CITY OF WILDOMAR CITY COUNCIL
AGENDA

5:30 P.M. – CLOSED SESSION
7:00 P.M. - REGULAR MEETING

SEPTEMBER 8, 2010
Council Chambers
23873 Clinton Keith Road

Bridgette Moore, Mayor
Marsha Swanson, Mayor Pro Tem
Sheryl Ade, Council Member
Bob Cashman, Council Member
Scott Farnam, Council Member

City Manager
Frank Oviedo

City Attorney
Julie Hayward Biggs

WILDOMAR CITY COUNCIL
REGULAR MEETING AGENDA
SEPTEMBER 8, 2010

ORDER OF BUSINESS: Public sessions of all regular meetings of the City Council begin at 7:00 P.M. Closed Sessions begin at 6:00 P.M. or such other time as noted.

REPORTS: All agenda items and reports are available for review at: Wildomar City Hall, 23873 Clinton Keith Road; Mission Trail Library, 34303 Mission Trail Blvd.; and on the City's website, www.cityofwildomar.org. Any writings or documents provided to a majority of the City Council regarding any item on this agenda (other than writings legally exempt from public disclosure) will be made available for public inspection at City Hall during regular business hours.

PUBLIC COMMENTS: Prior to the business portion of the agenda, the City Council will receive public comments regarding any items or matters within the jurisdiction of the governing body. The Mayor will separately call for testimony at the time of each public hearing. If you wish to speak, please complete a "Public Comment Card" available at the Chamber door. The completed form is to be submitted to the City Clerk prior to an individual being heard. Lengthy testimony should be presented to the Council in writing (10 copies) and only pertinent points presented orally. The time limit established for public comments is three minutes per speaker.

ADDITIONS/DELETIONS: Items of business may be added to the agenda upon a motion adopted by a minimum 2/3 vote finding that there is a need to take immediate action and that the need for action came to the attention of the City subsequent to the agenda being posted. Items may be deleted from the agenda upon request of staff or upon action of the Council.

CONSENT CALENDAR: Consent Calendar items will be acted on by one roll call vote unless Council members, staff, or the public request the item be discussed and/or removed from the Consent Calendar for separate action.

PLEASE TURN ALL CELLULAR DEVICES TO VIBRATE OR OFF FOR THE DURATION OF THE MEETING. YOUR COOPERATION IS APPRECIATED.

CALL TO ORDER – CLOSED SESSION 5:30 p.m.
The City Council will meet in closed session pursuant to Section 54956.9(b) of the California Government Code to confer with legal counsel with regard to one matter of significant exposure to litigation.

ROLL CALL

ADJOURN CLOSED SESSION

CALL TO ORDER – REGULAR SESSION 7:00 p.m.

ROLL CALL

MOMENT OF SILENCE

FLAG SALUTE

PRESENTATIONS

Jasper the Alpaca
Eagle Scout Proclamation – Westley Greuel
Sycamore Academy Presentation
Fire Department Monthly Update
Community Services Monthly Update
Chamber of Commerce Monthly Update

PUBLIC COMMENTS
This is the time for citizens to comment on issues not listed on the agenda. Under the provisions of the Brown Act, the City Council is prohibited from discussing or taking action on items not listed on the agenda. Each speaker is asked to fill out a "Public Comments Card" (located on the table by the Chamber door) and give the card to the City Clerk prior to the start of the meeting. Comments are limited to three (3) minutes per speaker. The Council encourages citizens to address them so that questions and/or concerns can be heard.

APPROVAL OF THE AGENDA AS PRESENTED

1.0 CONSENT CALENDAR

All matters listed under the Consent Calendar are considered routine and will be enacted by one roll call vote. There will be no separate discussion of these items unless members of the Council, the public, or staff request specific items be removed from the Consent Calendar for discussion and/or separate action.

1.1 Reading of Ordinances

RECOMMENDATION: Approve the reading by title only of all ordinances.

1.2 Warrant Registers

RECOMMENDATION: That the City Council approve the following Warrant Registers:

1. Dated August 11, 2010 in the amount of $56,570.92;
2. Dated August 19, 2010 in the amount of $389,250.42;
3. Dated August 26, 2010 in the amount of $161,702.65;
4. Dated September 2, 2010 in the amount of $332,014.09.

1.3 Treasurer's Report

RECOMMENDATION: That the City Council approve the Treasurer's Report for July, 2010.

1.4 Agreement with the County of Riverside Transportation and Land Management Agency (TLMA)

RECOMMENDATION: That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE, TRANSPORTATION AND LAND MANAGEMENT AGENCY AND THE CITY OF WILDOMAR

2.0 PUBLIC HEARINGS

2.1 Medical Marijuana Ordinance

RECOMMENDATION: The Planning Commission recommends that the City Council **not** adopt an Ordinance entitled:

ORDINANCE NO. ____
AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 17.292 TO THE WILDOMAR MUNICIPAL CODE TO ALLOW THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS AND AMENDING PORTIONS OF CHAPTER 17.12 OF THE WILDOMAR MUNICIPAL CODE

3.0 GENERAL BUSINESS

3.1 Intent to Participate in the Southwest Financing Authority

RECOMMENDATION: That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER OF INTENT, IDENTIFYING DESIRED CONDITIONS, FOR THE CITY OF WILDOMAR TO JOIN THE SOUTHWEST COMMUNITIES FINANCING AUTHORITY

3.2 Medical Benefits

RECOMMENDATION: That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS

CITY MANAGER REPORT

CITY ATTORNEY REPORT

COUNCIL COMMUNICATIONS

FUTURE AGENDA ITEMS

ADJOURNMENT

2010 City Council Regular Meeting Schedule
September 22
October 13
October 27
November 10
November 24
December 8
December 22

If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans With Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Any person that requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting, may request such modification, accommodation, aid or service by contacting the City Clerk either in person or by phone at (951) 677-7751, no later than 10:00 A.M. on the day preceding the scheduled meeting.

POSTING STATEMENT: On September 3, 2010, by 5:00 p.m., a true and correct copy of this agenda was posted at the three designated posting locations:
Wildomar City Hall, 23873 Clinton Keith Road
U.S. Post Office, 21392 Palomar Street
Mission Trail Library, 34303 Mission Trail Blvd

CITY OF WILDOMAR CITY COUNCIL
Agenda Item #1.2
CONSENT CALENDAR
Meeting Date: September 8, 2010

TO: Mayor and City Council

FROM: Gary Nordquist, Assistant City Manager

SUBJECT: Warrant Registers

STAFF REPORT

RECOMMENDATION:
That the City Council approve the following Warrant Registers:

1. Dated August 11, 2010 in the amount of $56,570.92;
2. Dated August 19, 2010 in the amount of $389,250.42;
3. Dated August 26, 2010 in the amount of $161,702.65;
4. Dated September 2, 2010 in the amount of $332,014.09.

BACKGROUND:
The City of Wildomar requires that the City Council audit payments of demands and direct the City Manager to issue checks. The Warrant Registers are submitted for approval.

FISCAL IMPACT:
These Warrant Registers will have a budgetary impact in the amount noted in the recommendation section of this report. These costs are included in the Fiscal Year 2010-11 Budget.

Submitted by:	Approved by:
_____	_____
Gary Nordquist Assistant City Manager	Frank Oviedo City Manager

City of Wildomar
Warrant Register
August 11, 2010

Date	Num	Name	Memo/Description	Amount
08/11/2010	2595	American Forensic Nurses	Blood Draw	162.74
08/11/2010	2596	AppleOne	Temp Employ Svcs 7/20-7/22-10	388.80
08/11/2010	2597	Bio-Tox Laboratories	RC Sheriff-Lab Svcs	918.39
08/11/2010	2598	CR&R	7/1610 Dump and Return 40 yd box, disp fee	266.73
08/11/2010	2599	CTAI Pacific Greenscape	Various parks contract svcs-July 2010	4,609.50
08/11/2010	2600	Department of Justice	RC Sheriff-Blood Alcohol Analysis	35.00
08/11/2010	2601	Department of Transportation	Transportation Maint Svcs-June 2010	5,649.59
08/11/2010	2602	Diamond W Events	Parks Prof Svcs-July 2010	7,694.70
08/11/2010	2603	Edison	Electricity-various CSAs-July 2010	18,277.49
08/11/2010	2604	FedEx	Overnight shipping charge for Guardian	27.22
08/11/2010	2605	Image Printing System	Farmers Mkt/Concerts in the Park flyers	565.50
08/11/2010	2606	Inland Empire Media Group, Inc.	Magazine Subscription-front desk lobby	12.00
08/11/2010	2607	Martha Robles	Project Deposit Refund	2,384.18
08/11/2010	2608	Murrieta Lock & Safe Inc.	New security lock for back entrance city hall	801.73
08/11/2010	2609	Department	Jail Access/Booking Fee-June 2010	1,829.75
08/11/2010	2610	Sara Sjostrom	Mileage reimbursement-bank	22.00
08/11/2010	2611	Tyler Technologies	EDEN license fees	12,000.00
08/11/2010	2612	Verizon	Telephone charges 8/1-8/31/10	625.60
08/11/2010	2613	Gary Andre	Planning Comm Mtg 7/21/2010	75.00
08/11/2010	2614	Ben Benoit	Planning Comm Mtg 7/21/2010	75.00
08/11/2010	2615	Harv Dykstra	Planning Comm Mtg 7/21/2010	75.00
08/11/2010	2616	Michael Kazmier	Planning Comm Mtg 7/21/2010	75.00
			TOTAL	56,570.92

City of Wildomar
Warrant Register
August 19, 2010

Date	Num	Name	Memo/Description	Amount
08/19/2010	2617	Artisan Goldsmiths & Awards	Name plates	62.86
08/19/2010	2618	CASH	Petty cash reimbursements	69.14
08/19/2010	2619	County of Riverside - Fire Dept	Fire Protection Svcs-Apr-June 2010	382,563.13
08/19/2010	2620	DataQuick	Code Enf-Software July 2010	100.00
08/19/2010	2621	Data Ticket, Inc.	Code Enf Citation Processing June 2010	235.00
08/19/2010	2622	Diamond W Events	Farmers Market Agriculture Permit	70.99
08/19/2010	2623	DMN Publishing	Farmers Market Ad	196.00
08/19/2010	2624	Innovative Document Solutions	Copier Svc/Maint-July 2010	497.29
08/19/2010	2625	Lake Elsinore & San Jacinto Watersheds Authority	FY10/11 Contribution TMDL Task Force	4,668.93
08/19/2010	2626	North County Times	Public Hearing Notices	419.96
08/19/2010	2627	OnTrac	Overnight Delivery Svcs	41.25
08/19/2010	2628	Purchase Power (Pitney Bowes)	Postage Meter Rental 7/16/10-12/15/10	97.88
08/19/2010	2629	Wildomar Little League	Adult Softball Staff	227.99
			TOTAL	389,250.42

City of Wildomar
Check Detail
August 26, 2010

Date	Num	Name	Memo/Description	Amount
08/26/2010	2630	A & A Janitorial Services	Janitorial services & supplies August 2010	643.90
08/26/2010	2631	Crystal Clean Maintenance	Janitorial Services - City Hall - Sept 2010	698.00
08/26/2010	2632	DirecTV	Monthly Office Television Service - 8/12/10 - 9/11/10	83.99
08/26/2010	2633	Edison	July 2010-Utilities, street lamp	6,584.46
08/26/2010	2634	FedEx	FedEx Express Services - Clerks Office	15.80
08/26/2010	2635	Interwest Consulting Group	Various Municipal Services for July 2010	153,676.50
			TOTAL	161,702.65

City of Wildomar
Check Detail
September 2, 2010

Date	Num	Name	Memo/Description	Amount
09/02/2010	2636	Ace Weed Abatement	22115 Canyon Dr	450.00
09/02/2010	2637	Aetna	Insurance Premium for City Council & City Clerk - Sept 2010	4,835.00
09/02/2010	2638	AFLAC, Remittance Processing Services	Insurance Premium for City Council & City Clerk - Sept 2010	604.74
09/02/2010	2639	American Forensic Nurses	Blood Draws	277.16
09/02/2010	2640	Animal Friends of the Valleys, Inc.	Animal Services - July2010	7,500.00
09/02/2010	2641	AT&T Mobility	Council Mobile Phones - 7/21/10 - 8/20/10	577.58
09/02/2010	2642	Chung and Chung Accountancy Corporation	Accounts Payable/Receivable Assitanc 7/22/10-8/30/10	3,640.00
09/02/2010	2643	Doggie Walk Bags, Inc.	Dispenser Bags - 3 Parks	143.75
09/02/2010	2644	Riverside County Sheriff's Department	Contract Law Enforcement 7/1/10-7/28/10; Booking Fee--July 2010	269,551.65
09/02/2010	2645	CTAI Pacific Greenscape	Park Maintenance Services for Aug 2010	4,348.75
09/02/2010	2646	Naples Plaza Ltd.-Oak Creek II c/o C.W. Clark, Inc	Monthly Lease - Sept 2010	10,114.56
09/02/2010	2647	County of Riverside - Dept. of Environ. Health	Environmental Services - April--June 2010	1,165.12
09/02/2010	2648	Diamond W Events	Contructual Service-Park & Emergency Preparedness-Aug 2010	7,696.77
09/02/2010	2649	EDC of Southwest California	EDC City Membership for 2010-2011	6,500.00
09/02/2010	2650	Exec-U-Care	Premium - City Council - Sept 2010	1,264.47
09/02/2010	2651	Gary Nordquist	Reimb for Relocation Suppplies for new financial software and Candidate Orientation supplies	95.98
09/02/2010	2652	Guardian	Insurance Payment - Sept 2010	887.46
09/02/2010	2653	Image Printing System	Business Cards-Tina Roney, Jeff Thomas, Paula Willette, Holly Kowalski	293.63
09/02/2010	2654	Jeff Thomas	Computer Racks for Finance Computer	108.67
09/02/2010	2655	Marathon Reprographics	Bid Set of Plans ordered for sidewalks to Schools Project	14.96
09/02/2010	2656	Wildomar Awards and Trophies	Adult Softball Staff-August 2010	960.00
09/02/2010	2657	North County Times	Election Notice of Candidates, Public Hearing Notice	203.84
09/02/2010	2658	Misty V. Cheng	Accounting Services - Aug 2010	10,700.00
09/02/2010	2659	Sheryl Ade	Mileage Reimbursement	80.00
			TOTAL	332,014.09

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.3
CONSENT CALENDAR
Meeting Date: September 8, 2010

TO: Mayor and City Council

FROM: Gary Nordquist, Assistant City Manager

SUBJECT: Treasurer's Report, July 2010

STAFF REPORT

RECOMMENDATION:
Staff recommends that the City Council approve the Treasurer's Report for July 2010.

BACKGROUND/DISCUSSION:
Attached is the Treasurer's Report for Cash and Investments for the month of July 2010.

FISCAL IMPACTS:
None at this time.

Submitted by:	Approved by:
_____	_____
Gary Nordquist Assistant City Manager	Frank Oviedo City Manager

CITY OF WILDOMAR
TREASURER'S REPORT FOR
CASH AND INVESTMENT PORTFOLIO

July 2010

CITY CASH

INSTITUTION	BALANCE	RATE
WELLS FARGO	$ 3,008,802.44	0.00%
TOTAL	$ 3,008,802.44	

INSTITUTION	BEGINNING BALANCE	+ DEPOSITS	(-) WITHDRAWALS	ENDING BALANCE	RATE
WELLS FARGO	$ 3,159,501.42	$ 455,406.99	$ (606,105.97)	$ 3,008,802.44	0.000%
TOTAL	$ 3,159,501.42	$ 455,406.99	$ (606,105.97)	$ 3,008,802.44	

CITY INVESTMENT

:R	BOOK VALUE	FACE VALUE	MARKET VALUE	PERCENT OF PORTFOLIO	DAYS TO MAT.	STATED RATE
IVESTMENT FUND	$ 1,524,338.27	$ 1,524,338.27	$ 1,524,338.27	100.00%	0	0.531%
TOTAL	$ 1,524,338.27	$ 1,524,338.27	$ 1,524,338.27	100.00%		

ID INVESTMENT $ 4,533,140.71

CITY INVESTMENT

:R	BEGINNING BALANCE	+ DEPOSITS/ PURCHASES	(-) WITHDRAWALS/ SALES/ MATURITIES	ENDING BALANCE	STATED RATE
IVESTMENT FUNDS	$ 1,522,227.90	$ 2,110.37	$ 0.00	$ 1,524,338.27	0.531%
TOTAL	$ 1,522,227.90	$ 2,110.37	$ 0.00	$ 1,524,338.27	

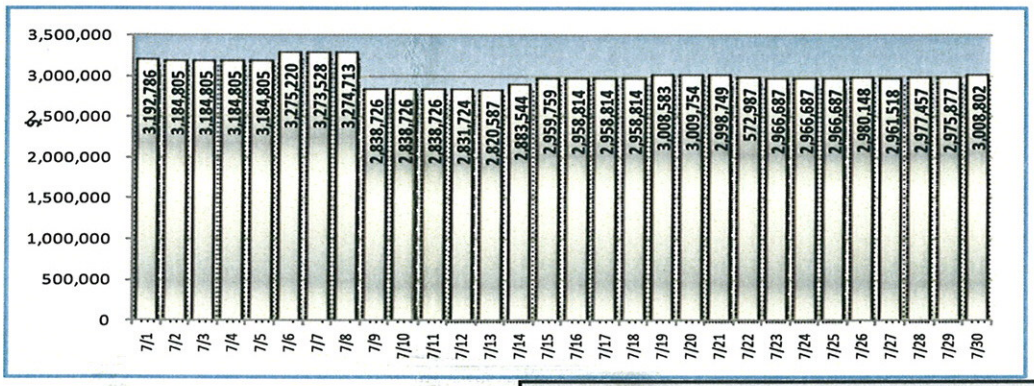
In compliance with the California Code Section 53646, as the Director of Finance/ City Treasurer of the City of Wildomar, I hereby certify that sufficient investment liquidity and anticipated revenues are available to meet the City's expenditure requirements for the next six months and that all investments are in compliance to the City's Statement of Investment Policy.
I also certify that this report reflects all Government Agency pooled investments and all City's bank balances.

Gary Nordquist
ACM Finance & Administration /
City Treasurer

Date

July 2010

Daily Cash Balance
All Funds Checking Only
Pool Report Balance



2008-2009	*Ending Balance*	*Monthly Net Actvity*
July	$ 20,855	$ 20,855
August	2,297,920	2,277,065
September	2,402,083	104,163
October	2,340,436	(61,647)
November	2,203,169	(137,267)
December	747,664	(1,455,505)
January	826,502	78,838
February	733,251	(93,251)
March	571,857	(161,394)
April	644,285	72,428
May	687,746	43,461
June	1,266,750	579,004
July	2,027,072	760,322
August	4,745,827	2,718,755
September	4,201,825	(544,002)
October	3,674,234	(527,592)
November	3,098,110	(576,124)
December	2,963,884	(710,350)
January	2,801,810	(296,300)
February	2,919,794	117,984
March	2,397,718	(522,076)
April	3,239,669	841,951
May	3,200,801	(38,868)
June	3,159,501	(41,300)
July	3,008,802	(150,699)

July 2010

Date	*Ending Balance in Whole $*	Net Change from Prior Day
7/1	3,192,786	-
7/2	3,184,805	(7,981)
7/3	3,184,805	-
7/4	3,184,805	-
7/5	3,184,805	-
7/6	3,275,220	90,416
7/7	3,273,528	(1,693)
7/8	3,274,713	1,186
7/9	2,838,726	(435,987)
7/10	2,838,726	-
7/11	2,838,726	-
7/12	2,831,724	(7,002)
7/13	2,820,587	(11,137)
7/14	2,883,544	62,957
7/15	2,959,759	76,214
7/16	2,958,814	(944)
7/17	2,958,814	-
7/18	2,958,814	-
7/19	3,008,583	49,768
7/20	3,009,754	1,172
7/21	2,998,749	(11,005)
7/22	2,975,906	(22,843)
7/23	2,966,687	(9,219)
7/24	2,966,687	-
7/25	2,966,687	-
7/26	2,980,148	13,461
7/27	2,961,518	(18,630)
7/28	2,977,457	15,939
7/29	2,975,877	(1,580)
7/30	3,008,802	32,926

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #1.4
CONSENT CALENDAR
Meeting Date: September 8, 2010

TO: Mayor and Council Members

FROM: Michael Kashiwagi, Development Services

SUBJECT: Agreement for Professional Services between the County of Riverside, Transportation and Land Management Agency (TLMA) and the City of Wildomar

STAFF REPORT

RECOMMENDATION:
That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE, TRANSPORTATION AND LAND MANAGEMENT AGENCY AND THE CITY OF WILDOMAR

BACKGROUND:
Prior to incorporation, the County of Riverside performed all services related to code enforcement, environmental programs, planning, private development plan review and entitlements, building and safety code compliance plan review and inspections, geographic information systems, capital projects delivery, and public works maintenance and operations throughout the Wildomar Community.

For the past year, the City of Wildomar has assumed responsibility for many of the services previously performed by TLMA including code enforcement, planning, development plan review and entitlement, building and safety plan review and inspections, GIS, public works maintenance, and traffic engineering services.

The purpose of the Professional Services Agreement is to provide for the continuation of TLMA services which staff believes would be beneficial and cost effective for the City of Wildomar. These services include:

- Geology
- Archeology

- Special Enforcement Team (SET) Code Enforcement
- Landscape Maintenance District Administration
- Project Management of major Capital Improvement Projects

In addition, the Professional Services Agreement includes additional services requested by the City of Wildomar to increase our capacity to provide necessary service to the Community. All services provided by this agreement will be performed on a request basis, Riverside County will only perform services as requested by the City. All work will be performed under the direction of the City, staff and costs will be based upon the hourly rates stated in the Agreement.

FISCAL IMPACT:
There is no fiscal impact since costs associated with this agreement will be paid with General Fund and/or non-General Fund sources within the City's adopted operating budget.

ALTERNATES:
1. Take no action.
2. Provide staff with further direction.

Submitted by:	Approved by:
_____	_____
Michael Kashiwagi Development Services	Frank Ovideo City Manager

ATTACHEMENTS:
1. Resolution No. 2010 - _____
2. Agreement

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF RIVERSIDE, TRANSPORTATION AND LAND MANAGEMENT AGENCY AND THE CITY OF WILDOMAR

WHEREAS, prior to incorporation, the County of Riverside performed all services related to code enforcement, environmental programs, planning and entitlement, development plan review and building and safety code compliance, capital projects delivery, and public works maintenance and operations services in the Wildomar community; and

WHEREAS, the City of Wildomar and County of Riverside have determined that it is in the best interest of the citizens of Wildomar for the County to continue to provide selected services as determined by the City of Wildomar; and

WHEREAS, the County of Riverside Transportation and Land Management Agency has the expertise, resources, and experience to provide services requested by the City of Wildomar.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA AS FOLLOWS:

Authorizes the City Manager to execute a Professional Services Agreement between the County of Riverside Transportation and Land Management Agency and the City of Wildomar.

PASSED, APPROVED, AND ADOPTED this 8th day of September, 2010.

_____
Bridgette Moore
Mayor

APPROVED AS TO FORM:

_____
Julie Hayward Biggs
City Attorney

ATTEST:

_____
Debbie A. Lee, CMC
City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN THE COUNTY OF RIVERSIDE

AND THE CITY OF WILDOMAR

The County of Riverside, California (hereinafter "COUNTY"), and the City of Wildomar, California (hereinafter "CITY"), hereby agree as follows:

RECITALS

A. CITY desires that the following COUNTY departments within the Transportation & Land Management Agency (hereinafter "TLMA") provide, upon request, certain professional services for CITY: the Administrative Services Department, the Code Enforcement Department, the Environmental Programs Department, the Planning Department and the Transportation Department.

B. Services by other COUNTY departments or agencies are not the subject of this Agreement.

C. COUNTY and CITY desire to define the scope of the professional services to be provided and the terms and conditions pursuant to which COUNTY will provide the professional services.

NOW THEREFORE, the parties hereto mutually agree as follows:

SECTION 1 - RECITALS INCORPORATED

The foregoing recitals are incorporated herein and made a part of this Agreement by this reference.

SECTION 2 - ADMINISTRATION

The TLMA Director, or his designee, shall administer this Agreement on behalf of COUNTY (hereinafter "COUNTY'S contract administrator"). The CITY manager, or his designee, shall administer this Agreement on behalf of CITY (hereinafter "CITY'S contract administrator").

SECTION 3 - SCOPE OF SERVICES

Upon CITY'S request and COUNTY'S approval as set forth herein, COUNTY will provide the professional services described in Attachments A-1 through A-5 to this Agreement, as well as any other professional service if the parties mutually agree to such services and the cost of such services in writing (hereinafter "professional services"). COUNTY, or consultants under contract to COUNTY, if any, shall comply with all CITY codes, ordinances, resolutions, regulations and policies (hereinafter "City codes") in providing the professional services. COUNTY shall work directly with CITY and its staff in providing the professional services and COUNTY staff shall consult with CITY staff if CITY staff desires such consultation. COUNTY shall not be required to, and shall not, respond to any person or entity other than CITY concerning the professional services it provides. CITY shall be responsible for responding to all such persons or entities as set forth herein.

SECTION 4 - REQUESTS FOR SERVICES

CITY may use any desired means or process to decide whether to request professional services. CITY may request professional services for a single project or a group or class of projects. CITY shall make all requests for professional services in writing and CITY'S contract administrator shall send such requests to COUNTY'S contract administrator. Before requesting professional services, CITY'S contract administrator may ask COUNTY'S contract administrator for a written estimate of the cost of the services and any established procedure COUNTY may have for providing the services (hereinafter "service delivery procedure").

SECTION 5 - APPROVAL OF REQUESTS

If COUNTY agrees to provide the professional services requested, COUNTY'S contract administrator shall notify CITY'S contract administrator and the appropriate TLMA department in writing. The written notification to CITY shall include the service delivery procedure, if any. Services shall be provided in accordance with the service delivery procedure unless the parties mutually agree to a different procedure. Except as provided in Section 6. of this Agreement,

COUNTY shall not provide professional services if the request for such services is not made and approved in the manner described above.

SECTION 6 - DANGEROUS CONDITION EXCEPTION

Notwithstanding the provisions of Sections 4. and 5. of this Agreement, COUNTY is hereby authorized to immediately remedy any dangerous condition it encounters in the course of providing professional services, and CITY hereby agrees to pay the reasonable costs incurred by COUNTY for such remediation. For purposes of this Agreement, a dangerous condition shall be any condition that may result in imminent personal injury or property damage. If COUNTY encounters a dangerous condition, it shall immediately notify CITY'S contract administrator.

SECTION 7 - PERTINENT INFORMATION

Once a request for professional services has been made and approved in the manner described above, CITY'S contract administrator shall promptly transmit to COUNTY'S contract administrator all pertinent information concerning the project or group or class of projects. Such information shall include, but not be limited to, CITY'S case file(s); CITY'S approvals; CITY'S codes; CITY'S General Plan; any applicable specific plans; and any reports relating to biology, cultural resources, paleontology or geology.

SECTION 8 – INSPECTION, REJECTION AND ACCEPTANCE OF SERVICES

CITY may inspect COUNTY'S work performed pursuant to this Agreement while the work is being performed or after it has been completed. CITY may reject COUNTY'S work no later than thirty (30) days after the work has been completed by submitting to COUNTY'S contract administrator a written explanation of the reasons for the rejection. If CITY does not reject COUNTY'S work as provided above, CITY shall be deemed to have accepted COUNTY'S work. CITY'S acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. CITY'S acceptance shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, the sections

pertaining to indemnification and insurance.

SECTION 9 - PERSONNEL

In providing the professional services described in this Agreement, COUNTY and its staff shall be considered independent contractors and shall not be considered CITY employees for any purpose. COUNTY staff shall at all times be under COUNTY'S exclusive direction and control and shall be located at COUNTY facilities. Neither CITY, not its officials, officers, employees or agents, shall have control over the conduct of COUNTY or any of COUNTY'S officials, officers, employees, or agents except as set forth in this Agreement. COUNTY shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred by this Agreement or is otherwise expressly conferred by CITY in writing. COUNTY shall not at any time or in any manner represent that COUNTY or any of COUNTY'S officials, officers, employees or agents are in any manner officials, officers, employees or agents of CITY. COUNTY shall pay all wages, salaries and other amounts due such personnel in connection with their provision of the professional services and as required by law. Neither COUNTY, nor any of COUNTY'S officials, officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. COUNTY expressly waives any claim COUNTY may have to any such rights.

SECTION 10 - VEHICLES

If CITY chooses to provide vehicles for COUNTY'S use in providing professional services, the vehicles shall meet COUNTY'S specifications, shall be adequately equipped and ready for service and shall be registered in the name of CITY. CITY-owned vehicles shall only be used for CITY-approved functions.

SECTION 11 - COST OF SERVICES

Unless the parties have mutually agreed to a set fee for professional services in writing as

provided in Section 3. of this Agreement, CITY shall pay COUNTY for all such services, including staff-to-staff consultations, at the hourly rates set forth in Attachment B to this Agreement. CITY shall pay COUNTY for each hour of services it provides, or each fraction of an hour billed at 1/10th increments, including any required travel time. CITY may request overtime hours at the hourly rates set forth in Attachment B, if overtime hours are offered by the appropriate COUNTY department. Notwithstanding the above, CITY shall pay COUNTY the full costs of producing any aerial photographs, aerial maps or satellite images for CITY. If CITY chooses to provide vehicles for COUNTY'S use, CITY shall also pay COUNTY the full costs of operating such vehicles, including, but not limited to, fuel, maintenance, and licensing costs. CITY shall not pay COUNTY for any professional services not described in Attachments A-1 through A-5 to this Agreement, unless those services have been mutually agreed to in writing as provided in Section 3. of this Agreement.

SECTION 12 - BILLING

COUNTY'S contract administrator shall submit to CITY'S contract administrator a monthly invoice which shall include an itemized accounting of all services performed and the cost thereof.

SECTION 13 - PAYMENTS

CITY shall pay each monthly invoice within thirty (30) days of the date CITY'S contract administrator receives the invoice from COUNTY'S contract administrator. CITY may dispute any monthly invoice by submitting a written description of the dispute to COUNTY'S contract administrator within ten (10) days of the date CITY'S contract administrator receives the invoice from COUNTY'S contract administrator. CITY may defer the payment of any portion of the invoice in dispute until such time as the dispute is resolved; however, all portions of the invoice not in dispute must be paid within the thirty (30)-day period set forth herein.

SECTION 14 – RECORD MAINTENANCE

COUNTY shall maintain all documents and records relating to the professional services provided pursuant to this Agreement, including, but not limited to, any and all ledgers, books of account, invoices, vouchers, canceled checks, and other expenditure or disbursement documents. Such documents and records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the professional services provided by COUNTY pursuant to this Agreement. Such documents and records shall be maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to public agency audits and expenditures.

SECTION 15 – RECORD INSPECTION

All documents and records required to be maintained pursuant to Section 14. of this Agreement shall be made available for inspection, audit and copying, at any time during regular business hours, upon the request of CITY'S contract administrator. Copies of such documents or records shall be provided directly to CITY'S contract administrator for inspection, audit and copying when it is practical to do so; otherwise, such documents and records shall be made available at COUNTY'S address specified in Section 19. of this Agreement.

SECTION 16 - DUTY TO INFORM AND RESPOND

CITY'S contract administrator shall promptly transmit to COUNTY'S contract administrator all inquiries, complaints, and correspondence that CITY receives concerning COUNTY'S professional services and all information concerning dangerous conditions that CITY'S contract administrator either knows or should know exist. COUNTY'S contract administrator shall promptly transmit to CITY'S contract administrator all inquiries, complaints, and correspondence that COUNTY receives in the course of providing professional services. CITY shall be responsible for responding to all such inquiries, complaints and correspondence.

SECTION 17 – STANDARD OF PERFORMANCE

COUNTY represents and warrants that it has the qualifications, experience and facilities

necessary to properly perform the professional services described in this Agreement and that it will perform such services competently. In meeting its obligations under this Agreement, COUNTY shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of COUNTY under this Agreement.

SECTION 18 – PERMITS AND LICENSES

COUNTY shall obtain any and all permits, licenses and authorizations necessary to perform the professional services described in this Agreement. Neither CITY, not its officials, officers, employees or agents shall be liable, at law or in equity, as a result of COUNTY'S failure to comply with this section.

SECTION 19 - NOTICES

Any notices required or permitted to be sent to either party shall be deemed given when personally delivered to the individuals identified below or when addressed as follows and deposited in the U.S. Mail, postage prepaid:

County of Riverside	City of Wildomar
Transportation & Land Management Agency	23873 Clinton Keith Road
P.O. Box 1605	Suite 201
Riverside, CA 92502-1605	Wildomar, CA 92595
Attention: George Johnson	Attention: Frank Oviedo
Director	City Manager

SECTION 20 - OWNERSHIP OF DATA

Ownership and title to all reports, documents, plans, specifications, and estimates produced or compiled pursuant to this Agreement shall automatically be vested in CITY and become the property of CITY. CITY reserves the right to authorize others to use or reproduce such materials

and COUNTY shall not circulate such materials, in whole or in part, or release such materials to any person or entity other than CITY without the authorization of CITY'S contract administrator.

SECTION 21 - CONFIDENTIALITY

COUNTY shall observe all Federal and State regulations concerning the confidentiality of records. All information gained or work product produced by COUNTY pursuant to this Agreement shall be considered confidential, unless such information is in the public domain. COUNTY'S contract administrator shall promptly notify CITY'S contract administrator when COUNTY receives a request for release or disclosure of information or work product. COUNTY shall not release or disclose information or work product to persons or entities other than CITY without prior written authorization from CITY'S contract administrator, except when such release or disclosure is required by the California Public Records Act or any other law.

SECTION 22 - INDEMNIFICATION

Indemnification by COUNTY. Excepted as provided below in the paragraph entitled "Special Circumstances", COUNTY shall indemnify, defend and hold harmless CITY, its officials, officers, employees and agents from all claims and liability for loss, damage, or injury to property or persons, including wrongful death, based on COUNTY'S negligent acts, omissions or willful misconduct arising out of or in connection with the performance of professional services under this Agreement including, without limitation, the payment of attorney's fees.

Indemnification by CITY. CITY shall indemnify, defend and hold harmless COUNTY, its officials, officers, employees and agents from all claims and liability for loss, damage, or injury to property or persons, including wrongful death, based on CITY'S negligent acts, omissions or willful misconduct arising out of or in connection with the performance of professional services under this Agreement including, without limitation, the payment of attorney's fees.

Special Circumstances. Notwithstanding the above, COUNTY shall not indemnify, defend and hold harmless CITY, its officials, officers, employees and agents, and CITY shall indemnify, defend, and hold harmless COUNTY its officials, officers, employees and agents, from all claims

and liability resulting from any of the following:

The invalidity of CITY'S codes.

How CITY decides to address, or prioritize actions addressing, alleged violations of CITY'S codes.

How CITY decides to maintain, or prioritize the maintenance of, CITY facilities, including, but not limited to, streets and sidewalks.

How CITY decides to deploy, or prioritize the deployment of, school crossing guards.

The design of CITY facilities, including, but not limited to, streets and sidewalks.

CITY'S failure to provide pertinent information and inform as provided in Sections 7. and 16. of this Agreement.

Notification and Cooperation. The parties mutually agree to notify each other through their respective contract administrators if they are served with any summons, complaint, discovery request or court order (hereinafter "litigation documents") concerning this Agreement and the professional services provided hereunder. The parties also mutually agree to cooperate with each other in any legal action concerning this Agreement and the professional services provided hereunder. Such cooperation shall include each party giving the other an opportunity to review any proposed responses to litigation documents. This right of review does not, however, give either party the right to control, direct or rewrite the proposed responses of the other party.

SECTION 23 - INSURANCE

The parties agree to maintain the types of insurance and liability limits that are expected for entities of their size and diversity. The types of insurance maintained and the limits of liability for each insurance type shall not limit the indemnification provided by each party to the other. If CITY chooses to provide vehicles for COUNTY'S use, CITY shall maintain liability insurance for the CITY-owned vehicles and insurance for any physical damage to the CITY-owned vehicles in an amount equal to the replacement value of all vehicles provided. The vehicle policies shall, by endorsement, name COUNTY, its agencies and departments and their respective officials, officers, employees and agents as additional insureds.

SECTION 24 – ASSIGNMENT

The expertise and experience of COUNTY are material considerations for this Agreement. CITY has an interest in the qualifications and capabilities of the persons and entities that COUNTY will use to fulfill its obligations under this Agreement. In recognition of that interest, COUNTY shall not assign or transfer this Agreement, in whole or in part, or the performance of any of COUNTY'S obligations under this Agreement without prior written consent of the CIYT'S contract administrator. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling CITY to any and all remedies at law or in equity, including summary termination of this Agreement. CITY acknowledges, however, that COUNTY, in the performance of its duties under this Agreement, may utilize subcontractors.

SECTION 25 - IMMUNITIES

Nothing in this Agreement is intended to nor shall it impair the statutory limitations and/or immunities applicable or available to the parties under State laws and regulations.

SECTION 26 - MODIFICATIONS

This Agreement may be amended or modified only by mutual agreement of the parties. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

SECTION 27 - WAIVER

Any waiver by a party of any breach of one or more of the terms of this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term hereof. Failure on the part of either party to require exact, full and complete compliance with any terms of this Agreement shall not be construed as changing in any manner the terms hereof, or estopping that party from enforcing the terms hereof.

SECTION 28 - SEVERABILITY

If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

SECTION 29 - TERM

This Agreement shall become effective upon its approval by the Riverside County Board of Supervisors and shall remain in effect until June 30, 2011. This agreement may be terminated by either party upon thirty (30) days written notice to the other party. This Agreement may be extended for up to an additional twelve (12) months if the parties, through their respective governing bodies, mutually agree to the extension in writing and mutually agree on the hourly rate to be charged for services.

SECTION 24 - ENTIRE AGREEMENT

This Agreement is intended by the parties as a final expression of their understanding with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements and understandings, written or oral.

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APPROVALS

COUNTY Approvals

APPROVED AS TO FORM:

_____ Dated: _____

Katherine A. Lind

Principal Deputy County Counsel

APPROVED BY BOARD OF SUPERVISORS:

_____ Dated: _____

Marion Ashely

Chairman, Riverside County Board of Supervisors

ATTEST:

CLERK OF THE BOARD:

By:_____

Deputy

(SEAL)

CITY Approvals

APPROVED AS TO FORM:

_____ Dated:_____

Julie Hayward Biggs

City Attorney, City of Wildomar

APPROVED BY CITY COUNCIL:

_____ Dated: _____

Bridgette Moore

Mayor, City of Wildomar

ATTEST:

CITY CLERK:

By:_____

Debbie A. Lee, CMC

City Clerk

ATTACHMENT A-1

Geographic Information Services

Upon request and approval as set forth in this Agreement, the Geographic Information Services (GIS) section of the Administrative Services Department can provide any of the following: maps, reports, data, metadata, databases, mailing labels, exhibits, applications, geographic analyses, field data collection, addresses and street names, and GIS research; assist with special projects such as map books and map series, social economic data (employment, population, housing), demographic analysis, population statistics and forecasting.

ATTACHMENT A-2

Code Enforcement Department Services

Upon request and approval as set forth in this Agreement, the Code Enforcement Department will do any of the following: enforce State statutes and CITY codes relating to matters such as land use, grading, building, abandoned vehicles, parking, noise and rubbish; process parking and administrative citations; process statements of expense and administrative cost summaries; work in partnership with law enforcement agencies in cases which require a multi-agency response; provide any other services customarily provided by a City code enforcement department.

ATTACHMENT A-3

Environmental Programs Department Services

Upon request and approval as set forth in this Agreement, the Environmental Programs Department will do any of the following: review public and private development projects to ensure that such projects are consistent with Multi-Species Habitat Conservation Plans (MSHCPs); prepare conditions of approval for development projects; process Habitat Acquisition Negotiation Strategy (HANS) applications and conduct Single-Family Expedited Review Processes as required by the Western Riverside County MSHCP; review biological reports and MSHCP consistency analyses; perform habitat assessments and biological surveys.

ATTACHMENT A-4

Planning Department Services

Upon request and approval as set forth in this Agreement, the Planning Department will do any of the following: review public and private development projects to ensure that such projects are consistent with State law and CITY codes; review development projects to determine the level of analysis needed for cultural, paleontological and geologic resources; review reports related to these resources; prepare environmental analyses for development projects; prepare conditions of approval for development projects; provide any other services customarily provided by a City planning department.

ATTACHMENT A-5

Transportation Department Services

Upon request and approval as set forth in this Agreement, the Transportation Department will provide all services customarily provided by a City transportation department, including, but not limited to, the following:

Roadway Maintenance Services:

Repair pavement failures

Trim street trees

Remove fallen trees

Stripe/mark pavement

Seal cracks

Install/replace traffic signs

Repair/replace sidewalks

Install/repair barricades

Clean roadside ditches

Clean drain inlets

Patrol streets during rainstorms

Sweep streets

Landscape Maintenance Services:

Administer Landscape Maintenance Districts (LMDs), including assessment collection annexations.

Administer landscape maintenance contracts

Remove graffiti

Roadway Drainage Maintenance Services:*

Repair/ replace fencing

Remove trash

Control/ remove vegetation

Repair erosion damage

Mow fire abatement/small areas

Clean ditches/open channels/outfalls

Clean pipes/manholes

Repair/replace minor pipes

*In areas not subject to the jurisdiction of the Riverside County Flood Control & Water Conservation District

Special Event Support Services:

Detours – install temporary barricades and delineate roadways

Road closures – install temporary barricades and delineate roadways

Traffic Signal Maintenance Services:

Scheduled maintenance (monthly, quarterly, semi-annually, and annually) -

Inspect controller and cabinet

Observe signals

Realign signals

Observe and replace vehicle signal indicators

Observe and repair signal outages

Inspect/repair/replace vehicle loop detectors

Observe/adjust vehicle signal timing

Inspect/repair/replace electromechanical components

Clean/polish/replace lenses and reflectors as necessary

Unscheduled Maintenance -

Respond to malfunction/damage reports

Repair or replace parts/components as necessary

Respond and mark underground service alert requests

Emergency call-out services–(for damage, severe weather events, earthquakes, etc.)

Replace foundation, mast arm, or pole

Replace pavement loop detector

Repair/replace underground conduit/cable

Replace signal cabinet and/or foundation

Repair/replace controller

Engineering Services:

Prepare environmental documents and supporting studies

Prepare plans, specifications, and estimates for capital projects

Inspect and provide contract management services for capital projects - bid, award, and administer contracts for project construction

Provide resident engineer services on Caltrans projects

Process authorizations on federally funded projects.

Process authorizations and billings on projects funded by regional funding programs, such as TUMF, Measure “A”, and other State, Regional, or local programs

Administer Road and Bridge Benefit District (RBBD) Programs

Crossing Guard Services:

Hire and train school crossing guards.

Deploy school crossing guards at locations to be determined.

