives to operate storefront dispensaries (*QPA v. City of Anaheim*, (2010) at 23). It is clear however that cities and counties may **not** use federal law or invoke federal preemption as a justification for banning these facilities (*QPA v. City of Anaheim*, (2010) at 34).

**Case law has consistently stated that federal law does not preempt California's medical cannabis laws** (*QPA v. City of Anaheim*, (2010) at 27, 28, 30, 34). While the federal government is free to prohibit cannabis, it cannot force the states to do the same (*QPA v. City of Anaheim*, (2010) at 28). California could go so far as to legalize all possession and use of cannabis, but has decided not to do so and instead provides a limited immunity for people meeting certain requirements. Of course, the federal government is free to continue to arrest and prosecute Californians under the federal Controlled Substances Act.

Further, there is nothing in a city's compliance with state medical cannabis laws that would result in a violation of federal law (*QPA v. City of Anaheim*, (2010) at 29). A city's compliance with state law in the exercise of its regulatory, licensing, and zoning powers with respect to the operation of storefront medical cannabis dispensaries would not violate federal law. The fact that some individuals or collectives or cooperatives might choose to act in a way that violates federal law does not implicate the city in any such violation. (*QPA v. City of Anaheim*, (2010) at 29-30). Governmental entities do not incur aider and abettor status or direct liability by complying with their obligations under the state medical cannabis laws. (*Garden Grove* (2007), 157 Cal.App.4th 355, 389-390; accord, *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 825, fn. 13). As a result, cities and counties are free to establish and implement regulations that allow for the collective or cooperative operation of a storefront medical cannabis dispensary.

Paul Stewart  
Executive Director  
Medicinal Cannabis Collective Coalition (MC3)

**"Wit is the sudden marriage of ideas which before their union were not perceived to have any relation."  
Mark Twain**

**Andrew Miner - medical marijuana dispensaries**

ATTACHMENT P  
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**From:** Peter Stefan <[REDACTED]>  
**To:** <aminer@ci.sunnyvale.ca.us>  
**Date:** 9/3/2010 9:12 AM  
**Subject:** medical marijuana dispensaries  
**CC:** [REDACTED]

To Andy Miner,  
 Sunnyvale Planning Division.

Many cities have moratoriums because medical marijuana dispensaries grow out of control. We should have rules that are stronger and more carefully thought out. After writing my suggestions on zoning conditions and control, I think that the only possibility of doing things right is to select beforehand, a location in the city where dispensaries are all located and co-located. This naturally limits the proliferation of suppliers that will far exceed the actual needs of local residents. If there is no limit, the suppliers will expand their customer base to those who do not need medical marijuana or those who are vulnerable. A centralized location makes monitoring easier, and actually limits the perturbation to the city. Residents will not have to deal with the uncertainties of dispensaries popping up here and there. A centralized location also makes shopping easier - nowadays there are many blends and flavors of marijuana to choose from. It has occurred to me that a possibility may be the area next to the Department of Public Safety, on All America Way. One of the two parking lots can be converted into a multi-story building with parking garages to be shared with the department. With good architectural design, existing trees can be incorporated into the building.

These are the conditions I can come up with, after doing some reading.

(A) limit any negative effects on surrounding communities and on the city:

1. A minimum of 1000 ft from homes, public and private schools, day-care centers, parks, playgrounds, theaters, and other sensitive uses. ( I am also inclined to think that MacDonald's should be included, especially the stores with play sets. )
2. They should not be in shopping malls.
3. Not to be located on major roads with a lot of traffic.
4. No public consumption of medical marijuana.
5. No sale of food containing marijuana outside the dispensaries. Any food, such as brownies, containing marijuana should be clearly labeled, and carry the warning that ingestion can make some people sick. (A teacher in Santa Cruz bought some brownies on the street, not knowing that they contained marijuana. Several persons fell sick.)

(B) strong law enforcement and control, and the additional cost to the city for monitoring and enforcement should be included in the license fee.

1. Applicants should be screened, and their business plans should be evaluated for merit as well as to spot potential problems.
2. \$5000 fine for 1st violation, permit to be revoked upon 2nd violation. (A fine of \$1000 is well worth the risk of being discovered for violations, given the price of marijuana.)
3. Credit card transactions only; cash should not be allowed. (An owner of a medical marijuana dispensary said on TV that it was his practice. Then it should be feasible for all.)
4. Burglar alarms and 24-hour surveillance instruments should be required. The record of surveillance should be kept for a minimum of 30 days.
5. Operating hours should be restricted to 7 am - 9 pm.
6. Public safety officers should patrol the area at random times.

7. No advertising signs and no colorful lights. The name of the dispensary should not be displayed in labels that can be read at a distance of 50 ft. or more.
8. No distribution of advertisements as the distribution of grocery store flyers and the Sunnyvale Sun. Any advertisement in the Sun or other newspapers should carry the statement that medical marijuana is for certain medical conditions only, and the warning that marijuana can be the first step in addiction to other drugs.
9. No more than 8 oz per patient.
10. No growing of marijuana on the premise. (In addition to the difficulty of control, growing marijuana in the modern way is extremely energy intensive and creates fire hazards.)

The limited benefits of medical marijuana can be exaggerated by proponents. According to the National Institute of health, marijuana affects the brain, has the potential to be addictive, and can adversely affect mental health, the heart, and the lungs. Marijuana smoke contains 50-70% carcinogenic hydrocarbons than cigarette smoke. ( <http://www.nida.nih.gov/infofacts/marijuana.html> ) While some cancer patients choose to use medical marijuana for pain relief, doctors in cancer centers can prescribe an FDA-approved pure form of THC (delta-9-tetrahydrocannabinol), the psycho-active ingredient in marijuana. The pure form is also free of molds. For non-cancer chronic pain, there are solutions which are not merely palliative, but which actually help patients to heal their bodies and become healthier.

Thank you.

Sincerely,  
Mei-Ling Stefan  
2010 Sept 3



ATTACHMENT P  
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**Andrew Miner - Medical Cannabis Regulations**

**From:** Silicon Valley ASA <siliconvalleyasa@gmail.com>  
**To:** Andrew Miner <AMiner@ci.sunnyvale.ca.us>  
**Date:** 9/23/2010 10:39 AM  
**Subject:** Medical Cannabis Regulations  
**Attachments:** Potential RFP Considerations.doc

---

Hello Andy,

Thank you for meeting with me on Tuesday. I think we had a very productive discussion. I have attached the RFP considerations that we discussed. Please let me know if you have any questions.

Best Regards,

Lauren

ASA  
Potential RFP Considerations

- Actual proposed location
- Extra security protocols
- Employee requirements and training procedures
- Voluntary age restrictions
- Patient & Caregiver verification procedures
- Membership requirements
- Member rules and regulations
- Patient privacy protections
- Distribution model: Walk up retail, one on one consults, appointments required, etc.
- Types of payments accepted
- Discounts and payment plans for low income members
- Quality control procedures
- Transparency in distribution chain (ie Require preauthorization for collective cultivation)
- Statement of Qualifications:
- Medical or healthcare training and experience
  - Knowledge of cannabis
  - Cultivation experience
  - Volunteer/caregiving experience
  - Dispensing experience
  - Business experience
- Business plan including proposed pricing and revenue projections
- Proposed salaries and wages
- Proposed patient services and support, such as:
- Provide low-income members with daily lunches and hygiene supplies such as toothbrushes, toothpaste, feminine hygiene products, combs, and bottles of bleach.
  - Coordinate peer-counseling sessions to help members with physical, emotional, and social concerns.
  - Subsidize health care expenses for members such as nutrition counseling, mental health treatment, and preventive care.
  - Allow members to consult one-on-one with a social worker about benefits, health, housing, safety, and legal issues.
  - Provide members with holistic health services such as yoga, therapeutic massage, art therapy, and acupuncture.
  - Coordinate weekend social events such as a Friday night movie or guest speaker and a Saturday night social with live music and a hot meal for members.
  - Provide members with online computer access and deliver informational services through a Web site.
  - Encourage and engage members in political and community activities.
  - Host support group sessions for members such as:
    - A “wellness group” to discuss healing techniques and host guest speakers; HIV/AIDS group to address issues of practical and emotional support; A women’s group focused on women-specific issues in medical struggles; A “Phoenix” group to help elderly patients find their place in the medical cannabis community.

**Andrew Miner - Medical Marijuana dispensaries in Sunnyvale**

ATTACHMENT P  
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**From:** Tappan Merrick [REDACTED]  
**To:** [REDACTED], Sunnyvale Politics  
 <SunnyvalePolitics@yahoogroups.com>, NeighborsFirst Sunnyvale  
 <PutNeighborhoodsFirstInSunnyvale@yahoogroups.com>, Raynor Park Neighbors  
 <raynorshine@yahoogroups.com>, <gbell2@sonic.net>  
**Date:** 8/27/2010 11:22 AM  
**Subject:** Medical Marijuana dispensaries in Sunnyvale  
**CC:** <council@ci.sunnyvale.ca.us>, Andrew Miner <aminer@ci.sunnyvale.ca.us>, Don Johnson  
 <djohnson@ci.sunnyvale.ca.us>, Tiffany Carney <tcarney@community-newspapers.com>,  
 David J Butler <dbutler@mercurynews.com>

Dear Neighbors,

The City of Sunnyvale is considering whether or not to approve medical marijuana dispensaries in Sunnyvale. They had the second of two community meetings last night, which I attended. It was much more interesting than I had anticipated, and it allowed residents to speak of their various concerns. This issue is scheduled to come before the Council at their September 14, 2010 regular Council meeting.

Regardless of your position, I urge you to contact either the Council or Andrew Miner (in the Community Development Department) with the city regarding your opinion.

Mine? I thought that you'd never ask.