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

DEPARTMENT	POSITION	REGULAR HOURS	OVERTIME HOURS
TLMA Administrative Services Department (GIS)	GIS Specialist	$ 94	N/A
Code Enforcement Department	Code Enforcement Officer II	$ 61.58	N/A
Code Enforcement Department	Code Enforcement Officer III	$ 64.41	N/A
Code Enforcement Department	Senior Code Enforcement Officer	$ 67.55	N/A
Code Enforcement Department	Supervisor Code Enforcement Off.	$ 70.63	N/A
Code Enforcement Department	Aide	$ 31.56	N/A
Code Enforcement Department	Technician	$ 43.31	N/A
Environmental Programs Department	Ecological Resource Specialist	$ 95	$ 114
Environmental Programs Department	Principal Planner	$ 123	$ 148
Environmental Programs Department	Clerical	$ 40	$ 48
Planning Department	Geologic and Paleontological Services	$ 138	$ 152
Planning Department	Archeological Services	$ 136	$ 149
Planning Department	Senior and Principal Planner Services	$ 136	$ 149
Planning Department	Planner Services (Including Landscape Architect Review)	$ 129	$ 142

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Planning Department	Planning Technician	$ 54	$ 59
Transportation Department/ Highway Operations Rates	Asst Dist Road Maint Superv	$80.04	N/A
Transportation Department/ Highway Operations Rates	Bridge Crew Worker	$71.29	N/A
Transportation Department/ Highway Operations Rates	Crew Lead Worker	$76.80	N/A
Transportation Department/ Highway Operations Rates	District Road Maintenance Supv	$89.88	N/A
Transportation Department/ Highway Operations Rates	Engineering Project Mgr	$166.56	N/A
Transportation Department/ Highway Operations Rates	Equipment Operator I	$70.93	N/A
Transportation Department/ Highway Operations Rates	Equipment Operator II	$76.73	N/A
Transportation Department/ Highway Operations Rates	Highway Maint Superintendent	$121.85	N/A
Transportation Department/ Highway Operations Rates	Highway Ops Superintendent	$175.72	N/A
Transportation Department/ Highway Operations Rates	Laborer	$ 51.37	N/A
Transportation Department/ Highway Operations Rates	Lead Bridge Crew Worker	$79.28	N/A
Transportation Department/ Highway Operations Rates	Lead Traffic Control Painter	$81.83	N/A
Transportation Department/ Highway	Lead Tree Trimmer	$77.61	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Operations Rates			
Transportation Department/ Highway Operations Rates	Maintenance & Construct Worker	$62.42	N/A
Transportation Department/ Highway Operations Rates	Office Assistance II	$50.29	N/A
Transportation Department/ Highway Operations Rates	Principal Eng Tech	$112.36	N/A
Transportation Department/ Highway Operations Rates	Secretary II	$73.31	N/A
Transportation Department/ Highway Operations Rates	Sign Maker	$ 75.96	N/A
Transportation Department/ Highway Operations Rates	Sr Equipment Operator	$82.71	N/A
Transportation Department/ Highway Operations Rates	Sr Traffic Signal Technician	$ 109.62	N/A
Transportation Department/ Highway Operations Rates	Technical Eng Unit Supervisor	$123.64	N/A
Transportation Department/ Highway Operations Rates	Traffic Control Painter	$75.98	N/A
Transportation Department/ Highway Operations Rates	Traffic Signal Supervisor	$114.74	N/A
Transportation Department/ Highway Operations Rates	Traffic Signal Tech	$104.46	N/A
Transportation Department/ Highway Operations Rates	Transportation Warehouse Worker II	$72.86	N/A
Transportation Department/ Highway	Tree Trimmer	$70.13	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Operations Rates			
Transportation Department/ Highway Operations Rates	Truck & Trailer Driver	$74.74	N/A
Transportation Department/Engineering Rates	Admin Services Analyst I	$78.10	N/A
Transportation Department/Engineering Rates	Admin Services Analyst II	$88.69	N/A
Transportation Department/Engineering Rates	Associate Civil Engineer	$135.28	N/A
Transportation Department/Engineering Rates	Asst Civil Engineer	$115.37	N/A
Transportation Department/Engineering Rates	Assoc. Transportation Planner	$128.06	N/A
Transportation Department/Engineering Rates	Engineering Aide	$61.48	N/A
Transportation Department/Engineering Rates	Engineering Division Manager	$191.19	N/A
Transportation Department/Engineering Rates	Engineering Project Mgr	$166.56	N/A
Transportation Department/Engineering Rates	Engineering Technician I	$82.26	N/A
Transportation Department/Engineering Rates	Engineering Technician II	$91.45	N/A
Transportation Department/Engineering Rates	GIS Senior Analyst	$100.21	N/A
Transportation Department/Engineering	Junior Engineer	$103.16	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Rates			
Transportation Department/Engineering Rates	Office Assistant II	$50.29	N/A
Transportation Department/Engineering Rates	Office Assistant III	$55.87	N/A
Transportation Department/Engineering Rates	Principal Const Inspector	$129.24	N/A
Transportation Department/Engineering Rates	Principal Engineering Tech	$112.36	N/A
Transportation Department/Engineering Rates	Secretary I	$65.96	N/A
Transportation Department/Engineering Rates	Senior Stenographer Clerk	$ 63.11	N/A
Transportation Department/Engineering Rates	Senior Transportation Planner	$147.34	N/A
Transportation Department/Engineering Rates	Senior Civil Engineer	$154.59	N/A
Transportation Department/Engineering Rates	Senior Engineering Tech	$105.98	N/A
Transportation Department/Engineering Rates	Senior Engineering Tech-PLS/PE	$111.81	N/A
Transportation Department/Engineering Rates	Technical Eng Unit Supervisor	$123.64	N/A
Transportation Department/Engineering Rates	Transportation Proj Mgr-EC	$166.56	N/A
Transportation Department/Survey Rates	Admin Services Analyst	$77.13	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Transportation Department/Survey Rates	County Surveyor	$188.66	N/A
Transportation Department/Survey Rates	Engineering Tech I	$79.03	N/A
Transportation Department/Survey Rates	Engineering Tech II	$90.25	N/A
Transportation Department/Survey Rates	Office Assistant III	$53.69	N/A
Transportation Department/Survey Rates	Principal Eng Tech	$110.87	N/A
Transportation Department/Survey Rates	Principal Eng Tech - PLS/PE	$116.99	N/A
Transportation Department/Survey Rates	Secretary I	$63.36	N/A
Transportation Department/Survey Rates	Sr Eng Tech	$104.58	N/A
Transportation Department/Survey Rates	Sr Eng Tech - PLS/PE	$110.34	N/A
Transportation Department/Survey Rates	Sr Land Surveyor	$133.49	N/A
Transportation Department/Survey Rates	Sr Surveyor	$126.63	N/A
Transportation Department/Survey Rates	Supervising Land Surveyor	$152.54	N/A
Transportation Department/Equipment Rental Rates	Sedans - Leased	$ 8.40	N/A
Transportation Department/Equipment Rental Rates	Pickups - Leased	$ 10.50	N/A
Transportation Department/Equipment Rental Rates	Survey Mini PU	$16.62	N/A
Transportation Department/Equipment Rental Rates	Pickups-3/4T	$20.32	N/A
Transportation Department/Equipment Rental Rates	Light Trucks	$27.10	N/A
Transportation Department/Equipment Rental Rates	Medium Dumps	$31.36	N/A
Transportation Department/Equipment	Med Dmps w/Attach	$74.61	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Rental Rates			
Transportation Department/Equipment Rental Rates	Graders	$44.52	N/A
Transportation Department/Equipment Rental Rates	Heavy Truck	$32.13	N/A
Transportation Department/Equipment Rental Rates	Medium Crawler	$134.62	N/A
Transportation Department/Equipment Rental Rates	Heavy Crawler	$81.73	N/A
Transportation Department/Equipment Rental Rates	Wheel Tractor	$20.98	N/A
Transportation Department/Equipment Rental Rates	Extra Heavy Crawler	$79.92	N/A
Transportation Department/Equipment Rental Rates	Medium Loader	$40.73	N/A
Transportation Department/Equipment Rental Rates	Heavy Loader	$44.26	N/A
Transportation Department/Equipment Rental Rates	Tractor W/Mower	$69.21	N/A
Transportation Department/Equipment Rental Rates	Chip Spreader	$66.06	N/A
Transportation Department/Equipment Rental Rates	Street Sweeper	$69.89	N/A
Transportation Department/Equipment Rental Rates	Self Loading Scraper	$121.77	N/A
Transportation Department/Equipment	Heavy Mixer	$231.92	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Rental Rates			
Transportation Department/Equipment Rental Rates	Elevating Scraper	$153.48	N/A
Transportation Department/Equipment Rental Rates	Extra Heavy Loader	$41.51	N/A
Transportation Department/Equipment Rental Rates	Heavy Dumps	$45.82	N/A
Transportation Department/Equipment Rental Rates	Screen Plant	$79.84	N/A
Transportation Department/Equipment Rental Rates	Gradall Excavator	$48.19	N/A
Transportation Department/Equipment Rental Rates	Truck Transport	$38.79	N/A
Transportation Department/Equipment Rental Rates	Roller (Self propelled)	$25.23	N/A
Transportation Department/Equipment Rental Rates	Aerial Platform Truck	$35.33	N/A
Transportation Department/Equipment Rental Rates	Brush Chipper	$12.77	N/A
Transportation Department/Equipment Rental Rates	Asphalt Reclaimer	$219.97	N/A
Transportation Department/Equipment Rental Rates	Signal Aerial Lift Truck	$83.66	N/A
Transportation Department/Equipment Rental Rates	Striping Unit	$46.67	N/A
Transportation Department/Equipment	Curb Builder	$38.75	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Rental Rates			
Transportation Department/Equipment Rental Rates	Concrete Saw	$26.20	N/A
Transportation Department/Equipment Rental Rates	Deflectometer	$86.94	N/A
Transportation Department/Equipment Rental Rates	Drill Rig	$17.51	N/A
Transportation Department/Equipment Rental Rates	Paving Machine	$121.71	N/A
Transportation Department/Equipment Rental Rates	Patch Truck	$29.99	N/A
Transportation Department/Equipment Rental Rates	Stump Cutter	$41.45	N/A
Transportation Department/Equipment Rental Rates	Dura-Patchers	$65.20	N/A
Transportation Department/Equipment Rental Rates	Stencil Trucks	$28.32	N/A
Transportation Department/Equipment Rental Rates	Survey Truck	$52.41	N/A
Transportation Department/Equipment Rental Rates	Thermal Applicator	$51.56	N/A
Transportation Department/Equipment Rental Rates	Vac Truck	$69.61	N/A
Transportation Department/Equipment Rental Rates	Water Truck	$38.65	N/A
Transportation Department/Equipment	Pup Trailer	$31.03	N/A

ATTACHMENT B

HOURLY RATES FOR PROFESSIONAL SERVICES

Rental Rates			
Transportation Department/Equipment Rental Rates	Roller (Pulled)	$15.65	N/A
Transportation Department/Equipment Rental Rates	Rotary Sweepers	$78.89	N/A
Transportation Department/Equipment Rental Rates	Patch Spraying Rig	$8.10	N/A
Transportation Department/Equipment Rental Rates	Small Compressor	$37.77	N/A
Transportation Department/Equipment Rental Rates	Cement Mixer	$41.16	N/A
Transportation Department/Equipment Rental Rates	Tiltbed Trailer	$39.78	N/A
Transportation Department/Equipment Rental Rates	Lowbed Trailer	$18.97	N/A

CITY OF WILDOMAR – CITY COUNCIL
AGENDA ITEM #2.1
PUBLIC HEARING
Meeting Date: September 8, 2010

TO: Mayor and City Council

FROM: Frank Oviedo, City Manager

SUBJECT: Regulation of Medical Marijuana Cooperatives

STAFF REPORT

RECOMMENDATION:
The Planning Commission recommends that the City Council **not** adopt an Ordinance entitled:

> ORDINANCE NO. ____
> AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 17.292 TO THE WILDOMAR MUNICIPAL CODE TO ALLOW THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS AND AMENDING PORTIONS OF CHAPTER 17.12 OF THE WILDOMAR MUNICIPAL CODE

BACKGROUND:
Section 17.12.050 of the Zoning Ordinance (part of the Wildomar Municipal Code) prohibits the establishment and operation of medical marijuana dispensaries within the City. This prohibition was originally adopted by the County of Riverside prior to the City's incorporation, and has remained in effect in the City since incorporation by virtue of the City's adoption of the County Code as the City Code. Since that time the City has been receiving several inquiries from members of the public who wish to establish medical marijuana cooperatives in the City for the purpose of dispensing medical marijuana.

At the April 28, 2010, City Council meeting the Council was provided with information on the current state of medical marijuana policy. The staff report included information on the legal, law enforcement, and planning issues related to medical marijuana. Based upon this presentation and the subsequent discussion, the City Council directed staff to bring a draft ordinance back for consideration that is based upon the current ordinance for the City of Laguna Woods. A copy of the Laguna Woods ordinance is contained in Attachment D.

The State documents for the medical marijuana program are contained in Attachment F of this staff report. Specifically, the provisions of The Compassion Use Act (CUA) are contained in Attachment F-1, the State's Medical Marijuana Program Act (MMPA) is

contained in Attachment F-2, and the Attorney General's "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" is contained in Attachment F-3. An informational handout on the local regulation of medical marijuana dispensaries which was prepared by Americans for Safe Access is also contained in Attachment G.

In addition, the California Court of Appeal for the 4th District issued a decision on August 18, 2010 with regard to *Qualified Patients Association, et al. v. City of Anaheim*. It had been hoped that this long awaited ruling would resolve many concerns about California's law with regard to medical marijuana issues and local medical marijuana regulatory ordinances. The City Attorney's review of the ruling notes that the focus of the ruling is on whether the State Legislature had authority to adopt a statute establishing statewide standards and procedures for regulating medical marijuana uses after the adoption of the CUA.

The CUA was enacted as an initiative measure by a vote of the people, and it was contended that the MMPA was an impermissible amendment to it because it was not voted on by the people. The Court of Appeal determined that the MMPA did not amend the CUA, but rather established rules and guidelines for implementation of the CUA. Thus the MMPA has been validated by the court and the standards and procedures set forth in the MMPA have been deemed to be valid in California.

The City Attorney also notes that the ruling in *Anaheim* also addresses the federal preemption issue, holding that while the Federal Controlled Substances Act ("CSA") prohibits all possession, distribution and use of marijuana by any individual, it does not preempt the CUA and the MMPA. Essentially, the Court of Appeal ruled that while federal law prohibits any possession, use or distribution of marijuana and may subject an individual to prosecution and criminal sanctions by federal agents, neither the State of California nor any local agency is required to enforce federal law. States and local governments may thus enact statutes and ordinances establishing policies that ignore or decline to prosecute federal law violations.

The City Attorney also notes that while the federal preemption aspect of the ruling supports existing California law, the court declined to rule on the question of whether the state law preempts local regulation and mandates local agencies to permit medical marijuana collectives or cooperatives and their related dispensaries.

The ruling also holds that any regulation that limits or prohibits medical marijuana uses within a local community does not constitute a violation of the civil rights protections afforded individuals by the Unruh Act (Civil Code Section 51). The court held that a governmental body does not act as a business establishment when it enacts legislation, it cannot be subject to the Unruh Act prohibitions against discrimination even though the legislation limits access to some facilities or services afforded to one group or another.

As a result of these conclusions, the only definitive guidance resulting from the ruling is that state and local agencies are not required to enforce federal law and that failure to permit a medical marijuana collective or cooperative from operating a dispensary does not violate the civil rights protections of the California Unruh Act. Thus, while liability for

civil rights actions predicated on the Unruh Act has been eliminated, many questions regarding local regulation under the California laws remain unanswered.

According to the City Attorney, it looks as if the local regulation of medical marijuana and ordinances establishing rules for dispensaries associated with collectives and cooperatives are likely to be upheld, and that purveyors of medical marijuana will need to comply with those local regulations. A copy of the *Anaheim* decision, *Qualified Patients Association, et al. v. City of Anaheim*, is also contained in Attachment I. In addition, the City Attorney has also provided an explanatory memorandum on issues associated with the proposed medical marijuana ordinance and its adoption. This information is contained in Attachment J.

DISCUSSION:

At the direction of the City Council, the City Attorney's office prepared a draft ordinance to allow medical marijuana dispensaries based upon the ordinance from the City of Laguna Woods. The draft ordinance prepared which by the City Attorney is contained in Attachment A. A table comparing the existing Laguna Woods ordinance with this proposed ordinance is contained in Attachment E.

The draft ordinance would amend the City's zoning ordinance to allow medical marijuana dispensaries within the City of Wildomar. The draft ordinance would establish a regulatory permit requirement for medical marijuana dispensaries and would provide detailed provisions governing the application and approval process. A summary of the draft ordinance is provided below.

Sec. 17.292.010 – Legislative Intent	Documents the rationale and purpose for the ordinance.
Sec. 17.292.020 - Definitions	Defines the terms used in the ordinance.
Sec. 17.292.030 – Medical Marijuana Dispensary Permit Required	Requires a permit pursuant this Chapter to operate a medical marijuana dispensary.
Sec. 17.292.040 – Other Permit Issuance	Prohibits the issuance of any permits or approvals for a medical marijuana dispensary with the prior approval of a Medical Marijuana Dispensary Permit.
Sec. 17.292.050 – No Nonconforming Uses	Prohibits any existing medical marijuana dispensary from being considered a legal non-conforming use.
Sec. 17.292.060 – Not an Accessory Use	Prohibits a medical marijuana dispensary from being considered an accessory use to another use or business.
Sec. 17.292.070 – Locational Standards	Establishes the basic criteria for locating medical marijuana dispensaries (e.g.

	zoning districts and separation distances).
Sec. 17.292.080 – Application Process	Establishes the basic application requirements for a Medical Marijuana Dispensary Regulatory Permit.
Sec. 17.292.090 – Regulatory Permit review and approval	Establishes the permit approval process and requirements for a Medical Marijuana Dispensary Regulatory Permit.
Sec. 17.292.100 – Operational Requirements	Establishes the operational requirements and conditions for a medical marijuana dispensary.
Sec.17.292.110 – Appeal of Decisions	Establishes a decision appeal process to the City Council.
Sec.17.292.120 – Indemnification and Disclaimer Provisions	Establishes indemnification requirements and procedures associated with the approval of a medical marijuana dispensary.
Sec. 17.292.130 - Enforcement	Establishes the operational requirements and conditions for a medical marijuana dispensary.

In preparing the staff report for both the Planning Commission and City Council, there was several potential policy areas that staff wanted to receive specific guidance on. This list of these policy areas was also intended to provide a starting point for deliberations on the Ordinance. Unfortunately, because of the Planning Commission's final recommendations, no specific policy guidance has been provided by the Commission on these matters. The starting point topics are discussed below.

- Dispensary Locations – Zoning Districts
- Dispensary Locations – Separation Distances
- Approval Authority
- Day and Time of Operation
- Number of Dispensaries
- Duration of Security Recording Retention

<u>Dispensary Locations – Zoning Districts</u>
The draft ordinance prepared by the City's Attorney's Office would amend the City's zoning ordinance to allow medical marijuana cooperatives dispensing marijuana to locate within the C-1/C-P (general commercial), C-P-S (scenic highway commercial),

and C-O (commercial office) zones. From a land use and planning perspective, the dispensaries are essentially commercial land uses with many items common to commercial/retail businesses; dispensaries attract customers who travel to the business to purchase a product sold there and then leave. The potentially problematic social aspects of these types of businesses (e.g. loitering, public drug use) are addressed through the location and operational criteria, and by having the business in a location with clear visibility to the public.

An alternate strategy would be to allow these uses in a more industrial location. This approach would be more secluded than placing the use in a commercial zone. Possible industrial-based zoning districts would include the M-SC (manufacturing-service commercial) and I-P (industrial park) zones. However, if the Council would like to see more flexibility in the potential location, these uses could be allowed in both the commercial and industrial zones.

Dispensary Locations – Separation Distances

The draft ordinance contains separation distances from a variety of potentially sensitive uses that are youth oriented. The ordinance places restrictions on the location of dispensaries within these zones, including requirements that dispensaries be at least 1,000 feet away from youth-oriented establishments such as schools, parks, youth oriented sports and recreational facilities, and commercial daycare centers. The 1,000 foot distance also applies to areas where these types of uses are planned or zoned to be located. The 1,000-foot separation distances are consistent with State law requirements for medical marijuana dispensaries. The Laguna Woods ordinance also includes a 1,000 foot separation distance from adult businesses. These provisions are found in Section 17.292.070.D. A preliminary exhibit depicting many of the Youth Oriented Facilities in the City is contained in Attachment L.

Approval Authority

The draft ordinance establishes the City Manager, or their designee, to administratively approve the Medical Marijuana Dispensary Regulatory Permits without a public hearing if all of the criteria contained in Section 17.292.070 - Location Standards, and Section 17.292.080 - Application Process, and Section 17.292.090 - Regulatory Permit Review and Approval. If an approval process with an increased level of public participation is considered appropriate, some of the following are options that could be considered.

- Noticed public hearing before the Planning Director;
- Noticed public hearing before the Planning Commission;
- Notice public hearings before the Planning Commission (for a recommendation) and City Council (for a decision); or a
- Noticed public hearing before the City Council.

Day and Time of Operation

The draft ordinance proposes to limit the hours of operation for medical marijuana dispensaries to 9:00 am to 5:00 pm, Monday through Friday.

Number of Dispensaries

The Laguna Woods Ordinance did not limit the number of establishments dispensing medical marijuana, consequently the draft ordinance also does not limit how many Medical Marijuana Dispensary Regulatory Permits may be approved within the City. Should there be limitations on the number of dispensaries? If the Council feels that limitations in the number of dispensaries is appropriate, the Council will also provide direction on the selection criteria in the event there are more applications to open a medical marijuana dispensary than there are issuable permits.

Duration of Security Recording Retention

The Police Department has indicated that the retaining security camera recordings for only 120 hours (5 days) is not a long enough to guarantee the availability of the recordings in the event of an investigation. Consequently, the police requested that this time period be modified to a more appropriate period of between 14 and 30 days to ensure that the recordings are available in the event of an investigation. As a result, staff has modified the provisions of Sections 17.292.080.D.1 and 17.292.130.D.5 to require the retention of the security camera recordings for a continuous period of 14 days (236 hours).

Eligibility: Dispensary, Cooperative, Collective

The California medical marijuana law provides that individuals may associate to "collectively or cooperatively" cultivate medical marijuana (Health & Safety Code §11362.775.). From this, the State Attorney General's Guidelines concluded that the law only recognizes "cooperatives" and "collectives," and not "dispensaries." Nonetheless, the Guidelines also recognize that a "dispensary" may be legal if it operates as a "cooperative" or "collective."

For a medical marijuana dispensary to call itself a "cooperative" it must be organized and registered with the state pursuant to the provisions governing cooperatives in the Corporations Code or the Food and Agriculture Code. Cooperatives must follow strict rules on organization, articles, elections and distribution of earnings and must report individual transactions from individual members each year. The term "collective" on the other hand, is not defined in California law.

The Laguna Woods Ordinance uses the term "dispensary" as the place where medical marijuana is dispensed or provided to qualified patients. Because the Laguna Woods Ordinance did not fully define a dispensary as a cooperative, collective, or delivery service, this clarification was added to the definition of a dispensary is included in Section 17.292.020.F of the proposed ordinance (in Attachment A). By defining the term "dispensary" solely as a collective, cooperative, or delivery service under the Health and Safety Code, the non-profit status becomes an essential requirement of the Medical Marijuana Dispensary Regulatory Permit authorized by the proposed ordinance. The City Attorney has provided a summary of the terms used in many of the local ordinances. Because of the wide range of regulatory approaches taken by local jurisdictions, the local ordinances often define and use multiple terms. This information on the terminology used by other jurisdictions is contained in Attachment K.

PLANNING COMMISSION DISCUSSION:

This item was heard by the Planning Commission on July 21, 2010 and August 4, 2010. This draft ordinance was first considered by the Planning Commission, in its role as the "planning agency" for the City, because the proposed ordinance addresses the policy issue of medical marijuana dispensaries from a zoning and land use perspective and involves the addition of a new chapter to the City of Wildomar's Zoning Ordinance. The City Council established the Planning Commission as the "planning agency" for the City of Wildomar in 2008.

During the public hearing process, the Commission received both oral testimony and testimony on the proposed ordinance. The Planning Commission received 35 e-mails and letters between the 16th of July and 4th of August 2010. Nine of the written testimonies were in support of the ordinance while 24 of the written testimonies were in opposition to the ordinance. Copies of the written testimonies provided to the Commission are provided in Attachments H-1 and H-2. In addition, a copy of a lengthy presentation on medical marijuana (which was provided to the California Police Chiefs Association) that was provided to the City Council by Gerry Hall is also attached. A copy of this document is provided in Attachment H-3.

There were also over 40 speakers that testified at the public hearings. A summary of the testimony in support and in opposition to the proposed ordinance are provided below.

Public Testimony:	**Wildomar Residents**	**Non-Wildomar Residents**
In Support	5	14
In Opposition	22	3
General Comments or Observations Only	2	0

A condensed summary of the various public comments are provided below.

<u>Comments in Support</u>

- Supports the ordinance.
- Believes there is a valid medical need.
- Supports locating these facilities in commercial zones.
- Believes that dispensaries allow patients a safe place to acquire medical marijuana.
- Prohibiting dispensaries does not make marijuana go away, it will still be in the community.
- Capping prices could help protect against profiteering.

- Believes that opposition to the ordinance is just based upon a social stigma associated with marijuana.
- Would generate additional sales tax in the City.
- Adopting the ordinance would put the City “out in front” of issue if the ballot propositions in November pass.
- A well run dispensary can actually reduce crime.

Comments on the Proposed Ordinance

- Prefers the term “collective” to the term “dispensary”
- Section 17.292.010 – Should not be limited to City residents.
- Section 17.292.070 – Should not be allowed in the Redevelopment Area, and the 1,000 foot separation distance should be reduced to 600 feet and should not include daycare facilities (as proposed by Assembly Bill 2650).
- Section 17.292.100 – Needs longer hours, suggestions included until 6pm or 8 pm in the evening, or 10 am to 7 pm seven days a week.

Comments in Opposition

- Opposes the further access to marijuana in the community.
- Opposes the ordinance.
- Medical marijuana is bad for the community and for families.
- Concerned about the criminal infiltration that may occur.
- Concerned about loitering around the dispensaries (home delivery seems like a better option).
- The City may want to examine dispensaries in the surrounding communities to see what types of requirements and problems there are for these facilities.
- Concerned about increased crime and about increases in the amount of driving under the influence that may occur.
- Concerned about increased illegal drug use.
- Medical marijuana should only be allowed through regular pharmacies.
- The City should wait until after the election to make a decision on this (because of the proposition on the ballot).

Following the public hearing, the comments of the Planning Commissioners focused on a variety of topics. The Commission discussion focused on a variety of topics that included the following: the appropriateness of having dispensaries in the community,

questions about how much of a local need/demand there is for a dispensary, that government should not be regulating dispensaries, and that taking any action on the proposed ordinance at this time (i.e. ahead of the November election) may not be the best course of action since State law may be changing again.

In the process of arriving at a decision, the Planning Commission considered three motions. The first motion was that the Commission recommends that the City Council not adopt the ordinance and that the issue be reconsidered following the November election. This motion died for the "lack of a second".

The second motion received a second and was that the Planning Commission recommends approval of the draft ordinance to the City Council with the following changes:

- Allow the dispensaries in both commercial and industrial zones;
- Require permit approval at a noticed public hearing before the City Council;
- To extend the hours of operation to 9 a.m. to 5 p.m., Monday through Saturday; and,
- Limit the number of dispensary permits in the City to two. (However the motion did not include any selection criteria to determine how a permittee would be selected.)

However, this motion was defeated by a vote of 2 to 3 with Commissioners Dykstra and Kazmier voting for the motion.

The third (and final) motion also received a second and was that the Planning Commission adopt a resolution recommending that the City Council not adopt the proposed ordinance. This motion passed with a vote of 3 to 2 with Commissioners Andre, Benoit, and Devine voting for the motion, while Commissioners Dykstra and Kazmier voted against the motion. A copy of the approved Planning Commission resolution, recommending that the City Council not adopt the ordinance, is contained in Attachment B. The draft minutes from the July 21, 2010, and August 4, 2010, Planning Commission meetings are contained in Attachments C-1 and C-2, respectively.

ENVIRONMENTAL REVIEW:
A review of the potential environmental impacts was conducted for the proposed zoning ordinance amendment to establish special regulations limiting how a specific commercial retail land use can be operated within the City. This evaluation indicated no potential for impacts on the environment because this ordinance would simply permit a new use in existing retail commercial (or other zoning classification if it applies) zones and would not change or add such zones, it appears that there are no direct or indirect environmental impacts that would result.

As a result, the Planning Commission recommends that if the City Council adopts the ordinance, the City Council should determine that the proposed zoning ordinance

amendment has no potential to impact to the environment, and that the proposed ordinance is exempt from CEQA review pursuant to Section 15061(b)(3) which states that if an activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

ALTERNATIVES:

1. Adopt the proposed ordinance.
2. Modify the proposed ordinance and then adopt the revised ordinance.
3. Provide other direction.

Submitted and Approved By:

_____

Frank Oviedo
City Manager

ATTACHMENTS:

A. Draft Ordinance
B. Commission Resolution Recommending Denial
C. Planning Commission Minutes
    1. Meeting of July 21, 2010
    2. Meeting of August 4, 2010
D. Laguna Woods Ordinance
E. Laguna Woods Ordinance Comparison Table
F. State Medical Marijuana Documents
    1. The Compassionate Use Act (Proposition 215)
    2. Medical Marijuana Program (SB 420)
    3. California Attorney General, Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use
G. Medical Cannabis Dispensing Collectives and Local Regulation, prepared by Americans for Safe Access
H. Written public comments received by the Commission.
    1. Written Comments prior to 5:00 p.m. July 21, 2010
    2. Written Comments between 5:00 p.m. July 21, 2010 and August 4, 2010
    3. Medical Marijuana Dispensaries and Associated Issues, presented to the California Chiefs of Police Association
I. Anaheim Decision (*Qualified Patients Association, et al. v. City of Anaheim*)
J. Memorandum from the City Attorney regarding the proposed ordinance
K. Ordinance Terminology by City and County
L. Revised Preliminary Exhibit depicting a 1,000 foot radius around the locations of many of the Youth Oriented Facilities

AmericansFor SafeAccess

Advancing Legal Medical Marijuana Therapeutics and Research

City Ordinances (38)

Albany
Angels Camp
Berkeley
Citrus Heights
Cotati
Diamond Bar
Dunsmuir
Elk Grove
Eureka
Fort Bragg
Jackson
La Puente
Laguna Woods
Long Beach
Los Angeles
Malibu
Martinez
Oakland
Palm Springs
Placerville
Plymouth
Redding
Richmond
Ripon
San Francisco
San Jose
San Mateo
Santa Barbara
Santa Cruz
Santa Rosa
Sebastopol
Selma
South El Monte
Sutter Creek
Tulare
Visalia
West Hollywood
Whittier

County Ordinances (9)

Alameda
Calaveras
Kern
Los Angeles
San Luis Obispo
San Mateo
Santa Barbara
Santa Clara
Sonoma

City Moratoriums (100)

Adelanto
Aliso Viejo
American Canyon
Anderson
Arcata
Baldwin Park
Barstow
Beaumont
Benicia
Brea
Calexico
Calimesa
Calistoga
Carpinteria
Carson
Clearlake
Coachella
Colton
Corning
Chula Vista
Daly City
Danville
Downey
Dunsmuir
El Centro
Fillmore
Fountain Valley
Galt
Glendale
Grass Valley
Greenfield
Half Moon Bay
Hemet
Imperial Beach
La Habra
Lafayette
Laguna Beach
Laguna Niguel
Lake Elsinore
Livingston
Lodi
Loma Linda
Loomis
Los Altos
Los Gatos
Mammoth Lakes
Marin City
Menifee
Mill Valley
Monterey
Moreno Valley
Morgan Hill
Morro Bay
Mount Shasta
Mountain View
Napa
National City
Oakdale
Oceanside
Orange
Orinda
Orland
Pacific Grove
Perris
Porterville
Rancho Cordova
Rancho Cucamonga
Red Bluff
Redwood City
Richmond
Rio Dell
Rosemead
Sacramento
Salinas
San Bruno
San Dimas
San Fernando
San Juan Bautista
San Ramon
Santee

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South San Francisco
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Tehachapi
Temple City
Vacaville
Ventura
Victorville
Walnut Creek
Watsonville
West Sacramento
Westlake Village
Yreka
Yucca Valley

County Moratoriums (15)
Butte
Colusa
Fresno
Glenn
Lake
Lassen
Madera
Nevada
San Bernardino
San Diego
San Joaquin
Shasta
Solano
Tehama
Tulare

City Bans (134)
Alameda
Anaheim
Antioch
Arroyo Grande
Atascadero
Auburn
Azusa
Blythe
Brawley
Brentwood
Buellton
Buena Park
Camarillo
Ceres
Chino
Claremont
Cloverdale
Clovis
Colma
Concord
Corona
Costa Mesa
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Fontana
Fortuna
Fremont
Fresno
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Garden Grove
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Healdsburg
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Highland
Hollister
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Indian Wells
Indio
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La Mirada
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La Quinta
Laguna Hills
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Lake Forest
Lawndale
Livermore
Lincoln
Lompoc
Los Banos
Manhattan Beach
Manteca
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Merced
Millbrae
Mission Viejo
Modesto
Montclair
Monterey Park
Moorpark
Murrieta
Nevada City
Newark
Norco
Oakdale
Oakley
Ontario
Palm Desert
Palos Verdes Estates*
Pasadena
Paso Robles
Patterson
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Temecula
Torrance
Turlock
Tustin
Ukiah
Union City
Upland
Vista
Willits
Windsor
Woodland
Yountville
Yuba City
Yucaipa

County Bans (9)
Amador
Contra Costa*
El Dorado
Madera
Merced
Placer
Riverside
Stanislaus
Sutter

*Ban ordinance allows for one dispensary.

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ATTACHMENT A

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ADDING CHAPTER 17.292 TO THE WILDOMAR MUNICIPAL CODE TO ALLOW THE CREATION OF MEDICAL MARIJUANA DISPENSARIES AND ESTABLISHING ASSOCIATED REGULATIONS AND AMENDING PORTIONS OF CHAPTER 17.12 OF THE WILDOMAR MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The City Council finds that this amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the Guidelines, in that the amendment does not have the potential for causing a significant effect on the environment.

SECTION 2. The City Council finds that:

A. In November 1996, the voters of the State of California approved Proposition 215, the Compassionate Use Act of 1996 ("CUA"), which has been codified as California Health and Safety Code Section 11362.5, et seq.; and

B. The intent of the CUA was to enable persons who might benefit from the use of marijuana for specified medical purposes to obtain and use it under limited, specified circumstances; and

C. In 2003, the California Legislature enacted Senate Bill 420 ("SB 420") (codified as Health and Safety Code Sections 11362.7-11362.83), which supplemented and clarified the scope of the application of the Compassionate Use Act, promoted uniform and consistent application of the CUA within the State, and enhanced access of patients and caregivers to medical marijuana; and

D. Section 11362.83 of the California Health and Safety Code provides that localities are free to adopt laws that are consistent with State law, and as such, it is up to each jurisdiction to decide if they will allow medical marijuana dispensaries, in what zones, and under what regulations; and

E. Recognizing that there is a potential conflict between Federal and State law, it is the City Council's intention that this ordinance shall be deemed to comply with California law as established by the CUA and SB 420, which provide for the use of medical marijuana by qualified patients and the dispensation of medical marijuana to qualified patients by medical marijuana dispensaries, regarding the location and operation of medical marijuana dispensaries; and

F. To protect the public health, safety and welfare, it is the desire of the City Council to modify the Wildomar Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

G. It is the City Council's intention that nothing in this ordinance shall be construed to:

1. Allow persons to engage in conduct that endangers others or causes a public nuisance;

2. Allow the use of marijuana for nonmedical purposes; or

3. Allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise not permitted under state law.

SECTION 3. Based on the findings outlined in Section 2 above, the City Council hereby adopts Chapter 17.292 of the Wildomar Municipal Code to read as follows:

"Chapter 17.292 Medical Marijuana Dispensaries

17.292.010 Legislative purpose.

It is the intent of the City of Wildomar to allow the establishment of Medical Marijuana Dispensaries within the boundaries of the City of Wildomar to serve the bona fide medical needs of the residents of the City as provided by state law. Further, it is the intent of the City Council to regulate the offsite and other public impacts of such facilities to protect the public health, safety, and welfare of the residents, children, and businesses from harmful secondary effects that could result from a dispensary.

17.292.020 Definitions.

All definitions set forth in Health and Safety Code sections 11362.5 and 11362.7 et seq., as may be amended from time to time, including, but not limited to, the terms "attending physician", "persons with an identification card", and "serious medical conditions" shall apply under this chapter in addition to the definitions set forth as follows:

A. "Applicant" means a person who is required to file an application for a permit under this chapter, including an individual owner, managing partner, officer of a corporation, or any other operator, manager, employee, or agent of a Medical Marijuana Dispensary.

B. "City" means the City of Wildomar.

C. "City Manager" means the City Manager of the City of Wildomar or his/her designee.

D. "Identification Card" shall have the same definition as contained in California Health and Safety Code section 11362.7, as may be amended from time to time.

E. "Medical Marijuana" is defined in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, et seq. "Medical Cannabis" shall have the same definition as Medical Marijuana.

F. “Medical Marijuana Dispensary” or “Dispensary” means any facility or location where the primary purpose is to dispense Medical Marijuana as a medication that has been recommended by a physician and where Medical Marijuana is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or qualified patient, in strict accordance with California Health and Safety Code sections 11362.5 and 11362.7, et seq. Only a group of primary caregivers and/or qualified patients who collectively or cooperatively associate to cultivate and dispense Medical Marijuana shall be deemed a Medical Marijuana Dispensary. “Medical Marijuana Dispensary" also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary due to physical or mental disability, for medical purposes in compliance with Health and Safety Code sections 11362.5 and 11362.7, et seq.

A Medical Marijuana Dispensary shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of the Division 2 of the Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code; a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of Health and Safety Code, as long as such use complies strictly with applicable law including, but not limited to, Health and Safety Code sections 11362.5 and 11362.7, et seq.

G. “Medical Marijuana Dispensary Regulatory Permit” means a permit to operate a Medical Marijuana Dispensary issued under this ordinance.

H. “Person” means any individual, partnership, co-partnership, firm association, joint stock company, corporation, limited liability company, or combination of the above, in whatever form or character.

I. “Police Chief” means the Police Chief designated by the City Council of the City of Wildomar, or the authorized representatives thereof.

J. “Primary Caregiver” shall have the same definition as California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

K. “Qualified Patient” shall have the same definition as contained in California Health and Safety Code sections 11362.5 and 11362.7, as may be amended from time to time.

L. “School” means an institution of learning for juveniles under the age of 18, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education. This definition does not include collegiate level institutions including colleges, graduate schools, universities, and non-profit research institutions.

M. "Youth Oriented" means and establishment that advertises in a manner that identifies an establishment as catering to or providing services intended for minors; or an establishment where the individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

17.292.030 Medical marijuana dispensary permit required.

A. No person shall operate a Medical Marijuana Dispensary without obtaining a Medical Marijuana Dispensary Regulatory Permit pursuant to the provisions of Chapter 17.292. Every person who proposes to maintain, operate or conduct a medical marijuana dispensary in the City of Wildomar shall file an application with the City Manager upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.

B. Prior to initiating operations and as a continuing requisite to conducting operations, any person or entity wishing to operate a Medical Marijuana Dispensary shall obtain a Medical Marijuana Dispensary Permit from the City Manager or his/her designee, under the terms and conditions set forth herein.

17.292.040 Other permit issuance.

No land use entitlement, permit (including building permit), approval, site plan, certificate of occupancy, zoning clearance, or other land use entitlement or authorization for a Medical Marijuana Dispensary shall be granted or permitted except in conformance with this chapter.

17.292.050 No nonconforming uses.

No use which purports to have distributed medical marijuana prior to the enactment of this chapter shall be deemed to have been a legally established use under the provisions of the Zoning Code and such use shall not be entitled to claim legal nonconforming status.

17.292.060 Not an accessory use.

A Medical Marijuana Dispensary is not and shall not be approved as an accessory use to any other use permitted by this Zoning Code.

17.292.070 Location standards.

The following location standards shall apply to all Medical Marijuana Dispensaries:

A. Medical Marijuana Dispensaries may be permitted, upon application and approval of a Medical Marijuana Dispensary Regulatory Permit in accordance with the criteria set forth in this chapter, only within the General Commercial (C-1/C-P), Scenic Highway Commercial (C-P-S), and Commercial Office (C-O) Zones.

B. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned, planned, or otherwise designated for such use.

C. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of a youth-oriented establishment, or an establishment that provides youth-oriented services characterized by either or both of the following:

1. The establishment advertises in a manner that identifies the establishment as catering to or providing services intended for minors; or

2. The individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

D. A Medical Marijuana Dispensary shall not be established or located within 1,000 feet of those uses described in Chapter 5.44 - Sex-Oriented Businesses of the municipal code.

E. All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building, or structure in which the medical marijuana dispensary is, or will be located, to the nearest property line of the use to be separated.

F. A Medical Marijuana Dispensary shall be parked at a rate of one space for every 250 square feet of gross floor area for the entire business.

17.292.080 Application process.

An application for a regulatory permit for a Medical Marijuana Dispensary shall include, but shall not be limited to, the following information:

A. A description of the size of the group of primary caregivers and/or qualified patients who comprise the proposed Medical Marijuana Dispensary and documentation demonstrating that the Medical Marijuana Dispensary is a non-profit operation;

B. The address of the location from which the dispensary for which application is made will be operated;

C. A site plan and floor plan of the premises denoting:

1. Waiting Area

2. Dispensing Area

3. Location of Storage Area

a. Separate air handling/HVAC system for the lease space. Neither the ventilation system for the lease space/premise

nor the air handling/HVAC controls are to be shared with another lease space.

4. Exterior Lighting

5. Restrooms

6. Signage Plan (both interior and exterior)

D. A security plan including the following measures:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least two hundred thirty-six (236) concurrent hours of digitally recorded documentation in a format approved by the Police Chief. The cameras shall be in use twenty four (24) hours per day, seven (7) days per week. The areas to be covered by the security cameras include, but are not limited to, the dispensing areas, storage areas, all doors and windows, and any others as determined by the Police Chief.

2. The lease/business space shall be alarmed with an alarm system that is operated and monitored by a recognized security company.

3. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of dispensary staff.

4. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.

E. The name and address of the person who is managing or responsible for the Medical Marijuana Dispensary's activities;

F. The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property; the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana dispensary will be operated on his/her property;

G. Identification of the source of all medical marijuana dispensed by the Medical Marijuana Dispensary.

H. A statement verifying the truth and accuracy of all information requested signed under penalty of perjury.

I. Any such additional and further information as is deemed necessary by the City Manager to administer this chapter.

17.292.090 Regulatory permit review and approval.

A. The Police Chief shall conduct a background check of any applicant for a regulatory permit and report his/her determination on the acceptability of the applicant's background to the City Manager.

B. Upon completing the review process, the regulatory permit shall be granted or conditionally granted, unless the City Manager, in consultation with the Police Chief finds that the applicant:

1. Has made one or more false or misleading statements, or omissions on the application or during the application process; or

2. Is not a Primary Caregiver or Qualified Patient; or

3. Has not satisfied all of the requirements of this Chapter; or

4. The applicant of the Medical Marijuana Dispensary has been convicted of a felony, or convicted of a misdemeanor involving moral turpitude, or the illegal use, possession, transportation, distribution or similar activities related to controlled substances. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

C. Based on the information set forth therein, and in consultation with the Police Chief, the City Manager may impose reasonable terms and conditions to implement the requirements of this Chapter.

D. A medical marijuana dispensary regulatory permit shall be valid for one year. Sixty (60) days prior to the expiration of a medical marijuana regulatory permit, the operator of the Medical Marijuana Dispensary may apply for renewal of the permit for a subsequent year. Each renewal application shall certify the accuracy of the information in the prior application and document any changes or additions to that information as of the date of the application for renewal.

E. A Medical Marijuana regulatory permit is not transferable. Prior to a change in operator, the applicant shall secure a new medical marijuana regulatory permit from the City. Failure to do so may be grounds for revocation.

17.292.100 Operational requirements.

No person shall engage in, conduct, or permitted to be engaged in or conducting a Medical Marijuana Dispensary unless each of the following requirements are continually met:

A. The dispensary shall comply fully with all of the applicable restrictions and mandates set forth in state law.

B. The dispensary shall only be open between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday.

C. Physician's referrals shall be verified by the dispensary prior to dispensing initially and at least every six (6) months.

D. Dispensary staff shall maintain patient records on site, including, but not limited to, a copy of the physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by the said primary caregiver.

E. The dispensary must maintain a lobby/waiting area at the entrance of the business, which is physically separated from the dispensing area. Only staff shall be allowed in the dispensing area. The public areas of the business shall be open and viewable at all times by owner/staff.

F. Medical Marijuana shall be kept in a secured manner during business and non-business hours.

G. At all times, the air handling/HVAC system for the lease space shall be isolated to the lease space and in no way linked or extended to another lease space. The controls for said system shall be self contained for the lease space as well.

H. If consumable Medical Marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for sale/distribution, then the applicant needs to secure Riverside County Department of Environmental Health approval for handling food products and the associated letter grade must be displayed, if applicable.

I. No dispensary shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of medical marijuana on terms and consistent with this Code and applicable law.

J. Any Medical Marijuana Dispensary must pay any applicable sales tax pursuant to federal, state, and local law.

K. The entrance and lobby/waiting area shall be posted at all times indicating that smoking, ingesting, or consuming marijuana on the premises or in the associated parking lot is prohibited.

L. Signage for the dispensary shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.

M. Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises.

N. Windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

O. No person under the age of 18 years shall be allowed on the premises at any time.

P. Physician service shall not be provided on the premises. “Physician services” does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site. However, no social service activities may be provided in the dispensing area.

Q. All applicable permits, including the medical marijuana regulatory permit, shall be conspicuously posted at the location of the dispensary in full public view.

17.292.110 Appeal of decisions.

Any decision regarding the approval, conditional approval, denial of a new or renewed, or revocation of a Medical Marijuana regulatory permit may be appealed to the City Council. Said appeal shall be made by a notice of appeal from the person appealing within thirty (30) days from the date of the decision. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council amended from time to time, and a written, verified declaration setting forth the basis for the claim that the permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of a Medical Marijuana regulatory permit until action is taken on the appeal.

17.292.120 Indemnification and disclaimer provisions.

A. To the fullest extent permitted by law, the City of Wildomar shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to medical marijuana, or for the activities of any medical marijuana dispensary. Upon receiving possession of a regulatory permit for a Medical Marijuana Dispensary, the Operator of the dispensary shall sign an agreement: (1) indemnifying the City of Wildomar; (2) carry insurance in the amounts and of the types that are acceptable to the City Manager; and (3) naming the City as an additionally insured.

B. As a condition of approval of a regulatory permit for a Medical Marijuana Dispensary Permit, the operator, by utilizing the benefits of the approval, shall thereby agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval. In addition, the applicant/owner shall reimburse the City et al. for any court costs and attorney fees that the City et al. may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

C. Approval and inspection processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support

of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

17.292.130 Enforcement.

A. Recordings made by the security cameras shall be made available to the City Manager and/or Police Chief upon verbal request; no search warrant or subpoena is needed to view the recorded materials.

B. The Police Chief, City Manager, City Building Official and their authorized representatives shall have the right to enter the dispensary from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.

C. Operation of the dispensary in non-compliance with any conditions of approval or standards of this chapter, or continuing a use after a medical marijuana regulatory permit has expired, shall constitute a violation of the Municipal Code and shall be handled in accordance with Chapter 1.03 of this Code.

D. The City Manager may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

1. The business has three violations outlined in this chapter that occur within a 180-day period; or

2. Operations cease for more than ninety (90) calendar days, including during change of ownership proceedings; or

3. A use is continued after a Medical Marijuana Regulatory Permit has expired; or

4. Ownership is changed without securing a Medical Marijuana Regulatory Permit; or

5. Operator fails to maintain at least two hundred thirty-six (236) continuous hours of security recordings; or

6. Operator fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.“

SECTION 4. Section 17.12.040 of the Wildomar Municipal Code is hereby amended to strike the language prohibiting the establishment of medical marijuana dispensaries, and shall read as follows:

“**17.12.040 Uses allowed in zone classifications.**

The terminology used in Section 17.12.010 of this chapter is general only and is not intended to be descriptive of all uses allowed in the zone classifications. The zone classifications are specifically set forth in subsequent articles of the ordinance codified

in this chapter to which reference should be made to determine all the uses permitted therein. When a use is not specifically listed as permitted or conditionally permitted in a zone classification, the use is prohibited unless, in circumstances where this section empowers him or her to do so, the planning director makes a determination that the use is substantially the same in character and intensity as those uses permitted or conditionally permitted in the zone classification."

SECTION 5. Section 17.12.050 of the Wildomar City Code is hereby repealed in its entirety.

SECTION 6. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase added by this Ordinance, 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 of effectiveness of the remaining portions of this Ordinance 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 are declared unconstitutional, invalid, or ineffective.

SECTION 7. Effective Date. This ordinance shall take effect thirty (30) days after its passage by the City Council.

SECTION 8. Publication. The City Clerk shall cause this ordinance to be published or posted in accordance with Government Code section 36933.

ADOPTED AND ENACTED this _____ day of _____, 2010.

_____
Bridgette Moore
Mayor

APPROVED AS TO FORM:

_____
Julie Hayward Biggs
City Attorney

ATTEST:

_____
Debbie A. Lee, CMC
City Clerk

ATTACHMENT B

RESOLUTION NO. PC10-012

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF WILDOMAR RECOMMENDING THAT THE CITY COUNCIL NOT ADOPT AN ORDINANCE ALLOWING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES

WHEREAS, In 1996 voters in California approved "The Compassionate Use Act of 1996" (CUA) with Proposition 15; and

WHEREAS, in 2003, the State enacted Senate Bill 420 "The Medical Marijuana Program" to implement the provisions of the CUA; and

WHEREAS, the City of Wildomar incorporated on July 1, 2008; and

WHEREAS, the regulation of land uses through zoning provisions is a function of local government intended to protect the public health, safety, and welfare; and

WHEREAS, to protect the public health, safety and welfare, it is the desire of the City Council to modify the Wildomar Municipal Code to be consistent with SB 420, regarding the location and operation of medical marijuana dispensaries; and

WHEREAS, on July 10, 2010 the City gave public notice by the methods prescribed the Municipal Code announcing the holding of a public hearing at which the proposed zoning code amendment would be considered; and

WHEREAS, on July 21, 2010 the Planning Commission, during a regularly scheduled meeting, considered these possible amendments to the Zoning Ordinance; and

WHEREAS, the Planning Commission continued the public hearing to August 4, 2010; and

WHEREAS, on August 4, 2010 the Planning Commission, during a regularly scheduled meeting, again considered the possible amendments to the Zoning Ordinance.

NOW THEREFORE, the Planning Commission of the City of Wildomar does Resolve, Determine, Find and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS. Section 15270(a) states that CEQA does not apply to projects which a public agency rejects or disapproves, that no specific environmental analysis is required.

SECTION 2. PLANNING COMMISSION ACTION. Following a careful evaluation of the issues and having considered all the information and public testimony, the Planning Commission hereby recommends that the City Council not adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

PASSED, APPROVED AND ADOPTED this 4th day of August 2010.

Robert Devine
Chairman

APPROVED AS TO FORM:

Thomas Jex
Assistant City Attorney

ATTEST:

David Hogan
Planning Commission Secretary

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)
CITY OF WILDOMAR)

I, David Hogan, Planning Commission Secretary of the City of Wildomar, California, do hereby certify that the foregoing Resolution No. PC10-12 was duly adopted at a regular meeting held on August 4, 2010 by the Planning Commission of the City of Wildomar, California, by the following vote:

AYES: Andre, Benoit, Devine

NOES: Dykstra, Kazmier

ABSTAIN: none

ABSENT: none

David Hogan
Planning Commission Secretary
City of Wildomar

ATTACHMENT C

ATTACHMENT C-1

EXCERPTS OF THE REGULAR PLANNING COMMISSION MEETING DRAFT MINUTES FOR JULY 21, 2010

5.1 ZONING CODE AMENDMENT 10-05 – MEDICAL MARIJUANA DISPENSARIES
RECOMMENDATION: Select one of the following actions:

A. Adopt a resolution recommending that the City Council adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

B. Adopt a resolution recommending that the City Council not adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

Director Hogan made the staff presentation and handed the Commission a preliminary version of the 1,000 setback exhibit.

Commissioner Andre commented there where missing public and youth areas that are not reflected on the location map.

Director Hogan replied the map is not in a final form and was created by staff to give the Commission an idea of where these sensitive uses are and what the map will look like.

Commissioner Andre commented on the illegal dispensaries that surfaced in the City of Los Angeles when they allowed legal dispensaries to operate. How will the City address this issue if it were to happen?

Planning Director Hogan replied that the City of Wildomar is small enough for staff to keep a strong control.