We all have compassion for those seriously ill and in need of relief from various illnesses, cancer and chemotherapy in particular. But from what was discussed, even by those supposedly in the know at this meeting, the major unresolved issue is the ability to control various issues. No single model plan was presented, even by those who are strongly in favor of these dispensaries, which would explain exactly how these dispensaries would operate, how security would be handled, how these dispensaries would prevent their product from falling into teenage or criminal hands, or limiting the amount of this drug that would be dispensed to each individual.

The meeting did point out that a doctor had to issue a recommendation for medical marijuana (as it is still illegal to issue a prescription for the product) and that it had to be renewed once a year. But there was no mention of quantities, warning labels to not drive while stoned, limiting issues such as no more than four times per day, keep out of the reach of children, avoiding second hand smoke, combining with other drugs such as alcohol may significantly impair judgment, etc. And there are no child-proof protective caps to keep wandering small children from getting into the users stash while the user isn't watching.

The leading spokeswoman for these dispensaries pointed out that no one has ever died from an overdose of marijuana. She did fail to recognize that drivers under the influence of marijuana do die, just as with cell phones, text messages, drinking and smoking (think dropping your cigarette or an ash falls on to your lap while driving).

Two alarming issues that did arise were advertising and dispensary locations. A mother of 13 year olds brought in a copy of a current METRO magazine, which is apparently distributed free to some 60,000 throughout Santa Clara County at locations such as libraries, quick shop stores and movie theaters. She stated that the current copy had some 12 pages of advertising that promoted festivals for marijuana

paraphernalia and other sorts of related things. While we can't prevent freedom of speech, I would think that any Sunnyvale dispensary vendor would have to agree to not advertise to win any bid.

The second is great today, but as we know in Sunnyvale, may be totally unrealistic tomorrow, especially with the drive by developers to build more high density housing. The current plan calls for no dispensary opening within 1,000 feet (think 3 football field lengths) of a residence or school. The only available locations appear to be in the industrial section of northern Sunnyvale. But as we saw recently at the last Council meeting with Spansion wanting to move out of Sunnyvale and sell their property to a real estate developer rather than an industrial company because Spansion can earn more money that way, what's to say that five years from now somebody comes in and wants to build another real estate development next to or near that dispensary just because the lot is for sale. Do we let them, and if we don't, how can we legally stop this new development? And finally, even if Sunnyvale allows a dispensary in northern Sunnyvale, what will the people living at Moffett Field or Mountain View think? Don't we have a moral obligation to work with and receive their blessings too?

My solution is to vote against medical marijuana dispensaries in Sunnyvale until, only package-able options can be developed (say liquid or powdered THC with precise measurements), the Food and Drug Administration approves a prescription process that limits the monthly purchase of this product to a reasonable amount, warning labels can be applied to the packaging, and maybe even requiring an education course for users to ensure proper handling, safekeeping and keeping out of the reach of children, regardless of age.

Any other approval vote will only prove to be very expensive to the City of Sunnyvale and damaging to our City's youths' long term health.

Be sure and let the City Council know your views as well as Andrew Miner, who is coordinating all of the citizen responses.

Thanks for caring.

Tap Merrick

ATTACHMENT P  
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Andrew Miner - Re: [PNFS] Re: Medical Marijuana in Sunnyvale

From: Thomas Dwyer III [REDACTED]  
 To: Andrew Mendelsohn [REDACTED]  
 Date: 8/30/2010 11:16 AM  
 Subject: Re: [PNFS] Re: Medical Marijuana in Sunnyvale  
 CC: Sunnyvale Politics <SunnyvalePolitics@yahoo.com>, PNFS PutNeighborhoodsFirst <PutNeighborhoodsFirstInSunnyvale@yahoo.com>, Andrew Mendelsohn <ajm@thinksrs.com>, <amincr@ci.sunnyvale.ca.us>

On Fri, Aug 27, 2010 at 12:13 PM, Andrew Mendelsohn <[REDACTED]> wrote:

On 8/27/2010 11:21 AM, Tappan Merrick wrote:

*My solution is to vote against medical marijuana dispensaries in Sunnyvale until, only package-able options can be developed (say liquid or powdered THC with precise measurements), the Food and Drug Administration approves a prescription process that limits the monthly purchase of this product to a reasonable amount, warning can be applied to the packaging, and maybe even requiring an education course for users to ensure proper handling, safekeeping and keeping out of the reach of child regardless of age.*

This is at best disingenuous. What you're really saying is that you'll never vote for dispensaries in Sunnyvale because the Feds and the FDA are not in a million years going to regulate and allow medical marijuana as you require. In fact the entire California medical marijuana initiative was designed as an end-run around the absurd federal regulations.

Now having said this I have to admit that from what I hear, the entire "medical" requirement seems to be a sham in actual practice. High school students have told me that everyone knows where to go to get a medical marijuana form and that no actual checking is done for an actual medical condition.

Now having said that, what's so bad about it?

The smell, for one thing. Yuck. Somehow that smell seems to permeate much farther than regular tobacco smoke. Maybe I just have a sensitive nose, I don't know, but when I smell cigarette smoke I can almost always look around to see who is blowing the stuff in my direction. Not so with marijuana smoke. :( Plus, we don't need people like this running around wasting public resources: <http://www.youtube.com/watch?v=d-iBJQFMvgo>

Tom III

As the speaker at the meeting said marijuana is incredibly safe as drugs go, far safer than alcohol, and I don't see anyone clamoring to eliminate alcohol sales in Sunnyvale. We don't require child-protective caps on whiskey bottles, so why for marijuana?

If having a dispensary in Sunnyvale means it's easier for people to get their pot, for medical reasons, or just because they want to relax a bit, I don't see what's wrong with that or why we need to grab the pitchforks and torches to prevent it.

Regards,  
 Andrew

--  
 Phone: x232  
 Email: [REDACTED]

-----  
 A DISCUSSION GROUP FOR LOCAL GOVERNMENT ISSUES IN SUNNYVALE

-----  
 Your email settings: Individual Email | Traditional  
 Change settings via the Web (Yahoo! ID required)  
 Change settings via email: Switch delivery to Daily Digest | Switch to Fully Featured  
 Visit Your Group | Yahoo! Groups Terms of Use | Unsubscribe

**MedicalMariJuana AP - Medical Marijuana in Sunnyvale**

ATTACHMENT P  
Page 33 of 52

**From:** "H. Dietrich" [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/5/2010 8:54 AM  
**Subject:** Medical Marijuana in Sunnyvale  
**CC:** Hannalore Dietrich [REDACTED]

As a resident and as a Commissioner on the Sunnyvale Housing & Human Services Commission, I am against having medical marijuana shops/other in Sunnyvale.

Hannalore Dietrich  
[REDACTED]

**MedicalMariJuana AP - Marijuana**

ATTACHMENT P  
Page 34 of 52

**From:** "Beverly Gibbs" [REDACTED]  
**To:** <medicalmarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/9/2010 8:41 PM  
**Subject:** Marijuana

Hi,

I am not for selling marijuana in Sunnyvale. We have enough problems dealing with the gang element; the city is asking for more problems adding the sale of marijuana. I am against it now and forever. Beverly Gibbs

MedicalMariJuana AP - I support carefully regulated medical marijuana

ATTACHMENT

P

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**From:** Max Kaehn [REDACTED]  
**To:** <medicalmarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/10/2010 11:25 AM  
**Subject:** I support carefully regulated medical marijuana

I do not currently have any medical conditions that would benefit from medical marijuana, but I would like to see it opened up for research so scientists can do legitimate studies to find which components have beneficial effects. The first step for initial data-gathering is being able to openly study people benefiting from its medical effects without worrying that they'll be arrested for trying to manage pain or nausea or glaucoma. None of us are getting any younger, and it would be nice to have prospects of more specialized medicines, derived from the study of cannabis, being available by the time we might need them. I would be particularly supportive of a measure that encourages partnership with a university or laboratory so the customers of any dispensary would be able to participate in studies.

I think taxing medical marijuana, like in Oakland, is entirely reasonable; I would like to see that it at the very least pays for any extra costs incurred with the Department of Public Safety.

Some useful background material on drug decriminalization: a Cato Institute white paper on drug decriminalization in Portugal, and a followup blog post from the paper's author.

--

Max Kaehn  
[REDACTED]

“Before enlightenment: sharpen claws, catch mice.  
After enlightenment: sharpen claws, catch mice.”

MedicalMariJuana AP - Medical Marijuana should be sold in Pharmacies

ATTACHMENT P  
Page 36 of 52

**From:** Holst Dolores [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/17/2010 2:37 PM  
**Subject:** Medical Marijuana should be sold in Pharmacies

We don't need to add another mind-altering substance that compromises people's five senses. You don't drive to the corner store to buy Oxycotin or opiate-type medication. If marijuana is to be sold legally it should be dispensed by a trained Pharmacist at a Pharmacy.

In Los Angeles, the number of dispensaries exploded from four to upward of 1,000 in the past five years. Police believe some were nothing but fronts for drug dealers to sell marijuana to people who have no medical need, and the city recently adopted an ordinance to reduce that number to 70 in coming months.

I SAY NO TO MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND/OR DISPENSARIES IN THE CITY OF SUNNYVALE.

**From:** Jennifer Park Martin [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/19/2010 12:54 PM  
**Subject:** Medical Marijuana - Council Study Issue (website)

ATTACHMENT P  
Page 37 of 52

Hello –

As a resident of Sunnyvale with my husband and two small children, I wanted to pass along my opinion on the Medical Marijuana issue. I don't personally know anyone who uses medical marijuana but I do have strong feelings on the subject.

There are people who are suffering from serious medical ailments who find that marijuana gives them relief from their symptoms, helps with their appetite, etc. I think it is morally wrong to deny them access to marijuana as a treatment option if it helps them. We make other strong drugs (morphine, etc.) available, I don't see that this should be any different.