Vice Chairman Dykstra opened the public hearing

Kristan Lloyd suggested additional information be added to the staff report. One is allowing outside sources to operate in the city. Second, is that dispensaries should be excluded from the RDA zone. Third, is to consider revising the hours of operation for dispensaries and fourth, to designate bathrooms for employees of dispensaries and not for public use.

Gina Castanon, is in favor of the zoning code amendment, but has concerns. She referred to the AB2650 which allows dispensaries 600 feet near schools and parks which can be applicable for the City ordinance. She also expressed her agreement with Kristan Lloyd regarding the hours of operation and urged the Planning Commission to pass the decision onto the City Council.

Steven Chang, suffered a motorcycle accident and expressed his first hand experience with the medicine and how it aid him. He also mentioned people that sell the medicine should be given background checks.

Gil Rasmussen, commented on the need to revise the ordinance to say collective and not dispensaries because they are two different subjects.

Garin Heslop, expressed his concerns with zoning. He would like to open a wellness center to aid the elderly in the community and feels that the industrial zone for this use as it is not

creating a sense of community. He also commented that the hours of operation are difficult to work with and suggested a revision of hours.

Norman Smith feels that by allowing people to open dispensaries it will create a large problem for the City.

Echo Benoit asked about crime rates relating to this use. She feels that if dispensaries are allowed it should have tight controls. Also, asked what surrounding Cities are doing regarding this subject.

Gerald Hall, asked Planning Commission not to approve the zoning code amendment.

Burt Goulding, recommended not approving the zoning code amendment.

Tom Barral sees the City as a great place to live and is against the zoning code amendment.

Carlos Stahl commented on creating a safe place for people to purchase their product.

Ryan Rochoa, representing Robert Rees, commented on providing a safe environment for people to acquire their medicine.

Steven A. Figueroa commented on the pain a family member suffers and how they depend on medical marijuana to survive.

Kelly Rene commented on the negative image perceived on people who use medical marijuana.

Commissioner Andre commented on the various medical surgeries he has gone through and the pain he has endured from the outcome and understands the need to seek pain relief. He is all for helping people deal with pain, but see's the problem other Cities are dealing with illegal businesses rising from the approval of legal businesses and the expense placed upon the Cities to monitor these establishments. In addition, feels it is unfair to vote without the presence of Chairman Devine and proposes a continuance.

Commissioner Benoit agreed with a continuance and would like to see more information.

Commissioner Kazmier agreed with Commissioner Benoit's comment.

Director Hogan commented the Commission may choose to continue the matter to a later date, but it is up to the Commission to decide.

Motion: Vice Chairman Dykstra made a motion to continue the public hearing to the August 4, 2010 Planning Commission meeting. The motioned was seconded by Commissioner Kazmier. Motion carried, the following vote resulted:

AYES:	Dykstra, Andre, Benoit, Kazmier
NOES:	-
ABSENT:	Devine
ABSTAIN:	-

ATTACHMENT C-2

EXCERPTS OF THE REGULAR PLANNING COMMISSION MEETING DRAFT MINUTES FOR AUGUST 4, 2010

4.1 ZONING CODE AMENDMENT 10-05 – MEDICAL MARIJUANA DISPENSARIES
RECOMMENDATION: Select one of the following actions:

A. Adopt a resolution recommending that the City Council adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

B. Adopt a resolution recommending that the City Council not adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

Director Hogan made the staff presentation

Chairman Devine stated he had listened to a CD copy of the previous Planning Commission meeting and is informed of the testimony and discussions that took place at the July 21, 2010 meeting.

Chairman Devine opened the continued public hearing.

Garin Heslop started a power point presentation representing a company by the name of MedCare which focused on the impacts and benefits of medical marijuana dispensaries.

Austen Diffenderfer spoke continuing the PowerPoint presentation

Chairman Devine asked the presenter if they already operated a collective in the State?

Austen answered they cover a large area of Temecula and Corona and currently have an office space in Temecula

Garin Heslop clarified they do not dispense any medical marijuana from their office locations.

Orrin Larsen spoke continuing the PowerPoint.

Chairman Devine asked what the source of information for reduced crime rates were taken from

Orrin Larsen responded the information would be in the report provided to the Planning Commission.

Sarah Lofthus, spoke continuing the PowerPoint.

Commissioner Andre asked presenter Sarah Lofthis, what type of medical provider is she.

Sarah Lofthis responded she is certified as a chiropractor, massage therapist and acupuncture.

David Dinius spoke continuing the PowerPoint.

Commissioner Andre asked where the presenter's office is located.

David Dinius responded that MedCare only has an office location and they do not dispense from it.

Commissioner Andre asked were does MedCare dispense.

David Dinius responded MedCare has a strict delivery service.

Chairman Devine asked were is the source of the product.

David Dinius responded the source is the MedCare members and that Garin Heslop would be a better source to answer the Commission's questions.

Garin Heslop clarified the answer from David Dinius by saying MedCare is a private cooperative, were all members cultivate the medicine and provide the medicine to one another.

Kelly Renee spoke continuing the PowerPoint presentation.

Ron Downey commented if the Planning Commission would like see a functional collective they could come visit his establishment located in Riverside, California. Also, added if the City does not have regulations on this item, it will be difficult to keep dispensaries out of the City if they are approved by the Government.

Wayne Williams referred to an article he provided staff regarding the negative relationship between marijuana and crime.

Carlos Stahl commented that he owns and operates a dispensary in the City of Lake Elsinore and currently has plans to operate a dispensary in Wildomar.

Commissioner Benoit arrived.

Gina Castanon commented on the cost that has been consumed by City Staff in drafting the ordinance and reminded the Commission of the 4 to 1 vote from the City Council to allow the Ordinance to be drafted. She feels the Commission is not addressing zoning issues and is concentrating on criticizing the ordinance instead.

Chairman Devine clarified the Commission gives recommendations to City Council and based on that the Council will ultimately make their decision.

Gina Castanon replied since the Chairman was absent, the Commission rescheduled the meeting to a later date for further discussion and that cost the City money.

Commissioner Andre commented each Planning Commissioner represents 6,500 residences in the community; therefore, a full Commission is needed to decide on issues.

Gina Castanon stated that she disagreed with that statement and further commented on the 15 minute delay to begin tonight's meeting.

Gina Castanon urged the Planning Commission to make a decision and not push the item off any further.

Kyle Castanon commented on how well that City staff had researched the issue and in drafting the ordinance and also urged the Planning Commission to take into consideration approving there ordinance and take the content of the ordinance into consideration.

Norman Smith commented to City staff to define the meaning of Dispensaries and Collectives. He also added his long history in law enforcement and believes the approval of Marijuana will impact the City negatively.

Gerald Hall commented retired veterans can receive medical marijuana at the U.S. Department of Veterans Affairs and doesn't understand why people are proposing dispensaries for veterans.

Burt Goulding summarized the medical marijuana dispensary history.

Robert Trivison commented the idea of medical marijuana dispensaries has been sugar coated by the speakers who are in favor of it and opposes the approval of the ordinance.

Curtis Drake commented medical marijuana will give the City a bad perception and devalue property.

Maria Walker commented she opposes the ordinance due to personal reasons of her brother falling victim to the drug.

Veronica Langworthy commented on the non medical value of marijuana and strongly urges the Planning Commission to not approve the ordinance.

Don Whildin agreed with the previous speaker's (Veronica Langworthy) comments.

Robin Myers commented drugs should be made available by pharmacy technicians and not by individual business owners.

Mike Hendricks commented on his opposition of allowing dispensaries in the City and added if people need medicine they should go to a pharmacy and not a dispensary.

Steve Price commented on his personal observation of the drugs negative effects on friends and coworkers.

Gina Meador commented on the negative effects marijuana has had on her son and opposes the ordinance.

Larry Walker commented on allowing the voters decide the outcome of the ordinance.

Ginger Carlson commented on the abuse of selling prescription medical marijuana to public.

Kristan Lloyd commented on the history of an illegal business that opened for business and was shut down by the City. Also, reminded the Commission that City Council voted 4 to 1 on drafting the ordinance and believes the Council would not want to waste City money on an ordinance they did not see any future in.

Ruben Hernandez commented on the commercial drugs being created and distributed in a control environment and as a family man believes the City should wait until November to let voters decide the outcome of the Marijuana issue.

Jeff Rosen represented Pastor Ron Armstrong of Cornerstone Community Church and read a letter addressed to the Planning Commission which reminded the Commission to carefully weight the issue and make sure people are actually trying to provide relief or trying to make money on those desperately needing medicine.

George W. Taylor questioned on why the speakers who are for the approval of the ordinance not able to open a dispensary in Cities which they reside in. Mr. Taylor commented that perhaps the City should wait for the decision other Cities will make on the subject.

Tim Walker commented the speakers today are in the business for the money and not to provide medical relief.

Tyler Adams commented the City to wait until November for the voters to make a decision and not discuss medical marijuana at this moment.

Robert Skiff commented he survived cancer without the need for medical marijuana and opposes dispensaries.

Martha L. Bridges commented on her opposition to medical marijuana dispensaries.

Chairman Devine closes the public hearing at 8:56 PM

Director Hogan asked the Planning Commission for a 5 minute recess to update Commissioner Benoit on the discussion he may have missed due to his late arrival.

Chairman Devine responded it would be a good idea to update Commissioner Benoit at this time before the Commission's discussion. The Commission took a short recess and then resumed the meeting.

Commissioner Andre commented it might be a good idea to wait until November to let the voters decide.

Commissioner Benoit agreed with Commissioner Andre in waiting.

Commissioner Kazmier agreed with waiting until the November vote.

Vice Chairman Dykstra questioned City Attorney Julie Hayward Biggs if representatives from her law firm drafted the Laguna Woods Ordinance.

City Attorney Biggs responded in the affirmative but added the ordinance had been created before she began working at the firm and is not fully aware of its contents.

Vice Chairman Dykstra asked City Attorney Biggs if she is aware of any crime that has risen due to the approval of the ordinance.

City Attorney Biggs responded the City of Laguna Woods is a small and quiet community.

Commissioner Benoit asked City Attorney Biggs if the Laguna Wood is gated.

City Attorney Biggs responded that only part of the city is gated.

Vice Chairman Dykstra asked Director Hogan and City Attorney Biggs if there is a tax implication as far as income and a cost in law enforcement should the ordinance be approved.

Director Hogan responded that finances are not generally a component of the Planning Commissions deliberate process. However, there is a deposit based fee that is implemented for staff's time that goes into processing a project. He mentioned staff needs more for the ordinance, but to answer Vice chairman Dykstra he answered in the affirmative.

City Attorney Biggs responded if the City of Wildomar wishes to tax on medical marijuana it would have to be approved by the voters at an election.

Vice Chairman asked City Attorney Biggs about the sales tax being implemented.

City Attorney Biggs responded she believes medical marijuana is subject to the State sales tax.

Vice Chairman Dykstra asked Director Hogan if there has been any projection of how much revenue sales tax a dispensary would generate.

Director Hogan responded there have been no projections, because staff isn't sure what assumptions to use to create these projections.

Vice Chairman Dystra asked City Attorney Biggs if there is any experience with the City of Laguna woods regarding sales tax.

City Attorney Biggs responded she did not know that information the moment.

Vice Chairman Dystra stated he would like to know that information.

Vice Chairman Dystra asked what cost of police and code enforcement will be.

Director Hogan responded that the proposed ordinance contains provisions for ongoing inspections by code enforcement and stated that he anticipated that a deposit will need to be established upon permit approval to cover City costs.

Vice Chairman Dystra asked if a deposit fee had been established in the ordinance.

Director Hogan responded that the ordinance does not establish a particular fee.

Vice Chairman Dystra asked if that is a subject matter City Council discusses or Planning Commission.

Director Hogan responded that finance issues are generally a City Council matter.

Vice Chairman Dystra commented he has mixed feelings on the subject matter and struggles with the idea of compassionate care and proper regulation. His thoughts are the zoning designations should be commercial and industrial and the establishments should have a 1,000 foot distance from any youth orientated location. Permits should have a notice of public hearing, days and hours of operation should be 9-5 Monday though Saturday, limit the number dispensaries to 2 and the duration security recording retention should be 14 days.

Chairman Devine commented he also has mixed feelings for the subject. He wants people to be able to seek relief but also has questions on City resources being used to secure these establishments and the crime element that may arise from them.

Chairman Device asked Director Hogan if the City can issue some type of Bond on the medical marijuana to cover the added staff time to process and monitor marijuana dispensaries.

Director Hogan responded in the affirmative.

Chairman Devine commented on his concerns about potential unethical practices being conducted by medical staff and business owners.

Chairman Devine understands this decision is for Council and does not want to continue the item and feels the ultimate decision will be taken in November.

Commissioner Andre motioned to not allow medical marijuana dispensaries in the City of Wildomar with a supplemental recommendation to the City Council to look at the item based upon the results of the November election. The motion died for the lack of a second.

Vice Chairman Dykstra motioned to recommend Option A (to recommend approval of the proposed ordinance) with the following changes: that the dispensaries be located in the commercial and instruction zones, the location be at least 1,000 feet from youth oriented establishments, the permits should be required a notice of public hearing before the City Council, the days and times of operation should be 9 to 5, Monday through Saturday, the ordinance should limit the number of permits to 2 within the City limits due to the small size of the City and the duration of the security recording retention will be 14 days per Police Department recommendation. The motion was seconded by Commissioner Kazmier.

Chairman Devine mentioned that the Planning Commission received many responses from residences opposing the ordinance and with that said he will vote NO on recommending approval of the ordinance.

AYES:	Dykstra, Kazmier
NOES:	Devine, Andre, Benoit
ABSENT:	-
ABSTAIN:	-

Motion failed.

Vice Chairman Dykstra commented he would like to see the City Council take the Planning Commissions conditions discussed at tonight's meeting.

Motion: Commissioner Benoit motioned for Option B (to not recommend approval of the proposed ordinance). Motion seconded by Commissioner Andre. Motion carried with the following vote:

AYES:	Devine, Andre, Benoit
NOES:	Dykstra, Kazmier
ABSENT:	-
ABSTAIN:	-

ATTACHMENT D

CITY OF LAGUNA WOODS ORDINANCE

Section 13.26.025. - Medical marijuana dispensaries.

(a) *Legislative purpose.* It is the intent of the City of Laguna Woods to allow the establishment of medical marijuana dispensaries within the boundaries of the City of Laguna Woods to serve the bona fide medical needs of the residents of the City as provided by state law. Further, it is the intent of the City Council to regulate the offsite and other public impacts of such facilities to protect the public health, safety, and welfare of the residents, children, and businesses from harmful secondary effects that could result from a dispensary.

(b) *Definitions.* All definitions set forth in California Health and Safety Code §§ 11362.5 and 11362.7 et seq., as may be amended from time to time, including, but not limited to, the terms "attending physician", "persons with an identification card", and "serious medical conditions" shall apply under this section in addition to the definitions set forth as follows:

(05) *Applicant* means the person who is managing or responsible for the medical marijuana dispensary's activities.

(10) City means the City of Laguna Woods.

(15) City Manager means the City Manager of the City of Laguna Woods or his/her designee.

(20) Cultivation of medical marijuana means the growing of medical marijuana for medical purposes as defined in strict accordance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq.

(25) Drug paraphernalia shall have the same definition as contained in Health and Safety Code § 11354.5, as may be amended from time to time.

(30) Identification card shall have the same definition as contained in California Health and Safety Code § 11362.7, as may be amended from time to time.

(35) Medical marijuana is defined in strict accordance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq. "Medical cannabis" shall mean the same as medical marijuana.

(40) Medical marijuana dispensary means any facility or location where the purpose is to dispense medical marijuana on a nonprofit basis as a medication that has been recommended by a physician and where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver and/or qualified patient, in strict accordance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq. "Medical marijuana dispensary" also includes establishments from which marijuana is delivered to patients who cannot obtain it from a dispensary due to physical or mental disability, for medical purposes in compliance with California Health and Safety Code §§ 11362.5 and 11362.7 et seq.

A "Medical marijuana dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses: a clinic licensed pursuant to Health and Safety Code Div. 2, Ch. 1; a health care facility

licensed pursuant to Health and Safety Code, Div. 2, Ch. 2; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Health and Safety Code, Div. 2, Ch. 3.01; a residential care facility for the elderly licensed pursuant to Health and Safety Code, Div. 2, Ch. 3.2; a residential hospice; or a home health agency licensed pursuant to Health and Safety Code, Div. 2, Ch. 8, as long as such use complies strictly with applicable law including, but not limited to, California Health and Safety Code §§ 11362.5 and 11362.7 et. seq.

(45) Permittee means the person to whom a medical marijuana regulatory permit is issued.

(50) Police Chief means the Police Chief - staff or contract employee - designated by the City Council of the City of Laguna Woods, or the authorized representatives thereof.

(55) Primary caregiver shall have the same definition as California Health and Safety Code §§ 11362.5 and 11362.7, as may be amended from time to time.

(60) Qualified patient shall have the same definition as contained in California Health and Safety Code §§ 11362.5 and 11362.7, as may be amended from time to time.

(65) School means an institution of learning for juveniles under the age of 18, whether public or private, offering a regular course of instruction required by the California Education Code. This definition includes a nursery school, kindergarten, elementary school, middle or junior high school, senior high school, or any special institution of education. This definition does not include collegiate level institutions including colleges, graduate schools, universities, and nonprofit research institutions.

(70) Written recommendation means the same as contained in California Health and Safety Code § 11362.715 et seq.

(c) No land use entitlement, permit (including building permit) approval, site plan, certificate of occupancy, zoning clearance, or other land use authorization for a medical marijuana dispensary shall be granted or permitted except in conformance with this section.

(d) Permitted zoning district. Medical marijuana dispensaries shall be permitted, upon application and approval of a regulatory permit in accordance with the criteria set forth in this section, only within the community commercial (cc) and professional and administrative office (ap) zoning districts.

(e) No nonconforming uses. No use which purports to have distributed marijuana prior to the enactment of this section shall be deemed to have been a legally established use under the provisions of the Zoning Code and such use shall not be entitled to claim legal nonconforming status.

(f) Location standards. The following location standards shall apply to medical marijuana dispensaries:

(1) A medical marijuana dispensary shall not be established or located within 1,000 feet of another medical marijuana dispensary, any school, daycare, nursery, playground, or property zoned planned, or otherwise designated for such use.

(2) A medical marijuana dispensary shall not be established or located within 1,000 feet of a youth-oriented establishment, or an establishment that provides youth-oriented services characterized by either or both of the following:

a. The establishment advertises in a manner that identifies the establishment as catering to or providing services intended for minors; or

b. The individuals who regularly patronize, congregate or assemble at the establishment are predominantly minors.

(3) All distances shall be measured in a straight line, without regard to intervening structures, from the nearest point of the building, or structure in which the medical marijuana dispensary is, or will be located, to the nearest property line of those uses describe in Subsections 13.26.020 (e)(1) and (2).

(4) A medical marijuana dispensary is not and shall not be approved as an accessory use to any other use permitted by this Zoning Code.

(5) Onsite parking. A medical marijuana dispensary shall be parked at a rate of one space for every 250 gross square feet of the entire business space.

(g) *Permits required.* Prior to initiating operations and as a continuing requisite to conducting operations, any person or entity wishing to operate a medical marijuana dispensary shall obtain a regulatory permit from the City Manager or his/her designee, under the terms and conditions set forth herein.

(h) Medical marijuana dispensary regulatory permit. Every person who proposes to maintain, operate or conduct a medical marijuana dispensary in the City of Laguna Woods shall file an application with the City Manager upon a form provided by the City and shall pay a filing fee as established by resolution adopted by the City Council as amended from time to time.

(i) Application process.

(1) An application for a regulatory permit for a medical marijuana dispensary shall include, but shall not be limited to, the following information:

a. An estimate of the size of the group of primary caregivers and/or qualified patients who will be served by the nonprofit dispensary; this description should include whether delivery service will be provide and the extent of such service;

b. The address of the location from which the dispensary for which application is made will be operated;

c. A site plan and floor plan of the premises denoting:

1. Waiting area.

2. Dispensing area.

3. Location of storage area.

4. Separate air handling/HVAC system for the lease space. Neither the ventilation system for the lease space/premise nor the air handling/HVAC controls are to be shared with another lease space.

5. Exterior lighting.

6. Restrooms.

7. Signage plan (both interior and exterior).

d. A security plan including the following measures:

1. Security cameras shall be installed and maintained in good condition, and used in an on-going manner with at least 120 concurrent hours of digitally recorded documentation in a format approved by the Police Chief. The cameras shall be in use 24 hours per day, seven days per week. The areas to be covered by the security cameras include, but are not limited to, the dispensing areas, storage areas, all doors and windows, and any others as determined by the Police Chief.

2. The lease/business space shall be alarmed with an alarm system that is operated and monitored by a recognized security company.

3. Entrance to the dispensing area and any storage areas shall be locked at all times, and under the control of dispensary staff.

4. The business entrance(s) and all window areas shall be illuminated during evening hours. The applicant shall comply with the City's lighting standards regarding fixture type, wattage, illumination levels, shielding, etc., and secure the necessary approvals and permits as needed.

e. The name and address of the person who is managing or responsible for the medical marijuana dispensary's activities;

f. The name and address of the owner and lessor of the real property upon which the business is to be conducted. In the event the applicant is not the legal owner of the property; the application must be accompanied with a notarized acknowledgement from the owner of the property that a medical marijuana dispensary will be operated on his/her property.

g. Any such additional and further information as is deemed necessary by the City Manager or Police Chief to administer this chapter.

(j) *Regulatory permit review and approval.*

(1) The Police Chief shall conduct a background check of any applicant for a regulatory permit and report his/her determination on the acceptability of the applicant's background and the suitability of the proposed location to the City Manager.

(2) Upon completing the review process, the regulatory permit shall be granted or conditionally granted, unless the City Manager, in consultation with the Police Chief, finds that the applicant:

a. Has made one or more false or misleading statements, or omissions on the application or during the application process; or

b. Is not a primary caregiver or qualified patient; or

c. Has not satisfied all of the requirements of this section.

(3) Based on the information set forth therein, and in consultation with the Police Chief, the City Manager may impose reasonable terms and conditions on the proposed operations in addition to those specified in this chapter.

(4) A medical marijuana regulatory permit shall be valid for one year. Sixty days prior to the expiration of a medical marijuana regulatory permit, the operator of the medical marijuana dispensary may apply for renewal of the permit for a subsequent year. Each renewal application shall certify the accuracy of the information in the prior application and document any changes or additions to that information as of the date of the application for renewal.

(5) A medical marijuana regulatory permit is not transferable. Prior to a change in operator, the applicant shall secure a new medical marijuana regulatory permit from the City. Failure to do so may be grounds for revocation.

(k) *Operational requirements.* No persons shall engage in, conduct, or permitted to be engaged in or conducting a medical marijuana dispensary ("dispensary") unless each of the following requirements is continually met:

(1) The dispensary shall comply fully with all of the applicable restrictions and mandates set forth in state law.

(2) The dispensary shall only be open between the hours of 9:00 a.m. and 5:00 p.m., Monday through Saturday.

(3) Physician's referrals shall be verified by the dispensary prior to dispensing initially and at least every six months.

(4) Patients must be residents of the City of Laguna Woods and must provide adequate identification to that effect.

(5) Dispensary staff shall maintain patient records on site, including, but not limited to, a copy of the physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by the said primary caregiver.

(6) The dispensary must maintain a lobby/waiting area at the entrance of the business, which is physically separated from the dispensing area. Only staff shall be allowed in the dispensing area. The public areas of the business shall be open and viewable at all times by owner/staff.

(7) Marijuana shall be kept in a secured manner during business and non- business hours.

(8) At all times, the air handling/HVAC system for the lease space shall be isolated to the lease space and in no way linked or extended to another lease space. The controls for said system shall be self contained for the lease space as well.

(9) If consumable medical marijuana products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for sale/distribution, then the applicant needs to secure Orange County Department of Health Services approval for handling food products and the associated letter grade must be displayed.

(10) No dispensary shall conduct or engage in the commercial sale of any product, good or service. The term "commercial sale" does not include the provision of

medical marijuana on terms and conditions consistent with this Code and applicable law.

(11) Any medical marijuana dispensary must pay any applicable sales tax pursuant to federal, state, and local law.

(12) The entrance and lobby/waiting area of the dispensary shall be posted at all times indicating that smoking, ingesting, or consuming marijuana on premise or in the associated parking lot is prohibited.

(13) Signage for the dispensary shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.

(14) Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises.

(15) Windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours.

(16) No person under the age of 18 years shall be allowed on premise at any time.

(17) Physician service shall not be provided on the premise. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site. However, no social service activities may be provided in the dispensing area.

(18) All applicable permits, including the medical marijuana regulatory permit, shall be conspicuously posted at the location of the dispensary in full public view.

(l) *Enforcement.*

(1) Recordings made by the security cameras shall be made available to the City Manager and/or Police Chief upon verbal request; no search warrant or subpoena is needed to view the recorded materials.

(2) The Police Chief, City Manager, City Building Official and their authorized representatives shall have the right to enter the dispensary from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this chapter and all laws of the City and State of California.

(3) Operation of the dispensary in noncompliance with any conditions of approval or standards of this section, or continuing a use after a medical marijuana regulatory permit has expired, shall constitute a violation of this Code and shall be handled in accordance with Chapter 1.04 of this Code.

(4) The City Manager may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

a. The business has three violations outlined in this chapter that occur within a 180-day period; or

b. Operations cease for more than 90 calendar days, including during change of ownership proceedings; or

c. A use is continued after a medical marijuana regulatory permit has expired; or

d. Ownership is changed without securing a medical marijuana dispensary regulatory permit; or

e. Operator fails to maintain 120 hours of security recordings; or

f. Operator fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.

(m) *Appeal of decisions.* Any decision regarding the approval, conditional approval, denial of a new or renewed, or revocation of a medical marijuana regulatory permit may be appealed to the City Council. Said appeal shall be made by a notice of appeal from the person appealing within 30 days from the date of the decision. The appeal shall be accompanied by a fee, which shall be established by resolution of the City Council amended from time to time, and a written, verified declaration setting forth the basis for the claim that the permit was improperly approved, denied, conditioned or revoked. Filing of an appeal shall suspend the issuance of a medical marijuana regulatory permit until action is taken on the appeal.

(n) *Indemnification and disclaimer provisions.*

(1) To the fullest extent permitted by law, the City of Laguna Woods shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the medical marijuana, or for the activities of any medical marijuana dispensary. Upon receiving possession of a regulatory permit for a medical marijuana dispensary, the operator of the dispensary:

a. Shall sign an agreement indemnifying the City of Laguna Woods; and

b. Carry insurance in the amounts and of the types that are acceptable to the City Manager; and

c. Name the City as an additionally insured.

(2) As a condition of approval of a regulatory permit for a medical marijuana dispensary, the operator, by utilizing the benefits of the approval, shall thereby agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval. In addition, the applicant/owner shall reimburse the City et al. for any court costs and attorney fees that the City et al. may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

(3) Approval and inspection processes conducted pursuant to this chapter shall preserve to the maximum extent possible all legal protections and privileges, consistent with reasonably verifying the qualifications and status of qualified patients and primary caregivers. Disclosure of any patient information to assert facts in support of a qualified status shall not be deemed a waiver of confidentiality of that information under any provision of law.

ATTACHMENT E

LAGUNA WOODS ORDINANCE COMPARISON TABLE

Laguna Woods Section	Draft Ordinance Section	Changes/Remarks
13.26.025 (a)	17.292.010	None
13.26.025 (b)	17.292.020	Added the following definitions: + "Medical Marijuana Dispensary Regulatory Permit" + "Person" + "Youth Oriented" Modified the definition of "Dispensary" to state that it must be a collective or cooperative. Deleted the following unused definitions: - "Cultivation of Medical Marijuana" - "Drug Paraphernalia" - "Permitee" - "Written Recommendation"
13.26.025 (c)	17.292.040	None
13.26.025 (d)	17.292.070.A	Added references to Wildomar commercial zones; specifically, the C-1/C-P, C-P-S, and C-O Zones
13.26.025 (e)	17.292.050	None
13.26.025 (f)	17.292.070.B through .E	None
13.26.025 (f)(4)	17.292.060	None
13.26.025 (g)	17.292.030.B	None
13.26.025 (h)	17.292.030.A	None
13.26.025 (i)	17.292.080	Modified the provisions of Subsection D.1 to require the retention of the security recordings for a period of 14 days (instead of the 5 days in the Laguna Woods ordinance)
13.26.025 (j)	17.292.090	Added additional text as subsection B.4 defining the criteria for evaluating the background check.
13.26.025 (k)	17.292.100	None
13.26.025 (l)	17.292.110	None
13.26.025 (m)	17.292.120	None
13.26.025 (n)	17.292.130	Modified the provisions of Subsection D.5 to incorporate the requirement for the retention of the security recordings for a period of 14 days

ATTACHMENT F

ATTACHMENT F-1

THE COMPASSIONATE USE ACT (Proposition 215)
HEALTH AND SAFETY CODE - SECTION 11362.5

"§11362.5. Use of marijuana for medical purposes.

(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 care-givers 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 care-giver" 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." *(Added by 1996 initiative Measure Prop 215 §1, eff.: 11/6/96.)*

ATTACHMENT F-2

MEDICAL MARIJUANA PROGRAM ACT (SB 420, 2003)
HEALTH AND SAFETY CODE - SECTIONS 11362.7-11362.83

"§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 school bus.

(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."

ATTACHMENT F-3

STATE ATTORNEY GENERAL GUIDELINES (2008)

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).[1]) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

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

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

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for

[1] 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.)

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

F. The Federal Controlled Substances Act.

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

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

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

II. DEFINITIONS

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

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

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

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

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

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

2. **State of California Medical Marijuana Identification Card**: Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder's identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

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

4. **Possession Guidelines**:

a) **MMP**:[2] Qualified patients and primary caregivers who possess a state-issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs." (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess

[2] On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

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

B. **Enforcement Guidelines**.

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

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

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

4. **State of California Medical Marijuana Identification Cardholders**: When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

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

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

has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

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

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician's name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person's medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person's claim of having a verbal physician's recommendation that cannot be readily verified with the physician at the time of detention.

6. **Exceeding Possession Guidelines**: If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

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

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

1. **Statutory Cooperatives:** A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "co-op") 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.

ATTACHMENT G

Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS, AND PATIENTS HELPING PATIENTS

MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

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MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

January 2010

EXECUTIVE SUMMARY

Introduction 1

OVERVIEW

About this Report 2
About Americans for Safe Access 2
The National Political Landscape 2
History of Medical Cannabis in California 3
What is a Medical Cannabis Dispensing Collective? 3
Rationale for Medical Cannabis Dispensing Collectives 4
Medical Cannabis Dispensing Collectives are Legal Under State Law 4
Why Patients Need Convenient Dispensaries 4
What Communities are Doing to Help Patients 5

IMPACT OF DISPENSARIES AND REGULATIONS ON COMMUNITIES

Dispensaries Reduce Crime and Improve Public Safety 6
Why Diversion of Medical Cannabis is Typically Not a Problem 7
Dispensaries Can Be Good Neighbors 8

BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

Dispensaries Provide Many Benefits to the Sick and Suffering 9
Research Supports the Dispensary Model 10
Many Dispensaries Provide Key Health and Social Services 10
Conclusion 12
Recommendations for Ordinances 13
Resources for More Information 16

APPENDIX A

List of City and County Ordinances 17

APPENDIX B

Guide for Evaluating Proposed Dispensary Ordinances in California 18

APPENDIX C

California Attorney General's Guidelines for Dispensaries 19

Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS AND PATIENTS HELPING PATIENTS

EXECUTIVE SUMMARY

California's original medical cannabis law, the Compassionate Use Act of 1996 (Prop. 215), encouraged state and federal governments to develop programs for safe and affordable distribution of medical cannabis (marijuana). Although self-regulated medical cannabis dispensing collectives (dispensaries) have existed for more than 14 years in California, the passage of state legislation (SB 420) in 2003, court rulings in *People v. Urziceanu* (2005) and *County of Butte v. Superior Court* (2009), and guidelines from the state Attorney General, all recognized and affirmed their status as legal entities under state law. With most of the 300,000 cannabis patients in California relying on dispensaries for their medicine, local officials across the state are developing regulatory ordinances that address business licensing, zoning, and other safety and operational requirements that meet the needs of patients and the community.

Americans for Safe Access, the leading national organization representing the interests of medical cannabis patients and their doctors, has undertaken a study of the experience of those communities that have dispensary ordinances to act as a guide to policy makers tackling dispensary regulations in their communities. The report that follows details those experiences, as related by local officials; it also covers some of the political background and current legal status of dispensaries, outlines important issues to consider in drafting dispensary regulations, and summarizes a recent study by a University of California, Berkeley researcher on the community benefits of dispensaries.

In short, this report describes:

Benefits of regulated dispensaries to communities include:

- providing access for the most seriously ill and injured,
- offering a safer environment for patients than having to buy on the illicit market,
- improving the health of patients through social support,
- helping patients with other social services, such as food and housing,
- having a greater than average customer satisfaction rating for health care.

Creating dispensary regulations combats crime because:

- dispensary security reduces crime in the vicinity,
- street sales tend to decrease,
- patients and operators are vigilant any criminal activity is reported to police.

Regulated dispensaries are:

- legal under California state law,
- helping revitalize neighborhoods,
- bringing new customers to neighboring businesses,
- not a source of community complaints.

This report concludes with a section outlining the important elements for local officials to consider as they move forward with regulations for dispensaries. ASA has worked successfully with officials across the state, including Alameda County, Los Angeles, San Francisco and elsewhere to craft ordinances that meet the state's legal requirements, as well as the needs of patients and the larger community. Please contact us if you have

OVERVIEW OF MEDICAL CANNABIS DISPENSARIES

"As the number of patients in the state of California who rely upon medical cannabis for their treatment continues to grow, it is increasingly imperative that cities and counties address the issue of dispensaries in our respective communities. In the city of Oakland we recognized this need and adopted an ordinance which balances patients' need for safe access to treatment while reassuring the community that these dispensaries are run right. A tangential benefit of the dispensaries has been that they have helped to stimulate economic development in the areas where they are located."

—Desley Brooks, Oakland City Councilmember

ABOUT THIS REPORT

Land-use decisions are now part of the implementation of California's medical marijuana, or cannabis, laws. As a result, medical cannabis dispensing collectives (dispensaries) are the subject of considerable debate by planning and other local officials. Dispensaries have been operating openly in many communities since the passage of Proposition 215 in 1996. As a compassionate, community-based response to the problems patients face in trying to access cannabis, dispensaries are currently used by more than half of all patients in the state and are essential to those most seriously ill or injured. Since 2003, when the legislature further implemented state law by expressly addressing the issue of patient collectives and compensation for cannabis, more dispensaries have opened and more communities have been faced with questions about business permits and land use options.

In an attempt to clarify the issues involved, Americans for Safe Access has conducted a survey of local officials in addition to continuously tracking regulatory activity throughout the state (see AmericansForSafeAccess.org/regulations). The report that follows outlines some of the underlying questions and provides an overview of the experiences of cities and counties around the state. In many parts of California, dispensaries have operated responsibly and provided essential services to the most needy without local intervention, but city and county officials are also considering how to arrive at the most effective regulations for their community, ones that respect the rights of patients for safe and legal access within the context of the larger community.

ABOUT AMERICANS FOR SAFE ACCESS

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 50,000 active members with chapters and affiliates in more than 40 states.

THE NATIONAL POLITICAL LANDSCAPE

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor. The two largest physician-based professional organizations in the U.S., the American Medical Association and the

American College of Physicians, have urged the federal government to reconsider its regulatory classification of cannabis.

For decades, the federal government has maintained the position that cannabis has no medical value, despite the overwhelming evidence of marijuana's medical efficacy and the broad public support for its use. Not to be deterred, Americans have turned to state-based solutions. The laws passed by voters and legislators are intended to mitigate the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference.

Beginning in California in 1996, voters passed initiatives in eight states plus the District of Columbia—Alaska, Colorado, Maine, Michigan, Montana, Nevada, Oregon, and Washington. State legislatures followed suit, with elected officials in Hawaii, Maryland, New Jersey, New Mexico, Rhode Island, and Vermont taking action to protect patients from criminal penalty. Understanding the need to address safe and affordable access to medical cannabis, California, Maine, New Jersey, New Mexico, and Rhode Island all adopted local or state laws that regulate its production and distribution.

Despite *Gonzales v. Raich*, a U.S. Supreme Court ruling in 2005 that gave government the discretion to enforce federal cannabis laws even in medical cannabis states, more states continue to adopt laws each year. With the election of President Barack Obama, a new approach to medical cannabis is taking shape. In October 2009, the Justice Department issued guidelines discouraging U.S. Attorneys from investigating and prosecuting medical cannabis cases. While this new policy specifically addresses enforcement, ASA continues to work with Congress and the President to push for expanded research and protection for all medical cannabis in the U.S. The public advocacy of well-known cannabis patients such as the Emmy-winning talkshow host Montel Williams and music artist Melissa Etheridge has also increased public awareness and helped to create political pressure for changes in state and federal policies.

HISTORY OF MEDICAL CANNABIS IN CALIFORNIA

Since 1996, when 56% of California voters approved the Compassionate Use Act (CUA), public support for safe and legal access to medical cannabis has steadily increased. A statewide Field poll in 2004 found that "three in four voters (74%) favors implementation of the law." In 2003, the state legislature recognized that the Compassionate Use Act (CUA) gave little direction to local officials, which greatly impeded the safe and legal access to medical cannabis envisioned by voters.

Legislators passed Senate Bill 420, the Medical Marijuana Program (MMP) Act, which provided a greater blueprint for the implementation of California's medical cannabis law. Since the passage of the MMP, ASA has been responsible for multiple landmark court cases, including *City of Garden Grove v. Superior Court*, *County of San Diego v. San Diego NORML*, and *County of Butte v. Superior Court*. Such cases affirm and expand the rights granted by the CUA and MMP, and at the same time help local officials better implement state law.

In August 2008, California's Attorney General issued a directive to law enforcement on state medical marijuana law. In addition to reviewing the rights and responsibilities of patients and their caregivers, the guidelines affirmed the legality of storefront dispensaries and outlined a set of requirements for state law compliance. The attorney general guidelines also represent a roadmap by which local officials can develop regulatory ordinances for dispensaries.

WHAT IS A MEDICAL CANNABIS DISPENSING COLLECTIVE?

The majority of medical marijuana (cannabis) patients cannot cultivate their medicine for themselves and cannot find a caregiver to grow it for them. Most of California's estimated 300,000 patients obtain their medicine

from a Medical Cannabis Dispensing Collective (MCDC), often referred to as a "dispensary." Dispensaries are typically storefront facilities that provide medical cannabis and other services to patients in need. As of late 2009, there were approximately 1,000 medical cannabis dispensaries in California.

Dispensaries operate with a closed membership that allows only qualified patients and primary caregivers to obtain cannabis, and only after membership is approved (upon verification of patient documentation). Many dispensaries offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number of dispensaries offer additional services for their patient membership, including such services as: massage, acupuncture, legal trainings, free meals, or counseling. Research on the social benefits for patients is discussed in the last section of this report.

RATIONALE FOR MEDICAL CANNABIS DISPENSING COLLECTIVES

While the Compassionate Use Act does not explicitly discuss medical cannabis dispensaries, it calls for 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." (Health & Safety Code § 11362.5) This portion of the law has been the basis for the development of compassionate, community-based systems of access for patients in various parts of California. In some cases, that has meant the creation of patient-run growing collectives that allow those with cultivation expertise to help other patients obtain medicine. In most cases, particularly in urban settings, that has meant the establishment of medical cannabis dispensing collectives, or dispensaries. These dispensaries are typically organized and run by groups of patients and their caregivers in a collective model of patient-directed health care that is becoming a prototype for the delivery of other health services.

MEDICAL CANNABIS DISPENSARIES ARE LEGAL UNDER STATE LAW

In an effort to clarify the voter initiative of 1996 and aid in its implementation across the state, the California legislature passed the Medical Marijuana Program Act (MMP), or Senate Bill 420, in 2003, establishing that qualified patients and primary caregivers may collectively or cooperatively cultivate and distribute cannabis for medical purposes (Cal. Health & Safety Code section 11362.775). The Act also exempts collectives and cooperatives from criminal sanctions associated with "sales" and maintaining a place where sales occur.

In 2005, California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in the landmark case of People v. Urziceanu, which held that the MMP provides collectives and cooperatives a defense to marijuana distribution charges. Another landmark decision from the Third District Court of Appeal in the case of *County of Butte v. Superior Court* (2009) not only affirmed the legality of collectives but also found that collective members could contribute financially without having to directly participate in the cultivation.

In August 2008, the State Attorney General issued guidelines declaring that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law." The Attorney General provided law enforcement with a list of operational practices for collectives to help ensure compliance with state law. By adhering to a set of rules—including not-for-profit operation, the collection of sales tax, and the verification of patient status for collective members—dispensaries can operate lawfully and maintain legitimacy. In addition, local officials can use the Attorney General guidelines to help them adopt local regulatory ordinances.

WHY PATIENTS NEED CONVENIENT DISPENSARIES

While some patients with long-term illnesses

or injuries have the time, space, and skill to cultivate their own cannabis, the majority of patients, particularly those in urban settings, do not have the ability to produce it themselves. For those patients, dispensaries are the only option for safe and legal access. This is all the more true for those individuals who are suffering from a sudden, acute injury or illness.

Many of the most serious and debilitating injuries and illnesses require immediate relief. A cancer patient, for instance, who has just begun chemotherapy will typically need immediate access for help with nausea, which is why a Harvard study found that 45% of oncologists were already recommending cannabis to their patients, even before it had been made legal in any state. It is unreasonable to exclude those patients most in need simply because they are incapable of gardening or cannot wait months for relief.

WHAT COMMUNITIES ARE DOING TO HELP PATIENTS

Many communities in California have recognized the essential service that dispensaries provide and have either tacitly allowed their operation or adopted ordinances regulating them. Dispensary regulation is one way in which the cities can exert local control and ensure that the needs of patients and the community at large are being met. As of January 2010, thirty-two cities and nine counties have enacted regulations, and many more are considering doing so soon.

Officials recognize their duty to implement state laws, even in instances when they may not have previously supported medical cannabis legislation. Duke Martin, mayor pro tem of Ridgecrest said during a city council hearing on their local dispensary ordinance, "it's something that's the law, and I will uphold the law."

This understanding of civic obligation was echoed at the Ridgecrest hearing by Councilmember Ron Carter, who said, "I want to make sure everything is legitimate and above board. It's legal. It's not something we can stop, but we can have an ordinance of regulations."

Similarly, Whittier Planning Commissioner R.D. McDonnell spoke publicly of the benefits of dispensary regulations at a city government hearing. "It provides us with reasonable protections," he said. "But at the same time provides the opportunity for the legitimate operations."

> "Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."
>
> —Mike Rotkin, Santa Cruz

Whittier officials discussed the possibility of an outright ban on dispensary operations, but Greg Nordback said, "It was the opinion of our city attorney that you can't ban them; it's against the law. You have to come up with an area they can be in." Whittier passed its dispensary ordinance in December 2005.

Placerville Police Chief George Nielson commented that, "The issue of medical marijuana continues to be somewhat controversial in our community, as I suspect and hear it remains in other California communities. The issue of 'safe access' is important to some and not to others. There was some objection to the dispensary ordinance, but I would say it was a vocal minority on the issue."

IMPACT OF DISPENSARIES AND REGULATORY ORDINANCES ON COMMUNITIES IN CALIFORNIA

DISPENSARIES REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Some reports have suggested that dispensaries are magnets for criminal activity and other undesirable behavior, which poses a problem for the community. But the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a dispensary. And complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

This trend has led multiple cities and counties to consider regulation as a solution. Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary-related crime has not been a problem for the county, the regulations will help law enforcement determine the legitimacy of dispensaries and their patients.

The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement problems or secondary effects for at least one year. As a result, the focus of the proposed Ordinance is narrowed to insure Dispensary compliance with the law" (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006).

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security for their members and staff more seriously than many businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland's city administrator for the ordinance regulating dispensaries, Barbara Killey, notes that "The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc…since the ordinance passed."

Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens or from neighboring businesses." Neighboring Sebastopol has had a similar experience.

Despite public opposition to medical cannabis dispensaries, Sebastopol Police Chief Jeffrey Weaver admitted that for more than two years, "We've had no increased crime associated [with Sebastopol's medical cannabis dispensary], no fights, no loitering, no increase in graffiti, no increase in littering, zip."

"The parade of horrors that everyone predicted has not materialized. The sky has not fallen. To the contrary…California jurisdictions have shown that having medical cannabis in place does not impact…public safety." —San Francisco Supervisor David Campos

Those dispensaries that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Many local officials surveyed by ASA said dispensaries operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted.

Several officials said that regulatory ordinances had significantly improved relations with other businesses and the community at large. An Oakland city council staff member noted that prior to adopting a local ordinance the city had received reports of break-ins. However, the council staff member said that with the adoption of Oakland's dispensary ordinance, "That kind of activity has stopped. That danger has been eliminated." Assistant City Administrator Arturo Sanchez, a nuisance enforcement officer, affirmed that since 2004 he has "never received a nuisance complaint concerning lawfully established medical marijuana dispensaries in Oakland…[or] had to initiate an enforcement action."

The absence of any connection between dispensaries and increased local crime can be seen in data from Los Angeles and San Diego. During the two-year period from 2008 to 2010 in which Los Angeles saw the proliferation of more than 500 dispensaries, the overall crime rate in the city dropped considerably. A study commissioned by Los Angeles Police Chief Charlie Beck, comparing the number of crimes in 2009 at the city's banks and medical marijuana dispensaries, found that 71 robberies had occurred at the more than 350 banks in the city, compared to 47 robberies at the more than 500 medical marijuana facilities. Chief Beck observed that, "banks are more likely to get robbed than medical marijuana dispensaries," and that the claim that dispensaries attract crime "doesn't really bear out." In San Diego, where some officials have made similar allegations about increased crime associated with dispensaries, an examination of city police reports by a local paper, the San Diego City Beat, found that as of late 2009 the number of crimes in areas with dispensaries was frequently lower than it was before the dispensary opened or, at worst, stayed the same.

WHY DIVERSION OF MEDICAL CANNABIS IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But the experience of those cities that have instituted ordinances is that such problems, which are rare in the first place, quickly disappear. In addition to being monitored by law enforcement, dispensaries universally have strict rules about how members are to behave in and around the facility. Many have "good neighbor" trainings for their members that emphasize sensitivity to the concerns of neighbors, and all dispensaries absolutely prohibit the resale of cannabis. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

As Oakland's city administrator for the regulatory ordinance explains, "dispensaries themselves have been very good at self policing against resale because they understand they

can lose their permit if their patients resell."

In the event of an illegal resale, local law enforcement has at its disposal all of the many legal penalties provided by the state. This all adds up to a safer street environment with fewer drug-related problems than before dispensary operations were permitted in the area. The experience of the City of Oakland is a good example of this phenomenon. The city's legislative analyst, Lupe Schoenberger, stated that, "…[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced."

"The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc. since the ordinance passed."

—Barbara Killey, Oakland

Dispensaries operating with the permission of the city are also more likely to appropriately utilize law enforcement resources themselves, reporting any crimes directly to the appropriate agencies. And, again, dispensary operators and their patient members tend to be more safety conscious than the general public, resulting in great vigilance and better preemptive measures. The reduction of crime in areas around dispensaries has been reported anecdotally by law enforcement in several communities.

DISPENSARIES CAN BE GOOD NEIGHBORS

Medical cannabis dispensing collectives are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area.

Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses in the surrounding area simply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit. Even if patients are not immediately utilizing the services or purchasing the goods offered by neighboring businesses, they are more likely to eventually patronize those businesses because of convenience.

ASA's survey of officials whose cities have passed dispensary regulations found that the vast majority of businesses either adjoining or near dispensaries had reported no problems associated with a dispensary opening after the implementation of regulation.

Kriss Worthington, longtime councilmember in Berkeley, said in support of a dispensary there, "They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Mike Rotkin, councilmember and former mayor for the City of Santa Cruz, said about the dispensary that opened there last year, "The immediately neighboring businesses have been uniformly supportive or neutral. There have been no complaints either about establishing it or running it."