I certainly hope that if I or a loved one are ever in pain or somehow suffering and could be aided by the use of medical marijuana that it isn't illegal or even inconvenient to get it. I'm sure it's hard enough facing a serious illness without the government being unnecessarily cruel and difficult about it. We should be able to just go down to any pharmacy in Sunnyvale and get our prescription filled.

I urge Sunnyvale to take a compassionate, nurturing approach to its citizens and do what it can to ease their pain and improve their quality of life during a time of pain and distress.

Thanks for listening,

Jennifer Martin  
943 Buckeye Drive  
Sunnyvale, CA 94086

**From:** Fay J Wiggins. [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 8/20/2010 3:09 PM  
**Subject:** Fw:

ATTACHMENT P  
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----- Forwarded message -----

**From:** [REDACTED]  
**To:** medicalmarijuana@ci.sunnyvale.ca.com  
**Date:** Fri, 20 Aug 2010 14:45:01 -0700

I think it is a poor idea to have a "pot shop" in Sunnyvale. We have enough problems without starting an illegal operation. I believe it is still against Federal Law. Pot heads have poor time and depth perception and are a danger to society. It stops mental development and we need all the brain cells we have to carry on a responsible life.

I am against having Medical Marijuana dispensary in Sunnyvale. Fay Wiggins

**From:** George Bell [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**CC:** Stewart Bell <sbellmd@hotmail.com>  
**Date:** 8/20/2010 9:57 PM  
**Subject:** Medical Marijuana - Council Study Issue (website)  
**Attachments:** DSBell\_MD\_Perspective\_7.15.10.pdf

ATTACHMENT P  
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Sunnyvale City Council, :

Please do NOT allow so-called "Medical" Marijuana collectives or dispensaries in Sunnyvale.

In your decision, please consider the information in the attached article. The article was written by my brother, Stewart Bell, M.D., a board-certified psychiatrist practicing in Ontario, California.

Thank you,

George Bell  
[REDACTED]  
Sunnyvale, CA

**MedicalMariJuana AP - Feedback from Sunnyvale resident on MM issue**

ATTACHMENT

P

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**From:** Stephen Colegrove [REDACTED]  
**To:** <medicalmarijuana@ci.sunnyvale.ca.us>  
**Date:** 9/15/2010 9:50 PM  
**Subject:** Feedback from Sunnyvale resident on MM issue

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Dear City Council Members and interested departmental personnel:

I am against the location of any dispensaries within the Sunnyvale city limits.

As a Sunnyvale resident, I have a vested interest in the quality of life within Sunnyvale. Our city is well-known in the area for having a low crime rate and the most professional public safety department. Increase in crime from these dispensaries would be an unwarranted and unwanted intrusion into our community. Individuals who wish to purchase medical marijuana may travel to other municipalities for their needs. I stand by the opinion of Lt. Rushmeyer and the Sunnyvale DPS that this will not bring a positive element to Sunnyvale.

Sincerely,

Steve Colegrove

[REDACTED]  
Sunnyvale

MedicalMariJuana AP - Medical Marijuana - Council Study Issue (website)

ATTACHMENT P

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**From:** "Cassie Miller" <[REDACTED]>  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 10/5/2010 8:46 AM  
**Subject:** Medical Marijuana - Council Study Issue (website)

City of Sunnyvale:

I have lived in Sunnyvale for 43 years, and I am well educated on the history of hemp cultivation, the use and nature of cannibus, the reason it became illegal in 1937, and the concerns of all sides.

I also have been working, talking to people in all walks of life, on the subject of Prop. 19, the last year. I can tell you that the public overwhelmingly wants cannibus and hemp back into our lives, for reasons ranging from cannibus being a safe medicine... to hemp being a valuable industry that never should've been killed by DuPont (out of greed)...to eliminating the crime surrounded by hemp farmers BECAUSE it's illegal.... to freeing people from jail who shouldn't be there (and leave room for criminals who currently aren't getting adequate sentences because of jail overcrowding)...to the enourmous financial gain we will benefit from if we legalize and tax it.

Unfortunately, the poles/votes are not likely to reflect the percentage of the population who know and understand why this valuable commodity should be legalized again, as it has been for most of the last many thousands of years. This is because the wisest people on this subject are often: 1). From other countries, not misinformed about it as Hearst/Anslinger/DuPont misinformed the U.S....or 2). 'not wanting to get their names on any list, as they are involved in the production and/or consumption of cannibus. I am telling you here that the majority of the population has become wise to the fact that we must not only legalize cannibus, but we must also bring back the hemp industry!