And Dave Turner, Mayor of Fort Bragg, noted that before the passage of regulations there were "plenty of complaints from both neighboring businesses and concerned citizens," but since then, it is no longer a problem. Public officials understand that, when it comes to dispensaries, they must balance both the humanitarian needs of patients and the

concerns of the public, especially those of neighboring residents and business owners.

Oakland City Councilmember Nancy J. Nadel wrote in an open letter to her fellow colleagues across the state, "Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses, law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Barbara Killey adds, "Dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell."

Mike Rotkin of Santa Cruz stated that since the city enacted an ordinance for dispensarys, "Things have calmed down. The police are happy with the ordinance, and that has made things a lot easier. I think the fact that we took the time to give people who wrote us respectful and detailed explanations of what we were doing and why made a real difference."

BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING

Safe and legal access to cannabis is the reason dispensaries have been created by patients and caregivers around the state. For many people, dispensaries remove significant barriers to obtaining cannabis. Patients in urban areas with no space to cultivate cannabis, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness - all tend to rely on dispensaries as a compassionate, community-based solution as a preferable alternative to potentially dangerous illicit market transactions.

Many elected officials in California recognize the importance of dispensaries to their constituents. As Nathan Miley, former Oakland City councilmember and now Alameda County supervisor said in a letter to his colleagues, "When designing regulations, it is crucial to remember that at its core this is a healthcare issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

West Hollywood Mayor John Duran agreed, noting that with the high number of HIV-positive residents in the area, "Some of them require medical marijuana to offset the medications they take for HIV." Jane Bender, mayor of Santa Rosa, says, "There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."

And Mike Rotkin of Santa Cruz said that this is also an important matter for his city's citizens: "The council considers it a high priority and has taken considerable heat to speak out and act on the issue."

It was a similar decision of social conscience that lead to Placerville's city council putting a regulatory ordinance in place. Councilmember Marian Washburn told her colleagues that "as you get older, you know people with diseases who suffer terribly, so that is probably what I get down to after considering all the other components."

"There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine." —Jane Bender, Santa Rosa

While dispensaries provide a unique way for patients to obtain the cannabis their doctors have recommended, they typically offer far more that is of benefit to the health and welfare of those suffering from both chronic and acute medical problems.

Dispensaries are often called "clubs" in part because many of them offer far more than a clinical setting for obtaining cannabis. Recognizing the isolation that many seriously ill and injured people experience, many dispensary operators choose to offer a wider array of social services, including everything from a place to congregate and socialize to help with finding housing and offering meals. The social support patients receive in these settings has far-reaching benefits that also influences the development of other patient-based care models.

RESEARCH SUPPORTS THE DISPENSARY MODEL

A 2006 study by Amanda Reiman, Ph.D. of the School of Social Welfare at the University of California, Berkeley examined the experience of 130 patients spread among seven different dispensaries in the San Francisco Bay Area. Dr. Reiman's study cataloged the patients' demographic information, health status, consumer satisfaction, and use of services, while also considering the dispensaries' environment, staff, and services offered. The study found that "medical cannabis patients have created a system of dispensing medical cannabis that also includes services such as counseling, entertainment and support groups, all important components of coping with chronic illness." She also found that levels of satisfaction with the care received at dispensaries ranked significantly higher than those reported for health care nationally.

Patients who use the dispensaries studied uniformly reported being well satisfied with the services they received, giving an 80% satisfaction rating. The most important factors for patients in choosing a medical cannabis dispensary were: feeling comfortable and secure, familiarity with the dispensary, and having a rapport with the staff. In their comments, patients tended to note the helpfulness and kindness of staff and the support found in the presence of other patients.

MANY DISPENSARIES PROVIDE KEY HEALTH AND SOCIAL SERVICES

Dispensaries offer many cannabis-related services that patients cannot otherwise obtain. Among them is an array of cannabis varieties, some of which are more useful for certain afflictions than others, and staff awareness of what types of cannabis other patients report to be helpful. In other words, one variety of cannabis may be effective for pain control while another may be better for combating nausea. Dispensaries allow for the pooling of information about these differences and the opportunity to access the type of cannabis likely to be most beneficial.

Cannabis-related services include making cannabis available in other forms for patients who cannot or do not want to smoke it. While most patients prefer to have the ability to modulate the dosing that smoking easily allows, for others, the effects of extracts or edible cannabis products are preferable. Dispensaries typically offer a wide array of edible products for those purposes. Many dispensaries

also offer classes on how to grow your own cannabis, classes on legal matters, trainings for health-care advocacy, and other seminars.

Beyond providing safe and legal access to cannabis, the dispensaries studied also offer important social services to patients, including counseling, help with housing and meals, hospice and other care referrals. Among the broader services the study found in dispensaries are support groups, including groups for women, veterans, and men; creativity and art groups, including groups for writers, quilters, crochet, and crafts; and entertainment options, including bingo, open mic nights, poetry readings, internet access, libraries, and puzzles. Clothing drives and neighborhood parties are among the activities that patients can also participate in through their dispensary.

Examples of health services offered at dispensaries across California:

- Naturopathic medicine
- Reiki
- Ayurvedic medicine
- Chinese medicine
- Chiropractic medicine
- Acupuncture
- Massage
- Cranial Sachral Therapy
- Rolfing Therapy
- Group & Individual Yoga Instruction
- Hypnotherapy
- Homeopathy
- Western Herbalists
- Individual Counseling
- Integrative Health Counseling
- Nutrition & Diet Counseling
- Limited Physical Therapy
- Medication Interaction Counseling
- Condition-based Support Groups

Social services such as counseling and support groups were reported to be the most commonly and regularly used, with two-thirds of patients reporting that they use social services at dispensaries 1-2 times per week. Also, life services, such as free food and housing help, were used at least once or twice a week by 22% of those surveyed.

"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

—Nancy Nadel, Oakland

Dispensaries offer chronically ill patients even more than safe and legal access to cannabis and an array of social services. The study found that dispensaries also provided other social benefits for the chronically ill, an important part of the bigger picture:

> Beyond the support that medical cannabis patients receive from services is the support received from fellow patients, some of whom are experiencing the same or similar physical/psychological symptoms…. It is possible that the mental health benefits derived from the social support of fellow patients is an important part of the healing process, separate from the medicinal value of the cannabis itself.

Several researchers and physicians who have studied the issue of the patient experience with dispensaries have concluded that there are other important positive effects stemming from a dispensary model that includes a component of social support groups.

Dr. Reiman notes that, "support groups may have the ability to address issues besides the

illness itself that might contribute to long-term physical and emotional health outcomes, such as the prevalence of depression among the chronically ill."

For those who suffer the most serious illnesses, such as HIV/AIDS and terminal cancer, groups of people with similar conditions can also help fellow patients through the grieving process. Many patients who have lost or are losing friends and partners to terminal illness report finding solace with other patients who are also grieving or facing end-of-life decisions. A medical study published in 1998 concluded that the patient-to-patient contact associated with the social club model was the best therapeutic setting for ill people.

CONCLUSION

After more than 14 years of existence, dispensaries are proving to be an asset to the communities they serve, as well as the larger community in which they operate. This is especially the case when public officials choose to implement local ordinances that recognize the lawful operation of dispensaries. Since the Medical Marijuana Program Act was enacted by the California legislature in 2004, more than 40 localities have adopted ordinances regulating dispensaries.

By surveying local officials and monitoring regulatory activity throughout the State of California, ASA has shown that once working regulatory ordinances are in place dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries—now expressly legal under California state law—are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

Medical and public health studies have also shown that the social-club model of most dispensaries is of significant benefit to the overall health of patients. The result is that medical cannabis patients rate their satisfaction with dispensaries as far greater than the customer-satisfaction ratings given to health care agencies in general.

Public officials across the state, in both urban and rural communities, have been outspoken in praise of the dispensary regulatory schemes they enacted and the benefits to the patients and others living in their communities.

As a compassionate, community-based response to the medical needs of more than 300,000 sick and suffering Californians, dispensaries, and the regulations under which they operate, are working.

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

RECOMMENDATIONS FOR DISPENSARY REGULATIONS

Cannabis dispensaries have been operating successfully in California for more than 14 years with very few problems. And, although the legislature and courts have acted to make dispensaries legal under state law, the question of how to implement appropriate zoning laws and business licensing is still coming before local officials all across the state. What follows are recommendations on matters to consider, based on adopted code as well as ASA's extensive experience working with community leaders and elected officials.

COMMUNITY OVERSIGHT

In order to appropriately resolve conflict in the community and establish a process by which complaints and concerns can be reviewed, it can often be helpful to create a community oversight committee. Such committees, if fair and balanced, can provide a means for the voices of all affected parties to be heard, and to quickly resolve problems.

The Ukiah City Council created such a task force in 2005; what follows is how they defined the group:

> The Ukiah Medical Marijuana Review and Oversight Commission shall consist of seven members nominated and appointed pursuant to this section. The Mayor shall nominate three members to the commission, and the City Council shall appoint, by motion, four other members to the commission…
>
> Of the three members nominated by the Mayor, the Mayor shall nominate one member to represent the interests of City neighborhood associations or groups, one member to represent the interests of medical marijuana patients, and one member to represent the interests of the law enforcement community.
>
> Of the four members of the commission appointed by the City Council, two members shall represent the interests of City neighborhood associations or groups, one member shall represent the interests of the medical marijuana community, and one member shall represent the interests of the public health community.

ADMINISTRATION OF DISPENSARY REGULATIONS ARE BEST HANDLED BY HEALTH OR PLANNING DEPARTMENTS, NOT LAW ENFORCEMENT AGENCIES

Reason: To ensure that qualified patients, caregivers, and dispensaries are protected, general regulatory oversight duties - including permitting, record maintenance and related protocols - should be the responsibility of the local department of public health (DPH) or planning department. Given the statutory mission and responsibilities of DPH, it is the natural choice and best-suited agency to address the regulation of medical cannabis dispensing collectives. Law enforcement agencies are ill-suited for handling such matters, having little or no expertise in health and medical affairs.

Examples of responsible agencies and officials:

- Angels Camp—City Administrator
- Atascadero—Planning Commission
- Citrus Heights—City Manager
- Cotati—City Manager
- Laguna Woods—City Manager
- Los Angeles—Planning Department
- Malibu—City Manager
- Palm Springs—City Manager
- Plymouth—City Administrator

- Sebastopol—Planning Department
- San Francisco—Dept. of Public Health
- Santa Barbara—Community Development Department
- Selma—City Manager
- Visalia—City Planner

ARBITRARY CAPS ON THE NUMBER OF DISPENSARIES CAN BE COUNTER-PRODUCTIVE

Reason: Policymakers do not need to set arbitrary limitations on the number of dispensing collectives allowed to operate because, as with other services, competitive market forces and consumer choice will be decisive. Dispensaries that provide quality care and patient services to their memberships will flourish, while those that do not will fail.

Capping the number of dispensaries limits consumer choice, which can result in both decreased quality of care and less affordable medicine. Limiting the number of dispensing collectives allowed to operate may also force patients with limited mobility to travel farther for access than they would otherwise need to.

Artificially limiting the supply for patients can result in an inability to meet demand, which in turn may lead to unintended and undesirable effects such as lines outside of dispensaries, increased prices, and lower quality medicine, in addition to increased illicit-market activity.

Examples of cities and counties without numerical caps on dispensaries:

- Elk Grove
- Fort Bragg
- Laguna Woods
- Placerville
- Redding
- Ripon
- Santa Barbara
- Selma
- Tulare
- Calaveras County
- Kern County
- Los Angeles County
- City and County of San Francisco
- San Mateo County
- Sonoma County

RESTRICTIONS ON WHERE DISPENSARIES CAN LOCATE ARE OFTEN UNNECESSARY AND CAN CREATE BARRIERS TO ACCESS

Reason: As described in this report, regulated dispensaries do not generally increase crime or bring other harm to their neighborhoods, regardless of where they are located. And since travel is difficult for many patients, cities and counties should take care to avoid unnecessary restrictions on where dispensaries can locate. Patients benefit from dispensaries being convenient and accessible, especially if the patients are disabled or have conditions that limit their mobility.

It is unnecessary and burdensome for patients and providers to restrict dispensaries to industrial corners, far away from public transit and other services. Depending on a city's population density, it can also be extremely detrimental to set excessive proximity restrictions (to schools or other facilities) that can make it impossible for dispensaries to locate anywhere within the city limits, thereby establishing a de facto ban on dispensing. It is important to balance patient needs with neighborhood concerns in this process.

PATIENTS BENEFIT FROM ON-SITE CONSUMPTION AND PROPER VENTILATION SYSTEMS

Reason: Dispensaries that allow members to consume medicine on-site have positive psychosocial health benefits for chronically ill people who are otherwise isolated. On-site consumption encourages dispensary members to take advantage of the support services that improve patients' quality of life and, in some cases, even prolong it. Researchers have shown that support groups like those offered by dispensaries are effective for patients with a variety of serious illnesses. Participants active in support services are less anxious and

depressed, make better use of their time and are more likely to return to work than patients who receive only standardized care, regardless of whether they have serious psychiatric symptoms. On-site consumption is also important for patients who face restrictions to off-site consumption, such as those in subsidized or other housing arrangements that prohibit smoking. In addition, on-site consumption provides an opportunity for patients to share information about effective use of cannabis and of specialized delivery methods, such as vaporizers, which do not require smoking.

Examples of localities that permit on-site consumption (many stipulate ventilation requirements):

- Berkeley
- Laguna Woods
- San Francisco
- Alameda County
- Kern County
- Los Angeles County
- San Mateo County

DIFFERENTIATING DISPENSARIES FROM PRIVATE PATIENT COLLECTIVES IS IMPORTANT

Reason: Private patient collectives, in which several patients grow their medicine collectively at a private location, should not be required to follow the same restrictions that are placed on retail dispensaries, since they are a different type of operation. A too-broadly written ordinance may inadvertently put untenable restrictions on individual patients and caregivers who are providing either for themselves or a few others.

Example: Santa Rosa's adopted ordinance, provision 10-40.030 (F):

> "Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple "qualified patients" and/or "primary care givers," are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, "retail" distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, 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, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

PATIENTS BENEFIT FROM ACCESS TO EDIBLES AND MEDICAL CANNABIS CONSUMPTION DEVICES

Reason: Not all patients can or want to smoke cannabis. Many find tinctures (cannabis extracts) or edibles (such as baked goods containing cannabis) to be more effective for their conditions. Allowing dispensaries to carry these items is important to patients get-

ting the best level of care possible. For patients who have existing respiration problems or who otherwise have an aversion to smoking, edibles and extracts are essential.

Conversely, for patients who do choose to smoke or vaporize, they need to procure the tools to do so. Prohibiting dispensaries from carrying medical cannabis consumption devices, often referred to as paraphernalia, forces patients to go elsewhere to procure these items. Additionally, when dispensaries do carry these devices, informed dispensary staff can explain their usage, and different functions, to new patients.

Examples of localities allowing dispensaries to carry edibles and delivery devices:

- Albany
- Angels Camp
- Berkeley
- Cotati
- Citrus Heights
- Laguna Woods
- Malibu
- Palm Springs
- Redding
- Santa Barbara
- Santa Cruz
- Sebastopol
- Sutter Creek
- West Hollywood
- Alameda County
- Kern County
- Los Angeles County
- Sonoma County

RESOURCES FOR MORE INFORMATION

A downloadable PDF of this report is online at AmericansForSafeAccess.org/DispensaryReport

A model dispensary ordinance can be seen at AmericansForSafeAccess.org/ModelOrdinance.

A regularly updated list of ordinances, moratoriums, and bans adopted by California cities and counties can be found at AmericansForSafeAccess.org/regulations.

You can find ASA chapters in your area at AmericansForSafeAccess.org/Chapters.

ASA Blog
AmericansForSafeAccess.org/blog

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AmericansForSafeAccess.org/legal

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Contact ASA to order the DVD "Medical Cannabis in California"—interviews with elected officials and leaders who are implementing safe and effective regulations.

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

APPENDIX A

CALIFORNIA CITIES AND COUNTIES THAT HAVE ADOPTED ORDINANCES REGULATING DISPENSARIES

(as of January 2010)

For an updated list, go to:
AmericansForSafeAccess.org/regulations

City Ordinances (32)

- Albany
- Atascadero
- Angels Camp
- Berkeley
- Citrus Heights
- Cotati
- Diamond Bar
- Elk Grove
- Fort Bragg
- Jackson
- Laguna Woods
- La Puente
- Malibu
- Martinez
- Oakland
- Palm Springs
- Placerville
- Plymouth
- Redding
- Ripon
- San Francisco
- San Jose
- Santa Barbara
- Santa Cruz
- Santa Rosa
- Sebastopol
- Selma
- Sutter Creek
- Tulare
- Visalia
- West Hollywood
- Whittier

County Ordinances (10)

- Alameda
- Calaveras
- Kern
- Los Angeles
- San Luis Obispo
- San Mateo
- Santa Barbara
- Santa Clara
- Sonoma

APPENDIX B

ASA'S QUICK GUIDE FOR EVALUATING PROPOSED MEDICAL MARIJUANA DISPENSARY ORDINANCES IN CALIFORNIA

This is a quick guide on what should be, and what should not be, in city and county ordinances to best support safe access for medical cannabis patients.

What the ordinance MUST include:

- Allowance for over-the-counter/storefront sales (sometimes called reimbursements, contributions, or not-for-profit sales)
- Allowance for patients to medicate on-site
- Allowance for sale of cannabis edibles and concentrated extracts
- Distinction between Medical Cannabis Dispensing Collectives (MCDCs) and private patient collectives or cooperatives

What to look out for in proposed ordinances:

Is the general language and focus framed as a medical or healthcare issue, rather than a criminal justice or law enforcement problem?

Does the ordinance affirm that MCDCs should be organized to serve patients and have a "not-for-profit" business model?

Is there a cap on the number of MCDCs allowed to operate that could negatively impact accessibility, affordability and quality?

- How was the MCDC cap number determined (per capita, per pharmacy)?
- What criteria will be used to approve and license MCDCs?
- Will quality through competition be supported?

Zoning considerations:

- Will each MCDC be required to apply for a conditional use permit, or does the ordinance specify MCDCs as an enumerated business?
- Are there proximity restrictions or "buffer zones" from so-called "sensitive uses" which will make locating a dispensary onerous.
- Has a map been prepared that shows where the ordinance will require MCDCs to locate?

.

Does the ordinance provide for a community oversight committee tasked with any licensing or appeals processes?

- Will the oversight committee include patients, activists, MCDC operators, and members of the local community?

.

What are the MCDC requirements for book-keeping and records disclosure?

- Does the ordinance allow MCDCs to keep identifying information about its members off-site, to protect patient identities?
- Does law enforcement have unfettered access to patient records or is a subpoena required?

.

Are there caps on the number of patient-members an MCDC can serve?

Is on-site cultivation prohibited for MCDCs?

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

APPENDIX C

ATTORNEY GENERAL, STATE OF CALIFORNIA, GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

1. **Statutory Cooperatives**: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Id. at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (Id. at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (Ibid.) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See id. at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., id. at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

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

B. **Guidelines for the Lawful Operation of a Cooperative or Collective**: Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The

following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation. 1. Non-Profit Operation: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].

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

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

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

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

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

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

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

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

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

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

6. **Permissible Reimbursements and Allocations**: Marijuana grown at a collective

or cooperative for medical purposes may be:

a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;

b) Provided in exchange for services rendered to the entity;

c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or d) Any combination of the above.

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

a) Operating a location for cultivation;

b) Transporting the group's medical marijuana; and

c) Operating a location for distribution to members of the collective or cooperative.

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

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

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

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

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ATTACHMENT H

ATTACHMENT H-1

Written Comments (Received prior to 5:00 pm July 21, 2010)

Dave Hogan

From: Briana Johnson [delphinium78@msn.com]
Sent: Friday, July 16, 2010 9:22 PM
To: Debbie Lee; Dave Hogan
Cc: wildomar@aol.com
Subject: Say No to medical marijuana dispensaries in Wildomar

Dear Leaders of Wildomar City,

From the time I was 11 until entering university after my graduation from Elsinore High School, I was a youth growing up in the wonderful family neighborhood of Windsong Valley. While attending a university of over 30,000 people I met students from all over the country as well as from other countries, and yet I was proud to have come from little Wildomar, a town full of family values and residents who took pride in their small community. Several years after I received my degree and was married, my husband and I decided to return to this area to raise our, now four, children.

I am writing to raise my voice to ask you not to allow medical marijuana dispensaries in the city of Wildomar. I plead with you to 'just say no', something you are taught as a child and which we continue to teach our children. Please do not invite this into our family centered community, this which will create heavier stress on vigilant parenting and which will make a already fading line between appropriate drug use and drug abuse even more worn. Please do not be swayed by outsiders who have not invested time and heart in upholding and contributing to the values upon which have made Wildomar flourish.

Thank you very much for your time. I am confident you will make the right decision for our community: its families and its future.

Briana Johnson

Dave Hogan

From: Carol [12carol21@gmail.com]
Sent: Saturday, July 17, 2010 2:50 PM
To: Debbie Lee; Dave Hogan
Subject: medical marijuana dispensaries in Wildomar

I understand that the Planning Commission and the City Council are going to be voting on allowing legal medical marijuana in Wildomar.

Please register my opposition to this decision. I have 5 grandchildren who live in Wildomar and it has always seemed a family-friendly city. The children are safe in their schools and in their neighborhood. Their parents do not worry about what they will see or whom they may encounter when taking them shopping or to doctors' visits. The older children have good activities with friends because drug use is not legal.

I hope you will curtail the existence of drugs, pornography and other harmful influences in Wildomar so it can continue to be a good place for children and young adults to live and work.

Thank you, Carol Schill

Dave Hogan

From: Bridgette Moore[redacted]
Sent: Sunday, July 18, 2010 8:12 AM
To: Dave Hogan; Robert Devine
Subject: FW: Medical Marijuana on PC agenda 7/21

Dave & Bob,
I received this but it is for you.
Bridgette

-----Original Message-----
From: handyglenn@jps.net [mailto:handyglenn@jps.net]
Sent: Saturday, July 17, 2010 10:31 AM
To: bridgette[redacted]
Subject: RE: Medical Marijuana on PC agenda 7/21

Planing Commission:

If Medical Marijuana is Medical, then it should be dispensed the same way other controlled drugs are which is with a DR's RX and from a Pharmacy. Other wise there is is no control and the free wheeling smokers do there thing. Which is more low life in the area.

Glenn & Betty Copple

Dave Hogan

From: hsilvestre@aol.com
Sent: Sunday, July 18, 2010 9:41 AM
To: Dave Hogan
Subject: Marijuana

Att planning commission, it is time to think outside the box and allow Medical M into our city. I would limit the zoning to east of mission trails -west of I-10- north of corydon part of the city- commercial or industrial-- a certain distance away from schools and daycare centers. No more than 2 dispenceries allowed. All compliances, records, practices to be up to state level or better. I also want them to provide schools with anti- drug flyers, seminars etc. Say no to drugs - funded by them, and to be involved in the community more-- I think this can be a good source of revenue to the city. I also think by placing them in the area I mentioned the city limits potential outcry from some. Thanks

Henry Silvestre
Sent via BlackBerry by AT&T

Dave Hogan

From: skhobs@aol.com
Sent: Sunday, July 18, 2010 10:50 AM
To: Dave Hogan
Subject: Medical Mar

I think the proposal is a good one and that the city should vote in favor of allowing the dispensaries to operate with in the guide lines.
It will benefit the city especially if the vote in Nov passes.

Karen Hobson

Dave Hogan

From: John (Temecula) Lloyd [JLLOYD1@irf.com]
Sent: Sunday, July 18, 2010 11:29 AM
To: Robert Devine; Dave Hogan
Subject: Medical Marijuana Dispensaries

Hello,

I spotted Bridgette's call out on Facebook to provide feedback on this subject so I thought I'd drop a line.

I believe that as long as the City requires dispensaries to provide quality control, stringent security and insurance against any negative impacts that may arise, the community could benefit from this type of service.

There should be fees for licensing that are in accordance with the cost of creating this new type of business and also a community tax levied against the volume being dispensed (by the ounce?), to cover any additional costs the City might see due to increased policing because of the nature of the goods being sold.

I would also limit the number of locations to two for this sized community.

Thanks for taking input, and for all the work you do. John Lloyd

Dave Hogan

From: Debbie Lee
Sent: Monday, July 19, 2010 9:03 AM
To: 'bridgette[redacted]; Marsha Swanson; Sheryl Ade; [redacted]Bob Cashman; 'Scott Farnam'
Cc: Frank Oviedo; Gary Nordquist; Dave Hogan
Subject: FW: Medical Mar

FYI

-----Original Message-----
From: skhobs@aol.com [mailto:skhobs@aol.com]
Sent: Sunday, July 18, 2010 10:56 AM
To: Debbie Lee
Subject: Medical Mar

I think that it is a good idea for the city to allow the dispensaries.
It would be of great benefit to the city especially if the measure passes in Nov. to legalize. The city would be a step ahead. I have watched several family members and friends in serve pain who would have been helped by being able to obtain it legally. They would never dream of reaching outside of what is legal or legally available to them.

Karen Hobson

Dave Hogan

From: Caroline Blevins [sweetcaroline80@gmail.com]
Sent: Monday, July 19, 2010 12:08 AM
To: Dave Hogan; Robert Devine
Subject: This Wildomar Residents Opinion About The Consideration Of Regulations To Allow Medical Marijuana Dispensaries

To Whom It May Concern:
This entry is from a post I blogged about resiliently. A little back round, I've lived in this area for over 18 years, my husband is a Peace Officer for the State of California, my husband has never used an illegal drug in his life, I have been known to use marijuana very rarely for medicinal purpose's. At the end of this email I also Added a web page to visit with an article writen By Larry A. Bedard, MD special to the Mercury News, and is a very informative comparing the effects of alcohol and marijuana use.
I have no problem telling it how it is!. CA more then ever before, needs to get out of debt, and this in November is gonna be the best way. Did you know that state employee wages only make up 4% of the budget? But yet our current GOV hates cops and peace officers, so he went after those first! Historically prohibition doesn't work or help! I don't care what "party" you affiliate with, if alcohol, a drug worse then pot, because of its death rates ect.... can be legal, then why not pot?! The benefits to the state not only include more money! Did you know that Marijuana is CA most productive (money maker) cash crop next to (wine) grapes? Do you even know the history of Marijuana? I do, and It's sad that the history of alcohol" prohibition" is taught in our schools but not this. Even though the two are not only very similar, but also started being demonized around the same time, because of politics and bad propaganda. Still, opposing supporters of marijuana forget that alcohol is an even worse devastating drug. Think of all the "alcohol" related death's you ever heard of. You'll never find ONE death related to Marijuana! Excluding driving under the influence of any drug, but then again, any "drug" prescribed or not, can inhibit a driver, regardless of it's name! Some may say, "then your husband still may loose his job because of the "lack" of prisoners! Eff- that! Our prison are the most overcrowded in the nation! Even if they didn't have "pot" offenders, they would still be dealing with even more service crimes, like murder, trafficking, or sex crimes! , And still be overcrowded. Did you know that this state spends and average of $250,000 per Ward, per Year? "Ward" is the name our state give to under age individuals that commit a serious and heinous crime. California has the potential to get out of debt, reduce spending , and make money! And not send lay-off notices or wadge deprecations to teachers, peace officers, or fire fighters, and even still we (CA) always have had this option.
And to people who say that "pot" is a "gateway" drug, eff- you! Then so is alcohol! It's kinda like food that is bad for you, over weight, diabetes ect.. Your kid or you being over weight because of the shit "society" allows to feed it, is someones else's fault ...right?! NO! Everyone was in this world was once a child, and you learn the shit you know by watching the adults around you. The point is teach your kids about values, history, exceptions, and good from bad! You can't blame your problems on the Ill's of society, it's about the discipline, integrity, and values you (as a parent) instill on your children. Please, don't let someone or something do your parental job, and obligation! It's your fault if you and your family is over weight! So fix it if you feel the need, just like it's you fault if your an alcoholic, druggie, of sex offender abuse. We are through paying for your stupidity! The point being, shut the eff-up!, and stop blaming others and/or things because your illness/craziness is to much for you to handle, and feel the need to blame anything but yourself! Get the medical help you need if you can't "deal" with an "addiction" , know your limits, genetics, and history! Smoke some pot! That's all I'm saying.

http://www.mercurynews.com/opinion/ci_15525522?nclick_check=1

So not only do I think this is the right decision for our state but very beneficial to any city that get on the dispensaries train. Just thinking of all the business it would bring to the state and city of Wildomar is mind blowing. Thanks for your time and I hope you will consider all the opinions you receive and make an informed decision.

If and when the state of California legalizes medical and private marijuana use in November you can bet I'll be adding something else to my garden to grow!

Wildomar Resident Since July, 2008

~Sweet Caroline~

Dave Hogan

From: Rosen, Jeff [JRosen@go2cornerstone.com]
Sent: Monday, July 19, 2010 10:29 AM
To: bridgette[redacted]
Cc: Dave Hogan; Debbie Lee
Subject: RE: Need your opinion by 7/21

Hi Bridgette,

Cornerstone as an organization does not have an official position on the question of medical marijuana, but allow me to give my personal "take"
on this issue. Please keep in mind that while I spend most of my waking hours in Wildomar, my home is in Murrieta, so I will not have the opportunity to vote on this in Wildomar.

The fact that marijuana can offer significant relief to those suffering from glaucoma and nausea brought on by chemotherapy is well documented.
I believe that it is safe to assume that any marijuana dispensaries in Wildomar will be required to comply with state regulations.

These are my personal questions and concerns;

1) Approx how many Wildomar residents would benefit? Would most of the "clients" reside in other communities? If so what is the benefit to Wildomar?

2) Although medical marijuana patients can legally use marijuana as prescribed, what is to stop them from sharing or selling to third parties? I personally know of one medical marijuana patient who confided to me that he shares with his wife and others.

With these concerns in mind, my personal preference is the city proceed slowly and cautiously.
Pastor Jeff
-----Original Message-----
From: Bridgette Moore [redacted]
Sent: Sunday, July 18, 2010 8:23 AM
To: Rosen, Jeff
Subject: Need your opinion by 7/21

Hi Pastor Jeff,

Medical marijuana is on the Planning Commission agenda this Wed, 7/21 at 7pm.

PLEASE email your opinion ASAP to:
Planning Director Dave Hogan dhogan@cityofwildomar.org and City Clerk Debbie Lee dlee@cityofwildomar.org

Wildomar commission to consider regulations to allow medical marijuana dispensaries
11:02 PM PDT on Saturday, July 17, 2010
By JOHN F. HILL
The Press-Enterprise
Wildomar could start on a path this week toward becoming the second Riverside County city to allow medical marijuana dispensaries.
The city's Planning Commission on Wednesday will consider a new law that would regulate the dispensaries, lifting a ban in place since Wildomar became a city in 2008.

First, the commission must decide if dispensaries are appropriate for the city. If so, it must decide how and where they can operate.

City Attorney Julie Hayward-Biggs drafted regulations based on a law passed by the city of Laguna Woods, an Orange County retirement community.

In a report prepared for the meeting, Planning Director David Hogan said commissioners could accept the ordinance as is, reject it or modify it as they see fit.

For example, the draft would give the city administration power to issue permits to dispensaries. The commission could decide to make the process more onerous, requiring public hearings before a business can open.

The draft would allow dispensaries in commercial zones only. But, Hogan said in the report, the commission could decide to relegate the businesses to industrial zones only, or it could allow them in both commercial and industrial zones.

Commissioners must also decide how far the dispensaries should be from schools, parks and other places children are likely to be. The draft law calls for them to be at least 1,000 feet away.

The draft does not put a cap on the number dispensaries allowed in the city. It allows them to be open only from 9 a.m. until 5 p.m. Monday through Friday. And it requires the businesses to have security cameras and to keep the tapes for at least two weeks in case police need them to investigate a crime.

All such regulations could be altered if the commission approves a new law.

The push to allow dispensaries began this spring, when a nonprofit marijuana collective, the Wildomar Patients Compassionate Group, opened a storefront location on Mission Trail. The collective's manager, William Sump, walked into City Hall and announced he would open the store, though city codes forbade it.

Wildomar's rules on medical marijuana were inherited from Riverside County when the city incorporated.

The collective's opening and subsequent quick closure sparked a response from local medical marijuana activists, who persuaded the council to consider allowing dispensaries.

In April, the council voted 4-1, with Mayor Bridgette Moore dissenting, to direct the city attorney to draft the new law. If the Planning Commission votes in favor of a new ordinance, the law would proceed to the City Council for approval.

Reach John F. Hill at 951-375-3738 or johnhill@PE.com

Dave Hogan

From:	Debbie Lee
Sent:	Monday, July 19, 2010 12:03 PM
To:	'bridgette [redacted] Marsha Swanson; Sheryl Ade; [redacted] Bob Cashman; 'Scott Farnam'
Cc:	Frank Oviedo; Gary Nordquist; Dave Hogan
Subject:	FW: Medical Marijuana

FYI

From: Curtis Drake [mailto:curtis@dlogistics.us]
Sent: Monday, July 19, 2010 11:52 AM
To: Debbie Lee
Subject: Medical Marijuana

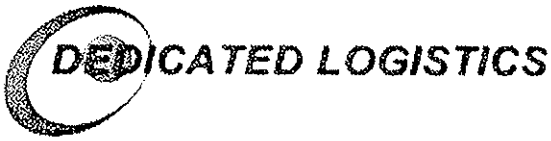
City of Wildomar

I would like to express my concern regarding upcoming legislation to zone or allow medical marijuana into our town, I strongly oppose this measure. I would never want to see a dispensary in our city borders if nothing else based upon principle. I don't want my children exposed to it, I don't want them taking it, I don't want them selling it, and I don't want their friends who will be a huge influence on them doing likewise. Do you understand the ease to obtain a medical use card to get this? This is an absolute joke! Any individual can profess anxiety, lack of sleep, pain etc. in order to obtain a card. This is not just for glaucoma patients any more, this is now spread to multiple reasons, basically any reason to get high. Call it like it is, this will bring more drugs into the community and where does it go from there? The consequences of this will be more drugs in the homes, more drugs in the schools, more people driving high in my town, more people sitting on their porches getting stoned legally because we permitted it in our city. Allowing this would be a very poor decision on part of the city of Wildomar. I want to live in a community that stands for standards and values, this to me is just another step in the continual erosion of decaying moral values in this nation. Did you know that in the ancient city of Troy only 2 people stood up to the leaders to ask them not to bring in the Trojan Horse? That decision did not go so well for the Trojans.

I hope that you will consider my opinion as a long time resident of Wildomar (15 years) and a former clergy in this community.

Thank you,

Curtis Drake
curtis@dlogistics.us
Phone: 951-734-8709
E Fax: 951-710-6690
Cell: 951-285-9993



Dave Hogan

From: Tina Tyra [alaboroflove@verizon.net]
Sent: Monday, July 19, 2010 3:28 PM
To: Dave Hogan; Debbie Lee
Cc: 'Swanson, Marsha'; Bridgette Moore
Subject: Medical Marijuana Dispensaries

My home and my business are both located in Wildomar. I am active in the community as a Rotarian and through Chambers of Commerce and local business organizations. I have a child in the school system and children who graduated from the school system.

I am AGAINST medical marijuana dispensaries for the following reasons:

1. They are still illegal federally.
2. We can't preach to our children to avoid illicit drugs if we offer them for sale, even medically. This is hypocritical.
3. A head on crash in Wildomar which took the life of an 18 year old young man on his way to the prom last year (Bundy Canyon Road) was precipitated
   by a wrong-way driver who was under the influence of Marijuana, used illegally. If we make it legal, we will have more deaths, injuries, and accidents.
4. Marijuana is a gateway drug. Overwhelmingly, the people in our prisons have used Marijuana and have gone on to more destructive drugs.
5. As you can see by the articles below, Medical marijuana dispensaries are experiencing violent crime. People are being shot and killed for the money
   and the dope. Three such shootings have occurred in L.A. in the past month. They have been described as "brutal". L.A. has ordered the closure of over 400 dispensaries. Other cities have experienced the same, and yet proponents say they are "safe".
6. Medical marijuana dispensaries in Los Angeles now outnumber schools. Is this really necessary?
7. Medical marijuana dispensaries have become a front for illicit sales of the drugs. In some cases, people are walking down the street and re-selling the pot.
8. We came to this city to avoid the big-city crime and have a rural, idyllic setting in which to raise our children. Now we are dealing with pot sales, graffiti,
   gangs and crime. Are we inviting more with dispensaries?

PLEASE READ THIS – VERY IMPORTANT:
http://latimesblogs.latimes.com/lanow/2010/06/lapd-investigating-robberyshooting-at-san-fernando-valley-medical-marijuana-dispensary.html

http://www.foxnews.com/us/2010/06/25/los-angeles-police-probe-fatal-shootings-medical-marijuana-dispensaries/

This is a walk in front for sales. Any of us can claim migraine or chronic pain and get a prescription. If a cancer patient needs it, then their cancer doc can prescribe it. There shouldn't be docs that JUST DO MEDICAL MARIJUANA PRESCRIPTIONS. This is wrong. My fiance is a physician and while he thinks that some people can benefit (like cancer patients), he too is against dispensaries. This is the wrong way to approach it, should marijuana be classified as a medical treatment. If it is legitimate, it can be prescribed by regular physicians and filled at pharmacies. These "feel good" docs are prescribing way too many drugs and marijuana is one of them. We are creating a society of drug-dependent people. Then, they go out and drive. We can't complain when someone is killed in a traffic accident and/or shootings and violence occurs if we advocate for this.

http://www.medicalmarijuanadoc.com/

Proponents argue that they are not dangerous and that they will station armed guards in the dispensaries. They wouldn't need armed guards if they weren't dangerous.

Proponents argue that it's only a matter of time before marijuana is legalized and that it is a drug used for multiple ailments. If a doctor prescribes it, you should be able to get it at a pharmacy like other drugs. We don't need dispensaries and/or collectives.

I will not be attending the council meeting because the proponents are offensive and over-zealous. They are a noisy minority. Everyone I have spoken to, even if they believe marijuana should be legalized, is not keen on the idea of dispensaries near their homes or their businesses.

PLEASE DO NOT ALLOW MEDICAL MARIJUANA OUTLETS OR COLLECTIVES IN OUR CITY!! Many other cities are banning them. We should do the same.

Tina Tyra
Wildomar Resident & Business Owner

Dave Hogan

From: Carolyn Scharpen [cscharpen@verizon.net]
Sent: Monday, July 19, 2010 3:44 PM
To: Dave Hogan
Subject: Opposition to Medical Marijuana Dispensaries

Dear Dave,

Thank you for answering my questions on the phone today regarding the proposed Planning Commission meeting this Wednesday. Since I can't be at the meeting, I request this email be read and included in the package to be forwarded to the City Council.
==========

I am writing in regard to the Planning Commission agenda item 5.1 regarding a zone code amendment for medical marijuana dispensaries.

I vehemently oppose any action that would allow the lifting of the 2008 ban on these dispensaries. I strongly urge the Planning Commission to adopt a resolution recommending that the City Council not adopt an ordinance allowing the establishment and operation of medical marijuana dispensaries.

We moved here about two years ago from Orange County. We looked in many other areas, but were drawn to Wildomar because it had a peaceful country feel yet provided easy access to freeway and other services. We settled near Clinton Keith and Grand Avenue, surrounded by horse properties that could well be described as a little slice of heaven. Each day we give thanks that we live in a little part of America that values its history, its senior citizens, and retains a neighborly feel. We love the fact that Wildomar is safe for our children to ride their bikes along country roads. The Farmer's Market is a great new addition to the community. We have observed the growth in facilities along Clinton Keith and, despite regretting the increased traffic, have concluded that such growth is somewhat inevitable given a growing population and the city's desire to increase revenue.

Never once did we imagine the growth and revenue hunt would include the addition of medical marijuana dispensaries.

One has only to go to the Justice Department home page to see that the California medical marijuana situation is surrounded with controversy, deception and illegality. It states:

1. "The assertion that all medical marijuana is headed for seriously ill patients is misleading."
2. "Many self-designated medical marijuana growers are, in fact, growing marijuana for illegal, "recreational" use."
3. "The DEA and its local and state counterparts routinely report that large-scale drug traffickers hide behind and invoke Proposition 215, even when there is no evidence of any medical claim. In fact, many large-scale marijuana cultivators and traffickers escape state prosecution because of bogus medical marijuana claims. Prosecutors are reluctant to charge these individuals because of the state of confusion that exists in California. Therefore, high-level traffickers posing as "care givers" are able to sell illegal drugs with impunity."

Source: www.justice.gov/dea/ongoing/calimarijuana.html

I understand some of the push to allow the dispensaries has occurred as as a result of a non-profit group called "Wildomar Patients Compassionate Group" and other medical marijuana activists urging the council to reconsider the ban. As a former cancer patient, now survivor, I can compassionately state that the side effects of treatment, while challenging, can be endured without resorting to illegal drug use.

The city of Wildomar boldly invites: Welcome to Wildomar, one of California's most recently incorporated cities -- where natural beauty and a feisty spirit give rise every day to the optimism leading it to a future unlimited."

I am confident that drug trafficking and the "selling of illegal drugs with impunity" is not the kind of "feisty spirit" and "unlimited future" the city of Wildomar seeks. If the city of Wildomar proceeds on this course, I am equally sure you will rapidly see many of its citizens use their own feisty spirit to move right out of Wildomar in search of a city where they can truly feel safe and optimistic about their family's future.

Sincerely,
Carolyn Scharpen

Dave Hogan

From: Debbie Lee
Sent: Tuesday, July 20, 2010 1:29 PM
To: 'bridgette[redacted]Marsha Swanson; Sheryl Ade; [redacted], Bob Cashman; 'Scott Farnam'
Cc: Frank Oviedo; Gary Nordquist; Dave Hogan
Subject: FW: Vote on marijuana sales; Please share with the council.

FYI

From: faulkenham@aol.com [mailto:faulkenham@aol.com]
Sent: Tuesday, July 20, 2010 11:59 AM
To: Debbie Lee
Subject: Vote on marijuana sales; Please share with the council.

I have lived in Wildomar since 1978. I raised 6 children here. They all graduated from EHS, most went on for advanced degrees. I started working for the Lake Elsinore High School District in 1984 (it later merged with the elementary district and became Lake Elsinore Unified School District). I retired from the district two years ago as a school psychologist. I know you don't like to hear this but many of our students live in less than ideal homes. Many have "absentee" parents. That doesn't mean that the parents are gone, just that they are so busy with their own lives that they ignore their children. Yes, even in our more "affluent" areas. The Middle School (MS) students are released for the day at 1:55 pm. That leaves a lot of empty hours until parents get home from work. I mention this because the MS students are the most vunerable.

Over the past few years, many studies have been completed regarding brain development. You are all parents and some of you are grandparents. You are well aware that the first 2 years of life are big growing times for the brain. It is less well known that the body shifts its emphasis from growing the brain to changing the body from child to adult starting at the time of puberty. For the next few years there is minimal growth in the brain. You know from experience that young teenagers have very little self-control and are usually very impulsive. They do not consider the consequences of their decisions. They are easily influenced by their peers.

Right now you are thinking that this decision to allow marijuana sales will not affect our children. That there will be age limits on sales. Well, there are age limits on the sale of alcohol too. But a recent survey by NIMH found that a significant percentage of elementary age students have an alcoholic drink several times a week. The same will be true for marijuana. What are the dangers of marijuana you ask. For an adult, not so much. For the developing brain of a child, a lot. It can permanently change neural development of the frontal cortex. The frontal cortex is our master control. The part of our brain that acts as our moral compass, that uses reason as a guide, that balances consequences against immediate gratification. Several studies have shown that heavy use of marijuana in teenagers contributes to poor concentration, lack of interest, and malaise as adults.

Please do not allow the sale of marijuana in our great city just for the sake of increased revenue.

With great concern,

Kaaren Faulkenham
24972 Butterchurn Rd.

Dave Hogan

From: Debbie Lee
Sent: Wednesday, July 21, 2010 8:36 AM
To: 'bridgette [redacted] Marsha Swanson; Sheryl Ade; Bob Cashman; [redacted] Scott Farnam'
Cc: Frank Oviedo; Gary Nordquist; Dave Hogan
Subject: FW: Medical Marijuana Law

FYI

From: sixstrubles@verizon.net [mailto:sixstrubles@verizon.net]
Sent: Tuesday, July 20, 2010 10:35 PM
To: Debbie Lee; Dave Hogan
Subject: Medical Marijuana Law

We understand the city council is considering allowing medical marijuana shops to be set up in the city of Wildomar. As residents of more than 10 yrs here, we are vehemently opposed to this for a number of reasons. First, there isn't anywhere in the city where shops could be set up away from schools and neighborhoods. Wildomar doesn't have a retail or industrial district that is far enough removed from families and children to guarantee safety around any proposed shops. Second, we know proponents will point to a recent study that stated medical marijuana shops are less likely targets of crime than banks and liquor stores. Of course, that's true. Criminals go where the money is--and it's not at medical marijuana shops. However, what the study doesn't address is the criminal element coming into the area in the first place. Though they may not target medical marijuana shops, they do target the businesses and people around those shops. This was highlighted in the past month or so with two incidents involving shootings in LA county around medical marijuana shops. This is not going to be brought up by proponents. If the issue is about tax revenue, this is a short-sighted answer. If medical marijuana shops are allowed in the area, what other kinds of businesses are going to want to come into Wildomar? And what's going to happen to property values? This has always been a strong family community but this will not be a destination that families are going to want to relocate to. And once a medical marijuana shop is set up, it's going to be very difficult to remove it in the future even if there is a change of heart down the road.

We're curious to see how many proponents of medical marijuana shops are actually Wildomar residents. We also have to wonder whether the city council truly believes a majority of the residents are in favor of having medical marijuana shops in Wildomar. We have to believe this will be remembered when election time comes up.

Dave Hogan

From: Stan Crippen [stancrippen@mac.com]
Sent: Wednesday, July 21, 2010 4:35 PM
To: Dave Hogan
Subject: Marijuana dispensaries

To the City Council and the Planning Commission,

We wanted to take this opportunity as you are considering allowing Medical Marijuana Dispensaries in Wildomar to express our opposition. It has been told to us that very little opposition has been expressed by the community. I hope that this is not misunderstood by the Council and the Commission. This issue has been raised as school was ending and during the summer. We did not find out that this was even a consideration until recently. We believe that the real outcry will occur as it becomes a reality by vote and the dispensaries begin to appear. We would like to outline previous to the vote, why we are opposed.

Stan **as a teacher and Mary as a nurse,** have seen the effects of marijuana on altering the course of lives. Mary has seen what it has done to the unborn, and to the parenting skills of parents more focused on the next 'high' than the raising of their child. Stan has spent his entire teaching career trying to help students move out of the "I don't care" attitude that comes from pot use. It is the gateway drug, with his students beginning as early as 4th grade, some being introduced by parents or siblings. To increase the availability and acceptance of it as a medicine, will not be a benefit to our community. We were able to raise our children in Wildomar and two of them returned to this community and are raising their families. We are concerned about their future in this area as they raise their children. We would hope to protect our grandchildren and their friends from marijuana dispensaries right here in Wildomar.

As homeowners we're appalled that according to newspaper reports $12,000 has been spent to investigate the possibilities of dispensaries. In these times of reduced funds available, why would the city authorize to even look into it? When we requested our dirt road to be paved, we were informed that there would be $50,000 available for road improvement, and we would need to participate financially to get it done. How is it responsible to spend 25% of the total road amount on investigating the possibility of approving dispensaries?

As members who participated in the Vision of Wildomar's Future Conference, we don't remember dispensaries being included in that future. There were many worthy and beneficial projects and goals that were brought up (walking trails throughout the city, etc.). Have we invested the same amount of money and time investigating those options that would benefit the entire community? Our area is just shaking the stigma of being one of the 'meth' capitals of California. Why we would want to highlight ourselves by being pioneers in the dispensary arena? Especially when our sister city to the north, Lake Elsinore, said no (Californian, section B, June 23, 2010).

As a member of the Lake Elsinore Unified School District Board, I am very concerned about the impact that this could have on our students. Logic says that if the purpose of having dispensaries is to make it more readily available to those that need it, the point is,..it is more readily available period. Can you guarantee that not one youth of our community will be able to access it? If you cannot, then I am not ready to agree that we should increase availability in our community.

Our purpose is not to withhold medical marijuana from those who genuinely seek it for justifiable purposes. There are places that it can be obtained, and although they may not be convenient, I would rather inconvenience those individuals, than I would risk altering just one youth's life from Wildomar. Another point that we found interesting is that the individuals that we have heard from who want to set up the dispensaries are

from outside of our community. If it is such a great idea, wouldn't logic suggest that they do it in their communities? Why aren't they? Are they using us and taking advantage of our new city status? Are they so enthusiastic about it because of their own profit motive as opposed to benefiting our community?

People will say, "The kids who want it are going to get in any way". They may, but we can not sit still as adults – caretakers – and make it easier for them to obtain marijuana or make it appear as though it is acceptable. As a high school teacher, I grew weary of hearing that one of my student's biggest high school accomplishments was making it all the way through rehab. I was thankful that they got the help, but it made me even more committed to keeping them safe from using the gateway drug that put them there in the first place.

To the city council, we are grateful and thankful for all that you have done to get the city off on the right steps in it's infancy. We know you have put in many unseen hours and you may have justifiable reasons for considering this. We just need to be very clear how important this issue is to us and many of the that community members that we know. We could not vote for any council member that approved this measure and would work to put in candidates opposed to dispensaries.

Respectfully,

Stan and Mary Crippen

Dave Hogan

From: Katherine Bess [ekzoo@verizon.net]
Sent: Wednesday, July 21, 2010 4:43 PM
To: Debbie Lee; Dave Hogan
Cc: Katherine Bess
Subject: Medical Marijuana law

Dear City of Wildomar Planning Director and City Clerk,

I am sending you this email to let you know I live in Wildomar and I am against changing zoning ordinances, because I do not wish to allow for medical marijuana dispensaries.
While I have compassion for people who could benefit from the anti nausea properties marijuana can provide, I think the proper way to provide this is from a licensed pharmacy who complies with state and federal law regarding the dispensing of prescriptions written by a licensed physician, possibly with the same kind of data collection (like drivers licenses) that is asked for with regards to Sudafed, to ensure that this drug is dispensed to people who have not been able to control their disease process any other way.

Thank you,
Katherine Bess

ATTACHMENT H-2

Written Comments (received between 5:00 pm July 21, 2010 and August 4, 2010)

PUBLIC COMMENTS RECEIVED

ON THE

MEDICAL MARIJUANA ORDINANCE

BETWEEN JULY 21, 2010 AND August 4, 2010.

Dave Hogan

From: Silva, Martin [martin.silva@ert.com]
Sent: Friday, July 23, 2010 8:12 PM
To: Robert Devine; Dave Hogan; Gary Andre; Harv Dykstra
Cc: Alfredo Garcia
Subject: Medical Cannibis Dispensory
Attachments: MCD.pdf; MS ERT CV.pdf

Hello Gentleman,

My name is Martin Silva, I am a licensed Respiratory Therapist #15920 by the Respiratory Care Board in the State of California to dispense administer and provide patients with a physicians prescription any medication including narcotics and all cardiac and respiratory drugs deemed medically necessary. I have been practicing in acute care facilities for 16 years, and currently provide clinical trials for Pulmonary Function Testing the last 3 years, including privileges at Rancho Springs and Inland Valley hospitals respectively. I have been a member of the National Board of Respiratory Care (http://www.nbrc.org) for just as long. That said I would like to bring to your attention the concern regarding the topic of Medical Cannabis Dispensaries in the City of Wildomar. This topic of conversation was brought up amongst a few collogues of mine including a Cardiologist, Registered E.R. Nurse and fellow Respiratory Therapists. We all feel the need for giving safe access to all patients alike and as caregivers we all understand the needs with such a great responsibility bestowed upon us as professionals. We have long followed the misgivings in Los Angeles and now have this very topic knocking on our front door. We are legally obligated to uphold a very high standard of care within the medical community and with good reason have to adhere to the federal, state and local laws and regulations of which we have come accustomed to for many years. It is with this background I feel a moral and ethical obligation to speak comfortably about this subject matter and to voice a concern that I believe many of us have within the entire community. Just as all of you gentleman have an obligation to do what is best for our community we would like to offer our expertise and services in the form of a humble opinion to the City of Wildomar, and the City Council Members, on the precipice of such an important decision. If we were to allow and open a dispensary for the medical community would it not be in the best interest of our patients it be operated by licensed medical professionals with experience and education in Pharmacology, Respiratory Therapy and the Cardio Pulmonary field of medicine?

I suspect the reason this has never been proposed before is because of the lack of integrity the industry has been perceived by so many for so long, no medical professional would dare risk their name and license to be associated with such a demeaning group of unscrupulous individuals who use the name of caregivers as a means of pure monetary gain and have cowardly used the system to benefit themselves first and foremost at the expense of real patients in need. If these individuals worked in a hospital they would have been fired and in many instances incarcerated. The individuals who have been running the collectives and delivery services have long been running these outlets without any oversight or accountability from a medical and legal standpoint because they were never told they couldn't, and we as a community have collectively allowed this to occur, especially in Los Angeles. On behalf of myself and the many medical professionals in Wildomar and our neighboring communities I humbly implore you to consider what no one else has. To be different, to voice a change and implement some form of rules and regulations for a medical dispensary that would be the industry standard and in the process try to do best by our patients from a medical point of view . I would like to give you an idea of what I have in mind based on my experiences in acute and out-patient care but also in dealing with the federal and state investigators, OSHA, the Fire Marshal, HIPAA and Title 14 California Code of Regulation.

I have taken the liberty of attaching my CV and a short document with broad but helpful ideas of how we in the medical community believe this should be approached. I believe we can all agree, the last thing anyone of us want to see happen to our communities is what has despicably taken place in Los Angeles, and if given the opportunity to best operate a patient care clinic in the true sense of the word and appropriately facilitate the needs of our patients within our community with a sense of ethics and high moral standing, then we should do so accordingly. Medical Cannabis Dispensaries can be safely and positively integrated into Wildomar in a way that addresses the legitimate concerns of law enforcement and maintain the spirit of the law while properly meeting the needs of the patient population. The

reason we have such cavalier individuals running these places today is because they cannot be held accountable for their lack of patient care. Medical professionals have to adhere and answer to a much higher authority. California State Licensure. If we do not comply with the rules and regulations we will get our licenses suspended or in many instances revoked for life. Where actions from the current "Bud Tender" who is not educated in anatomy and physiology or pharmacology has nothing to lose and does not mind working in a gray area of the law because there is little or no oversight thus little or no consequences.
It is for this reason I would like to inquire for information on accessing and submitting an application to obtain a license for the purpose of opening a 100% Legal Medical Cannabis Dispensary within the city limits of Wildomar **for** the medical community and **by** the medical community. In addition to the application I would like to know if there are any present guidelines in place as far as rules and regulations the city may already have. If you can forward these to me as well, I would appreciate it very much. In conjunction with the support of many Physicians and Nurses who believe in safe and legal access to all prescribed patients we hope to be given the opportunity to help coordinate a professional working relationship with the City of Wildomar , it's Council Member's, the Planning Commission and the local Police Department. We will all be watching carefully as this process continues to move forward in the right direction for everyone concerned.

Thank you in advance for your attention and prompt response,
Regards,

Martin Silva RCP
Senior Respiratory Therapist, Clinical Specialist
ERT Research Services

martin.silva@ert.com

Getting it Done. Right.

The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) named above. If the reader of this communication is not the intended recipient(s) or the person responsible for delivering this communication to the intended recipient(s), you are hereby notified that you have received this communication in error and that any review, dissemination, distribution, or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately and delete the original message. Thank you.

I. Appoint a Medical Director

a. The primary role of the Medical Director, as leader of a multidisciplinary team, is to help organize a fiscally sound model and infrastructure of the core patient care business. To ensure that the program is safe, comprehensive, cost effective, and medically effective for all individual patients. Help initiate a Policy and Procedure manual and Standard Operating Procedures for the facility.

II. Appoint a Program Director/Manager

a. The Program Director's responsibilities relate primarily to oversight of program policies and procedures but may include specific responsibilities for patient evaluation, management, and supervision. In many instances, a program Director/Manager and specified staff, under the direction of the Medical Director, are responsible for much of the daily program operations. With input from other members of the team, the Program Director should oversee and provide direction in the processes of program development, on-going quality improvement, goal development; patient monitoring and documentation to facilitate compliance.

III. Appoint an Oversight Committee

a. This committee will act like that of a Medical Advisory Care board and charged with setting and enforcing standards regarding ethical standards and acceptable levels of performance. This committee will meet monthly to quarterly to review the progress of the program.
b. Approve new policies and procedures and revisions to existing policies and procedures.
c. To review feedback and complaints made by patients, if any follow up were required or an appropriate course of action taken to rectify the situation and if they were responded to in a timely fashion.
d. Implement interventions, as needed to improve site operations and situations that pose a threat to patient safety, such as the use of herbicides, pesticides and contaminants in the cultivation, curing, packaging and transportation of cannabis.
e. Implementation and coordination of cultivationg, harvesting and storing/curing with the proper use of aseptic techniques. "Suppliers of medical grades of cannabis must be particularly stringent in their cultivation techniques because HIV and AIDS patients suffering from immune suppression typically comprise 75% of medical user populations. Properly cultivated marijuana and its constituent cannabinoid compounds are among the safest drugs known to medical science." http://www.cannabismd.net/contaminants/
f. Establish a strong avenue of communication with local Law Inforcement agencie(s) to ensure all legal obligations are being met.
g. Committee should be comprised of the Director, Manager, City Counsel member in addition to having some form of representation from the local patient members and the local Police Department on the board.

IV. Appoint a Director of Education

a. In accordance with established policy and procedure approved by the current Medical Director; coordinate and implement patient education and respiratory pros and cons associated with smoking cannabis with the use of Peak Flow meters, Incentive Spirometry and 02 saturation.
b. Develop and implement a patient pulmonary rehabilitation program for patients associated with COPD, Asthma, IPF and sleep disorders using cannabis.
c. Coordinate patients plans of care in compliance with regional best practice guidelines and in conjunction with a multi-disciplinary care team for all post acute care patients currently on other meds, to minimize any possible negative reactions when using cannabis.
d. Coordinate a respiratory education plan for the use of cannabis for local public schools and the community. This helps counter drug abuse recreational use of cannabis.
e. Promote education and continuity in developing awareness and direction, especially for those at risk for increased pulmonary related illnesses while using cannabis for other post secondary illnesses.
f. Consistently support and adhere to the code of conduct as currently implemented and by maintaining the privacy and confidentiality of all patient information.
g. Protecting the assets of the organization, acting with ethics and integrity, reporting non compliance and adhering to applicable federal, state and local laws and regulations as set forth herein.
h. Most importantly; Patient Rights. Collectively we must compose a customized bill of rights for all patients using our community clinic. Including the 5 rights to patient medication safety.
    1. Right Medication – Not all cannabis is the same.
    2. Right Dose – Different types can vary from affecting various patients.
    3. Right Time – There is a time for everything and taking cannabis must be done responsibly in a timely manner with proper planning.
    4. Right Route – Not everyone should be smoking cannabis, there are many other means of taking this medicine.
    5. Right Patient – Cannabis is not for everyone and can be used effectively on a short term basis. Constant monitoring of patients and proper record keeping can help with the decision making process for a well informed patient.

Remember, this is a patient clinic and with that comes a much greater responsibility than providing a product. All patients deserve the opportunity afforded by the providing facility of what is best for that particular patients needs. They should be educated for what may facilitate their needs and recommendations based on factual data which should be presented to them so that collectively an educated decision can be made for the best plan of action including a constant support group to change with the patients needs.

Dave Hogan

From: Don whildin [donwhildin@msn.com]
Sent: Friday, July 30, 2010 5:35 PM
To: Dave Hogan
Subject: marijuana dispensaries

weds. 4 Aug 7 pm, city Planning Commission will be meeting in City Hall to discuss and/or vote on the approval or rejection of marijuana dispensaries within the City of Wildomar. Public meeting. Over 75% of attendees at the last meeting do not live in the cdity but attempting to influence the decision of the commission. Please consider mention the meeting in your Sunday bulleting. Go to meeting, send a letter or e mail dhogan@cityof wildomar.org Thank you

I WILL SPEAK OF THIS TO OUR CHURCH.

Dave Hogan

From: Greg Beil [gbeil@fbcwildomar.com]
Sent: Sunday, August 01, 2010 5:02 PM
To: Dave Hogan
Subject: Marijuana Dispensary

To Whom It May Concern:

I would like to voice my opinion concerning the upcoming meeting about the possible Marijuana Dispensary gaining approval in Wildomar. I am against approval for the dispensary. I work with young people from Wildomar and know the potential dangers of making drugs more available in our community. I realize it may produce more income for the city, but this is not the way our city should go.

Greg Beil, Principal
Faith Baptist Academy
Wildomar, CA 92595
(951) 245-8748

Dave Hogan

From: techy3@verizon.net
Sent: Sunday, August 01, 2010 9:15 PM
To: Dave Hogan
Subject: Marijuana Dispenary

I have been a resident of Wildomar consistantly for the past 40 years. I raised two boys in Wildomar and now am watching my 3 grandchildren being raised in Wildomar. I have seen alot of changes to Wildomar some good and some not so good. I also have worked in the school district for the past 26 years. I can not believe that you are even considering on allowing a Marijuana Dispenary anywhere near Wildomar. Whether it is legal or illegal it is still a drug. One our children would be able to get to easier if this is approved. It may help some with medical problems but I am sorry there are enough legal drugs people can get to help with the pain or whatever their excuse is. They say it is for medical reasons but that is just an excuse to get closer to legalizing drugs and that is what it is an illegal drug. I never thought I would live to see Pot legalized. Why can't people with so called medical problems go to the doctor and get medicine why are you even considering putting something like a Marijuana dispenary or pot store anywhere near here. Don't we have enough problems with drugs without this.

Thank You
Mr. and Mrs. House

PS. Remember we are the ones that can vote you in or vote you out. Look what is going on in Bell.

Dave Hogan

From: Bethany Beil [bbeil85@yahoo.com]
Sent: Monday, August 02, 2010 11:19 AM
To: Dave Hogan
Subject: Rejection of marijuana dispensary

Dear Mr. Hogan,
I am writing to let the City of Wildomar know of my disapproval of marijuana dispensaries in this area. As a high school teacher in Wildomar, I feel that having marijuana so easily available will be such a negative influence in our schools. Teens that get a hold of marijuana can be affected in school, sports, and other parts of life; marijuana also affects their memory, their ability to make a decision, and their awareness. Marijuana needs to stay illegal! Please do NOT mess up our city with this drug.
Thank you,
Beth Beil

Dave Hogan

From: Garin Heslop [garin.heslop@yahoo.com]
Sent: Monday, August 02, 2010 6:56 PM
To: Bridgette Moore; Frank Oviedo; Dave Hogan; Robert Devine; Harv Dykstra; Gary Andre; Ben Benoit; Michael Kazmier; Marsha Swanson; Sheryl Ade; Bob Cashman; Scott Farnam
Subject: re: Medical Cannabis important information
Attachments: medical canabis asa.pdf

Hi,

Attached is very insightful article with regards to medical cannabis, with the importance of the decision each of you have, I hope you take the time to read over the information provided. It is up to-date and accurate, it has interviews from members of city counsel, mayors and police chiefs of the cities and counties that have embraced medical cannabis. It is interesting how the concerns they had before approving were consistent with the ones that we are experiencing here. From this article we can answer numerous questions and learn from those who have already walked in your shoes. This is not an easy job each of you have, but I hope that you do the due diligence necessary to make an educated decision and keep an open mind about the future and were the industry is headed. There are alot of proven benefits for the community and surrounding businesses and very few negative ones. With change there is always fear, but to have the foresight to approve the ordinance you will put Wildomar and the residents ahead, with the ability to tax and regulate it, you give an opportunity to raise money for many community programs and help budget relief. There is alot of inderect good that can come from the approval if done correctly.

We are looking to open MedCare Health Center, a real all natural health center, we will give people a natural alternative to perscription drugs for many different ailments. There are many non habit forming natural remedies for many of the issues people take harmful and addictive perscription drugs. We are going to have a dietician to look at peoples intake and how eating certain foods can help, yoga, massage, accupunture, and herbal medicine that have helped people for 1000's of years including medical cannabis. If we are allowed to open we will be a shinning star in the community and can be used as an example to those in the industry. I am doing this because I have a passion to help people, my business partner is a disabled veteran and we both have seen how damaging perscription drugs can be and how easy natural changes in lifestyle can help change peoples life. I hope we have the opportunity to show each of you how much of a benefit to Wildomar we can be.

If you have any questions feel free to call or email me anytime.
Sincerely,
Garin Heslop
951-575-5353

Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS, AND PATIENTS HELPING PATIENTS

MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

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MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

January 2010

EXECUTIVE SUMMARY

Introduction 1

OVERVIEW

About this Report 2
About Americans for Safe Access 2
The National Political Landscape 2
History of Medical Cannabis in California 3
What is a Medical Cannabis Dispensing Collective? 3
Rationale for Medical Cannabis Dispensing Collectives 4
Medical Cannabis Dispensing Collectives are Legal Under State Law 4
Why Patients Need Convenient Dispensaries 4
What Communities are Doing to Help Patients 5

IMPACT OF DISPENSARIES AND REGULATIONS ON COMMUNITIES

Dispensaries Reduce Crime and Improve Public Safety 6
Why Diversion of Medical Cannabis is Typically Not a Problem 7
Dispensaries Can Be Good Neighbors 8

BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

Dispensaries Provide Many Benefits to the Sick and Suffering 9
Research Supports the Dispensary Model 10
Many Dispensaries Provide Key Health and Social Services 10
Conclusion 12
Recommendations for Ordinances 13
Resources for More Information 16

APPENDIX A

List of City and County Ordinances 17

APPENDIX B

Guide for Evaluating Proposed Dispensary Ordinances in California 18

APPENDIX C

California Attorney General's Guidelines for Dispensaries 19

Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS AND PATIENTS HELPING PATIENTS

EXECUTIVE SUMMARY

California's original medical cannabis law, the Compassionate Use Act of 1996 (Prop. 215), encouraged state and federal governments to develop programs for safe and affordable distribution of medical cannabis (marijuana). Although self-regulated medical cannabis dispensing collectives (dispensaries) have existed for more than 14 years in California, the passage of state legislation (SB 420) in 2003, court rulings in *People v. Urziceanu* (2005) and *County of Butte v. Superior Court* (2009), and guidelines from the state Attorney General, all recognized and affirmed their status as legal entities under state law. With most of the 300,000 cannabis patients in California relying on dispensaries for their medicine, local officials across the state are developing regulatory ordinances that address business licensing, zoning, and other safety and operational requirements that meet the needs of patients and the community.

Americans for Safe Access, the leading national organization representing the interests of medical cannabis patients and their doctors, has undertaken a study of the experience of those communities that have dispensary ordinances to act as a guide to policy makers tackling dispensary regulations in their communities. The report that follows details those experiences, as related by local officials; it also covers some of the political background and current legal status of dispensaries, outlines important issues to consider in drafting dispensary regulations, and summarizes a recent study by a University of California, Berkeley researcher on the community benefits of dispensaries.

In short, this report describes:

Benefits of regulated dispensaries to communities include:

- providing access for the most seriously ill and injured,
- offering a safer environment for patients than having to buy on the illicit market,
- improving the health of patients through social support,
- helping patients with other social services, such as food and housing,
- having a greater than average customer satisfaction rating for health care.

Creating dispensary regulations combats crime because:

- dispensary security reduces crime in the vicinity,
- street sales tend to decrease,
- patients and operators are vigilant any criminal activity is reported to police.

Regulated dispensaries are:

- legal under California state law,
- helping revitalize neighborhoods,
- bringing new customers to neighboring businesses,
- not a source of community complaints.

This report concludes with a section outlining the important elements for local officials to consider as they move forward with regulations for dispensaries. ASA has worked successfully with officials across the state, including Alameda County, Los Angeles, San Francisco and elsewhere to craft ordinances that meet the state's legal requirements, as well as the needs of patients and the larger community. Please contact us if you have

OVERVIEW OF MEDICAL CANNABIS DISPENSARIES

"As the number of patients in the state of California who rely upon medical cannabis for their treatment continues to grow, it is increasingly imperative that cities and counties address the issue of dispensaries in our respective communities. In the city of Oakland we recognized this need and adopted an ordinance which balances patients' need for safe access to treatment while reassuring the community that these dispensaries are run right. A tangential benefit of the dispensaries has been that they have helped to stimulate economic development in the areas where they are located."

—Desley Brooks, Oakland City Councilmember

ABOUT THIS REPORT

Land-use decisions are now part of the implementation of California's medical marijuana, or cannabis, laws. As a result, medical cannabis dispensing collectives (dispensaries) are the subject of considerable debate by planning and other local officials. Dispensaries have been operating openly in many communities since the passage of Proposition 215 in 1996. As a compassionate, community-based response to the problems patients face in trying to access cannabis, dispensaries are currently used by more than half of all patients in the state and are essential to those most seriously ill or injured. Since 2003, when the legislature further implemented state law by expressly addressing the issue of patient collectives and compensation for cannabis, more dispensaries have opened and more communities have been faced with questions about business permits and land use options.

In an attempt to clarify the issues involved, Americans for Safe Access has conducted a survey of local officials in addition to continuously tracking regulatory activity throughout the state (see AmericansForSafeAccess.org/regulations). The report that follows outlines some of the underlying questions and provides an overview of the experiences of cities and counties around the state. In many parts of California, dispensaries have operated responsibly and provided essential services to the most needy without local intervention, but city and county officials are also considering how to arrive at the most effective regulations for their community, ones that respect the rights of patients for safe and legal access within the context of the larger community.

ABOUT AMERICANS FOR SAFE ACCESS

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 50,000 active members with chapters and affiliates in more than 40 states.

THE NATIONAL POLITICAL LANDSCAPE

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor. The two largest physician-based professional organizations in the U.S., the American Medical Association and the

American College of Physicians, have urged the federal government to reconsider its regulatory classification of cannabis.

For decades, the federal government has maintained the position that cannabis has no medical value, despite the overwhelming evidence of marijuana's medical efficacy and the broad public support for its use. Not to be deterred, Americans have turned to state-based solutions. The laws passed by voters and legislators are intended to mitigate the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference.

Beginning in California in 1996, voters passed initiatives in eight states plus the District of Columbia—Alaska, Colorado, Maine, Michigan, Montana, Nevada, Oregon, and Washington. State legislatures followed suit, with elected officials in Hawaii, Maryland, New Jersey, New Mexico, Rhode Island, and Vermont taking action to protect patients from criminal penalty. Understanding the need to address safe and affordable access to medical cannabis, California, Maine, New Jersey, New Mexico, and Rhode Island all adopted local or state laws that regulate its production and distribution.

Despite *Gonzales v. Raich*, a U.S. Supreme Court ruling in 2005 that gave government the discretion to enforce federal cannabis laws even in medical cannabis states, more states continue to adopt laws each year. With the election of President Barack Obama, a new approach to medical cannabis is taking shape. In October 2009, the Justice Department issued guidelines discouraging U.S. Attorneys from investigating and prosecuting medical cannabis cases. While this new policy specifically addresses enforcement, ASA continues to work with Congress and the President to push for expanded research and protection for all medical cannabis in the U.S. The public advocacy of well-known cannabis patients such as the Emmy-winning talkshow host Montel Williams and music artist Melissa Etheridge has also increased public awareness and helped to create political pressure for changes in state and federal policies.

HISTORY OF MEDICAL CANNABIS IN CALIFORNIA

Since 1996, when 56% of California voters approved the Compassionate Use Act (CUA), public support for safe and legal access to medical cannabis has steadily increased. A statewide Field poll in 2004 found that "three in four voters (74%) favors implementation of the law." In 2003, the state legislature recognized that the Compassionate Use Act (CUA) gave little direction to local officials, which greatly impeded the safe and legal access to medical cannabis envisioned by voters.

Legislators passed Senate Bill 420, the Medical Marijuana Program (MMP) Act, which provided a greater blueprint for the implementation of California's medical cannabis law. Since the passage of the MMP, ASA has been responsible for multiple landmark court cases, including *City of Garden Grove v. Superior Court*, *County of San Diego v. San Diego NORML*, and *County of Butte v. Superior Court*. Such cases affirm and expand the rights granted by the CUA and MMP, and at the same time help local officials better implement state law.

In August 2008, California's Attorney General issued a directive to law enforcement on state medical marijuana law. In addition to reviewing the rights and responsibilities of patients and their caregivers, the guidelines affirmed the legality of storefront dispensaries and outlined a set of requirements for state law compliance. The attorney general guidelines also represent a roadmap by which local officials can develop regulatory ordinances for dispensaries.

WHAT IS A MEDICAL CANNABIS DISPENSING COLLECTIVE?

The majority of medical marijuana (cannabis) patients cannot cultivate their medicine for themselves and cannot find a caregiver to grow it for them. Most of California's estimated 300,000 patients obtain their medicine

from a Medical Cannabis Dispensing Collective (MCDC), often referred to as a "dispensary." Dispensaries are typically storefront facilities that provide medical cannabis and other services to patients in need. As of late 2009, there were approximately 1,000 medical cannabis dispensaries in California.

Dispensaries operate with a closed membership that allows only qualified patients and primary caregivers to obtain cannabis, and only after membership is approved (upon verification of patient documentation). Many dispensaries offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number of dispensaries offer additional services for their patient membership, including such services as: massage, acupuncture, legal trainings, free meals, or counseling. Research on the social benefits for patients is discussed in the last section of this report.

RATIONALE FOR MEDICAL CANNABIS DISPENSING COLLECTIVES

While the Compassionate Use Act does not explicitly discuss medical cannabis dispensaries, it calls for 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." (Health & Safety Code § 11362.5) This portion of the law has been the basis for the development of compassionate, community-based systems of access for patients in various parts of California. In some cases, that has meant the creation of patient-run growing collectives that allow those with cultivation expertise to help other patients obtain medicine. In most cases, particularly in urban settings, that has meant the establishment of medical cannabis dispensing collectives, or dispensaries. These dispensaries are typically organized and run by groups of patients and their caregivers in a collective model of patient-directed health care that is becoming a prototype for the delivery of other health services.

MEDICAL CANNABIS DISPENSARIES ARE LEGAL UNDER STATE LAW

In an effort to clarify the voter initiative of 1996 and aid in its implementation across the state, the California legislature passed the Medical Marijuana Program Act (MMP), or Senate Bill 420, in 2003, establishing that qualified patients and primary caregivers may collectively or cooperatively cultivate and distribute cannabis for medical purposes (Cal. Health & Safety Code section 11362.775). The Act also exempts collectives and cooperatives from criminal sanctions associated with "sales" and maintaining a place where sales occur.

In 2005, California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in the landmark case of People v. Urziceanu, which held that the MMP provides collectives and cooperatives a defense to marijuana distribution charges. Another landmark decision from the Third District Court of Appeal in the case of *County of Butte v. Superior Court* (2009) not only affirmed the legality of collectives but also found that collective members could contribute financially without having to directly participate in the cultivation.

In August 2008, the State Attorney General issued guidelines declaring that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law." The Attorney General provided law enforcement with a list of operational practices for collectives to help ensure compliance with state law. By adhering to a set of rules—including not-for-profit operation, the collection of sales tax, and the verification of patient status for collective members—dispensaries can operate lawfully and maintain legitimacy. In addition, local officials can use the Attorney General guidelines to help them adopt local regulatory ordinances.

WHY PATIENTS NEED CONVENIENT DISPENSARIES

While some patients with long-term illnesses

or injuries have the time, space, and skill to cultivate their own cannabis, the majority of patients, particularly those in urban settings, do not have the ability to produce it themselves. For those patients, dispensaries are the only option for safe and legal access. This is all the more true for those individuals who are suffering from a sudden, acute injury or illness.

Many of the most serious and debilitating injuries and illnesses require immediate relief. A cancer patient, for instance, who has just begun chemotherapy will typically need immediate access for help with nausea, which is why a Harvard study found that 45% of oncologists were already recommending cannabis to their patients, even before it had been made legal in any state. It is unreasonable to exclude those patients most in need simply because they are incapable of gardening or cannot wait months for relief.

WHAT COMMUNITIES ARE DOING TO HELP PATIENTS

Many communities in California have recognized the essential service that dispensaries provide and have either tacitly allowed their operation or adopted ordinances regulating them. Dispensary regulation is one way in which the cities can exert local control and ensure that the needs of patients and the community at large are being met. As of January 2010, thirty-two cities and nine counties have enacted regulations, and many more are considering doing so soon.

Officials recognize their duty to implement state laws, even in instances when they may not have previously supported medical cannabis legislation. Duke Martin, mayor pro tem of Ridgecrest said during a city council hearing on their local dispensary ordinance, "it's something that's the law, and I will uphold the law."

This understanding of civic obligation was echoed at the Ridgecrest hearing by Councilmember Ron Carter, who said, "I want to make sure everything is legitimate and above board. It's legal. It's not something we can stop, but we can have an ordinance of regulations."

Similarly, Whittier Planning Commissioner R.D. McDonnell spoke publicly of the benefits of dispensary regulations at a city government hearing. "It provides us with reasonable protections," he said. "But at the same time provides the opportunity for the legitimate operations."

> "Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."
>
> —Mike Rotkin, Santa Cruz

Whittier officials discussed the possibility of an outright ban on dispensary operations, but Greg Nordback said, "It was the opinion of our city attorney that you can't ban them; it's against the law. You have to come up with an area they can be in." Whittier passed its dispensary ordinance in December 2005.

Placerville Police Chief George Nielson commented that, "The issue of medical marijuana continues to be somewhat controversial in our community, as I suspect and hear it remains in other California communities. The issue of 'safe access' is important to some and not to others. There was some objection to the dispensary ordinance, but I would say it was a vocal minority on the issue."

IMPACT OF DISPENSARIES AND REGULATORY ORDINANCES ON COMMUNITIES IN CALIFORNIA

DISPENSARIES REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Some reports have suggested that dispensaries are magnets for criminal activity and other undesirable behavior, which poses a problem for the community. But the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a dispensary. And complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

This trend has led multiple cities and counties to consider regulation as a solution. Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary-related crime has not been a problem for the county, the regulations will help law enforcement determine the legitimacy of dispensaries and their patients.

The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement problems or secondary effects for at least one year. As a result, the focus of the proposed Ordinance is narrowed to insure Dispensary compliance with the law" (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006).

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security for their members and staff more seriously than many businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland's city administrator for the ordinance regulating dispensaries, Barbara Killey, notes that "The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc…since the ordinance passed."

Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens or from neighboring businesses." Neighboring Sebastopol has had a similar experience.

Despite public opposition to medical cannabis dispensaries, Sebastopol Police Chief Jeffrey Weaver admitted that for more than two years, "We've had no increased crime associated [with Sebastopol's medical cannabis dispensary], no fights, no loitering, no increase in graffiti, no increase in littering, zip."

"The parade of horrors that everyone predicted has not materialized. The sky has not fallen. To the contrary…California jurisdictions have shown that having medical cannabis in place does not impact…public safety." —San Francisco Supervisor David Campos

Those dispensaries that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Many local officials surveyed by ASA said dispensaries operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted.

Several officials said that regulatory ordinances had significantly improved relations with other businesses and the community at large. An Oakland city council staff member noted that prior to adopting a local ordinance the city had received reports of break-ins. However, the council staff member said that with the adoption of Oakland's dispensary ordinance, "That kind of activity has stopped. That danger has been eliminated." Assistant City Administrator Arturo Sanchez, a nuisance enforcement officer, affirmed that since 2004 he has "never received a nuisance complaint concerning lawfully established medical marijuana dispensaries in Oakland…[or] had to initiate an enforcement action."

The absence of any connection between dispensaries and increased local crime can be seen in data from Los Angeles and San Diego. During the two-year period from 2008 to 2010 in which Los Angeles saw the proliferation of more than 500 dispensaries, the overall crime rate in the city dropped considerably. A study commissioned by Los Angeles Police Chief Charlie Beck, comparing the number of crimes in 2009 at the city's banks and medical marijuana dispensaries, found that 71 robberies had occurred at the more than 350 banks in the city, compared to 47 robberies at the more than 500 medical marijuana facilities. Chief Beck observed that, "banks are more likely to get robbed than medical marijuana dispensaries," and that the claim that dispensaries attract crime "doesn't really bear out." In San Diego, where some officials have made similar allegations about increased crime associated with dispensaries, an examination of city police reports by a local paper, the San Diego City Beat, found that as of late 2009 the number of crimes in areas with dispensaries was frequently lower than it was before the dispensary opened or, at worst, stayed the same.

WHY DIVERSION OF MEDICAL CANNABIS IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But the experience of those cities that have instituted ordinances is that such problems, which are rare in the first place, quickly disappear. In addition to being monitored by law enforcement, dispensaries universally have strict rules about how members are to behave in and around the facility. Many have "good neighbor" trainings for their members that emphasize sensitivity to the concerns of neighbors, and all dispensaries absolutely prohibit the resale of cannabis. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

As Oakland's city administrator for the regulatory ordinance explains, "dispensaries themselves have been very good at self policing against resale because they understand they

can lose their permit if their patients resell."

In the event of an illegal resale, local law enforcement has at its disposal all of the many legal penalties provided by the state. This all adds up to a safer street environment with fewer drug-related problems than before dispensary operations were permitted in the area. The experience of the City of Oakland is a good example of this phenomenon. The city's legislative analyst, Lupe Schoenberger, stated that, "…[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced."

"The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc. since the ordinance passed."

—Barbara Killey, Oakland

Dispensaries operating with the permission of the city are also more likely to appropriately utilize law enforcement resources themselves, reporting any crimes directly to the appropriate agencies. And, again, dispensary operators and their patient members tend to be more safety conscious than the general public, resulting in great vigilance and better preemptive measures. The reduction of crime in areas around dispensaries has been reported anecdotally by law enforcement in several communities.

DISPENSARIES CAN BE GOOD NEIGHBORS

Medical cannabis dispensing collectives are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area.

Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses in the surrounding area simply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit. Even if patients are not immediately utilizing the services or purchasing the goods offered by neighboring businesses, they are more likely to eventually patronize those businesses because of convenience.

ASA's survey of officials whose cities have passed dispensary regulations found that the vast majority of businesses either adjoining or near dispensaries had reported no problems associated with a dispensary opening after the implementation of regulation.

Kriss Worthington, longtime councilmember in Berkeley, said in support of a dispensary there, "They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Mike Rotkin, councilmember and former mayor for the City of Santa Cruz, said about the dispensary that opened there last year, "The immediately neighboring businesses have been uniformly supportive or neutral. There have been no complaints either about establishing it or running it."

And Dave Turner, Mayor of Fort Bragg, noted that before the passage of regulations there were "plenty of complaints from both neighboring businesses and concerned citizens," but since then, it is no longer a problem. Public officials understand that, when it comes to dispensaries, they must balance both the humanitarian needs of patients and the

concerns of the public, especially those of neighboring residents and business owners.

Oakland City Councilmember Nancy J. Nadel wrote in an open letter to her fellow colleagues across the state, "Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses, law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Barbara Killey adds, "Dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell."

Mike Rotkin of Santa Cruz stated that since the city enacted an ordinance for dispensarys, "Things have calmed down. The police are happy with the ordinance, and that has made things a lot easier. I think the fact that we took the time to give people who wrote us respectful and detailed explanations of what we were doing and why made a real difference."

BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING

Safe and legal access to cannabis is the reason dispensaries have been created by patients and caregivers around the state. For many people, dispensaries remove significant barriers to obtaining cannabis. Patients in urban areas with no space to cultivate cannabis, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness - all tend to rely on dispensaries as a compassionate, community-based solution as a preferable alternative to potentially dangerous illicit market transactions.

Many elected officials in California recognize the importance of dispensaries to their constituents. As Nathan Miley, former Oakland City councilmember and now Alameda County supervisor said in a letter to his colleagues, "When designing regulations, it is crucial to remember that at its core this is a healthcare issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

West Hollywood Mayor John Duran agreed, noting that with the high number of HIV-positive residents in the area, "Some of them require medical marijuana to offset the medications they take for HIV." Jane Bender, mayor of Santa Rosa, says, "There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."

And Mike Rotkin of Santa Cruz said that this is also an important matter for his city's citizens: "The council considers it a high priority and has taken considerable heat to speak out and act on the issue."

It was a similar decision of social conscience that lead to Placerville's city council putting a regulatory ordinance in place. Councilmember Marian Washburn told her colleagues that "as you get older, you know people with diseases who suffer terribly, so that is probably what I get down to after considering all the other components."

"There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine." —Jane Bender, Santa Rosa

While dispensaries provide a unique way for patients to obtain the cannabis their doctors have recommended, they typically offer far more that is of benefit to the health and welfare of those suffering from both chronic and acute medical problems.

Dispensaries are often called "clubs" in part because many of them offer far more than a clinical setting for obtaining cannabis. Recognizing the isolation that many seriously ill and injured people experience, many dispensary operators choose to offer a wider array of social services, including everything from a place to congregate and socialize to help with finding housing and offering meals. The social support patients receive in these settings has far-reaching benefits that also influences the development of other patient-based care models.

RESEARCH SUPPORTS THE DISPENSARY MODEL

A 2006 study by Amanda Reiman, Ph.D. of the School of Social Welfare at the University of California, Berkeley examined the experience of 130 patients spread among seven different dispensaries in the San Francisco Bay Area. Dr. Reiman's study cataloged the patients' demographic information, health status, consumer satisfaction, and use of services, while also considering the dispensaries' environment, staff, and services offered. The study found that "medical cannabis patients have created a system of dispensing medical cannabis that also includes services such as counseling, entertainment and support groups, all important components of coping with chronic illness." She also found that levels of satisfaction with the care received at dispensaries ranked significantly higher than those reported for health care nationally.

Patients who use the dispensaries studied uniformly reported being well satisfied with the services they received, giving an 80% satisfaction rating. The most important factors for patients in choosing a medical cannabis dispensary were: feeling comfortable and secure, familiarity with the dispensary, and having a rapport with the staff. In their comments, patients tended to note the helpfulness and kindness of staff and the support found in the presence of other patients.

MANY DISPENSARIES PROVIDE KEY HEALTH AND SOCIAL SERVICES

Dispensaries offer many cannabis-related services that patients cannot otherwise obtain. Among them is an array of cannabis varieties, some of which are more useful for certain afflictions than others, and staff awareness of what types of cannabis other patients report to be helpful. In other words, one variety of cannabis may be effective for pain control while another may be better for combating nausea. Dispensaries allow for the pooling of information about these differences and the opportunity to access the type of cannabis likely to be most beneficial.

Cannabis-related services include making cannabis available in other forms for patients who cannot or do not want to smoke it. While most patients prefer to have the ability to modulate the dosing that smoking easily allows, for others, the effects of extracts or edible cannabis products are preferable. Dispensaries typically offer a wide array of edible products for those purposes. Many dispensaries

also offer classes on how to grow your own cannabis, classes on legal matters, trainings for health-care advocacy, and other seminars.

Beyond providing safe and legal access to cannabis, the dispensaries studied also offer important social services to patients, including counseling, help with housing and meals, hospice and other care referrals. Among the broader services the study found in dispensaries are support groups, including groups for women, veterans, and men; creativity and art groups, including groups for writers, quilters, crochet, and crafts; and entertainment options, including bingo, open mic nights, poetry readings, internet access, libraries, and puzzles. Clothing drives and neighborhood parties are among the activities that patients can also participate in through their dispensary.

Examples of health services offered at dispensaries across California:

- Naturopathic medicine
- Reiki
- Ayurvedic medicine
- Chinese medicine
- Chiropractic medicine
- Acupuncture
- Massage
- Cranial Sachral Therapy
- Rolfing Therapy
- Group & Individual Yoga Instruction
- Hypnotherapy
- Homeopathy
- Western Herbalists
- Individual Counseling
- Integrative Health Counseling
- Nutrition & Diet Counseling
- Limited Physical Therapy
- Medication Interaction Counseling
- Condition-based Support Groups

Social services such as counseling and support groups were reported to be the most commonly and regularly used, with two-thirds of patients reporting that they use social services at dispensaries 1-2 times per week. Also, life services, such as free food and housing help, were used at least once or twice a week by 22% of those surveyed.

"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

—Nancy Nadel, Oakland

Dispensaries offer chronically ill patients even more than safe and legal access to cannabis and an array of social services. The study found that dispensaries also provided other social benefits for the chronically ill, an important part of the bigger picture:

> Beyond the support that medical cannabis patients receive from services is the support received from fellow patients, some of whom are experiencing the same or similar physical/psychological symptoms…. It is possible that the mental health benefits derived from the social support of fellow patients is an important part of the healing process, separate from the medicinal value of the cannabis itself.

Several researchers and physicians who have studied the issue of the patient experience with dispensaries have concluded that there are other important positive effects stemming from a dispensary model that includes a component of social support groups.

Dr. Reiman notes that, "support groups may have the ability to address issues besides the

illness itself that might contribute to long-term physical and emotional health outcomes, such as the prevalence of depression among the chronically ill."

For those who suffer the most serious illnesses, such as HIV/AIDS and terminal cancer, groups of people with similar conditions can also help fellow patients through the grieving process. Many patients who have lost or are losing friends and partners to terminal illness report finding solace with other patients who are also grieving or facing end-of-life decisions. A medical study published in 1998 concluded that the patient-to-patient contact associated with the social club model was the best therapeutic setting for ill people.

CONCLUSION

After more than 14 years of existence, dispensaries are proving to be an asset to the communities they serve, as well as the larger community in which they operate. This is especially the case when public officials choose to implement local ordinances that recognize the lawful operation of dispensaries. Since the Medical Marijuana Program Act was enacted by the California legislature in 2004, more than 40 localities have adopted ordinances regulating dispensaries.

By surveying local officials and monitoring regulatory activity throughout the State of California, ASA has shown that once working regulatory ordinances are in place dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries—now expressly legal under California state law—are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

Medical and public health studies have also shown that the social-club model of most dispensaries is of significant benefit to the overall health of patients. The result is that medical cannabis patients rate their satisfaction with dispensaries as far greater than the customer-satisfaction ratings given to health care agencies in general.

Public officials across the state, in both urban and rural communities, have been outspoken in praise of the dispensary regulatory schemes they enacted and the benefits to the patients and others living in their communities.

As a compassionate, community-based response to the medical needs of more than 300,000 sick and suffering Californians, dispensaries, and the regulations under which they operate, are working.

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

RECOMMENDATIONS FOR DISPENSARY REGULATIONS

Cannabis dispensaries have been operating successfully in California for more than 14 years with very few problems. And, although the legislature and courts have acted to make dispensaries legal under state law, the question of how to implement appropriate zoning laws and business licensing is still coming before local officials all across the state. What follows are recommendations on matters to consider, based on adopted code as well as ASA's extensive experience working with community leaders and elected officials.

COMMUNITY OVERSIGHT

In order to appropriately resolve conflict in the community and establish a process by which complaints and concerns can be reviewed, it can often be helpful to create a community oversight committee. Such committees, if fair and balanced, can provide a means for the voices of all affected parties to be heard, and to quickly resolve problems.

The Ukiah City Council created such a task force in 2005; what follows is how they defined the group:

> The Ukiah Medical Marijuana Review and Oversight Commission shall consist of seven members nominated and appointed pursuant to this section. The Mayor shall nominate three members to the commission, and the City Council shall appoint, by motion, four other members to the commission…
>
> Of the three members nominated by the Mayor, the Mayor shall nominate one member to represent the interests of City neighborhood associations or groups, one member to represent the interests of medical marijuana patients, and one member to represent the interests of the law enforcement community.
>
> Of the four members of the commission appointed by the City Council, two members shall represent the interests of City neighborhood associations or groups, one member shall represent the interests of the medical marijuana community, and one member shall represent the interests of the public health community.

ADMINISTRATION OF DISPENSARY REGULATIONS ARE BEST HANDLED BY HEALTH OR PLANNING DEPARTMENTS, NOT LAW ENFORCEMENT AGENCIES

Reason: To ensure that qualified patients, caregivers, and dispensaries are protected, general regulatory oversight duties - including permitting, record maintenance and related protocols - should be the responsibility of the local department of public health (DPH) or planning department. Given the statutory mission and responsibilities of DPH, it is the natural choice and best-suited agency to address the regulation of medical cannabis dispensing collectives. Law enforcement agencies are ill-suited for handling such matters, having little or no expertise in health and medical affairs.

Examples of responsible agencies and officials:

- Angels Camp—City Administrator
- Atascadero—Planning Commission
- Citrus Heights—City Manager
- Cotati—City Manager
- Laguna Woods—City Manager
- Los Angeles—Planning Department
- Malibu—City Manager
- Palm Springs—City Manager
- Plymouth—City Administrator

- Sebastopol—Planning Department
- San Francisco—Dept. of Public Health
- Santa Barbara—Community Development Department
- Selma—City Manager
- Visalia—City Planner

ARBITRARY CAPS ON THE NUMBER OF DISPENSARIES CAN BE COUNTER-PRODUCTIVE

Reason: Policymakers do not need to set arbitrary limitations on the number of dispensing collectives allowed to operate because, as with other services, competitive market forces and consumer choice will be decisive. Dispensaries that provide quality care and patient services to their memberships will flourish, while those that do not will fail.

Capping the number of dispensaries limits consumer choice, which can result in both decreased quality of care and less affordable medicine. Limiting the number of dispensing collectives allowed to operate may also force patients with limited mobility to travel farther for access than they would otherwise need to.

Artificially limiting the supply for patients can result in an inability to meet demand, which in turn may lead to unintended and undesirable effects such as lines outside of dispensaries, increased prices, and lower quality medicine, in addition to increased illicit-market activity.

Examples of cities and counties without numerical caps on dispensaries:

- Elk Grove
- Fort Bragg
- Laguna Woods
- Placerville
- Redding
- Ripon
- Santa Barbara
- Selma
- Tulare
- Calaveras County
- Kern County
- Los Angeles County
- City and County of San Francisco
- San Mateo County
- Sonoma County

RESTRICTIONS ON WHERE DISPENSARIES CAN LOCATE ARE OFTEN UNNECESSARY AND CAN CREATE BARRIERS TO ACCESS

Reason: As described in this report, regulated dispensaries do not generally increase crime or bring other harm to their neighborhoods, regardless of where they are located. And since travel is difficult for many patients, cities and counties should take care to avoid unnecessary restrictions on where dispensaries can locate. Patients benefit from dispensaries being convenient and accessible, especially if the patients are disabled or have conditions that limit their mobility.

It is unnecessary and burdensome for patients and providers to restrict dispensaries to industrial corners, far away from public transit and other services. Depending on a city's population density, it can also be extremely detrimental to set excessive proximity restrictions (to schools or other facilities) that can make it impossible for dispensaries to locate anywhere within the city limits, thereby establishing a de facto ban on dispensing. It is important to balance patient needs with neighborhood concerns in this process.

PATIENTS BENEFIT FROM ON-SITE CONSUMPTION AND PROPER VENTILATION SYSTEMS

Reason: Dispensaries that allow members to consume medicine on-site have positive psychosocial health benefits for chronically ill people who are otherwise isolated. On-site consumption encourages dispensary members to take advantage of the support services that improve patients' quality of life and, in some cases, even prolong it. Researchers have shown that support groups like those offered by dispensaries are effective for patients with a variety of serious illnesses. Participants active in support services are less anxious and

depressed, make better use of their time and are more likely to return to work than patients who receive only standardized care, regardless of whether they have serious psychiatric symptoms. On-site consumption is also important for patients who face restrictions to off-site consumption, such as those in subsidized or other housing arrangements that prohibit smoking. In addition, on-site consumption provides an opportunity for patients to share information about effective use of cannabis and of specialized delivery methods, such as vaporizers, which do not require smoking.

Examples of localities that permit on-site consumption (many stipulate ventilation requirements):

- Berkeley
- Laguna Woods
- San Francisco
- Alameda County
- Kern County
- Los Angeles County
- San Mateo County

DIFFERENTIATING DISPENSARIES FROM PRIVATE PATIENT COLLECTIVES IS IMPORTANT

Reason: Private patient collectives, in which several patients grow their medicine collectively at a private location, should not be required to follow the same restrictions that are placed on retail dispensaries, since they are a different type of operation. A too-broadly written ordinance may inadvertently put untenable restrictions on individual patients and caregivers who are providing either for themselves or a few others.