While hemp is a valuable source of superior fiber, a source of paper that produces 3 times the paper per acre as trees, and without the pesticides.... While hemp is a source of clean fuel (ethanol) and a healthy food high in omega 3's.... While hemp is a valued medicine for nausea, pain, and depression.... etc.. after thousands of years of people benefitting from this plant, it became illegal in the 30's for the wrong reasons. 3 individuals in the 30's killed off this commodity: DuPont, who had a patent on a chemical that converted trees into paper, set out to kill the better resource hemp, taking the back door of trying to make illegal the flower of the plant, i.e. the cannibus. He teamed up with Hearst, a newspaper giant, who had his own ulterior motive. Hearst, who hated Mexicans and invented the nickname "Marijuana" to give it a negative connotation and associate it with Mexicans, produced untruthful propoganda against cannibus and the Mexicans he associated it with. The media lied to the public about the affects of cannibus, via ridiculous media like "Refer Madness." DuPont's banker, related to Anslinger, a govt. official, got Anslinger to slip it into a bill of various proposals, and he got it passed INSIDE OF TWO MINUTES. Congress probably had no idea they were signing off to kill off the hemp industry so that DuPont could keep its monopoly over their inferior paper product.

Cannibus is a 100% SAFE and much valued medicine. In working the streets on this issue the last year, I met MANY patients who have benefitted from cannibus--it helped their nausea, their pain from arthritis, their depression. I met Doctors who grabbed my board and enthusiastically told me they were intent to get this for their patients, to replace the organ killing alternatives (vicodin etc.).... I met Cops who were eager to vote yes because they KNOW that NEVER is a crime committed because of cannibus ingestion and that no one belongs in jail for choosing such an herb....I met white collar professionals who use it occasionally as a catalyst for creating great things (as did our Forefathers, the founders of Apple Computer, etc.).... and of course I got signatures from youngsters who simply use it because they like it.

Opponents of cannibus are either misinformed or have ulterior motives, as does the pharmaceutical companies, who sell THC in the form of "Marinol," but they don't want people to be able to get the same relief by growing plants for FREE in their backyards..

Committees have been hired, since prohibition in the 30's, to try to prove that cannibus is harmful, but they cannot find ANYthing wrong with it (unlike alcohol and cigarettes and legal prescription drugs)! In 1971, Nixon hired the

Schaefer committee to prove cannabis is harmful. The committee came back and told him it is perfectly safe and that he had to legalize it. A similar exercise was done in 1988 (I forget the name, another Republican, I can find it for you if you'd like)--and AGAIN they came back with findings that cannabis is 100% SAFE and MUST be legalized!

People from countries where cannabis use is accepted legally (Canada, Netherlands, Britain are all getting wise that way...) tell us that it works well to have it legal; in fact there is even a smaller percentage of people who abuse it in those countries. The War of 1812 was fought because Napoleon wanted to cut off Russia's exporting of hemp.....It is only RECENTLY, and here in the U.S, that we were TRICKED into thinking cannabis is a bad thing, and that was just so DuPont could make more money by eliminating a better source of paper.

We MUST RIGHT the WRONG that DuPont and Anslinger and Hearst did to us in the 30's. The only people against legalizaion are misinformed. It's as simple as that. Now is the time to bring back cannabis and hemp, and those opponents will soon see the errors in their ignorance.

The law says that a state can challenge the Fed's on this and win. Obama is for that, he has already ordered DEA officials to stop harrassing people who have medical marijuana cards and dispensaries who supply them. The legal obstacle we have to achieve, in addition to winning in court, is to get cannabis off "Schedule 1" in the categorization of drugs, where it never belonged (Sched 1 is heroin and drugs of that nature). Everyone who knows anything about this will support doing so, and following that polititians will be free to express that they support honoring the people's wishes to bring cannabis and hemp back into our lives, via farming it as our forefathers suggested.

YES on dispensaries; YES on legalizing cannabis; and YES on bringing back the hemp industry!!!

C.M.

ATTACHMENT P  
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**From:** Margaret Harris [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 10/12/2010 6:11 PM  
**Subject:** Medical Marijuana - Council Study Issue (website)

I am completely at a loss to understand why our city council is spending our Sunnyvale tax money on this issue. This is the agenda of a tiny, committed, group of people whose agenda is to legalize illicit drugs. Sunnyvale does not need dispensaries to distribute mind-altering drugs. This is not a city issue and you should not be spending our tax money on it. With all the important issues facing Sunnyvale, why would you choose to spend time or tax-payer's money on this issue?

Sunnyvale should not be a city that is known for dispensing mind-altering drugs - what a BAD reputation that would be. Sunnyvale will attract people who want to come here to get mind-altering drugs and have NO INTENTION of contributing to the betterment of Sunnyvale.

I am a Sunnyvale resident, living here for over 20 years, and I STRONGLY OPPOSE medical marijuana dispensaries in my home town of Sunnyvale.

Margaret Harris

**From:** Stephen Zyszkiewicz [REDACTED]  
**To:** <MedicalMarijuana@ci.sunnyvale.ca.us>  
**Date:** 10/27/2010 9:35 PM  
**Subject:** Medical Marijuana - Council Study Issue (website)

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It's nice to see Sunnyvale finally so well organized about the issue! I have been asking for years.

It's definitely time dispensaries are allowed in Sunnyvale. They should be allowed to compete like any other business with unlimited number, otherwise you have a handful of people controlling the market.

The new state rule for 600 feet away from schools sounds reasonable, so I don't believe there's any need to even include that limit in the Sunnyvale ordinance other than to say you should follow state law.

However, if you extend the rule to residential, etc. there are not enough convenient locations for patients. This type of business isn't any more bothersome than any other business, and should be able to locate where it is most convenient.

Thank you,  
Steve

**Comments from Outreach Meetings for Medical Marijuana  
 Distribution Facilities (MMD's)**

August 19, 2010 (Afternoon Meeting):

- Does Federal Law override State Law?
- Does the City's moratorium go against State law?
  - o The City still has the right to apply land use controls on uses.
- What are results from other cities that have allowed MMDs?
- Important to provide safe and secure access and environment to medical marijuana.
- Ensure that there is good access to MMDs by transit lines.
- Locate away from sensitive use areas.
- Do we have enough public safety resources to deal with the use? Specifically police/law enforcement officers.
- Are individuals allowed to grow their own plants?
- DPS is concerned about where the marijuana is coming from- more marijuana may result in additional crimes.
- Can medical marijuana be obtained from pharmacies?
- These facilities tend to draw undesirable types, destroys property values. Overall impact seems negative.
- Good regulations will mitigate any negative situations.
- Not all operators are bad. There are good and bad business models.
- "Best practices" are when operators and neighbors work together.
- Each member grows plants for own use and any excess goes to collective.
- Revenue vs. risk- potential loss of tax dollars which will go to other cities.
- How many members/patients are there in Sunnyvale?
  - o One guesstimate...10-15% of local population are "qualified."
  - o Not truly possible to track due to privacy safeguards
- Many patients are low income and can't afford to buy it. Set up regulations so its accessible to those who really need it.
- If everyone is allowed to grow their own, why do we need these facilities?
- Definition of "collective" is that everyone shares the cost of growing.
- How many liquor stores does Sunnyvale have? Why are there no restrictions for them, but people want restrictions for MMDs?
- The State agency ABC controls alcohol sales, especially for over-concentration.
  - o At some point, before ABC regulations were established, the same discussions about storefront sales of alcohol probably occurred.
- Take a good business model and create regulations from that example.
- Make holistic centers a part of where medical marijuana is available.
  - o Yoga, nutrition advice, massage, etc.
- If MMDs are allowed, how can Sunnyvale enforce the regulations if there are reductions in the police force and there are not enough resources to be effective?
- Some cities collect significant fees at time of application to help defray the enforcement costs.

- Properly run collectives will reduce illegal activity, stimulate the economy, and help those that really need it.
- Allowing MMDs will increase visibility, but will not increase consumption or growing.
- Where does the marijuana come from and how is it tracked?
- San Jose is not the best example of how MMDs because no regulations were in place when these operations started.
- Why isn't this issue on the ballot for Sunnyvale voters to decide?
- How will staff come up with a recommendation to the Council?
- MMDs should be located in "higher end" areas to ensure safety, etc.
- Don't forget about the patients who aren't healthy enough to go out and get medical marijuana- especially if the facilities are limited to north Sunnyvale.
- Why do you have to regulate the facilities from certain uses?
- Distance regulations are good, but allow exceptions for certain cases:
  - o Take into account natural barriers (freeways, creeks, etc.).
- Use the existing Use Permit process to handle applications.
- Locate facilities away from schools.
- Dispensaries are a way for patients to meet each other- patients tend to feel isolated.
- City should run a facility or collective.
- City should set up districts where facilities could be allowed- "green light districts?"

August 26, 2010 (Evening Meeting):

- Is there a successful medical marijuana dispensary model available?
- What are the differences between a collective, cooperative and dispensary?
- Harborside Wellness Center may be a good example of a well-run dispensary.
- Has a cost analysis been done showing tax collected vs. enforcement and public safety costs?
- What are the social costs to the community of having these facilities in Sunnyvale?
- What happens if Sunnyvale allows MMDs, then a future Presidential administration changes their policy and begins to enforce Federal laws?
- There should be a back-up plan for that possibility.
- If MMDs are allowed, Sunnyvale public safety officers will be in a conflicting situation- do they enforce State or Federal laws?
- Once the line is crossed, it is hard to go back. Once they are allowed, it's hard to remove the use.
- How will the number of dispensaries compare to the number of liquor stores and smoke shops in the city.
- They may be an increase in the number of homes growing their own marijuana, for which there are risks to the neighborhood and resident. Maybe one distribution center is better.
- Distribution centers tend to attract negative situations and bring down property values and are big public safety issues.
- The City has limited public safety resources.
- The Metro newspaper has nearly 15 pages devoted to MMDs, and is distributed near where children and teenagers congregate. Can advertising be limited?
- Having MMDs in Sunnyvale will affect our schools. How can we prevent our kids from possessing this substance?
- Medical practitioners and pharmacies should dispense marijuana.
- There is a way to meet Federal and/or State guidelines if regulated properly.
- City Council needs a vigorous analysis of the social costs.
- The "systems" can be easily abused.
- Kids are looking to us for guidance, and promoting MMDs sends a wrong message.
- We don't need it in Sunnyvale- let them go elsewhere.
- City should be prepared for legal costs if MMDs are allowed.
- MMDs should be allowed for safe access for those who really need it.
- Collectives can be run properly- people do benefit from medical marijuana.
- MMDs as neighbors can improve properties, clean them up and provide better security.
- What additional taxes would be taken out to go towards public safety?
- This issue is a matter of control- design a system that has adequate controls to protect our youth and the general public.
- What is being done to reclassify marijuana so doctors can prescribe it and pharmacies can dispense it?
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- Allow MMDs, but have the appropriate controls, and allow them to be accessible to those that really need it.
- Keep a safe distance from day care centers.
- Is marijuana safe? Is it effective?