Example: Santa Rosa's adopted ordinance, provision 10-40.030 (F):

> "Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple "qualified patients" and/or "primary care givers," are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, "retail" distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, 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, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

PATIENTS BENEFIT FROM ACCESS TO EDIBLES AND MEDICAL CANNABIS CONSUMPTION DEVICES

Reason: Not all patients can or want to smoke cannabis. Many find tinctures (cannabis extracts) or edibles (such as baked goods containing cannabis) to be more effective for their conditions. Allowing dispensaries to carry these items is important to patients get-

ting the best level of care possible. For patients who have existing respiration problems or who otherwise have an aversion to smoking, edibles and extracts are essential.

Conversely, for patients who do choose to smoke or vaporize, they need to procure the tools to do so. Prohibiting dispensaries from carrying medical cannabis consumption devices, often referred to as paraphernalia, forces patients to go elsewhere to procure these items. Additionally, when dispensaries do carry these devices, informed dispensary staff can explain their usage, and different functions, to new patients.

Examples of localities allowing dispensaries to carry edibles and delivery devices:

- Albany
- Angels Camp
- Berkeley
- Cotati
- Citrus Heights
- Laguna Woods
- Malibu
- Palm Springs
- Redding
- Santa Barbara
- Santa Cruz
- Sebastopol
- Sutter Creek
- West Hollywood
- Alameda County
- Kern County
- Los Angeles County
- Sonoma County

RESOURCES FOR MORE INFORMATION

A downloadable PDF of this report is online at AmericansForSafeAccess.org/DispensaryReport

A model dispensary ordinance can be seen at AmericansForSafeAccess.org/ModelOrdinance.

A regularly updated list of ordinances, moratoriums, and bans adopted by California cities and counties can be found at AmericansForSafeAccess.org/regulations.

You can find ASA chapters in your area at AmericansForSafeAccess.org/Chapters.

ASA Blog
AmericansForSafeAccess.org/blog

ASA Forums
AmericansForSafeAccess.org/forum

Medical and Scientific Information
AmericansForSafeAccess.org/medical

Legal Information
AmericansForSafeAccess.org/legal

Become a member of ASA
AmericansForSafeAccess.org/join

Contact ASA to order the DVD "Medical Cannabis in California"—interviews with elected officials and leaders who are implementing safe and effective regulations.

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

APPENDIX A

CALIFORNIA CITIES AND COUNTIES THAT HAVE ADOPTED ORDINANCES REGULATING DISPENSARIES

(as of January 2010)

For an updated list, go to:
AmericansForSafeAccess.org/regulations

City Ordinances (32)

- Albany
- Atascadero
- Angels Camp
- Berkeley
- Citrus Heights
- Cotati
- Diamond Bar
- Elk Grove
- Fort Bragg
- Jackson
- Laguna Woods
- La Puente
- Malibu
- Martinez
- Oakland
- Palm Springs
- Placerville
- Plymouth
- Redding
- Ripon
- San Francisco
- San Jose
- Santa Barbara
- Santa Cruz
- Santa Rosa
- Sebastopol
- Selma
- Sutter Creek
- Tulare
- Visalia
- West Hollywood
- Whittier

County Ordinances (10)

- Alameda
- Calaveras
- Kern
- Los Angeles
- San Luis Obispo
- San Mateo
- Santa Barbara
- Santa Clara
- Sonoma

APPENDIX B

ASA'S QUICK GUIDE FOR EVALUATING PROPOSED MEDICAL MARIJUANA DISPENSARY ORDINANCES IN CALIFORNIA

This is a quick guide on what should be, and what should not be, in city and county ordinances to best support safe access for medical cannabis patients.

What the ordinance MUST include:

- Allowance for over-the-counter/storefront sales (sometimes called reimbursements, contributions, or not-for-profit sales)
- Allowance for patients to medicate on-site
- Allowance for sale of cannabis edibles and concentrated extracts
- Distinction between Medical Cannabis Dispensing Collectives (MCDCs) and private patient collectives or cooperatives

What to look out for in proposed ordinances:

Is the general language and focus framed as a medical or healthcare issue, rather than a criminal justice or law enforcement problem?

Does the ordinance affirm that MCDCs should be organized to serve patients and have a "not-for-profit" business model?

Is there a cap on the number of MCDCs allowed to operate that could negatively impact accessibility, affordability and quality?

- How was the MCDC cap number determined (per capita, per pharmacy)?
- What criteria will be used to approve and license MCDCs?
- Will quality through competition be supported?

Zoning considerations:

- Will each MCDC be required to apply for a conditional use permit, or does the ordinance specify MCDCs as an enumerated business?
- Are there proximity restrictions or "buffer zones" from so-called "sensitive uses" which will make locating a dispensary onerous.
- Has a map been prepared that shows where the ordinance will require MCDCs to locate?

.

Does the ordinance provide for a community oversight committee tasked with any licensing or appeals processes?

- Will the oversight committee include patients, activists, MCDC operators, and members of the local community?

.

What are the MCDC requirements for book-keeping and records disclosure?

- Does the ordinance allow MCDCs to keep identifying information about its members off-site, to protect patient identities?
- Does law enforcement have unfettered access to patient records or is a subpoena required?

.

Are there caps on the number of patient-members an MCDC can serve?

Is on-site cultivation prohibited for MCDCs?

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

APPENDIX C

ATTORNEY GENERAL, STATE OF CALIFORNIA, GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

1. **Statutory Cooperatives**: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Id. at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (Id. at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (Ibid.) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See id. at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., id. at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

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

B. **Guidelines for the Lawful Operation of a Cooperative or Collective**: Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The

following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation. 1. Non-Profit Operation: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].

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

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

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

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

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

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

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

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

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

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

6. **Permissible Reimbursements and Allocations**: Marijuana grown at a collective

or cooperative for medical purposes may be:

a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;

b) Provided in exchange for services rendered to the entity;

c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or d) Any combination of the above.

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

a) Operating a location for cultivation;

b) Transporting the group's medical marijuana; and

c) Operating a location for distribution to members of the collective or cooperative.

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

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

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

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

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www.AmericansForSafeAccess.org 1-888-929-4367

Dave Hogan

From: Heath McMahon [hjmcmahon@verizon.net]
Sent: Tuesday, August 03, 2010 9:06 AM
To: Dave Hogan
Subject: rejection on marijuana dispensary in Wildomar

Dear Planning Commission:

Thank you for the hard work and time you have invested in making our city a better place. We as residents ask that you reject the plan for a marijuana dispensary. We would like to see Wildomar as a place for children and families to grow not a place for legalized drugs.

Thank you.

Heath and Jamie McMahon
36105 Madora Drive
Wildomar, CA 92595

Dave Hogan

From: nmitchell@fbcwildomar.com
Sent: Tuesday, August 03, 2010 9:05 AM
To: Dave Hogan
Subject: Marijuana dispensaries in City of Wildomar

To the Planning Commission, City of Wildomar, City Hall:

I have been a resident of Wildomar since 1984 and plan to be here until I die. I cannot think of anything more evil and destructive than allowing marijuana dispensaries within our city. What are you thinking? Do you willfully want to destroy our young people? Our city, state, and nation need to be guiding our young people to choose right and not to self-destruct. PLEASE DON'T ALLOW THE TEMPTATION OF MARIJUANA BE PUT BEFORE OUR CITY!! Are you considering the dangers and evil this will bring to our law enforcement trying to keep peace and order?!

PLEASE, PLEASE VOTE AGAINST SUCH A DECISION!!! I also ask you to consider opinions and votes of only those of us who actually live in Wildomar. Whether you believe this or not, God will judge us for approving of this evil, and we should fear the consequences!

I'm sorry I won't be able to attend the meeting Wednesday and hear what is said and by whom. I'm trusting the Planning Commission members to choose right.

Sincerely,
Mrs. N. L. Mitchell

Dave Hogan

From: Bruce Alan [bruceg1611@yahoo.com]
Sent: Tuesday, August 03, 2010 9:59 AM
To: Dave Hogan
Subject: marijuana

As a Wildomar resident for 27 years with kids and grandkids in Wildomar here's an opinion. We do not need to sell dope anywhere, let alone in a place as small as Wildomar. Let's try getting our city on it's feet with good business, good homes, and wise planning. I am against it! Just think, selling dope to help finance a city. Does it really sound right? Advertise the city, "A better place for our families, Dope selling main revenue for the city"? How about making money for the high school FFA, "learn to make money by growing and selling dope" Somehow it seems different than raising sheep.

Sorry, but we all know better.

We voted you into a job, do it our way.

Bruce Goddard

Dave Hogan

From: Frank Strickland [frastr@verizon.net]
Sent: Tuesday, August 03, 2010 8:34 AM
To: dhogan
Subject: Meeting Wed. 4 August, 2010

Re: Aproval/Rejection of Marijuana Dispensary in the City of Wildomar.

WE are very much against the M. dispensary in Wildomar, it is not our belief, only bad can come from this.

Frank Strickland, Wilma Strickland
Owners: 35386 Perla Pl,
Wildomar, Ca. 92595

Dave Hogan

From: w wreck [wreck_w@yahoo.com]
Sent: Tuesday, August 03, 2010 2:30 PM
To: Dave Hogan
Subject: Marijuana dispensaries in Wildomar

My name is Wayne Record. I live in Wildomar, off Waite Street.

Concerning marijuana dispensaries in Wildomar.

I am very concerned that this discussion is even coming to the table for discussion. Did you know that U.S. law classifies marijuana as a Schedule I controlled substance? This means it has no acceptable medical use, and that there is no solid evidence that smoking marijuana creates any greater benefits than approved medications (including oral THC) now used to treat these patients, relieve their suffering, or mitigate the side effects of their treatment.

Please do not allow dispensaries in Wildomar.

Sincerely,

Wayne Record

Dave Hogan

From: dankatstr@verizon.net
Sent: Tuesday, August 03, 2010 8:47 PM
To: Dave Hogan
Subject: Rejection of Marijuana Dispensary in the City of Wildomar

Dear City of Wildomar,
The allowance of Marijuana Dispensary should NOT come to Wildomar! It is an illegal drug that when used may cause many unnecessary and avoidable crimes of our city, even if used in medicine could have a negative impact. It has been illegal for many years and should remain illegal, we are not the only people who believe this, but please for the sake of our city, Marijuana should remain illegal. Thank you

from Dan and Kathy Strickland
24245 Brillante Dr. Wildomar, Ca 92595

Dave Hogan

From: Kathy Beil [kjbeil@yahoo.com]
Sent: Wednesday, August 04, 2010 10:46 AM
To: Dave Hogan
Subject: legalization of marijuana

Dear City of Wildomar officials,
We would like you to vote against the legalization of marijuana dispensaries within the city of Wildomar. It will not set a good precedent for our community and especially for the youth of our community. We would hope that you would take this into consideration in your voting.

Thank you,
Mrs. Kathy Beil

Dave Hogan

From: Tina Tyra [alaboroflove@verizon.net]
Sent: Wednesday, August 04, 2010 12:06 PM
To: Dave Hogan
Subject: Medical marijuana

As stated in my previous e-mails, I am AGAINST medical marijuana dispensaries in Wildomar. There are many reasons, which I have stated. The recent murders at three medical marijuana dispensaries in L.A. are an example of what we will bring to our small town when we bring in these collectives and dispensaries. Where there are drugs and money, there are problems. If medical marijuana is so necessary, then it can be dispensed at pharmacies. It's still not legal federally, but if it became so, I would still be against it.

Tina Tyra
Wildomar Resident

Dave Hogan

From: lwilliams@fbcwildomar.com
Sent: Wednesday, August 04, 2010 12:12 PM
To: Dave Hogan
Subject: Marijuana dispensaries in City of Wildomar

I am a resident of Wildomar, and have been since 1987. I attend church on Wednesday nights and am unable to attend. I wish to express my disappointment at the appalling consideration before the Wildomar City Council. I am trusting God that only the opinions of the Wildomar residents will be considered regarding the marijuana clinics/growers, and that those opinions would be NO, NO, NO!!!! The fact that there are so many that come from other cities to influence the council in their favor is a clear indication that if clinics and growers are necessary, they should be standing before their **own** city councils petitioning them to allow clinics and growers in their **own** cities. I, as of this moment am not sure if our city council is appointed or elected, **however**, be sure I will know when the time comes to re-elect the appointed or the appointor. To allow outsiders to influence you in their favor would be a **hasty** and **sure** decline of the upward values in and around the city of Wildomar.

Respectfully?
L. W. Williams

Dave Hogan

From: Ricki Lynn Miller [ricki@realtorricki.com]
Sent: Wednesday, August 04, 2010 12:25 PM
To: Dave Hogan
Subject: Marijuana Collectives

Hi Dave,
My husband and I won't be able to make the city meeting tonight, but we wanted to make sure our Opinions were known. We are both Against the idea of having a dispensary in our community.

Personally: I know how easy it is for Doctors to feel pressured by their patients to prescribe medications for pain. My mother has been on a class 2 narcotic for over 25 years. She has never been taken off the drug to be reevaluated to see what her pain levels are...I know she's addicted. Her pain is real, but lives on the pills instead of doing exercise/therapy/loosing weight to fix the problem. This is whole issue in itself, but my point, "how easy could it be for the nonprescribed person to walk into one of these dispensaries to buy"?

My concern is once we let this cat out of the proverbial bag, there is no going back. Our little community struggles enough as it is with trashed out homes, taggers, lower property values, "assumed" crime element, all because it's an affordable place to live. We don't need to add to the stigma. I love this rural feeling place, that's why we moved her 8 years ago, and we don't want this in our Backyard.

Our suggestion: Mail Order; Safer environment for patrons and for the community, Government control, Reduced Potential Crime.

Thank You for your time.

Mr. & Mrs Jason & Ricki Lynn Miller Maple Street Residents

Ricki Lynn Miller ~ *REALTOR*
Windermere Exclusive Properties
DRE #01256772
Direct: **760-466-1877**
Search the MLS at **www.realtorricki.com**

Faith sees the invisible, believes the incredible, and receives the impossible!

Dave Hogan

From: Wes Lobo [weslobo@gmail.com]
Sent: Wednesday, August 04, 2010 1:47 PM
To: Dave Hogan; Ben Benoit; Harv Dykstra; Robert Devine; Michael Kazmier; Gary Andre; Debbie Lee
Cc: Tracy Lobo
Subject: Marijuana Dispensary

Dear Sirs,

I am writing to express to you my desire for you to deny approval of marijuana dispensaries or collectives to be located in the City of Wildomar.

My main concern is the monitoring and enforcement of any requirements put in place for these types of facilities. There are already a myriad of unenforced code and planning violations in our city that are not being addressed effectively. Adding marijuana sales onto the heap would only serve to make Wildomar a less desirable community. Cities allowing it to be sold within their borders, by those not necessarily qualified to do so, to patrons who obtain their permissions arguably too often through fraudulent means, regulated and monitored by an already overwhelmed and outnumbered staff, is something we should not do.

Many of these facilities have a secondary and unintended consequence of providing an opportunity for those inclined to circumvent the law and profit handily from the venture an avenue, a store front, to do just that. This collateral effect would not be a positive contribution to the community.

Unless and until marijuana becomes legal at the federal level, state and local jurisdictions should stay out of the equation. Since at the state level it has already been legalized for medicinal purposes - in direct contradiction to federal law - only serves to complicate the matter. Not simplify it. Why contribute to an already confusing and contradictory legislative situation?

Thank you for your attention and consideration. Please choose to deny locating these facilities in the City of Wildomar.

Regards,

Wesley Lobo
34290 Tanisha Court
Wildomar, CA 92595
(951) 674-6476

CORNERSTONE
COMMUNITY CHURCH

RECEIVED
AUG 04 2010
CITY OF WILDOMAR

August 4, 2010

Dear Planning Commission,

My name is Ron Armstrong and I am the Senior Pastor of Cornerstone Community Church of Wildomar.

I am not presenting this letter in support or opposition to Medical Marijuana dispensaries in Wildomar. I am presenting it to remind you that the citizens of Wildomar are relying on you to thoroughly understand this issue before you make your recommendation to the City Council.

Although some on both sides of this issue may try to demonize the other side, the truth is that very few people are against bringing relief to those who are genuinely suffering. I think we can all agree that if someone is suffering from extreme pain, we all want them to have relief. Neither side is content to watch their friends suffer.

However, the critical question is, "Is this a legitimate business bringing help to the suffering or is this a money making scheme designed to circumvent the law?"

I don't presume to have the answer to this question but I wanted you to know that we are counting on you to be able to answer it before you make your decision. We are counting on you to seek counsel from law enforcement officials, to talk to the medical community, and to carefully examine what other cities have experienced when they confronted this same issue.

I know there will be people who will demand an immediate decision of "yes" or "no" from you. It is human nature to be impatient and they will accuse you of failing to "do your job" if you don't give an immediate answer. Please remember that it is your job to weigh, research, and discuss before you decide.

I am confident that the Wildomar Planning Commission can be counted on to stand firm against being rushed into a decision by either side of this issue.

Sincerely,

Ron Armstrong
Senior Pastor
Cornerstone Community Church

34570 Monte Vista Drive • Wildomar • CA 92595 • (951) 674-8661 • Fax (951) 674-9603 • www.go2cornerstone.com

RECEIVED
AUG 04 2010
CITY OF WILDOMAR

LAPD chief: Pot clinics not plagued by crime

By Tony Castro, Staff Writer Updated: 01/16/2010 03:10:08 AM PST

"Purple OG" marijuana at a collective in Woodland Hills, CA Wednesday August 26, 2009. (Hans Gutknecht/LA Daily News) (Hans Gutknecht)

Despite neighborhood complaints, most medical marijuana clinics are not typically the magnets for crime that critics often portray, according to Los Angeles police Chief Charlie Beck.

"Banks are more likely to get robbed than medical marijuana dispensaries," Beck said at a recent meeting with editors and reporters of the Los Angeles Daily News.
Opponents of the pot clinics complain that they attract a host of criminal activity to the neighborhoods, including robberies. But a report that Beck recently had the department generate looking at citywide robberies in 2009 found that simply wasn't the case.
"I have tried to verify that because that, of course, is the mantra," said Beck. "It doesn't really bear out."

In 2009, the LAPD received reports of 71 robberies at the more than 350 banks in the city, compared to 47 robberies at medical marijuana facilities which number at least 800, the chief said in a follow up interview, in which he provided statistics from the report.

Beck said he had asked for a comparison of robberies at the two types of businesses because of the growing public outcry -- as the City Council debates tighter restrictions on clinics -- that those facilities have become an increasing target for crime.
He said he thought a comparison of banks and medical marijuana dispensaries was appropriate because of their similarities as potential targets -- both have large sums of cash and are often heavily fortified.
The statistics do not include crime at ATM machines, bank outlets in markets or crimes committed on the property surrounding banks or medical marijuana dispensaries.

He also acknowledged that banks report all their robberies to authorities, while some medical marijuana facilities may not. "This is just a snapshot, a statistic. It doesn't reflect quality of life issues, it doesn't reflect the things the public complains about (regarding) medical marijuana locations," Beck said. "It does give you some idea of (what the) level of crime is."

Many community activists believe there is a connection between the growth of medical marijuana dispensaries and the rise of crime in their neighborhoods.

(Continued on page 2)

"We expect that to be the case, especially if they're not controlled and regulated properly," said J.J. Popowich president of the Winnetka Neighborhood Council, which boasts of having helped shut down a dispensary on Vanowen Street last year.
Popowich said he is not against the existence of medical marijuana dispensaries so long as they are tightly regulated and located outside residential communities.
A spokesman for Americans for Safe Access, a statewide advocacy group for medical marijuana clinics, said his group does not believe claims linking dispensaries with increases in crime.

"The issue of whether they are magnets for crime is centered largely around exaggerated claims by law enforcement officials that excessive crime exists in the first place and these facilities are the source for it," said ASA spokesman Kris Hermes.
"Our own research in a number of cities has found quite the opposite to be true."
While Beck does not believe most dispensaries are magnets for crime, he does believe medical marijuana clinics should be subject to increased scrutiny and regulation.
He would like to see the number of clinics citywide limited to about 75. He also would like dispensaries to be required to disclose the names of their patients, although he said specific medical conditions could be withheld for privacy reasons.
Medical marijuana advocates oppose such disclosures.

"We're very concerned about local government's ability to have direct, unfettered access to patient records," Hermes said. "Allowing only access to names is better than allowing access to addresses, phone numbers and medical conditions. But even (turning over) names should not be done without a subpoena."

Beck said another statistic to be considered in the debate over medical marijuana dispensaries is that last year the LAPD served 39 search warrants at dispensaries and made 60 arrests, most for unlawful sales.

"The bottom line is that this all speaks to the fact (dispensaries) need to be regulated," he said. "That's why I support the (city) council coming up with their regulations."
The number of medical marijuana facilities in Los Angeles, and particularly the San Fernando Valley, has exploded since 2007. For months the City Council has been debating a new ordinance to restrict their locations near schools and homes. One possible proposal could eliminate most small dispensaries, leading to only a few "big-box" pot stores in isolated industrial areas.

Councilman Dennis Zine said the council has not fully completed drafting an ordinance but that the disclosure of medical marijuana dispensary members continues to be an issue.

"We know (there is) a lot of abuse," Zine said. "Everyone admits there is, even the dispensaries. We need to make sure there isn't abuse -- that the people who go (to dispensaries) aren't just using a ruse to get high.
"So we need some kind of verification of their membership and their legitimacy as clients."

ATTACHMENT H-3

Document received from Gerry Hall

Medical Marijuana Dispensaries and Associated Issues

Presented to the California Chiefs of Police Association

This report is respectfully presented to you with the following disclaimers;

- This report does not attempt to address the merits of Medical Marijuana or the concept of its use as an alternative medicine as discussed or proposed in Proposition 215.
- This report contains compilations of data collected by others in Law Enforcement as well as media coverage and this data is identified as such.

This report contains information on three topics;

- Reported Crimes Associated with Medical Marijuana
- Doctor's Involvement in the Medical Marijuana Equation
- One Example of a Medical Marijuana Entrepreneur

Areas that currently act as a hindrance to a true study of this topic are;

Under Reporting: With few exceptions, agencies contacted stated that they felt that the crimes related to Medical Marijuana Dispensaries were under reported, if reported at all. Confidential Informants have provided information that these additional crimes (Robberies, Assaults and Burglaries involving Marijuana or large amounts of cash) are not reported so as to not draw additional Law Enforcement and Media scrutiny to this very lucrative trade. This is not unlike the thought processes employed by Organized Crime as well as street gangs here in California.

Crime Classification: Another barrier to collection of this data is the lack of classification of this data as Medical Marijuana related. In years past, statistical analysis of domestic violence and hate crimes was difficult. These crimes now receive their own classification so tracking them is much easier. However until such time as Medical Marijuana crimes receive their own classification, separating these crimes from non Medical Marijuana related crimes is very difficult.

Over Reliance on Typical Statistical Data: Gathering statistical data on this topic would appear to be a simple task. One would imagine that you would look at crime in a given location prior to the arrival of a Medical Marijuana Dispensary and then look at crime after its arrival. This presents several difficulties. First, based on Internet research, there appears to be approximately 240 publicized Medical Marijuana Dispensaries (www.canorml.org) located in almost as many jurisdictions. No one agency can access data from all these locations and not all agencies compile this data. I spoke with several agency representatives and each had information regarding this issue, however few had specific crime statistics. Secondly, 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. Lastly, not all the "secondary issues" related to Medical Marijuana Dispensaries are crimes.

Loitering, additional vehicle and pedestrian traffic, use of Medical Marijuana at or near the facilities are described as quality of life issues and are only really quantified when they appear in the newspaper or the complainants appear at a City Council meeting.

Prior to discussing the reports of other Law Enforcement agencies, I would like to present some information from our Department. While our City does not currently have a Medical Marijuana Dispensary, this does not mean that we are immune from their effects.

On January 7, 2004 a resident of El Cerrito was arrested for possession of marijuana for sale. The subject was found to be in possession of 133 grams (4.6 ounces) of marijuana, a small amount of cash, a "replica handgun" pellet gun and three Medical Marijuana Dispensary cards (Oakland Cannabis Buyers Collective, Cannabis Buyers Collective of Marin and "Compassionate Caregivers" of Oakland)

On February 25, 2005, the same subject mentioned above was discovered to be growing marijuana in his house. He was found to be in possession of 15 adult plants, 72 starter plants, 505 grams (1.10 lbs) of processed marijuana, 50 grams (1.75 oz) of hashish packaged for sale and two assault rifles as well as $6,000.00 in cash. The subject claimed that these plants were Medical Marijuana. An investigation was conducted with the assistance of the West Contra Costa County Narcotic Enforcement Team and resulted in the conviction of the resident for Unauthorized Possession of Cannabis and Possession of an Assault Weapon.

On July 9, 2005, during a suspicious vehicle check, one of our Officers determined that a resident (Who is a member of the Oakland Cannabis Buyers Cooperative) possessed 55 immature plants with the intent of cultivating them and selling them to a Medical Marijuana Dispensary. The District Attorney has filed a complaint containing two felony charges of possession and cultivation of Marijuana. This case is awaiting adjudication as the subject has failed to appear in court (it is believed he has fled to the state of Oregon) and a bench warrant has been issued for his arrest.

On December 11, 2005, a traffic stop for speeding resulted in the arrest of the occupants for the possession on Marijuana packaged for sale and $3,365.00 in cash.

On March 8, 2006 our School Resource Officer received information that several students were ill after eating cookies distributed by another student. Further investigation revealed that a student had made the cookies with a butter obtained outside (secondary sale) a Medical Marijuana Dispensary containing a highly concentrated form of Tetrahydrocannabinol (THC the active ingredient in Marijuana). The student used the "butter" to bake and then sell these cookies to other students. After the student discovered that the cookies were so potent that some of his fellow students had to be treated at local hospitals, instead of throwing them away, he gave them to other students without telling them what they were laced with. This incident resulted in at least four students requiring hospitalization and it is suspected at least two or three others were intoxicated to the point of sickness.

From March of 2004 to May of 2006, this Department has conducted seven investigations at our 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.

Gathering the data from these incidents required hours of research and examination. Many agencies have neither the available resources nor the inclination to gather data of this kind. This makes presenting the data for consideration in this matter very difficult. Another area of importance is the possession of firearms in conjunction with large quantities of cash and marijuana. Those who have the money and drugs want to keep them and arm themselves to prevent robberies. Those who wish to relieve those in possession of cash and drugs use firearms and other deadly weapons to accomplish their task. When speaking to those involved in the drug trade, they will tell you violence and greed are "all just part of the game."

With the exception of those entries identified from other sources, I contacted and interviewed representatives from each of the listed agencies. I have included newspaper articles that either further describe events or provide additional information regarding some of the "secondary issues".

ANAHEIM

May 19, 2004 a Medical Marijuana Dispensary "420 Primary Caregivers" obtained a business license and began operations.

Fall 2004, The Police Department began to receive complaints from neighboring businesses in the complex. The complaints centered around the ongoing sales of Marijuana to subjects who did not appear to be physically ill, the smell of Marijuana inside the ventilation system off the building and the repeated interruption to neighboring businesses.

January 2005, The Medical Marijuana Dispensary was robbed at gunpoint by three masked subjects who took both money and marijuana from the business.

April 5, 2005, The Department met with the property Management Company, owners and representatives from the businesses in the complex which housed the Medical Marijuana Dispensary. The meeting focused on the safety of the employees and patrons of adjacent businesses. Many neighboring businesses complained of Marijuana use on the premises and in the surrounding area as well as a loss of business based on the clientele of the Medical Marijuana Dispensary "hanging around the area".

Since this meeting, two businesses have ended their lease with the property management company. A law firm that had been in that location for ten years left citing "Marijuana smoke had inundated their office….and they can no longer continue to provide a safe, professional location for their clientele and employees." A health oriented business terminated their lease after six years and moved out of the complex citing "their business is repeatedly interrupted and mistaken multiple times a day for "the store that has the marijuana."

The owner fears that "he or his employees may be shot if they are robbed by mistake and the suspects do not believe they do not have Marijuana." The Property Management Company indicated "at least five other businesses have inquired about terminating their lease for reasons related to 420 Primary Caregivers." Arrests have been made supporting the belief that some "qualifying patients" purchase Marijuana with a doctor's recommendation, then supply it to their friends for illicit use. Criminal investigations have revealed the business is obtaining its Marijuana from a variety of sources including Marijuana smuggled into the United Sates from South and Central America. The Police department has conservatively estimated the "420 Primary Caregivers" business to be generating approximately $50,000.00 a week in income.
(Source Declaration of Sgt. Tim Miller Anaheim P.D. Street narcotic Unit)

ALAMEDA COUNTY
January 12, 2005 a Medical Marijuana customer was robbed after leaving the "The Health Center" Medical Marijuana Dispensary (San Leandro). The victim was accosted by two subjects who possibly followed the victim away from the dispensary.

February 6, 2005 a Medical Marijuana Dispensary, the "Compassion Collective of Alameda County" was robbed by two subjects armed with handguns. The robbery took place at 4:50 pm in the afternoon and the suspects took an unspecified amount of cash and Marijuana.

April 27, 2005 a Medical Marijuana Dispensary, "The Health Center" (San Leandro) was burglarized at approximately 3:05 am. No specifics were provided as to the loss sustained as a result of the burglary. Many investigators believe that the victims do not truthfully report the loss of cash or marijuana.

May 24, 2005 a patron of a Medical Marijuana Dispensary, "A Natural Source" (San Leandro) was robbed by three subjects in the parking lot of the dispensary after making a purchase of Marijuana.

August 19, 2005: Five subjects armed with assault rifles conducted a take over robbery of a Medical Marijuana Dispensary "A Natural Source" (San Leandro). They engaged in a shoot out with two employees and one of the suspects was killed in the exchange of gun fire.

Sept. 12, 2005: Both money and marijuana were stolen from the Alameda County Resource Center (16250 East 14th St.) when burglars chopped through the wall of an adjacent fellowship hall during the night.
(Source Declaration by Lt. Dale Amaral Alameda County Sheriff's Department)

Calls for Service Related to Medical Marijuana Dispensaries (Unincorporated San Leandro and Hayward) Officer Initiated events may be vehicle stops or on-view arrests. 16043 East 14th Street: 2003: 2 Officer Initiated activity events, 2004: 1 Officer Initiated activity events. This business is now closed.

21227 Foothill Blvd "Garden of Eden" 2003: 1 Officer initiated activity events, 2004: No calls for service, 2005: 1 Theft call, 4 alarm calls, 1 Officer Initiated activity events.

913 E. Lewelling Blvd. "We are Hemp" 2003: 1 Officer initiated activity event, 2004: 1 Assault call, 2 Officer Initiated activity events, 2005: 1 Assault call, 1 Officer Initiated activity event.

16250 East 14th Street: 2003: 11 Officer initiated activity events, 2004: 3 loitering calls, 9 Officer initiated activity events, 2005: 5 Officer initiated activity events.

15998 East 14th Street: "The Health Center" 2003: 1 Officer initiated activity event, 2004: 1 Trespassing call, 1 Assault, 2 Disturbance calls, 2 Miscellaneous, 26 Officer initiated events, 2005: 1 Robbery, 1 Aggravated Assault, 1 Grand Theft, 3 Petty Thefts, 2 Vehicle Thefts, 4 Trespassing calls, 5 Loitering calls, 1 Weapons Possession, 2 Controlled Substance cases, 4 Alarm calls, 9 Disturbance calls, 3 Miscellaneous calls and 21 Officer Initiated events.

16360 Foothill Blvd: 2003: 1 Officer initiated activity event, 2004: 2 Officer initiated activity events, 2005: 1 Homicide, 2 Aggravated Assaults, 1 Grand Theft, 1 Controlled Substance case, 13 alarm calls, 2 Officer Initiated events.

21222 Mission Blvd: "Compassionate Collective of Alameda County" 2003: 2 Officer Initiated events, 2004: 5 Officer Initiated events, 2005: 1 Attempted Homicide, 2 Robberies, 2 Burglaries, 2 Controlled Substance cases, 10 Alarm calls, 2 Disturbance calls, 1 Miscellaneous calls and 2 Officer Initiated events.
(Source Alameda County Sheriff's Department Report)

Car Jacking Latest Pot Club Crime
Linda Sandsmark San Leandro Times (Excerpt from the article)
San Leandro, CA Sept 29, 2005 -- A woman was carjacked and robbed Monday afternoon after she left The Health Center (THC) marijuana club at 15998 East 14th Street. The unidentified woman, who is from Garberville in Humboldt County, walked back toward the clinic and her car was found on nearby Liberty Street. "She doesn't want to pursue a criminal complaint in spite of the fact she was carjacked," says Alameda County Sheriff's Department spokesman Lt. Dale Amaral. "When you have this kind of drug distribution center it's an absolute magnet for every thug in the nine Bay Area counties. We're running from call to call." Crimes including burglaries and robberies at many of the dispensaries have caused widespread community concern. …..It's a target-rich environment," says Amaral. "The sheriff's department is devoting a tremendous amount of resources to these clubs. Though the clubs may not be selling directly to students, the county's School Resource Officers report a 36-percent increase in arrests on nearby school campuses for minors possessing marijuana, possibly due to increased supply in the area.
(Source http://www.hempevolution.org/thc/dispensary_robbed040514.htm)

ARCATA

- There are two dispensaries in town that share a building.
- The two dispensaries have an ongoing disagreement with each other that has resulted in numerous calls for police services to settle disputes.
- The facilities do not have the correct electrical support and continuously blow out the electricity in the area. They have not complied with upgrading their electrical systems or responded to fire department concerns regarding proper exits and signage.
- There have been numerous instances where people have purchased marijuana at the dispensary and then resold it at a nearby park.
- A doctor has come to the dispensaries and, for a fee, will provide a medicinal marijuana recommendation for just about any complaint the patient makes.

(Source Staff Report to Davis City Council: Medical Marijuana June 13, 2005)

BAKERSFIELD

Sep 8th, 2005. DEA arrested three subjects in raid on the Free and Easy cannabis dispensary. Kern County sheriffs summoned the DEA after being called to investigate a robbery at the facility. Police found plants growing at one subject's home plus 20 lbs of marijuana, and illegally possessed firearms. .
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

BERKELEY

March 30, 2000: Two males armed with sawed off shotguns forced entry into a residence and forced the occupant at gun point to turn over a safe. A subsequent investigation revealed that a second resident who was not home at the time was a former director of a Medical Marijuana Dispensary and was the intended target of the robbery.

October 2001, December 2001 and June 2002: The Medical Marijuana Dispensary on University was robbed. Larges sums of money and Marijuana taken.

March 2003: A home invasion robbery over marijuana cultivation escalated into a homicide.

December 2003: The Medical Marijuana Dispensary on Telegraph was robbed. (No further info provided)

April 2004: A home invasion robbery investigation resulted in the seizure of $69,000.00, ten pounds of Marijuana and a "Tech 9" machine pistol.

"While recognizing the medical needs of the cannabis using patients, staff is concerned about the potential for crime and violence associated with the distribution and cultivation of Marijuana"
(Source) City Manager's report to the Berkeley City Council

Pot club robbed for third time in a year (Excerpts from the Article)
By David Scharfenberg, Daily Planet staff (06-07-02)
Club had promised to limit amount of cash, marijuana stashed there
Four men stole $1,500 and $3,500 worth of marijuana from the Berkeley Medical Herbs pot club yesterday after two of them were allowed on site without proper identification. The afternoon heist renewed concerns about the integrity of the club's security and reignited some anger in the neighborhood. This incident marks the third time in a year robbers have stormed the medicinal marijuana club, located in a small brick building at 1627 University Avenue. The last robbery, in December, prompted a rash of concern from city officials about security at the club. "The guys who robbed it ran out with a big satchel," the neighbor said, adding that he disapproves of the marijuana club. "This is a very attractive place for other drug dealers to rob. It's not something we want in our neighborhood." Geshuri acknowledged that a few neighbors are opposed to the club, but said most of the residents support Medical Herbs in its mission. The club had pledged after the December robbery to keep no more than $1,000 and one pound of marijuana on site. But Geshuri said the robbers on Wednesday made off with $500 more than that and as much as a pound-and-a-half of marijuana. The witness opposed to the club said theft proves that management is not keeping its pledge to prevent robberies and ensure safety.

<u>Berkeley</u>

- Has had three to four facilities operating in the City. (Over the last 3-4 years).
- There have been several take over robberies of the dispensaries.
- There have been arrests where legitimate purchasers have resold marijuana on the street to well individuals.
- Obvious young people entering and purchasing marijuana from the dispensary.
- Recommended that if we did not currently have the dispensaries, we should not allow them.
- Police department has been given explicit instructions by their City Council not to take any kind of enforcement action against the dispensaries or people going in or out of the facility.
- Facilities will accept any Health Department cards, even those obviously forged or faked.

(Source Staff Report to Davis City Council: Medical Marijuana June 13, 2005)

BUTTE COUNTY
Butte County does not track statistics related to Medical Marijuana Dispensaries, however a Detective in the Investigations Unit knew of;
At least six robberies or attempts, one of which involved a shoot out between the suspect and victim occurred during the months of August to October 2005. Each of these robberies took place at the victim's residence and the target was the victim's marijuana cultivation. He stated that this is the busy time of year for these activities as it is harvest time for the Marijuana grows.
(Source Det. Jake Hancock Butte County Sheriff's Department)

CALAVARAS COUNTY
Jan. 2005. Federal government files forfeiture suit after local sheriff finds 134 marijuana plants. Government seeks to forfeit a home and five acres of land. The defendant says he was growing for half a dozen friends and family members and had checked with local authorities to make sure he was within legal guidelines.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

CHERRYLAND
Cherryland, CA June 30, 2005 -- An employee of a marijuana dispensary narrowly escaped with his life after a gunman opened fire as he waited outside the establishment for co-workers to arrive. The employee, whom authorities declined to identify, was sitting inside his car in the rear parking lot of the Collective Cannabis Club at 21222 Mission Boulevard on Tuesday morning when a masked gunman appeared, said Lt. Dale Amaral, spokesman for the Alameda County Sheriff's Department.
(Source http://www.hempevolution.org/media/santa_cruz_sentinel/scs041213.htm)

CLEAR LAKE
There have been a few reported robberies of Medical Marijuana patients away from the dispensaries. One significant case involved home invasion robbery. Multiple suspects entered the home of a person who was known to be a Medical Marijuana user. During the robbery, one resident was beaten with a baseball bat while the suspects made inquires regarding the location of the marijuana.
Two of the suspects were shot and killed by the homeowner.
(Source Clear Lake P.D. Inv. Clawson)

CLOVIS
In December of 2005 the Clovis Police Department in conjunction with the Fresno County Sheriff's Department conducted an investigation which resulted in the arrest of a subject for possession of 120 pounds of marijuana. The subject of the investigation was found to have a Medical Marijuana card which helped facilitate his possession and sales of marijuana.
(source www.ci.clovis.ca.us/PressRelesaseDetail.asp?ID=838)

DAVIS (Excerpts from Staff Report to Davis City Council: Medical Marijuana June 13, 2005)
In summary, the experiences of other cities that already have dispensaries are bad. Dispensaries have experienced robberies themselves; legitimate patients have been robbed of their marijuana as they leave the facility; people purchasing marijuana at the dispensaries have been caught reselling the marijuana nearby; street level dealers have begun selling marijuana and other drugs nearby in an effort to undersell the dispensary; some dispensaries have doctors present in their facility who will recommend marijuana as a course of treatment for just about any patient complaint; and many dispensaries do not take serious steps to ensure they are selling only to legitimate patients or their caregivers. When asked, many of the police departments that already have facilities in their cities said that if Davis did not already have a dispensary, we should take steps to prohibit one from opening in the city.

DIXONVILLE
August 25, 2006: Medical Marijuana cardholder caught with 200 pounds of pot.
A Medical Marijuana cardholder was caught with 120 pounds of processed marijuana, 80 pounds of marijuana butter, 10 grams of hashish, 45 large cannabis plants and several psilocybin mushrooms. The Douglas Interagency Narcotics Team found some of the pot packaged for sale and $7,000 worth of cash at the home of Dwight Ehrensing off Strader Road, north of Buckhorn Road in Dixonville. Ehrensing, 61, was arrested and booked at the Douglas County Jail on charges of delivery of marijuana and the manufacture and possession of marijuana. The narcotics team was given a search warrant after receiving a tip that Ehrensing was selling marijuana, which isn't allowed, even for Medical Marijuana cardholders. "We're finding it's becoming more common," said DINT Lt. Curt Strickland. "People are using the cards to circumvent the law." DINT was assisted at the scene by the Douglas County Sheriff's Office, Oregon State Police, parole and probation officers.
Source: http://www.newsreview.info/article/20060825/NEWS/108250091

EL DORADO COUNTY
Medical Marijuana Dispensary operated Medical Marijuana clinic in Cool, California with 6000 patients; DEA raided Sep. 28, 2001; seized patient records. Indicted Jun 22, 2005 for marijuana found on premises.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

FAIRFAX
- Chief of Police Ken Hughes, advised the following:
- Fairfax has one marijuana dispensary
- Fairfax has had some problems with patients selling to non-patients
- They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana
- Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to trade it to a minor for sex
- Very small town and low crime rate

(Source Rocklin P.D. report)

HAYWARD P.D.
- Acting Chief Lloyd Lowe, advises the following:
- Hayward has three dispensaries total, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases
- They have problems with user recommendation cards – not uniform, anyone can get them
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made
- They have received complaints that other illegal drugs are being sold inside of dispensaries

- The dispensaries are purchasing marijuana from growers that they will not disclose
- Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006

(Information provided by Rocklin P.D. report)

HUMBOLDT COUNTY

One subject arrested in Humboldt County Aug 01, 2001 growing 204 plants for the Salmon Creek patients' collective; case turned over to the feds, pled guilty Dec 6; sentenced to 15 months for possession. Released from prison May 2003. This subject is now missing and presumed dead since Aug 2003; police suspect foul play.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

12/12/2003 Subject: Attempted Murder Suspects Arrested
Contact: Brenda Gainey, Case No#: 200308180, Location: Garberville
Humboldt County Sheriff's Deputies arrested two Garberville men last night wanted in connection with an attempted murder case from Mendocino County. Yesterday afternoon the Mendocino Sheriff's Office received a report of a shooting in Willits. Detectives from Mendocino learned that the victim, Jarron Jackson, 38 of Antioch, had been shot once in the arm during a robbery at a residence in Willits. Mendocino County Sheriff's Detectives learned the identities of the two suspects and issued a "Be On the Lookout" bulletin to Northern California police agencies. The bulletin also indicated that the two suspects were residents of Garberville. Late yesterday evening Humboldt County Sheriff's Deputies and officers from the California Highway Patrol went to the suspects' residence on the 1400 block of Redwood Dr. in Garberville.
Arrested at the house were Charles Magpie, 26, and Rudolph King, 28. Both men were taken into custody without incident. While waiting for Mendocino County Officials to arrive at the scene, Humboldt County Deputies received consent to search the house from one of the residents. Deputies found a sophisticated indoor commercial marijuana grow. Members of the Sheriff's Drug Enforcement Unit were called and found the following:
· Twenty-eight pounds of processed marijuana; estimated street value of $100,000.
· One thousand growing marijuana plants ranging in size from six inches to two feet; estimated street value of $875,000.
· Two shotguns
· Approximately $16,000 in cash

Date Released: 6/2/2006 Subject: Marijuana Investigation Contact: Deputy Campbell
Case No#: 200603240 Locations: Swayback Ridge
On 6/1/06, Sheriff's deputies were conducting follow up to a residential burglary that occurred in the Swayback Ridge area of Humboldt County. While attempting to contact persons who may have had knowledge about the burglary, a commercial indoor marijuana operation was discovered.

The Sheriff's Drug Enforcement Unit, assisted by the Drug Enforcement Administration and the Bureau of Narcotics Enforcement, served a search warrant on the property. Law Enforcement seized 570 marijuana plants, 1.5 pounds of processed marijuana, and three rifles. Suspect information was obtained, and warrants are being sought at this time.
(Source http://www.co.humboldt.ca.us/sheriff/pressreleases)

KERN COUNTY
July 20, 2005. The director of American Kenpo Kungfu School of Public Health was arrested for cultivating over 2,000 plants at three different locations. He was charged with conspiracy to distribute and possess more than 1,000 plants (10 year mandatory minimum).
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

LAKE COUNTY TASK FORCE: (Bureau of Narcotic Enforcement)
One recent case currently in federal litigation involves the seizure of 32,000 plants from one grow. The cultivator claims that he is a "provider" for Medical Marijuana patients and therefore exempt from prosecution for cultivation. The subject was arrested and released on bail pending trial on marijuana charges with possible sentence of 12 years to life. On Feb 16, 2005 this subject was re-arrested along with another subject after allegedly selling one pound of marijuana to DEA agents, who claim they did not mention medical purposes.
(Source) Lake County Narcotic Enforcement Team

One pound of high grade Marijuana sells for approximately $4,000.00 dollars in the Bay Area. In the Mendocino area that price drops to approximately $2,700 per pound based on availability. It is estimated that one plant can yield one to three pounds of Marijuana. Based on this information 32,000 plants times 1- 3 pounds = 32,000 – 96,000 pounds at $2,700 per pound = $86,400,000 to $259,200,000.

LAKE COUNTY IMPACTS
Sheriff Rod Mitchell, advised the following:

- Lake County has one marijuana dispensary in Upper Lake (Two as of this writing)
- The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of $175
- Many "patients" come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor
- Upper Lake has been impacted by the type of people coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users ("dopers").
- One quilt shop owner has told the sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in the very small town.

- They also have a notorious marijuana grower who beat prosecution for cultivation by making a medical claim. Law enforcement has taken a hands off approach even though he is blatantly violating the law.
- The Marijuana grower has recently claimed to be a church to avoid paying taxes.

(Source Rocklin P.D. report)

LAYTONVILLE

Crane by QUINCY CROMER/The Daily Journal (Excerpts from the article)

The owner of Mendo Spiritual Remedies in Laytonville and Hemp Plus Ministry in Ukiah -- who says he provides Medical Marijuana to more than a thousand people in Mendocino County -- will be in court next week to face charges for cultivation of marijuana.

Les Crane, founder and self-proclaimed reverend of the two churches where Medical Marijuana is available locally, said some 5,000 cannabis plants and his life savings -- about $6,000 converted into gold -- were seized by the Mendocino County Sheriff's Office on May 16. "They came here because a guy was coming to rob my house.

I called them to come and solve the problem and then they found out about the grow. We showed them all the documentation and they left and went and got a search warrant and came back and searched my church," Crane said.

(Source) http://www.hightimes.com/ht/news/content.php?bid=1203&aid=10

Laytonville marijuana guru shot to death (Excerpts from the article)

2 others beaten in home; no suspects, but officials believe killing related to pot growing

Saturday, November 19, 2005

By GLENDA ANDERSON

THE PRESS DEMOCRAT

A Laytonville pot guru who founded two Mendocino County medicinal cannabis dispensaries was shot to death during an apparent robbery in his home early Friday morning. Les Crane, who called his pot dispensaries churches and referred to himself as a reverend, said he was in the business to help ailing people, not to make money. He had said he had nearly 1,000 patients. He was killed at about 2:30 a.m. Friday in his home, which is about a mile from the center of Laytonville…. Two other people in Crane's home at the time of the shooting were beaten….Crane's death is believed to be related to his marijuana-growing and dispensing activities, Mendocino County authorities said. "I am totally surprised we haven't had more robberies and violent crimes associated with these things because of the amount of money involved and the value of the product," Sheriff Tony Craver said. His religious credentials were issued by the Universal Life Church, which supplies certificates through the mail and the Internet. Sheriff's Lt. D.J. Miller provided few details of the crime, pending further investigation, including how many times Crane was shot or if any money or items were taken. Mendocino County officials had doubts about Crane's purpose for growing pot, and in May he was arrested for marijuana cultivation and several thousand pot plants were confiscated from his home. The criminal case was pending when he was killed….

(Source)http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303

LOS ANGLES COUNTY
January 2004, Approximately six to eight known Medical Marijuana Dispensaries operating in West Hollywood. Several of the Medical Marijuana Dispensaries have generated calls for service.

January 10, 2004, An Assault with a Deadly Weapon and a Vandalism are reported at one of the Medical Marijuana Dispensaries as well as calls generated reporting obstruction of the street or sidewalk.

February 19, 2005, A Medical Marijuana Dispensary "LA Patients and Caregivers" reported that two subjects armed with handguns robbed the dispensary.

May 6, 2005, A search warrant was served at one of the dispensaries by L.A.P.D. (no further information provided)

May 15, 2005, A Medical Marijuana Dispensary "Alternative Herbal Health Services" four to five subjects armed with handguns entered the business at 4:25 pm, one of the employees was "pistol whipped" as the suspects demanded access to the dispensary's safe.
(Source Declaration of Sgt. Robert McMahon Los Angles County Sheriff's Department)

LOS ANGELES P.D.

Medical Marijuana Overview

The purpose of this fact sheet is to provide an overview of the issues concerning Medical Marijuana from its inception to the present and review the Los Angeles County Ordinance that permits Medical Marijuana providers (providers, collectives, cannabis clubs and clinics) in unincorporated areas of the county. Medical Marijuana providers have been popping up all over the City of Los Angeles at an alarming rate causing a myriad of enforcement dilemmas. Because the district attorney, city attorney and city council have no policy regarding Medical Marijuana, citizens and police are perplexed as what to do and who to turn to. Further exacerbating the problem, long lines of drug abusers, who are not sick, are purchasing marijuana at will. Based upon a number of findings, as described in this fact sheet, allowing Medical Marijuana providers in the City of Los Angeles is not in the best interests of the Department, the City, and especially, its citizens. Therefore, Medical Marijuana providers should be banned in the City.

The Compassionate Care Act of 1996, known as Proposition 215, made the possession and cultivation of marijuana legal for "qualified patients" and "primary caregivers." Qualified patients included those with serious illnesses that had a recommendation from a physician and primary caregivers were individuals designated by a patient who has consistently assumed responsibility for the housing, health and safety of the patient.

Senate Bill 420, enacted in 2004, implemented Proposition 215 and provided guidelines that included, a volunteer identification card system issued by county health departments for patients; immunity from arrest for possession, transportation, delivery or cultivation

with specified amounts of marijuana; and, expanded the definition of primary caregiver to employees of health care facilities. It also provided for limited compensation – no profiteering – for the primary caregiver, for "out of pocket" expenses and services, but not product. A "dispensary" is not a primary caregiver. Senate Bill 420 did not legalize providers. It stated primary caregivers cannot cultivate or distribute Medical Marijuana for profit. Sales and possession for sale are illegal. Commercial enterprises selling marijuana to any qualified public purchaser is not a primary caregiver and are subject to arrest and prosecution.

The Los Angeles County Ordinance does not specify who may dispense Medical Marijuana and what dosage is appropriate for a particular illness. One of the arguments for the legalization of Medical Marijuana is that marijuana relieves pain and suffering, aids digestion of food and nourishment and other benefits to persons suffering from cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine and other illnesses. A recent add in a magazine from Pacific Support Services, Inc., in advertising Medical Marijuana recommendations, usurped Proposition 215 by adding, "sports injuries, auto injuries, insomnia, chronic pain and nausea, and anxiety," to the aforementioned serious illnesses. They also promised, "If you do not qualify for a recommendation your visit is free," and provided a coupon for $150 evaluation. When it comes to dosage, there is no specified dosage for a particular illness. The dosage is left to the decision of someone that has smoked or eaten marijuana products to speculate as to a person's needs. These persons and providers do not have pharmaceutical experience.

In May 2005, officers from the LAPD served a search warrant upon a dispensary that was one of a chain of seven Medical Marijuana providers located throughout the state. The dispensary was targeted for blatant distribution and illegal sales of marijuana to adults and young people. Young people from all over southern California flocked to the business to buy marijuana and then returned to their respective communities to conduct street sales of the drug. No one on the premises had pharmaceutical training or licensing to distribute the drug. Furthermore, the business promoted the sale and cultivation of 60 strains of marijuana, of which, only six strains were for medical purposes. Evidence was also recovered at the scene that showed the dispensary was in business to make a profit and allegedly laundered their proceeds. **Fourteen persons were arrested and nearly 800 pounds of marijuana and over $242,000 in cash was seized (the 14 arrested were never filed on by the district attorney). Evidence documented over $1.7 million in cash was received from an average of 300 patients per day, during the month of March 2005. An email from the chain's headquarters boasted $2 million monthly and 800 patients daily.** The executive director chastised the dispensary for not bringing in more patients, which was a clear violation of Senate Bill 420 wherein providers are supposed to be non-profit. **It was estimated the corporation as a whole brought in over $200 million annually that was allegedly laundered through the purchase of real estate, exotic automobiles, expanding business operations and foreign investment. Patients reportedly paid as much as $6,400 for a pound of marijuana.**

During the aforementioned investigation, it was learned patients spent $150-$250 to be examined by a doctor to receive a recommendation, then another $40-$50 to obtain a patient identification card. According to Senate Bill 420, identification cards are only to be issued only by State or County health departments and not private entities. The cards were produced fraudulently. Next, patients had to spend from as little as $30 to several thousand dollars for dried marijuana or marijuana products. Some questions arose, "How can someone on a fixed income or pension afford Medical Marijuana?" and "What dosage of marijuana is appropriate for an ailment."

The Los Angeles County Ordinance provides for the sales and consumption of edible marijuana. Edibles are food products, i.e. soda pop, peanut butter, candy, bakery items, jam and other liquids that contain various levels of Tetrahydrocannabinol (THC), the psychoactive agent of marijuana. There were no regulations in the Ordinance for the quality control, potency, dosage and legality of the products sold. There is no Food and Drug Administration (FDA) approval of the products. Furthermore, on April 20, 2006 the FDA rejected the use of marijuana for treating serious illnesses, stating they did not support the use of smoked marijuana for medical purposes.

On March 23, 2006 in Oakland, "Beyond Bomb," one of a handful of manufacturers and distributors of edible marijuana products, who distributed edibles to the Yellow House and Medical Marijuana providers in California and the U.S., was searched by the Drug Enforcement Administration. The owner was arrested for marijuana trafficking. The area of the company used for processing and packaging edibles was atrocious. No sanitary precautions were taken whatsoever and the area was absolutely filthy and vermin was present. In addition, the company sold edibles in packaging resembling copyrighted and trademarked food items. The company used the same logo, candy wrapper colors and derivatives of the names of legal products, i.e. "Buddafinga" had the similar color wrapper and logo as the NestleUSA candy bar "Butterfinger." Over 20 different marijuana candy items were found that violated state and federal laws pertaining to the infringement of copyrights and trademarks. In addition, legitimate candy bars were opened and the contents was laced with THC and then repackaged in the new labeling. There was no explanation for "3X," "6X," or "10X" markings on the wrappers of edible products (according to operators of providers the markings indicate the potency of THC in the product). Lastly, there are no directions on the edible packages for the uses, dosage, warnings (allergy alerts, stomach bleeding and use with alcohol), drug facts, expiration date and other information, as required for over the counter drugs.

On August 15, 2006, a newly established Medical Marijuana dispensary in Hollywood, in an effort to recruit patients, **handed out free samples of bakery items laced with THC. Two persons, an UPS driver ate a cookie and a security guard ate a piece of chocolate cake, and then fell violently ill and was hospitalized**. The LAPD is currently investigating the poisoning of the two victims.

The Los Angeles County Ordinance also provided for the smoking of marijuana on site with a ventilation system but states nothing about the dangers associated with such use and secondhand smoke.

According to the scientific studies, there are more than 4,000 chemicals in cigarette smoke including 43 known cancer causing (carcinogenic) compounds and 400 other toxins. These effects damage the heart and lungs and make it harder for the body to fight infections. Breathing secondhand smoke has been found to be as dangerous as smoking. Marijuana smoke and cigarette smoke contain many of the same toxins, including one which has been identified as a key factor in the promotion of lung cancer. This toxin is found in the tar phase of both, and it should be noted that one joint has four times more tar than a cigarette, which means that the lungs are exposed four-fold to this toxin and others in the tar. Marijuana smoking for patients with already weakened immune systems means an increase in the possibility of dangerous pulmonary infections, including pneumonia, which often proves fatal in AIDS patients. None of these effects are stated in the ordinance. In addition, citizens and businesses adjacent to providers complain of marijuana smoke that permeates into their working spaces and public hallways causing them distress and caused their businesses to loose customers.

It was learned during the West Hollywood investigation; physicians were allegedly handing out Medical Marijuana recommendations for profit without actually examining prospective patients. Proposition 215 and Senate Bill 420 provided doctors could not be prosecuted for issuing Medical Marijuana recommendations. **Evidence was recovered wherein one doctor saw 49 persons in one day, netting $150 per patient. The same doctor allegedly saw 293 patients in one week earning over $43,000 without ever personally examining them.** Medical doctors typically see an average of no more than 10 patients per day. It was learned the doctor allegedly examined patients from a closed circuit television while a clerk received the payment and handed out pre-signed recommendations. Projecting his earnings, he could receive over $2.1 million annually without practicing medicine or worrying about malpractice insurance. An investigation last month in San Diego County proved this to be true regarding a different well-known physician. An undercover officer and a television crew, in separate incidents, obtained recommendations from the same physician, claiming maladies without begin examined and they paid for pre-signed recommendations. To further show there are no controls of who can receive Medical Marijuana, both persons then went to Medical Marijuana providers and obtained marijuana for their pets. They actually put their pet's names on the recommendations (one was a dog and the other was a bird). The providers commented that Medical Marijuana, in edible form, was good for them.

Another problem associated with Medical Marijuana recommendations is that there is no penalty for providers that do not check identification against the name listed on the recommendation**. Just last week, a high school coach in the San Fernando Valley allowed members of his team to use his recommendation so that they could purchase marijuana for recreational use. The dispensary made no effort to remove the recommendation from the 17-year-olds' possession and did not prevent them from obtaining marijuana.**

The Los Angeles County Ordinance called for a security system and guards for each dispensary. Medical Marijuana providers have had more extensive security systems than Sav-On, Ritz or Walgreen drug stores, and yet they still have been robbed and assaults have occurred because they keep exorbitant amounts of cash and marijuana on hand. In addition, the security systems and guards do nothing for the surrounding businesses or area. Many of the providers in LA County employ street gang members with extensive criminal histories as security guards. Despite the guards, the Department has seen a significant increase in Part I and Part II crime wherever providers have appeared. Surrounding merchants and residences have had to deal with intimidation, second-hand smoke, and vandalism to personal property and buildings, urinating and defecating in public, thefts from vehicles and businesses and the loss of business. On August 28, 2006 between midnight and 3 a.m., unknown suspects tunneled through an adjoining business (workout gym) into a Medical Marijuana dispensary and stole the marijuana inside. Lastly, several unincorporated areas within the County of Los Angeles border the City of Los Angeles and are causing problems for both cities. In San Francisco, a Medical Marijuana dispensary just lost its bid to open up a shop near Fisherman's Wharf. The City's Planning Commission meeting was packed by citizens who opposed the cannabis dispensary complaining that customers did not purchase pot for health problems, but to resell it on the street, and that the outlets are a magnet for general drug use and increases in overall crime, traffic and noise.

There were no provisions in the Los Angeles County Ordinance regarding advertising of Medical Marijuana providers. In August 2006, Medical Marijuana dispensary flyers were found on the Grant High School campus in Van Nuys, offering Medical Marijuana doctor evaluations and recommendations and free samples of marijuana. Medical Marijuana advertising has also been found on college campuses. On August 16, 2006 Time Warner Cable pulled the plug on three ads promoting Medical Marijuana that were scheduled to debut on four popular cable channels in the Coachella Valley.

There were no provisions in the Los Angeles County Ordinance for background verification of the owner's qualifications to run a Medical Marijuana dispensary. The owners of several Medical Marijuana providers have been found to be felons and in the case of one the largest Medical Marijuana corporations, the owner is a fugitive from another state for drug trafficking. **On August 17, 2006 the owner of a major Medical Marijuana dispensary in North Hollywood, with over 1,000 patients, was interviewed. He was anxious to speak with police because a Jamaican drug trafficking organization was trying to takeover his business and was threatening physical violence to him and his family.**

A new tact has been taken by a Medical Marijuana dispensary in Hollywood in representing themselves as a religious organization citing a recent decision by the U.S. Supreme Court, allowing certain hallucinogenic controlled substances to be used in religious ceremonies. Temple 420, in their interpretation of the court decision handed down in February 2006; purports marijuana is the sacrament of their religious experience. They offer prospective members unlimited supplies of marijuana to be picked up in person or sent through the mail after paying a $100 membership fee.

They represent, “Membership cards will work like Medical Marijuana cards in California. If a member is ever pulled over with cannabis, anywhere in the nation, they can present their card and show the authorities that they are lawfully in possession of religious marijuana.”

Though issuing prescribed medications, providers do not have to meet the same standards as pharmacies. As news agencies have pointed out, State regulations are stricter for California’s barbers than its Medical Marijuana providers.

Lastly, Senate Bill 420 has a provision allowing cities and counties to decide whether or not to approve Medical Marijuana providers. On August 16, 2006 the city of Monterey Park joined several counties and cities around the state, including the cities of Roseville, Pasadena and Torrance, in banning Medical Marijuana providers. Just in the last few days, the city of Corona has begun examining whether or not to ban Medical Marijuana providers. These cities, along with 38 others throughout the state, have recognized the serious impact Medical Marijuana providers have had upon communities and do not want what is happening in the southern California to happen in their communities. According to representatives from these cities, the banning of Medical Marijuana providers has not adversely affected their constituents.
Source Det. Dennis Packer Asset Forfeiture/Narcotics Vice Division L.A.P.D.)

MENDOCINO COUNTY
Marijuana: Marijuana Crop Worth $1.5 Billion in One California County Alone, Paper Estimates 12/2/05 (Excerpts from the Article)
Northern California's Mendocino County has been known for marijuana growing for at least 30 years. Part of the state's legendary Emerald Triangle of high-grade pot production along with neighboring Humboldt and Trinity counties, Mendocino has long profited from the underground economy. Last week, a local newspaper, the Willits News, tried to gauge just how large the profits may be, and the result is startling. According to the News, the local marijuana industry will add $1.5 billion to the county's economy this year. With Mendocino's legal economy estimated at about $2.3 billion, that means the pot economy is almost two-thirds as large as all other legal economic activities combined. When combining the aboveground and underground economies, the marijuana industry is responsible for roughly 40% of all Mendocino County economic activity, a figure approaching the proportions of the Afghan opium economy. The County of Mendocino Marijuana Eradication Team (COMMET) seized 144,000 plants this year, and District Attorney told the paper COMMET normally seized between five and eight percent of the crop, a little less than the 10% rule of thumb for estimating all drug seizures. The paper more than compensated for the lowball seizure rate by also factoring in a 20% crop loss to spoilage. Following the formula, the News estimated 1.8 million plants were sown in the county this year, with 1.32 million surviving droughts, floods, bugs, mold, and cops. And while both the DEA and Mendocino County law enforcement like to say that one plant produces one pound, the newspaper consulted local grower "Dionysius Greenbud," who said the average yield is closer to a half pound -- a very rough estimate, given a local crop that consists of both high-yielding outdoor plants and smaller, lower-yielding indoor plants. The paper's in-the-ballpark estimate for total pot production in the county is thus

some 662,000 pounds. The paper assumed a wholesale price of $2200 a pound, based on reports from local growers, and a simple multiplication yields a total of $1.5 billion. Is that figure out of line? It's hard to say. In last year's "Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market," Eric Schlosser quoted former DEA officials as estimating the value of all marijuana grown nationwide at $25 billion. While it is difficult to believe that one California County accounts for nearly 5% of all pot grown in the US, who is to say different? (Source http://stopthedrugwar.org/chronicle/413/mendocino.shtml)

March 16, 2006 Three suspects enter a Medical Marijuana Dispensary (Mendocino Remedies), pepper spray the employees and attempt to take property. A fight between the suspects and victims ensues and the suspects flee the scene.
(Source http://www.co.mendocino.ca.us/sheriff/pressreleases.htm)

MODESTO
July 18th, 2005. DEA arrests three subjects on charges stemming from a raid by Stanislaus Co sheriffs, who reported discovering 49 plants and 235 pounds of marijuana there. The main subject of the investigation and his wife had been providing Medical Marijuana for patients at a San Francisco dispensary.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

Soap store a front for pot outfit, cops say
Patrick Giblin Modesto Bee (Excerpts from the article)
Modesto, CA June 17, 2006 -- Drug agents looked past the soaps and lotions at The Healthy Choice on McHenry Avenue in Modesto and sniffed out a marijuana store in the back, law enforcement officials said Friday. "The second store was just like a legitimate store, with shelves, prices listed and receipts given to the customers," said Rea, an agent with the Stanislaus Drug Enforcement Agency. "I've never seen anything like it." There were prescription bottles filled with pre-weighed amounts of marijuana. There also were 50 to 100 pre-wrapped, marijuana-laced brownies and an equal number of marijuana-laced cookies. The store had a menu of prices and types of marijuana, with the different varieties neatly packed in Tupperware containers, Rea said. "They offered full customer service," Rea said. Local, state and federal drug agents raided the store about 9 a.m. Friday and stayed until about 1 p.m., seizing property and cataloging the inventory, sheriff's spokeswoman Gina Legurias said. They also seized about $20,000 in cash. Approximately 30 people came to the store looking to buy marijuana while officers were there, Rea said. About half of them had California Medical Marijuana cards, indicating they were suffering from cancer, glaucoma or other ailments. Marijuana is believed to help relieve the symptoms. However, the store isn't a licensed Medical Marijuana dispensary. The rest of the potential customers didn't have cards, Rea said. "They sold to anyone and everyone," he said. No customers were arrested. They were interviewed to give officers an idea of how much business the store did, Rea said

OAKLAND

- Large criminal element drawn to the dispensary location
- Marijuana dealers who have a doctor recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a recommendation.
- Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- Chief Word mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- They had more than 15 total in city, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.
- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told the police that they cannot keep the criminal element out.

(Source) Rocklin P.D. report

June 30, 2004: Five subjects were arrested by DEA following a CHP raid on a warehouse where 4,000 plants were found. The subjects claim that the plants were for a licensed dispensary. Police gave conflicting accounts of the incident; **the CHP says it called on the DEA after Oakland police declined to help.** Two defendants have pled not guilty to manufacturing charges bearing a 10-year to life sentence.

March 16, 2006. DEA raids cannabis candy manufacturer, "Beyond Bomb," at three different East Bay sites, seizing over 5,000 plants, $150K cash, and the company's stash of cannabis candies & soda pop. (Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

One Department representative was willing to speak with me, but did not wish to be quoted for this report. They advised me of a recent carjacking. This event involved an owner and three employees of a Medical Marijuana Dispensary. None of the four could agree on any fact relating to the case other than while property of the dispensary was stolen, no Marijuana or cash was taken. This leads us to believe that either a large quantity of Marijuana or cash was the target of the attack.

PLACENTIA

Temporary ban on medical marijuana sale proposed
The 45-day moratorium would allow city staff to study ways to regulate marijuana distributors
By SUSHMA SUBRAMANIAN Excerpts from the article
The Orange County Register Friday, August 11, 2006
Placentia -- The City Council on Tuesday plans to establish a 45-day moratorium on launching medical marijuana dispensaries. The effort was prompted by two recent cases involving the sale of marijuana. In May, police confiscated 15 mature marijuana plants from a man who was distributing the drug from his residence without a permit. City staff also received an inquiry about setting up a dispensary in Placentia. **Several California cities that have medical marijuana dispensaries have experienced an increase in crime, including resale of marijuana to people who don't have prescriptions and burglaries at the businesses, a city staff report says. "You don't want become the hotbed for medical marijuana sales,"** Mayor Scott Brady said. "If you don't set up the proper rules and regulations, then you become the capital of fill in the blank - marijuana sales or massage parlors."
Eight massage parlors were operating in the city in March 2005, when the city set up stricter rules for massage therapists to show proof of certification. Many residents complained about illicit activity at the establishments. Since then, about half of the businesses have been shut down.
Source http://www.ocregister.com/ocregister/homepage/abox/article_1241289.php

PLEASANTON
The City of Pleasanton does not have any dispensaries operating in Pleasanton, whether legally or illegally. Pleasanton has a moratorium on dispensaries in place, has not prepared any reports on a ban, and staff will request that Council extend the moratorium for another 12 months. In support of the moratorium, the following health / safety / welfare information was cited;

Juveniles in Pleasanton found with marijuana which was re-sold to them after having been obtained from a dispensary.

A dispensary employee was the victim of a robbery at his home after he brought more than $100,000.00 in cash from a Medical Marijuana Dispensary back to his home to Pleasanton.
(Source Larissa Seto Assistant City Attorney)

ROSEVILLE:
- Street level dealers trying to sell to those going to the dispensary at a lower price
- People are smoking marijuana in public around the facility
- People coming to the community from out of town and out of state to obtain Marijuana (Nevada State, San Joaquin County, etc)
- Marijuana DUI by people who have obtained from dispensary
- At least one burglary attempt into building

(Source Rocklin P.D. report)

On January 13, 2006 the proprietor of the Roseville's Medical Marijuana Dispensary was indicated by a Federal Grand Jury on 19 counts of marijuana trafficking and money laundering. **The indictment alleges that in an eight month period the defendant made approximately $2,750,849.00 from the sale of Medical Marijuana and of that figure $356,130.00 was traced to money laundering activities**. The U.S. Attorney handling the case stated, "This case is a perfect example of a person using Medical Marijuana as a smokescreen to hide his true agenda, which is to line his pockets with illegal drug money."
(Source Press release California State Attorney Generals Office)

SACRAMENTO
Sacramento has four dispensaries. Relatively few crimes other than at least two burglary attempts. Most of the complaints came to the council via citizens regarding quality of life issues i.e. loitering, traffic and use of marijuana in or near the dispensaries.

July 7, 2005. The director of Alternative Specialties dispensary, charged by feds following raid by Sacramento County Sheriff that uncovered two indoor gardens with an alleged 800 plants. Sheriffs say the subject had a criminal record for embezzlement and failed to file for a business license. He was charged with the manufacture of marijuana and illegal possession of weapons.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

SAN DIEGO
Armed Men Rob Pot From Medical Marijuana Store
Posted by Pierre Werner on August 1, 2005 10:41 am (110 reads)
SAN DIEGO -- Two men armed with a shotgun and rifle stole drugs from a Medical Marijuana store on Sunday, police said. The robbers went into Tender Holistic Care in the 2100 block of El Cajon Boulevard at about 8:30 p.m. Sunday. They took an unspecified amount of marijuana from the store and fled in a late model Isuzu Rodeo or Trooper with tinted windows, according to witnesses. The car was last seen heading east on El Cajon Boulevard, police said.

Source:
http://medicalmarijuanareferrals.com/modules/news/index.php?storytopic=0&start=420&PHPSESSID=0c8a52777fa2204f4874a268edd4f580

Dec 12, 2005 - Interagency task force raids 13 of 19 San Diego dispensaries. Task force led by DEA with state police. Raids conducted under state, not federal search warrant. No arrests, investigation ongoing.
(Source http://www.canorml.org/news/fedMedical Marijuanacases.html)

July 7, 2006: Medical Marijuana dispensaries charged with drug trafficking
ALLISON HOFFMAN Associated Press (Excerpts from the Article)
Federal prosecutors accused six people Thursday of illegally trafficking pot under the cover of California's Medical Marijuana. "They made thousands of dollars every day," Lam said. "Their motive was not the betterment of society. Their motive was profit." Prosecutors alleged that these dispensaries sold marijuana or marijuana-based products with little concern for legitimate medical need. "The party is over," District Attorney Bonnie Dumanis said at a news conference with federal prosecutors. She added that Proposition 215, the ballot measure that legalized marijuana for medical purposes, has been "severely abused by neighborhood pot dealers opening up storefronts." Complaints from residents living near dispensaries precipitated an investigation beginning in September 2005 by the San Diego police, the county sheriff's department, the Drug Enforcement Administration, Dumanis said. The San Diego County District Attorney's office released a complaint sent last week to the state medical board against four physicians alleging that they wrote "recommendations" for Medical Marijuana use - doctor's notes required by state law - to apparently healthy individuals.
(Source:
Http://www.mercurynews.com/mld/mercurynews/news/breaking_news/14982395.htm)

City hopes to close legal pot dispensary (Excerpts from the Article)
July 8, 2006 By Linda Lou UNION-TRIBUNE STAFF WRITER SAN MARCOS – An existing medical-marijuana dispensary here survived a City Council vote in February that banned any more dispensaries from opening. It was able to receive a business license because it called itself a nutritional supplement store, city officials said. But the dispensary's ability to remain open is now uncertain. Now the city is intent on shutting down the business, run by Legal Ease Inc. of San Diego, because it's been burglarized several times since the council's vote, said City Manager Rick Gittings.
The city contends it's a threat to the community's health, safety and welfare, violating the provisions the city imposed in February when it allowed the dispensary to stay open, Gittings said. The concept of providing Medical Marijuana to patients who really need it has good intentions, but as indicated by state and federal prosecutors this week, Medical Marijuana dispensaries are fronts for drug peddling, Gittings said. The letter said that another business near the dispensary's current location was burglarized because it was mistaken for the dispensary. The letter also said Legal Ease had failed at least once to submit security tapes of its premises and has failed to reveal what was stolen in the burglaries. Sgt. Gary Floyd, supervisor of San Marcos' street narcotics and gang unit, said he's not aware that Legal Ease had talked with the Sheriff's Department about relocating. He said that after some recent early-morning burglaries, the dispensary installed roll-up metal security covers over the door and window because thieves had smashed the glass to get inside. In Thursday's raid, dozens of candy bars and cartons of ice cream containing THC, a marijuana byproduct, were confiscated, Floyd said. Bags of packaged marijuana and larger bags of the drug used to refill the smaller ones were also taken, he said. No one was arrested. In December, a federal drug agent said he was able to purchase marijuana at the site with a forged doctor's recommendation.
(Source: http://www.signonsandiego.com/news/northcounty/20060708-9999-1mi8smmari.html)

SAN FRANCISO
May 14, 2005--In a daring home-invasion robbery at around 10PM, the house of the owner of Alternative Health and Healing Services at 442 Haight St was robbed of several pounds of cannabis and the dispensary keys. Details are sketchy, but it is believed that the robbers burst into the owner's home at gunpoint. More on this story as details are known.
(Source) http://www.hempevolution.org/thc/dispensary_robbed040514.htm

June 23, 2005 3 S.F. pot clubs raided in probe of organized crime (Excerpts from the Article)
Medical Marijuana dispensaries used as front for money laundering, authorities say. Federal authorities raided three San Francisco Medical Marijuana dispensaries Wednesday, and investigators arrested at least 13 people as part of an alleged organized crime operation using the clubs as a front to launder money. Authorities said…..that the operation controlled at least 10 warehouses where marijuana was grown in large quantities and that those involved were bringing in millions of dollars. One warehouse in Oakland that federal agents raided earlier this month was capable of growing $3 million worth of marijuana annually, investigators said. The marijuana ostensibly was for cannabis clubs, but the amount being grown was far more than needed to supply the dispensaries, authorities said.
(Source) http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL.

Dec. 20, 2005 - DEA raids HopeNet Cooperative after first raiding home of HopeNet directors Steve and Catherine Smith. No arrests. Agents seize cash, medicine, a few hundred small indoor plants, mostly cuttings and clones.
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

June 27, 2006: Medical Marijuana dispensary robbed during S.F. Gay Pride Parade
Adam Martin San Francisco Examiner
Thieves apparently took advantage of Sunday's 36th Annual San Francisco Gay Pride Parade and Celebration to commit this year's second robbery of a Medical Marijuana dispensary. According to police and the club's proprietor, two men entered Emmalyn's California Cannabis Clinic at 1597 Howard St. about 1:30 p.m. Sunday. They held up the clerk and stole cash and inventory while most of the staff was handing out fliers at the Gay Pride Parade. Sunday's holdup marked The City's second pot club robbery of the year. The Purple Heart dispensary at 1326 Grove St. was robbed Feb. 3, San Francisco Police Lt. John Loftus said. There were four such robberies in 2005, Loftus said. Loftus said clubs are attractive to thieves because "it's a big cash business, and marijuana is expensive." The two men who robbed the dispensary had been in about an hour prior to the crime and bought some marijuana. When they returned, Baumgartner said, "they put a gun to my clerk's head, had him lie down on the floor, then they robbed him and the store. He said the crime was captured on security cameras, whose tapes will be reviewed in the investigation.
(Source) http://www.hempevolution.org/media/examiner/e060627.htm

SAN JOSE

Murder in a Head Shop (Excerpts from the Article)

Will David Cruz's killer ever be found? By William Dean Hinton

ON MAY 10, right around 8:30pm, Jonathan Cruz dropped in on his brother at the Rainbow Smoke Shop on West San Carlos Street. Shortly after Jonathan departed, someone walked into the shop and killed David Cruz with a single bullet wound to the back of his head, just above the left ear. No money was taken from the register, and the store wasn't ransacked. The killing was essentially the end of Andrew's shop. After 10 years as owner, she was afraid to be in her own store. She began carrying a .38 with hollow-point bullets and closed the Rainbow's doors two hours earlier than before David's death. David Cruz's killer, meanwhile, has never been identified. The Cruz case is approaching the nine month mark with no credible theory why David was shot.
(Source http://equalrights4all.us/content/view/192/50/)

SAN LEADRO

San Leandro does not have any Medical Marijuana Dispensaries within their City Limits. They do however have employees of Medical Marijuana Dispensaries from other jurisdictions living in their city.

June 19, 2005: Suspects enter an unoccupied residence of a Medical Marijuana Dispensary employee taking jewelry and $10,000.00 in cash.

June 28, 2005: Suspects return to the same residence and begin to force entry when they are confronted by the resident and flee before any loss is sustained.

September 20, 2005: A receptionist of a Medical Marijuana Dispensary was accosted by a lone suspect as she walked from her vehicle to her house. The receptionist was able to get into her home and call police before the robbery was completed.

October 26, 2005: A Detective on routine patrol observes a suspicious circumstance and stops two subjects. The stop results in the arrest of the subjects for robbery and possession of stolen property. The house the suspects were watching was the home of a Medical Marijuana Dispensary employee.

December 19, 2005: The same receptionist (9/20/05 event) is robbed as she walks from her vehicle to her home. The suspects took a bag containing receipts from the Medical Marijuana Dispensary (Paperwork only, no cash)
(Source Mark Decoulode San Leandro PD)

SANTA BARBARA

MEDICAL MARIJUANA SHOP ROBBED: By Indy Staff, August 10, 2006
The first reported armed robbery of a Medical Marijuana distribution center took place at Santa Barbara Hydroponics, 3128 State Street.

Owner Jack Poet said he has been robbed three times before but never reported the earlier robberies because "Medical Marijuana is such a controversial issue." Poet said the robber in his thirties, 160 pounds, with red hair and a goatee walked away with $30 cash and 15 small display baggies of marijuana.
By Indy Staff | August 10, 2006 | 0 Comments | 0 TrackBacks

(Source
http://www.independent.com/news/2006/08/medical_marijuana_shop_robbed.html

SANTA CRUZ
Four men sought in home robberies
Santa Cruz Sentinel
Santa Cruz, CA Dec 13, 2004 -- Santa Cruz Police are asking for the public's help in finding four armed men who took marijuana grown for medicinal uses and electronics from two separate houses on Clay Street. Around 1 a.m. Sunday, a white, Asian and possibly two black males — all wearing masks and dark clothing — broke into two residences, rounded up their tenants, held them at gunpoint and ransacked their homes, all while demanding drugs and cash. Two of the victims were battered during the robbery. One of the suspects fired a single shot from a handgun when one of the victims tried to escape. No one was shot.
http://www.hempevolution.org/media/daily_review/dr050824.htm

SANTA CRUZ COUNTY
Capitola 2004: Three suspects entered the victim's home armed with a handgun in search of the residents Medical Marijuana grow. The resident and two guests were ordered to the floor. During the robbery the resident was shot and stabbed but managed to fight off the suspects who fled prior to the arrival of the responding Deputies.

Live Oaks October 1, 2005: Four suspects attempted to conduct a home invasion robbery of a home cultivator of Medical Marijuana. The homeowner fired a shotgun at the suspects who fled and were later captured by police following a vehicle pursuit and crash.

Ben Lomond March 5, 2006: Two suspects who identified themselves as "Police" forced their way into the victim's residence. The victim was assaulted, robbed and left tied up in his residence until the next day when he was discovered. Subsequent investigation revealed that the motive for the robbery was the victims Medical Marijuana supply.

SANTA ROSA
May 29, 2002 Federal agents raided a Medical Marijuana buyers club here Wednesday and arrested two people. A U.S. Drug Enforcement Administration spokesman said two addresses were searched, including the club near downtown. Marijuana, cash, a car and a weapon were seized.
(Source) http://cannabisnews.com/news/12/thread12999.shtml

September 29, 2004 The father of the owner of a Medical Marijuana Dispensary was followed home from the dispensary and robbed at gunpoint in front of his residence. The owner of the club believed that his business was being "cased" and that "further robberies were eminent."

January 25, 2005 Suspects force entry into a closed Medical Marijuana Dispensary and burglarize the business taking three pounds of Marijuana and cash.

March 3, 2005 Suspects forced entry into a Medical Marijuana Dispensary a stole a laptop computer, Marijuana and smoking paraphernalia.

April 15, 2005 Employees of a Medical Marijuana Dispensary were robbed by a suspect armed with a shotgun as they were closing the business. The suspect stole a "duffle bag" of Marijuana.

April 18, 2005 Suspects forced entry into a closed Medical Marijuana Dispensary and stole a digital scale.

April 19, 2005 Suspects forced entry into a Medical Marijuana Dispensary and stolen one half pound of marijuana.

Mar 17, 2006 Suspects forced entry into a closed Medical Marijuana Dispensary, loss unknown at this time.
(Source) Lt. Briggs Santa Rosa P.D.

The Vice unit has been involved in the investigation of the following Medical Marijuana Dispensary related crimes;

- A homicide, during a residential robbery where the suspects sought Marijuana cultivated for a dispensary.

- Four residential robberies, where the suspects sought Marijuana cultivated for a dispensary.
- Twelve cases where individuals were cultivating Marijuana for dispensaries, but were found to be operating outside Medical Marijuana guidelines and in a "for profit" status. Each of these cases resulted in the arrest of the cultivators and disposition is pending.

- Instances where undercover officers have found subjects buying Marijuana from Medical Marijuana Dispensaries under the guise of Medical Marijuana and then reselling the Marijuana to non Medical Marijuana users.

(Source) Sgt. Steve Fraga Santa Rosa P.D.

SONOMA COUNTY

A subject was arrested May 9, 2001 while growing for himself and other patients; convicted by a jury of cultivating more than 100 plants on Feb 11, 2002; sentenced to 5 yrs probation; He was re-arrested July 31, 2002 for cultivating while on probation. Convicted and sentenced to 44 months for growing 920 plants Dec 19, 2002. Released on bail April 2004; awaiting sentencing post-Raich 2005.

The proprietor of Genesis 1:29 club in Petaluma was arrested Sept 13, 2002. Agents uprooted 3,454 plants at the club's garden in Sebastopol. The suspect pled guilty July 2003; sentenced to 41 months, July 2005. Information provided by:
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

Friday, February 17, 2006 at 12:13, PM Commercial marijuana operation shut down.
On 2/16/05, the Sonoma County Narcotic Task Force, SCNTF, and the County of Mendocino Marijuana Eradication Team, COMMET completed an investigation involving a large-scale commercial marijuana growing operation. At the first residence on Little Creek Rd., agents located a marijuana growing operation where "starter" plants were being cultivated. These plants would eventually be moved to the larger grow rooms as they matured. As agents collected evidence, Kenneth D. Brenner, 57 yrs, of Annapolis arrived at the residence. When agents contacted Brenner, they located grow equipment in the bed of his truck. He was detained and returned to his residence. At Brenner's residence, agents seized numerous firearms. Agents also seized an AK47, a Colt AR15, and a .308 sniper rifle. Additional documents linking Brenner to the growing operation were seized. The indoor grow operation included 4 buildings which were located approximately a quarter of a mile off Annapolis Rd. in the thick brush. The grow buildings ranged from 100'X 30' to 30'x 20'. The buildings were constructed of plywood, with the exteriors painted black, and concealed under the thick canopy of trees. The plants were growing in a hydroponics type system, under approximately 120 high intensity lights. The lighting equipment alone is valued at $48,000.00. Agents located a camouflaged, insulated concrete bunker which housed a 125KW diesel generator. This generator was seized and valued at approximately $75,000.00. The total number of plants was approximately 1700.
Agents determined the plants when harvested would yield approximately 50 pounds of marijuana. The marijuana would have a street value of $150,000.00. As agents continued their searching, they seized over 3,000 live rounds of ammunition in one of the grow buildings. The ammunition matched the same type of assault rifles seized at Brenner's residence. Agents then discovered numerous metal military type ammunition cans hidden in the area. When the cans were opened, the agents discovered 22 solid bars of silver, and antique silver coins. The bars each weighed 9ozs., with an estimated value of $30,000.00. The Drug Enforcement Administration was contacted to consider the adoption of this case on a federal level.

Mr. Brenner was released at his residence. The case will be under further review by the United States Attorney's Office. For further information contact Detective Sergeant Chris Bertoli at (707) 565-5441.
Prepared by Detective Sergeant Chris Bertoli.

Thursday, January 5, 2006 at 12:18, PM $600,000 in marijuana seized.
On 1/4/06, the Sonoma County Narcotics Task Force completed a three month investigation involving the sales of methamphetamine in the City of Cloverdale. Through the use of undercover purchases, Task Force Agents identified a residence on South Cloverdale Boulevard as the source of methamphetamine. When agents served a search warrant at the residence, they located 212 pounds of manicured marijuana. The marijuana had been concealed in various locations on the property. Along with the marijuana, agents seized a half ounce of "crystal" methamphetamine, a scale, packaging material, and pay/owe records. As agents continued their search, they located an AK-47 assault rifle with 3 fully loaded 30 round magazines next to the rifle. A stolen sawed-off 12 gauge shotgun, 2 additional rifles, and one loaded semi-automatic handgun were also located in the same location. While searching the residence, agents encountered three children living at the residence with their parents. The ages of the children were 6,7, and 8 years. As agents searched, they discovered approximately 3 pounds of marijuana within the same room as the children were discovered sleeping. The estimated street value of the marijuana is $636,000.00 dollars. The methamphetamine is valued at $450.00.
For further information contact Detective Sergeant Chris Bertoli at (707) 565-5441.
Prepared by Detective Sergeant Chris Bertoli.
(Source www.sonomasheriff.org)

STANISLAUS COUNTY
Lack of cash, risk to kids and more crime discussed (Excerpts from the Article)
By ROGER W. HOSKINS BEE STAFF WRITER
Last Updated: August 23, 2006, 03:14:33 AM PDT
Law enforcement officials compared the battle against methamphetamine to the war on terrorism and warned that American children were far more at risk to drugs. Wasden said any task force needed to set its sights on the real window that widens the drug trade generation after generation. "Nobody starts with methamphetamines," said Wasden. "Our youth are being confused by the mixed messages we are sending and we need to send youth a core message that marijuana is a drug**." From marijuana to meth: Officer after officer offered their witness and belief that the people buying medicinal marijuana in Stanislaus County were neither sick nor afflicted.**

In their collective view, medicinal marijuana was a Smokescreen for recreational use. Sheriff's Sgt. Bob Hunt, a member of the Stanislaus Drug enforcement Agency, offered a frightening picture of the marijuana-meth link. "We have people buying $300,000 and $400,000 homes and they aren't moving in furniture but grow lights," said Hunt. "They are careful not to have more than 12 plants or sell more than $10,000 at a time. "They are using the marijuana profits to fund their meth operations.

We arrested one young dealer and he owned nine properties in Patterson." Cardoza called on the officers present to wage and win the public relations war on marijuana. "I voted against the federal bill to legalize pot," said Cardoza. "I'm bucking the public sentiment. I get 200 letters a year from people who want the United States to back off. I don't get any from people who want us to enforce the federal marijuana ban." So, he added, "It's up to you (officers) to educate the public."
(Source) http://www.modbee.com/local/story/12623637p-13328561c.html

TEHEMA COUNTY
Two subjects were indicted by federal grand jury on Jan 8, 2004 after trying to assert Medical Marijuana defense in state court. Arrested with 100s of small seedlings, 33 mature plants, and a few pounds of processed marijuana in Red Bluff and Oakland. Defendants say they were for personal use. The Tehama DA turned the case over to the feds while pretending to negotiate a deal with their attorneys. Denied a *Raich* defense by Judge England.
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

TRINITY COUNTY
A subject and his wife were arrested in 2003 for a sizable outdoors grow; they were re-arrested the next year after deliberately replanting another garden in public view. While awaiting trial, they were arrested once again, this time for a personal use garden of approximately ten plants.
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

TUSTIN
After a Medical Marijuana Dispensary opened, undercover officers conducted an investigation in the business. During the service of a search warrant, 25 pounds of marijuana was seized and the dispensary was shut down. The District Attorney still has not made a decision as to whether to file charges or not.
(Source) Scott Jordan Tustin PD

UKAIH
Over the last four years, the City of Ukiah has experienced an increase in crimes related to the Medical Marijuana Dispensaries. They are four Dispensaries in town as well as several citizens growing Marijuana for the purpose of providing Marijuana to dispensaries. There have been approximately ten robberies of either dispensaries or private grows. Some of these robberies have resulted in shootings. There has also been an arson of a dispensary which the police department believes was the result of a dispute with a customer.
(Source) Det. Guzman Ukiah P.D.

Ukiah Daily News (Excerpts from the Article)
An arson fire burned the Ukiah Cannabis Club Saturday morning, causing extensive damage and blackening neighboring structures as well. A man who told The Daily Journal he was upset with the Ukiah Cannabis Club, claiming club members owed him money for the crop of marijuana he grew for them, was arrested at the scene…..

The man in the back of the store, later identified as William Howard Ryan, 51, of Willits, telephoned UPD dispatch, saying he was armed and that he would shoot anyone coming to get him. Officers and firefighters heard muffled shots from the interior of the store….. Ryan was arrested on charges of arson, burglary and possession of hashish. He was interviewed by The Daily Journal just days ago when he claimed he was going to sue the Ukiah Cannabis Club for the money he says he is owed. Some witnesses said they saw Ryan enter the building with what looked like grenades strapped to his body. There were also reports the suspect carried a weapon, though that was not corroborated by police. A spokesperson for the Forest Club said the bar would be closed for a short time only. (Source http://www.hempevolution.org/media/ukiah_daily_news/udn020527.htm)

VENTURA
Two subjects were arrested Sept 28, 2001 for cultivating for the LACRC. Forfeiture filed against their property, including home they built for themselves, in July 02. Raided again and arrested for personal use garden of 35 plants in Aug 02; charged with cultivation. Pled guilty Sep 03. Ninth Circuit denied appeal March 2006.
(Source) http://www.canorml.org/news/fedMedical Marijuanacases.html

CALIFORNIA NARCOTIC OFFICERS ASSOCIATION
Agents have conducted sting operations on web sites such as "Craigslist" and recently conducted an investigation which resulted in the arrest of a subject for the sale of three pounds of marijuana as well as possession of an additional four pounds. This subject was an employee of a local Medical Marijuana Dispensary.

In all of these communities, law enforcement leaders were concerned with the impacts to the public health, safety and welfare by the commercial marijuana dispensing enterprise. All wished that they did not exist in their community. The trouble seems to occur when a large number of marijuana users, legal (under State law) and illegal gather at one location making them easy targets for illegal drug dealers; those freelance illegal drug dealers who are trying to recruit individuals with a doctors recommendation to legitimize (under State law) their sales and possession; and those who wish to prey upon the ill to steal their marijuana.

This is compounded by the vast amounts of cash and little or no oversight of the processes of prescription, procurement and sales of Medical Marijuana. All of these impacts are avoidable if the commercial marijuana dispensing business were not allowed to locate in our community.

Medical Marijuana Doctor's
Another area of contention is the apparent lack of oversight regarding who receives a physician's recommendation for Medical Marijuana and the process in doing so. One doctor who is touted as a "Medical Marijuana Doctor" is a practitioner in the City of El Cerrito. It is reported that our local doctor has issued over ten thousand recommendations for Medical Marijuana in the ten years since Prop. 215 was enacted in 1996. Research on the internet has revealed that the cost to patients to receive their initial recommendation ranges from $125.00 to $250.00.

If these figures are accurate, this one doctor has made $1,250,000 to 2,500,000 over the past ten years just in issuing Medical Marijuana recommendations. These recommendations have to be renewed every one to two years at the cost of $50.00 to $100.00. This same doctor has repeatedly been the target of investigations regarding his practices related to Medical Marijuana and is currently on probation with the Medical Board of California as a result of investigations into 47 complaints, all of which were referred by law enforcement or district attorneys. This Doctor's Website offers the following explanation;

Medical Board of California v Tod H. Mikuriya, M.D.
Since 1993, the Medical Board of California have had various ongoing investigations into Dr. Mikuriya's use of cannabinoids in his medical practice. Beginning in 1993 with rural county probation officers turning him in to the medical board for prescribing Marinol to probationers. The initial investigation resulted in a letter in Dr. Mikuriya's file. With the passage of the Compassionate Use Act of 1996, outlying Sheriff Deputies and District Attorneys began flooding the Medical Board with bogus complaints. Nearly 50 complaints were filed, none came from patients, health care professionals or patient families--none alleged any harm to patients. The medical board initiated multiple investigations. In 2003 Dr. Mikuriya had a hearing in front of an Administrative Law Judge which resulted in the worst of the allegations being dismissed. (Dismissed charges included unprofessional conduct and incompetence.) However, Dr. Mikuriya was convicted for negligence and failing to keep adequate records. In April of 2004 he was placed on probation which includes a practice monitor, cost recovery ($70,000), and various other indecencies. Appeals of all charges are pending and continue. This page and the associated links contain all of the legal documents in this matter, as well as interpretations of why it occurred and the politics that surround it by Dr. Mikuriya. All of these materials are being made available to the public and any interested party as a means for Dr. Tod to show that this entire production was--and remains--a political action and has nothing to do with patient care and/or harm.
(Source: http://www.mikuriya.com/)

Another interesting concept is that even the doctors involved in this industry appear to do a "cash only" business.

This is from Dr's Ellis' site; http://www.potdoc.com/ProfilePage.html
Occasionally the office will be closed due to Dr. Ellis' outside schedule. You must call to schedule an appointment to see Dr. R. Stephen Ellis, MD (CA License # G-40749). We are not a referral service for Medical Marijuana doctors in your area. We are a medical clinic with one medical doctor located in San Francisco, California.
We can see patients living anywhere in the State of California in our medical clinic located in San Francisco. A Prop. 215 recommendation written from our office is good anywhere in the State of California. We will ultimately require confirmation of your diagnosis from your MD (or DC, DPM, or DDS as appropriate). We work with our patients to develop appropriate case documentation as per the routine standards of medicine – the only acceptable standard of valid legal protection a `Prop 215' recommendation can provide.

Please bring an official picture ID for proof of ID and age. ALL patients (and any caregivers) MUST be at least 18 years of age and no longer attending high school. Exceptions in extreme cases can be made, so please feel free to call and discuss your situation.

The Initial New Patient Physical Exam and Evaluation with Dr. Ellis is $250.00 total if you qualify and a recommendation is issued.

There is an initial interview with Dr. Ellis to see if you qualify and the cost is included in the $250.00 new patient total fee. All patients that we will be able to assist then continue to undergo a physician performed medical history and physical exam as part of the initial visit. Those patients that we will not be able to help are immediately refunded all but $25 (for pre-screening assessment) of the total $250 new patient fee. The $250 new patient fee includes all follow-up visits needed as well as associated administrative services for the entire initial 6 month period. New Patients are covered for up to six months with their initial letter of recommendation. Once you are an established patient (six months after your initial visit), expired letters can be re-issued if the condition is still valid. You must see Dr. Ellis at a scheduled appointment in person in order to have an expired letter re-issued. Unfortunately, recommendations / physician statements can not be issued by telephone or mail at this practice. Any available updates to your medical records from your doctors confirming that your diagnosis is still valid are expected (and MAY be necessary) to complete the renewal process. The office visit and exam fee for established patients is currently $125.00 and any includes and all follow-up visits needed as well as associated administrative services for entire 1 year period. Established patients recommendations can be issued for up to one year duration as indicated.