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**SUMMARY OF STAFF CONCERNS**

It is difficult to balance all concerns in the issue of allowing MMDs in Sunnyvale. There are good reasons to allow them, and good reasons to prohibit them under the current regulatory standards. It is extremely difficult for local agencies to regulate and enforce a use that would best be regulated by the State or Federal governments.

Listed below are a few explanations and concerns:

Cultivation

- Cultivation can take place outside a city's boundaries, which makes it extremely difficult to ensure the product is safe and comes from a legal source. Local jurisdictions cannot ensure where the product is produced or how it is transported to a facility.
- The cultivation of marijuana is a complex issue. Requiring MMDs to cultivate their own marijuana on site or at member's homes puts those locations at risk for robbery, violence or other public safety concern. If cultivation is required or allowed to occur off site instead, it puts the cultivation outside the City's purview, and possibly into organized crimes hands.

Distribution and the Compassionate Use Act

- Medical marijuana cannot be dispensed through traditional outlets, such as a physician and pharmacy, but must be distributed through locally-permitted facilities with no oversight from Federal or State agencies (as required for the dispensing of traditional medicine).
- If Sunnyvale chooses to allow MMDs and to require them to meet the intent of the Compassionate Use Act, the work necessary to meet that intent could be time-consuming and expensive. Intensive oversight would be required to ensure the uses are safe and are positive additions to the community.

Limitations of Local Agencies

- Local agencies are not well equipped to successfully track and regulate a quasi-medical product produced out of the area. If MMDs are allowed, the City may want to regulate the businesses with extremely close oversight, which is not required for other operations such as pharmacies, preparation of food products, and the growing and distribution of agricultural products. With medical marijuana, since broader agency tracking does not occur (by State or Federal governments), the amount of oversight and tracking by the City could be significant. This oversight would be required to

ensure the product sold is safe, not from illegal grows, and meets the State law requirements that the product comes from collective or cooperative members.

- Medical drugs require a doctors prescription, the rules and regulations of which are controlled at a much higher level than a local jurisdiction. Cities do not have the resources or reach necessary to ensure that prescription drugs are distributed safely and in the proper amounts- but the Federal government does, and takes that responsibility. In contrast, medical marijuana, which must be completely regulated by a local agency, requires only a doctor's written or verbal recommendation, which is not tracked and can be used at numerous dispensaries because no higher agency tracks how the recommendations are used.
- The California Alcohol Beverage Control (ABC) has police power for the sale and distribution of alcohol, requiring distributors to have proper licenses, reviewing financial records of businesses, and making final decisions on granting or rescinding licenses. For medical marijuana, local agencies would be required to implement all those factors.

#### Local Oversight

- Several cities require their public safety department be able to review and audit the financial records of MMDs to ensure they are not for-profit enterprises, and are only assisting people with true medical conditions. This puts the City in an intrusive position in enforcing a land use permit, in a way not done for other uses. Although this tool may be one of the most effective in ensuring MMDs stay non-profit enterprises, there have been recent court cases challenging a city's ability to do so.
- Marijuana for medical purposes is a product that would best be controlled and regulated by an agency with broader authority than a local city. As an example, Sunnyvale determines specific aspects of a grocery store, such as appropriate location, appearance, and what size makes sense for that location. The Federal or State ensures items for sale in that store are safe and appropriately controlled. With medical marijuana, the City is responsible for oversight of all aspects of the MMD. There is reasonable concern that the City does not have the resources necessary to do so.

Summary

The original intent of the CUA was to allow individuals to grow marijuana individually and collectively for medical purposes, and to ensure they are safe from prosecution. In 2003, SB 420 expanded that by allowing distribution outlets of marijuana. By doing so, the State placed the entire burden on each city to ensure these facilities meet all aspects of State law.

Large MMDs typically buy their marijuana from sources outside the collective or cooperative, even though the law requires the marijuana to be obtained only from members of the MMD. It is difficult for a local jurisdiction to ensure the marijuana: comes from legitimate sources, is distributed to legitimate patients, and does not become a profit-based business.