Due to potential patient privacy issues, **all fees are due and payable in full in CASH ONLY at the time of your visit**. Patients are to bring the entire $250 payment at their initial visit. Multiple banks and ATMs are in the immediate vicinity. The San Francisco Clinic is very conveniently located in downtown San Francisco in the 450 Sutter St. Medical Building (Suite # 1415), between Stockton and Powell Streets, just one block North of Union Square. We are a short walk from Powell Street Station for convenient BART / MUNI (and hence SFO, OAK, & Cal Train) access from all of California. Multiple non-validated parking options on-site and very nearby. Call for simplified directions. Practice Profile page updated on February 27, 2006

This is what one reporter has to say about Dr. Ellis;
Doctor's orders: Get high (Excerpts from the Article)
A trip into the Medical Marijuana demimonde smokes out America's confusion about drugs, pleasure and morality. **By Chris Colin**

Jan. 31, 2001 | SAN FRANCISCO -- To get pot, you can stand on 16th and Mission and wait for someone to approach you, and wonder if he's a cop, and wonder if he's going to rob you, and wonder if his pot is laced with strychnine. Or you can have a dull pain in your right ear.

In a green box on the back page of the San Francisco Bay Guardian, Dr. R. Stephen Ellis advertises Medical Marijuana physician evaluations for just about anyone. The ad contains no explicit offers or promises, just a list of symptoms that presumably qualify one for legal pot: "Anorexia ... chronic pain ... arthritis ... migraine, or ANY other condition for which marijuana provides relief." This is from California Health & Safety Code 11362.5, implemented after California passed Proposition 215, also known as the Medical Marijuana/Compassionate Use Act, in 1996. At the bottom, boldfaced, underlined, in caps, we're reassured: "It's THE LAW!" **My ear hurts, I tell the assistant over the phone. He tells me to bring $200 cash. No check or credit card? I ask. Cash, he says.** To my left are the ill; three men between 35 and 50 sink into their chairs and stare at things in the floor that I can't see. Their eyes are glassy, and two of their heads are chemo-bald. To my right are three young men, none over 22 surely. They slump too, but with attitude, not sickness. They have baggy jeans and each has acne. The young camp looks at its shoes. The man directly to my left says he has glaucoma. He's grumpy about waiting. The man to his left says he's new to medicinal marijuana and is shaking and giddy. The man to his left sells sports tickets for a living, and is doing so on a cell phone, apparently unfazed by his circumstances. To my right are frauds. "I hurt my back playing football," the big one next to me says. He grins conspiratorially, as if he's never touched a football in his stoner life. Across from us a raver taps his toes. He grins, too, when I make eye contact. The surfer next to him grins too. "I better get this before my man Nate's party Friday," he says to no one in particular. "How long does it take to get the prescription filled?" I ask. "My other friend got some from a San Francisco dispensary two days after his evaluation," he says. I wonder how many scammers it would take to undermine the Medical Marijuana cause. Not that fakers are taking pot from the legitimately ill -- there's plenty to go around. Ellis joins me in the bare room, slight, friendly and rushed. He seems breakable. He also has the air of celebrity, probably because he's the only man many people know who can legalize pot, albeit one smoker at a time. He talks fast, like someone who either has been in an E.R. for years or has a line of patients out the door, each with a wad of cash. He takes my money and puts it in his pants pocket. "My ear hurts," I say, and I explain the pain. My honed explication of the problem doesn't seem to interest him. He interrupts after a minute, telling me to take my shirt off so he can use his stethoscope. The checkup is rudimentary, There's a brief, touching moment where he pats my arm, not weirdly, and then he's signing his recommendation. For the next 12 months, I'll be a legal Medical Marijuana smoker. The police, depending on the county, generally don't arrest smokers who have a prescription, except when they do. Courts often drop cases, depending on the judge, or how a jury might respond. Getting a physician's recommendation from Ellis may have been easy, but getting him on the phone for an interview is another story. It isn't until a month after my visit that he agrees to talk. "What were you doing before this?" I ask. "I was at emergency rooms," he says. "Which ones?" "Various emergency rooms in the Bay Area," he says. He won't say how many patients he's seen since opening the office in July -- "let's say several hundred," he finally tells me. Nor will he say how many are ultimately granted recommendations. I get the impression most walk away satisfied. "What about fakers?" I want to know. Ellis assures me that fakers don't make it to the examination room. "They realize it's a legitimate medical setting and go home," he says. "They can't get in without supporting documentation."

I tell Ellis that I was not asked for supporting documentation. He says he has since changed that policy, though I sense that he did so reluctantly. "We don't [require supporting documentation] in the E.R.," he says. "People come in complaining of a headache, we go over to an open cabinet and they leave with a shot of Demerol in their butt." "And that's unfair?" I ask. "Marijuana is much more benign than conventional narcotics," he says. We talk about his history. Ellis graduated from the University of Illinois medical school at Chicago in 1978, he says. His work as an emergency physician exposed him to "a real need" for better pain management strategies. A few seminars on Medical Marijuana persuaded him to look into alternative treatments. If Ellis was uneasy at the beginning of our conversation, he's in a gallop by the end. I ask why so few California doctors are recommending marijuana for pain four years after the passage of 215. "They're afraid," he says. "They're afraid of the [California] Medical Board, and of their peers, and possibly of potential legal ramifications ... even though they're clearly protected by the law." It's the California Medical Board that gets Ellis fired up. "They've been officially silent [on Medical Marijuana], but behind closed doors they've been harassing physicians," he says. "That's the bottleneck on 215. Patients can't get their docs to prescribe medicinal marijuana, even though the law allows for this. In California, you might find 1 in 1,000 doctors" who would. Ron Joseph, the board's executive director, calls Ellis' charges ridiculous. "It's a nice fallback," Joseph says, "but I defy him to cite one case where the board has harassed a single doctor." As Joseph tells it, it's not the board's policy to have an official position on Medical Marijuana -- it would just as soon have a position on X-rays. "We don't say whether it's good or bad, appropriate or inappropriate," he says. "We simply ask, 'Has the physician applied good judgment?'" Because the board's procedure is simply to investigate a "physician's actions as they're brought to our attention [by a patient]," he says, it has no incentive to bother doctors who are prescribing marijuana. So why aren't more doctors prescribing marijuana? Joseph blames the government. "The chilling effect has come from federal [agencies]," he says. "Doctors might be afraid of losing their DEA permit" (which allows them to prescribe controlled substances). As for Ellis' objection to the liberal distribution of Demerol in the E.R., compared with the paucity of marijuana prescriptions in the doctor's office, Joseph says an E.R. deserves its own standards. "It's a much different situation," he says. "There's little time to make the diagnosis [in the E.R.]. This is not the case in an office visit where the patient has the opportunity to explain his medical history." If a patient *is* able to obtain a physician's recommendation, he or she must next join a buyer's club. The Oakland Cannabis Buyer's Club is a mile from my house, so I swing by on a Saturday. Like Ellis' office, the OCBC is also low-rent, but it makes up for it in atmosphere. If Ellis' operation was film noir, the "Co-op" is Cheech & Chong plus "Beaches." The store mixes earnest compassion for the ill with a healthy appreciation for fat, leafy weed. Inside, past the pipes and bongs and vaguely pornographic poster of a luscious green bud, a woman at a counter sorts membership files. (The club has roughly 4,000 members, executive director Jeffrey Jones tells me later, but it's hard to count. Why? I ask. "We don't know how many are dead," he replies.) The woman at the counter gives me paperwork and takes my physician recommendation, a copy of which I'd already faxed in for approval. I do the paperwork and pose for my photo and pay the fee. My $21.95 entitles me to a list of active dispensaries, support in the event of police trouble, free massages and regular cultivation seminars. Cultivation? I ask.

I can grow up to 48 plants, they say -- beyond that it's risky. My new member I.D. is my "shield." If a cop stops me for possession, I need only flash the card. If that doesn't work, the officer is to call the 24-hour phone number on the back, and the club will vouch for me. "But this is legal, right?" I ask. "Well," they reply, "yes. But call if there's a problem." I'm out in 10 minutes, but still without pot. This is because an injunction keeps the club from selling it. The unmarked dispensary two blocks away is to pharmacy as Bates Motel is to Ritz-Carlton. Metal gratings cover the windows of the old building, which begs for a paint job or some dynamite work. The next room is un-American. It's how Amsterdam is described among teenagers, a perversely legal assortment of illegal things: pot plants, pot brownies, pot cookies, pot seeds and, of course, pot. Half a mile from the Oakland Police Department, two glass counters full of dope and a promising back room await anyone with an OCBC card and some cash. There is no catch. I experience the brief heartbreak of poorly timed access -- this kind of opportunity would've been great back when I liked pot -- but mainly I'm glad people who need it can get it. I buy an eighth of an ounce of the good stuff, not the great stuff. It's $45. The guy behind the counter is nice like a nurse. The place isn't a neighborhood drugstore -- no matter how medicinal your marijuana, it's still pot, and pot culture is irrepressible -- but there's no Pink Floyd or opium-den decadence. Ellis, like many Medical Marijuana advocates, is breathless on the subject. Finally, what will happen to a doctor in a tiny office who flouts federal law on the back page of the San Francisco Bay Guardian? Is he in danger? "I don't know," Jones from the OCBC had said. "Is a bug that flies into the light in danger?" Because he's working with other information, or because he's blinded by the light, Ellis himself isn't scared. "They'd be crazy if they bothered me," he'd told me, before getting off the phone to see another patient.
(Source http://drugandhealthinfo.org/page02.php?ID=6)

Another Doctor found through Internet research;

Hanya Barth, M.D.
Wellness Counseling & Alternative Medicine
California License #A031974

your Appointment

There are four things you should bring with you:

1) Any paperwork regarding your condition, including doctor reports, treatment notes, and paperwork with your diagnosis. The doctor is here to give you a second opinion. Any health history paperwork helps the doctor understand what your primary diagnosis is. Our doctors are here to provide you with a second opinion, therefore you must have seen a physician recently for the condition you use marijuana to treat in order to be evaluated. We are happy to refer you to a low cost medical clinic so that you may receive a check up. Please call and ask our office staff for the number to one of these locations.

2) Any medications or prescriptions (you may bring the bottles with their prescription labels), any supplements or over-the-counter herbs, vitamins, etc. We are interested in knowing what you regularly use to alleviate your condition.

3) California Driver's License or California I.D. Card. You must be able to prove California residency. This is a California law. We must see a photo I.D. proving residency here in the state of California.

4) **Please bring the appropriate fees to pay for your visit. At this time, our office is not accepting checks or credit cards. If payment is an issue, please speak with our office staff.**
http://www.howardstreethealthoptions.com

This is Dr. Milan Hopkins in Upper Lake;
Are you concerned about your health and looking for an old-fashioned doctor who will take the time to listen? One who is up-to-the-minute on new medical developments and understands your needs? You'll find a caring non-judgmental doctor accepting Medi-Cal, Medi-Care, Tribal Healthcare & other types of insurance. Also included on site is Leah, a certified massage and bodywork therapist. Please call to get affordable fees (Fees based on a sliding scale).
Cannabis Fees and Requirements
Due to the legalities surrounding a medical recommendation for cannabis, patients are required to provide Dr. Hopkins with the following documentation:
Primary Physician Information: If you have a primary care physician, we request that you discuss with him/her your desire for a cannabis recommendation. We require the name, telephone number, and mailing address of your physician. If possible please bring any medical records you may have that would support your medical conditions.
The California State Medical Board has decreed that the physician issuing a recommendation for medical cannabis must either assume responsibility for all aspects of the patient's care, or must consult with the patient's primary physician prior to issuing the recommendation.
Identification: Please bring with you some form of pictured identification.
Fee: The initial consultation and recommendation fee for medical cannabis is $175.00 to be paid at the time of service. (We do not except checks or bank card payments)
Six Month Check-Up: The doctor requests that his patients return ever 6 months, the fee for this visit is $60.00 to be paid at time of service. It is require by the California State Medical Board that cannabis patients be under the continual care of the prescribing doctor.
Annual Renewal: Your recommendation will need to be renewed every year for $125.00 with a 6 month check-up. If you missed your 6 month check-up it will be $175.00.
http://www.dochop.com/

10News Exposes 'Marijuana Doctors' (Excerpts from the Article)
POSTED: 4:39 pm PDT July 6, 2006, UPDATED: 12:41 pm PDT July 7, 2006
SAN DIEGO --
Doctors Offer Legal Pot
Proposition 215 -- the Medical Marijuana initiative approved by voters ten years ago, has been subverted, abused and misused say law enforcement agencies our I-Team has spoken with. Prop. 215 is supposed to provide seriously ill people access to marijuana to help relieve their pain but a 10News investigation discovered just about anyone can get pot legally if they want. 10 News became interested in Medical Marijuana after seeing a large number of advertisements for doctors prescribing pot. These pot docs' ads appear every week in the San Diego Reader. Discussions with 10News sources both in and out of law enforcement seemed to confirm a disturbing pattern of increasing sales by the pot docs as well as an increase in the number of distributors for the Medical Marijuana. We used staff members to go into doctor's office and see how difficult it was to get a referral for pot. It was very easy. Too easy in fact, say law enforcement sources. It turned out both federal and local agencies are also looking into the process. The 10News I-Team was able to acquire some government surveillance tapes used to document how different doctors would discuss with patients the benefits of marijuana. One shows an undercover officer and a Dr. Robert Steiner, discussing pot. "I assure you Tylenol is more of a risk to you and a hazard than is cannabis," said Dr. Robert Steiner. Steiner was doing one of his "legitimate and affordable" Medical Marijuana evaluations as advertised in the Reader. "It's open drug dealing with legitimacy," said Deputy District Attorney Dana Greisen. Greisen said doctors are recommending marijuana to just about anyone who can afford a doctor's visit. "It's being recommended for insomnia, depression (and) anxiety," said Greisen. "The law is being abused in a massive scale," said Greisen. The people using the marijuana aren't suffering from cancer, AIDS or other serious illnesses, which Proposition 215 is supposed to address. Dr. Steiner claimed no downsides to using marijuana on the law enforcement video. "We have two convincing studies that cannabis does not cause lung cancer. Cannabis regenerates brain cells," said Steiner. **The undercover agent then asked if he could also get pot for his dog. "He's got arthritis. He whines at night because of the pain," said the undercover agent. "Again, it is perfectly acceptable for pups," said Steiner.** Dr. Alfonso Jimenez has a Web site -- Medical Marijuana of San Diego -- where patients can register for his services online. What happened when we sent our testers in? "He was just laid-back and friendly. (He) didn't really seem to worry about if he was giving me this for the right reasons or not," said tester number one. He went to Jimenez for back pain he doesn't have. He got his referral and could have purchased pot legally. "There's a line behind me coming out of the door," said tester number one. DDA Greisen said it's all about the money. **"We had a doctor recently (who) testified he gave out about 2,000 recommendations in last year -- that's what he testified to in court -- at $230 approximately. You do the math -- that's $500,000 in cash**," said Greisen. Greisen said most office calls are paid for in cash. That's what another 10News employee had to do. He paid $125 to have Steiner recommend marijuana for his "sleeping problems." "They just let me in the office. (They) kind of started giving me all these facts about Medical Marijuana before they even knew what was wrong with me," said tester number two.

Tester two would get his marijuana if he went to another doctor first to document his condition. "He (Dr. Sterner) referred me to a doctor who would have me in and out real quickly. I could come right back, (and) he would be able to sign off on the recommendation. Once people get their recommendations, 10News discovered there's no limit or control as to how much marijuana they can buy from storefronts called dispensaries, and unlike a regular prescriptions, a patient can use the recommendations more than once. Dr. Jimenez has several offices and we talked to him by phone at his Hawaii location, he told 10News that he only provides a referral for patients with medical illnesses. Jimenez's operates a Web site MedicalMarijuanaOfSanDiego.com. When 10News visited Dr. Sterner, he explained he had to see patients and closed his office door. But there is another loophole in the system, called the primary care giver form. "Over the last year, we saw a proliferation of these recommendations," said Greisen. He says just about anyone can get marijuana. And to make matters worse, he says, doctors hand out blank primary caregiver forms. These forms allow patients to list anyone they want to be a caregiver. It allows this person to purchase or grow marijuana for them. 10News Investigations sent in two staffers to check Greisen's claims. And it was as the assistant district attorney had claimed. Our staffers were given blank caregiver forms. 10News learned that one person named his dog as a caregiver. As part of the investigation, 10News nominated a bird named Riggo as a caregiver. "The doctors -- because they're giving it to so many people -- are basically legalizing marijuana one doctor and patient at a time," said Greisen.
(Source: http://www.10news.com/news/9480300/detail.html)

Medical Marijuana abuses reported among teens

By Stephanie Bertholdo bertholdo@theacorn.com (Excerpts from the Article)

Part I of two parts on local teen drug abuse
A decade has passed since Californians voted to legalize marijuana for medicinal purposes. At the time, one of the arguments against legalizing the drug was that the law might open the door to abuse, especially among teens. Indeed, many teenagers in the area have found that the marijuana grown and dispensed by medical groups can be easily obtained, and is perhaps of even higher quality than what can be purchased on the street.
'Know the right doctor' To safeguard against abuse, people who suffer from cancer, AIDS, chronic pain and other conditions must obtain a prescription from a licensed physician, the first step to possessing a Medical Marijuana identification card. Once a Medical Marijuana identification card is in hand, a citizen can drop in to any local Medical Marijuana dispensary throughout California and legally purchase up to eight ounces of marijuana or other cannabis products**. One Oak Park teen who wished to remain anonymous for this article said that at least 10 of his friends have fraudulently obtained Medical Marijuana identification cards. "It's really easy to get," said the 19-year-old. "You just have to know the right doctor.**" According to several experts interviewed by The Acorn, if a person cannot convince their own physician that the drug is necessary for a particular medical condition, the dispensaries will often recommend a doctor who is more likely to write a prescription. The process to obtain a Medical Marijuana identification card is fairly straightforward.

Once a doctor's prescription is obtained, a form is filled out and after the prescription becomes verified a patient is legally eligible to purchase marijuana in limited quantities. "It's better pot, I guess, than a lot of the street stuff," said the Oak Park teen. Each dispensary devises guidelines on how much marijuana a patient can purchase. A spokesperson for Herbal Independent Pharmacy in Woodland Hills said that the store allows individuals to purchase only two ounces within a two-week period. "Someone could reasonably smoke an ounce in a week," the HIP employee said. For those who want to bypass such limitations, a regular supply of marijuana can be obtained by visiting different dispensaries in the Conejo and San Fernando valleys. Cannabis "clubs" do not check with other dispensaries, another HIP spokesperson said. The onus is on the patient, who by law may possess only eight ounces of marijuana at a time. But "they could hit 50 dispensaries in one day if they wanted to," the employee said. Some marijuana issued with 'little or no justification' Dep. Matt Dunn, a member of the Lost Hills Juvenile Intervention Team in Agoura Hills, said law enforcement officers often deal with teens in possession of Medical Marijuana. Randi Klein, the alternative education counselor with the Las Virgenes Unified School District, has seen a rise in Medical Marijuana usage over the past 18 months and believes that Medical Marijuana cards are being obtained by students who should not qualify. Klein said many of the clinics have doctors on staff who will write the prescriptions for such ailments as insomnia or anxiety. Klein considers doctors who prescribe marijuana for minor ailments, especially for teens who fabricate complaints of back pain, insomnia or anxiety, to be negligent. "I do think that kids are starting (to use drugs) younger and younger," Klein said. She said parents must take a more proactive role in supervising their children, from monitoring computer usage to making sure their teens are where they say they are. There are thousands of web pages outlining the drunken escapades of students, and thousands of pictures of students who appear drugged or drunk, Klein said. "It looks cool to so many kids," Klein said. She recommends that parents ask to see their children's profiles on the site. "It's important to know what your kids are doing," Klein said.

(Source: http://www.theacorn.com/news/2006/0727/Front_Page/004.html)

Who is Ken Estes you ask? Ken Estes is a long time proponent of Medical Marijuana who has or has had interests in at least four Medical Marijuana Dispensaries, all of which have come under law enforcement and media scrutiny. His dispensaries have been robbed, the focus of law enforcement scrutiny and when ordered by two cities (Oakland June/04 and Richmond currently) to close his dispensaries has refused to do so.

When Pot Clubs Go Bad: Ken Estes just wants to share the miracle of Medical Marijuana. Everyone else just wants him to go away. (Excerpts from the Article)
By Chris Thompson
Article Published Jul 24, 2002

Neighborhood lore has it that before Ken Estes set up his medical-marijuana club, the property used to be a whorehouse. The neighbors wish it still was. Back then, the customers walked in, took care of business, and got out. Bad shit never went down at

central Berkeley's local brothel -- certainly nothing like what happened on the afternoon of June 5. At 2:37 p.m., roughly ninety minutes before closing According to the police report, they forced the guard through the door, rushed into the club, and screamed at everyone to lie face down on the floor. Everyone did except for one man, a wheelchair-bound patient who had come to get his legally prescribed dose of reefer and now had a gun in his face. The two men trashed the place and finally found the stash after prying open a locked file cabinet. It was the third armed robbery at 1672 University Avenue in ten months. You get into a lot of creepy stuff when you hang out with Ken Estes. You get burglaries, armed robberies, police raids, and felony charges. You also get allegations of cocaine dealing, tax fraud, and spousal abuse. Shortly after a motorcycle accident left Estes paralyzed below his chest, he became a devoted advocate of Medical Marijuana. He carefully organized his club to offer every possible comfort to the sick or dying. And unlike other East Bay pot clubs, most of which stress a clinical pharmacy's atmosphere, patients can sit down and light up right there, beneath rustic paintings of Jimi, Janis, and Jerry. If it weren't for the crime that has plagued his club's operation, Estes might be the patron saint of Berkeley stoners. "We have the best prices and the best medicine." he boasts. "If you know buds, we have the bomb." But ever since Estes first got involved in the medical-marijuana movement, men with drugs, guns, and evil intent have followed him everywhere he goes. They have robbed him, exploited his generosity, and endangered the lives of everyone around him -- even his three children. He always picks the wrong friends. At least that's Ken's side of the story. His estranged lover, Stacey Trainor, told a darker version to the Contra Costa district attorney's office. She alleged that Estes is a former coke dealer who lied to secure his club's lease, that he has a Berkeley doctor in his pocket who will sell pot prescriptions for $215 a pop, and that up to thirty percent of his customers buy his product without any medical notes at all. Police and University Avenue merchants, meanwhile, claim that high-school kids used to line up for a taste outside Estes' club, and that his security guards scared away neighborhood shoppers and even got involved in fights on the street. His fellow cannabis-club operators even tried to drive Estes out of town. **In the six years since its passage, mayors, district attorneys, and state officials have been so focused on protecting patients from federal prosecution that they've neglected to implement any sort of regulations about how pot should be distributed. No state or local agency or mainstream medical group has offered any comprehensive guidelines on who should hand out pot in what manner. As a result, medical pot is not just legal, but superlegal, perhaps California's least-regulated ingestible substance. In the absence of official regulation, it has fallen to pot-club operators themselves to craft some sort of system** All they have is a gentlemen's agreement. Ken Estes broke that agreement, whether by design or neglect. And no one may have the legal power to make him stop. In 1992, he signed over his share of the salons to his business partner and started distributing pot, going to demonstrations, and working to decriminalize medical cannabis. Yet as Estes became a fixture in the medical cannabis scene, his life became increasingly chaotic and dangerous. At the very time that Proposition 215 liberated thousands of medical-marijuana smokers from prosecution, Estes began a long, almost farcical slide into crime. Even scoring on street corners didn't compare to what was to come. "No guns in the face at that point," he says of his early years. "That came later, with the medical-marijuana movement."

Estes began his cannabis activism by volunteering at the Oakland Cannabis Buyers cooperative. Jeff Jones, the co-op's executive director, doesn't even smoke pot. If Estes is a creative but befuddled libertine, Jones is rigid and dogmatic. From the start, the two rubbed one another the wrong way. After passage of Proposition 215, the co-op emerged from the shadows and began distributing pot out in the open. But no one had any idea how to go about it. **There were simply no rules; one day medical pot was illegal, the next day it wasn't. Proposition 215 is one in a long series of brief, poorly conceived initiatives whose implementation has proven to be a giant headache. The "Compassionate Use Act of 1996" offers no guidance on how pot should be distributed;** indeed, the initiative is a single page in length and merely encourages the federal and state governments to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients." Six years later, no one in Sacramento has figured out what this means. No state agency has ever issued binding directives on how to distribute pot, or to whom. With the state paralyzed, it has fallen to local governments to regulate Medical Marijuana. The portion of the Berkeley municipal code governing medical pot, for example, is so ridiculously lax that it plays right into the city's worst stereotypes, and yet it's as strict as virtually any other Bay Area city. Although the code limits the amount of pot a club can have on hand, there are no provisions limiting how close a pot club can be to a school, or requiring doctors to conduct an actual evaluation of patients, or requiring background checks for pot distributors -- which is standard practice for anyone who wants to run a liquor store. Yet the code does encourage pot clubs to "use their best efforts to determine whether or not cannabis is organically grown." The end result is that medical pot is actually less regulated than candy bars, which must at least have their ingredients printed on the wrapper. Club operators disagree on whether this is good or bad. Jeff Jones wants the government to step in and bring some common sense to pot's distribution. "We thought the government would get involved in distributing Medical Marijuana as per the state law," he says. "I never though that five or ten years later, we'd still be operating in a vacuum." Others worry that if the state takes a firmer hand, a conservative governor or attorney general might interpret the law so narrowly as to effectively recriminalize medical cannabis. But everyone agrees that since the government hasn't set up rules, club operators must police themselves. Even the police, hamstrung by a city council cognizant of the overwhelming public support for medical pot, can do virtually nothing to crack down on rogue clubs. If someone wanted to hand out pot like candy, no one could stop him. His neighbors along University Avenue soon figured this out. Accounts differ as to what Estes did when he first showed up at the Oakland co-op's door in 1995. Some say he taught the co-op's pot cultivation classes; others claim he weighed out the baggies and sampled the wares to categorize their potency. Estes says he did both. Whether the Oakland co-op itself was entirely above-board is a matter of some dispute. According to Trainor's statement to the Contra Costa DA, the co-op paid Estes in pot and unreported cash. "Part of the marijuana he received as payment from the club he would sell to other people, including persons who had no medical prescription for marijuana," her statement reads. In October 1998, the feds managed to get an injunction prohibiting the Oakland co-op from dispensing marijuana and Estes jumped in to fill the void. But he needed customers, so Trainor says Estes called a friend who worked there.

This employee gave Estes the names, addresses, and phone numbers of five hundred patients, and Estes soon started drumming up customers. Estes concedes he made no effort to call their doctors and confirm their medical condition he just started making deliveries to anyone with a card from the Oakland club. By the time that Estes went into business for himself, he, Trainor, and their three children had moved to a house in Concord, where he began growing pot to supply his growing army of patients. On September 20, Concord police officer David Savage took a call: Estes' neighbor claimed that she could see a bumper crop of pot plants growing in his backyard. Savage stopped by and peeked over the fence. Later that afternoon, he returned with a search warrant. Savage's police report indicates that he found pot everywhere. He found roughly fifty plants in a makeshift greenhouse in the backyard. He found an elaborate hydroponics system in the garage; behind sheets of dark plastic, dozens of plants were growing on plastic trays and in children's swimming pools; grow lights wheeled back and forth on a track hanging from the ceiling. He found baggies of weed stuffed in desk drawers and scattered along the floor, and plants hanging in the closets. In the master bedroom, underneath a crib where one of the children slept, Savage found two garbage bags with dried marijuana in them. "None of the growing and dried marijuana was in a secure place," Savage wrote in his report. "Most of the marijuana was accessible to the children in the residence. But Savage didn't know what to do with Estes. Estes had an Oakland co-op card certifying him as a patient, as well as patient records indicating he was a legally valid caregiver. How much dope did Proposition 215 allow him to have? By then, Estes had bought some property near Clear Lake, and Trainor had moved up north with the kids, growing more dope in a shed behind the house. Meanwhile, Estes' cousin Tim Crew had moved into the house to help him grow a crop that dwarfed his prior stash. **This period marks the beginning of one of Estes' most foolish habits: keeping massive amounts of drugs and money lying around. "People told me, 'Don't put more than a certain amount in the bank, or you could get in trouble,'" he says. "We had a lot of money, and I kept it with me. I'd hide it in my closet, hide it in my suitcase. I just didn't want to put it in a bank."** As more and more people got hip to Estes' stash, his cavalier attitude would provoke a spate of armed robberies that left his University Avenue neighbors terrified. The first robbery happened in Concord on January 1, 2000. Neighbors called the cops and reported that several men had burst out of Estes' house and raced down the street, leaving the door ajar. When Concord officers arrived at the scene, they found that the front door had been forced open. They also found no fewer than 1,780 marijuana plants in various stages of cultivation, even after the break-in. This time, the cops wouldn't be satisfied with confiscating his stash. The DA charged Estes with four felony counts of possession and cultivation of marijuana for sale, and will probably argue that the volume of pot on hand proved that he was an outright dealer, not a medicinal caregiver. With the heat coming down in Concord, Estes eyed Berkeley. Taking out a business license and a zoning permit to sell "herbs and other homeopathic remedies," Estes set up shop at 1672 University Avenue. From the very beginning, Berkeley Medical Herbs was characterized by his permissive business style. Michael "Rocky" Grunner showed up at Estes' door just months into his new operation and handed him a bag of quality product. But over time, a tense, nervous atmosphere infected the club. Finally, Estes claims, a friend came to him and broke the bad news: Grunner was dealing crank out of the back room.

Estes says he promptly threw Grunner out of the club. But the club's neighbors were beginning to worry about the sketchy new element. Machinist Richard Graham is a longtime area resident and has been known to take a hit upon occasion. But he even he draws the line at Estes' way of doing business. A few months after Estes opened the club, Graham dropped off a package mistakenly delivered to the wrong address. When Graham asked the man behind the counter how business was holding up, he offered to set him up with a physician for $200. "I asked them how their operation works, and they told me you just need a note from the doctor, and we have a doctor, and you can get a note for just about anything," Graham says. "Then he told me the prices, the registration fee to get the note, $200 per year. I just got the impression that these are people in it to sell marijuana as a business. I didn't feel that these were people motivated to help sick people, which I think other people are. It was a decidedly unclinical atmosphere, let's put it that way." In fact, Estes' operation was so unclinical that it even advertised in the Berkeley Daily Planet. Superimposed over the image of a big fat bud, the club announced that it had plenty of pot for sale, listing killer strains such as "Jack Frost, Mad Max, Romulin, G-Spot, and more." Other club operators groaned in dismay when they read the notice: "One-source shopping for all your medicinal needs! First visit, first gram free with mention of this ad!" Soon, kids were lining up outside, neighbors and police report, and the club's busiest hour was between three and four in the afternoon, when Berkeley High students got out of class. "The biggest complaint was the kids going in and out of there," says Lieutenant Al Yuen, head of the Berkeley Police Department's Special Enforcement Unit, which handles narcotics investigations. "We looked into that and watched kids going in and out. We never caught him selling to kids without a card. He claims that the kids had medicinal cards, but he doesn't keep records on who he sells to." In fact, Trainor told the DA's office that Estes sold his product to anyone with the cash. She estimated that seventy percent of the club's buyers were patients from the Oakland co-op, and that the other thirty percent were recreational users. And Trainor alleged that even many of the so-called patients may have had fraudulent doctor's notes. She claimed that Estes referred everyone without a card to Dr. Frank Lucido, a Berkeley family practitioner who allegedly charged a fee for every note. "Estes would tell his buyers to go to Lucido, give him $215, and he would give the person a prescription. For a while, Estes says, he even accepted photocopies of Lucido's notes, and neighbors used to find them littering the sidewalk in front of his club. Lucido says he used to write such notes and rely on patients to provide verification later. But he says he discontinued that practice two years ago, and now requires independent verification of his patients' ailments from another physician. Lucido says Estes has been a headache for his medical practice. Two years ago, the doctor says, Estes printed business cards that claimed he was working in conjunction with Lucido. The physician says that as soon as he found out, he had a lawyer call Estes and tell him to stop making that claim immediately. Why is Trainor telling so many tales out of school? It all began two years ago, when she began an affair with Rocky Grunner. The feud culminated on August 31, 2000, when Trainor swore out a temporary restraining order against Estes, claiming that Estes threatened to kill her. When the Lafayette cops arrived at his house to serve it, they found more plants growing in the basement. Back went Estes into the pokey, and the cops even raided the club and seized product and financial records. Two months later, Lafayette narcotics agents raided Grunner's own house and seized seventeen pounds of marijuana.

Trainor eventually broke off her affair. Grunner could not be reached for comment. Six months ago, as Estes became the subject of a Contra Costa district attorney investigation, Trainor met with assistant district attorney Phyllis Franks and county investigator Tony Arcado. Over the course of several hours, she told the story of their life together. According to her statement, Estes didn't start his new career dealing medical pot -- but cocaine. "After selling the tanning salon, Estes earned income by selling cocaine," Arcado wrote in his summary of Trainor's interview. "Trainer [sic] said the income from the cocaine business ran out in 1993, and Estes switched to selling marijuana." On the evening of Friday, October 12, 2001, the club was winding down after a long day when someone knocked on the door. An employee pulled the door open and stared straight down the barrel of a silver handgun. "We opened up the door, same as for everybody: 'Hey, what's up?'" Estes says. "The guys came in. They put everybody on the ground and took everything." Time was running out for Estes. The kids and the police raids were bad enough, but now men were waving guns around and racing off with drugs. At the time, Estes had no security guards, no iron gate on the door, just a lot of cash and pot. Neighbors and police representatives claim that this just made things worse. The men were not professional guards, and scared people away from the neighborhood by loitering on the sidewalk during business hours. Estes says the neighbors are giving way to their own racist fears. "If you talk to them, they're big, soft, easygoing guys," he says. "But unfortunately they're black. And in this society, you think of black as criminal. So the moment you see black people standing around, looking at your ID, I guess it looks like a crack house. I have black friends, and that seems to be held against me. None of the other clubs seems to be scrutinized as much as me." Not only did the guards not sit well with the neighbors, they also didn't stop the crime. On the evening of December 13, 2001, one last patient, a young woman, knocked on the door. As an employee opened the door for her, he glanced down to his left and saw three men crouched low. The woman turned and walked back to the sidewalk and the men rushed through the door. One pulled out an Uzi submachine gun, and the second robbery in two months was under way. The thieves probably wouldn't have kept coming back if there hadn't been so much to steal. Estes refuses to say how much pot was lost during the first robbery, but he says he kept an average of three pounds of dried marijuana in his store at all times. "Plus we had hash, we had kief, we had oils and other extracts from marijuana. We had baked goods, brownies, carrot cakes, Reese's peanut butter cups that were done like that. We had everything." At $65 an eighth, that meant thugs could make off with about $25,000 with one quick hit, to say nothing of the cash he kept on hand. With this, the city had finally had enough. City Councilmember Linda Maio convened a neighborhood meeting about the club -- which Estes didn't bother to attend -- and told the rest of Berkeley's cannabis dispensaries to bring their colleague to heel. On January 2, Geshuri agreed to the following terms: the club would only operate five hours a day; less than a pound of dope would be on the premises; newspaper advertising would stop immediately; a professional security company would be retained; and security cameras would be installed. The final robbery on June 5 spelled the end for Ken Estes. Despite his promise not to keep more than a pound of pot at the store, neighbors report that during the getaway, the robbers' duffel bag was so heavy that they had to drag it down to the car. As for the security cameras, club officials claimed that they had mysteriously broken down that day, and there was no film of the incident.

Estes had used up his last store of good faith, and even the other clubs agreed he had to go. He, his brother Randy Moses, and Geshuri have signed a lease at a new club in Oakland, near the corner of 18th Street and Broadway, where he promises to tighten up security. If this the best local government can do, Estes is in the clear. Of course, good old-fashioned drug laws may solve the Ken Estes problem for us. Assistant district attorney Phyllis Franks of Contra Costa County is preparing to try Estes on four felonies stemming from the Concord raids, and if convicted, he'll be out of business. This brings up the final legal question unresolved by Proposition 215: how do prosecutors determine whether someone is a legally sanctioned caregiver, or a drug dealer? The answer is there is no answer. When Estes turned himself in, forty demonstrators accompanied him to the station, and his image -- the martyr of Medical Marijuana, persecuted by vindictive prosecutors -- was flashed across the nightly news throughout the Bay Area. Estes admits he's made some mistakes, and vows to improve his operation. I believe I know who's behind this, the robberies. All this stuff that's gone on has happened since Stacey went to the police, and the police believed her. They told me that many times women turn on their drug-dealing boyfriends, and this seems like a case of that. I wish I could have hired better people, but I can't say that I would have done anything different. I really didn't foresee the criminal element making its presence like it did. But I can only do so much." And should Estes revert to his old, seat-of-his-pants ways, we may have no choice but to put up with him.
(Source) www.compassionatecoalition.org/comment/reply/3789

Medical Marijuana merchant defies Oakland order to close. Others might go underground, as city's new rule gets mixed reaction from consumers, business owners (Excerpts from the Article)
Oakland Tribune (CA) Wednesday, June 02, 2004 By Laura Counts, STAFF WRITER
OAKLAND -- Medical Marijuana patients who packed into the Dragonfly Holistic Solutions dispensary on Telegraph Avenue on Tuesday seemed unaware the business had been told by the city to shut down. They said they were seeking the most potent medicine in town -- a strain of marijuana called "Barney Purple" -- and didn't like hearing that new city rules will limit them to four city-sanctioned establishments. Those that received licenses will have to pay a $20,000 annual fee. Those that did not were supposed to close Tuesday. **Dragonfly did not make it, but owner Ken Estes said he will continue to operate in defiance of city rules until he is arrested.** He planned a protest outside the dispensary Tuesday morning, but the only signs of one emerged when the doors to the club opened 15 minutes late. "There is some kind of discrimination going on behind the scenes," Estes said. Still, no one except Estes continued business as usual. There are too many people who appreciate getting marijuana in a civilized way," said Lee, one of the backers of an initiative now collecting signatures for the November ballot that would all but decriminalize adult use of marijuana in Oakland. Sparky Rose, operator of Compassionate Access on Telegraph -- which also was approved -- said he serves 7,000 patients and is expecting more. He plans to soon move to a larger location nearby. The city will review the new rules in six months. Jeff Jones, director of the Oakland Cannabis Buyers' Cooperative -- which issues identification cards but does not dispense -- said he has been advising clubs to follow the rules.

"The city is our friend, and we are in this together. They are doing what they feel they need to do," Jones said. "I think the best practice is to close down quietly, and we'll spend the next six months lobbying to increase the limit."
http://www.marijuana.org/OaklandTrib6-02-04.htm

Marijuana Clubs Question Ethics Of City's Order To Close Friday, May 19, 2006 by Tom Lochner Contra Costa Times (Excerpts from the Article)
Richmond, CA -- With the crafting of a Medical Marijuana regulating ordinance stalled, the Richmond City Attorney's office has ordered the immediate closure of two cannabis clubs, the only ones known to operate in the city. One, Natural Remedies Health Collective on Macdonald Avenue, promptly closed. The other, Holistic Solutions on Hilltop Mall Road, remained open Thursday. Owner Ken Estes said he hopes to persuade Richmond officials and council members that his business benefits both patients and the city at large. In a cease-and-desist order dated May 16, Assistant City Attorney Trisha Aljoe told Natural Remedies owner Linda Jackson that failure to comply will result in the filing of criminal charges. Estes said he received a similar letter. Jackson closed her shop Wednesday, but on Thursday, she questioned the legality and ethics of the city's order. **"This is taking away my livelihood and putting my patients in harm's way,"** said Jackson. On Thursday, the committee declined to adopt a recommendation by the city staff to declare cannabis clubs a "non-permitted use" and referred the matter to the city council to consider as part of a general plan overhaul. Police Chief Chris Magnus said Thursday that cannabis clubs are a drain on police resources. Magnus said there was a burglary at Natural Remedies in May 2005. But Jackson said that occurred under a previous owner. And at Holistic solutions, Magnus said, Richmond officers observed a steady stream of young people coming and going, causing him to doubt they were there for medical reasons. But Estes said many younger people use Medical Marijuana for pain resulting from injuries and that police should come inside to observe how he checks out his patients.
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www.hemp.net/news/index.php?article=1149877045

Clearlake, CA: Moratorium on marijuana dispensaries (June 6, 2006)
Submitted by Nathan on Mon, 06/12/2006 - 9:24am. Lake County, California
Moratorium on marijuana dispensaries (Excerpts from the Article)
06/06/2006 Denise Rockenstein, Lake County Record-Bee
Source: http://www.record-bee.com/oanews/ci_3906208
Yet, 10 years after the passage of the Compassion Use Act, barriers are still blocking patients' access to medicinal marijuana. It is the city's hope that the issue will be resolved in Federal Court before the moratorium, which has been extended to 10 months, 15 days, is complete. According the staff report submitted to the council on May 25, "Clearlake currently has no permitted Dispensaries, but the Police Department believes there may be businesses distributing Medical Marijuana in the City, and that it is likely that persons will seek land use entitlements and permits from the City to distribute Medical Marijuana." Holistic Solutions, a natural healing center that provides medicinal marijuana, has been operating on Lakeshore Drive in Clearlake for more than a year under City of Clearlake Business License No. 4535.

Another distributor, **Barrett** Consulting, which operates Alternative Patient Services out of the Java Express Mall, has been a permitted business in the City of Clearlake for more than four years. Both Holistic Solutions and Barrett Consulting have been successful in obtaining a business license as well as renewals of those licenses. "If something doesn't change before (Sept. 30) I will be out of business," said James Barrett, Barrett Consulting proprietor who began his business after recognizing a need for local access. He further identified the elderly as being most affected by access barriers, stating that the teenage population basically has unlimited street access to marijuana. "The thing with the moratorium is that there is going to be a lot of (elderly) patients that can't get their medicine." Barrett agrees that zoning regulations on Medical Marijuana dispensaries are needed as does Holistic Solutions co-owner Dave Moses. "Zoning regulations are badly needed," Barrett said, "but, in my opinion, that should have been taken care of in 1997." Moses has extended his assistance to the city staff in establishing regulations on businesses providing medicinal marijuana to patients**. Moses, along with his brother Ken Estes, have been involved in the marijuana movement for more than 13 years.** Estes, president of Holistic Solutions, began using Medical Marijuana following a paralyzing motorcycle accident in 1993. "When I was going through my rehab I tried marijuana for the first time and it really worked. It did something that the pills weren't doing. It gave me my appetite back and I could sleep," Estes explained from his wheelchair. "The pills were breaking me down and the marijuana was kind of filling me up. Making me eat; giving me a good positive attitude. There are some good characteristics to marijuana that pharmaceuticals long to have**." Estes and Moses were instrumental in the establishment of regulations in the San Francisco area where they operate two more dispensaries.** An outline of those regulations has been submitted to city staff. As of Tuesday, June 6, the city has made no attempt to contact either Estes or Moses although they are eager to help put zoning regulations in place. "We want regulation and control because we believe in that," Moses said. "We don't think that we should be within 100 feet of a school, or operate all hours of the night, for example, and we would be like to be contributing our fair share to the city's coffers." Although Moses had requested that the council include in its moratorium authorization for renewal of existing business licenses, his request was denied. However, Mayor Joyce Overton recommended that the item be brought back before the council for a progress update in August. Contact Denise Rockenstein at drockenstein@clearlakeobserver.com.

Pot club owner unable to retrieve seized items 09/02/2006
By Tom Lochner
CONTRA COSTA TIMES
The owner of a cannabis club and his deliveryman have struck out at Richmond police headquarters trying to retrieve confiscated property: the club owner's 27 pounds of marijuana and the driver's personal effects, which include more than $23,000 in cash he called his life's savings. "They're denying patients their medicine," said Ken Estes, who owns Holistic Solutions on Hilltop Mall Road and the marijuana that was in the truck. On Thursday, a WestNET officer handed the deliveryman, Richard Barrett, a notice of intended forfeiture of the cash. **Barrett said he has carried his savings with him since the Sept. 11, 2001, terrorist attacks.**

Estes described as "pure harassment" a police action that began Tuesday with a traffic stop and culminated in Barrett's arrest on suspicion of illegally transporting narcotics and confiscation of the truck's cargo. Barrett was released later Tuesday after the cannabis club's legal team posted $15,000 bail. Barrett has an Oct. 2 date to appear in court but has not been charged with any crime. By then, Estes said, the marijuana, which he described as top-grade with the name "Ken's granddaddy," likely will be useless. "The product can go bad," Estes said. "It's like any kind of perishable." Richmond has no cannabis club-regulating ordinance. Administrative officials have said the clubs are therefore illegal, but they have not enforced a cease-and-desist order against Holistic Solutions issued May 16. Other cities have held that without an ordinance, there is no legal basis to control or ban the clubs. Estes said he considers Richmond's cease-and-desist order illegal.

Source: http://www.contracostatimes.com/mld/cctimes/news/15425405.htm

In closing, what we have learned over the ten years since the adoption of Proposition 215? We have learned that what was intended as “Compassionate use” has turned into an unregulated multi-million dollar cash and carry industry. There are appears to be little or no controls in place to govern the issuance of “medical recommendations” from doctors, the cultivation and transportation of marijuana to the dispensaries, as well as the operation of the dispensaries themselves. In those rare instances when the blurry line has been egregiously crossed, there is seldom a successful prosecution as a result.

We as the Law Enforcement component of our society must find a means of controlling this situation within our communities. The first step in the process must be the accurate recording of data relating to Medical Marijuana. Each of us at some point will be expected to inform our local governments as to the actual extent of the problem and our suggested course of action. Only by being well informed, with quantifiable and defendable statistics, will be able to broach this sensitive issue and make our recommendations to either ban these activities or at the very least put in place reasonable restrictions to reduce their impact.

ATTACHMENT I

Filed 8/18/10

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

QUALIFIED PATIENTS ASSOCIATION et al., Plaintiffs and Appellants, v. CITY OF ANAHEIM, Defendant and Respondent.	G040077 (Super. Ct. No. 07CC09524) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, David R. Chaffee. Affirmed in part, reversed in part.

Anthony Curiale for Plaintiffs and Appellants.

Joseph D. Elford for Americans for Safe Access as Amicus Curiae on behalf of Plaintiffs and Appellants.

Mark Leno as Amicus Curiae on behalf of Plaintiffs and Appellants.

Jack L. White, City Attorney, Christina Talley, Acting City Attorney, and Moses W. Johnson IV, Assistant City Attorney, for Defendant and Respondent.

Jones & Mayer, Martin J. Mayer, Jammar Boyd-Weatherby and Krista MacNevin Jee for California State Sheriffs' Association, California Police Chiefs'

Association and California Peace Officers' Association as Amici Curiae on behalf of Defendant and Respondent.

Meyers, Nave, Riback, Silver & Wilson, Chrystal B. James and Ellin Davtyan for City of Adelanto and other California cities as Amici Curiae on behalf of Defendant and Respondent.

William James Murphy, Tehama County Counsel, and Arthur J. Wylene, Assistant County Counsel, for California State Association of Counties as Amicus Curiae on behalf of Defendant and Respondent.

Edmund G. Brown, Jr., Attorney General, and Peter A. Krause, Deputy Attorney General, as Amici Curiae upon the request of the Court of Appeal.

* * *

Plaintiffs Qualified Patients Association (QPA) and Lance Mowdy appeal from a judgment of dismissal entered after the trial court sustained, without leave to amend, the City of Anaheim's demurrer to plaintiffs' complaint. Asserting the primacy of state law over local law under constitutional and statutory authority (Cal. Const., art. XI, § 7; Gov. Code, § 37100), plaintiffs' first cause of action sought a declaratory judgment that the city's ordinance imposing criminal penalties for the operation of a medical marijuana dispensary was preempted by the Compassionate Use Act (CUA) (Health & Saf. Code, § 11362.5)[1] and the Medical Marijuana Program Act (MMPA) (§§ 11362.7 through 11362.83). In their second cause of action, plaintiffs asserted the city's ordinance violated the Unruh Civil Rights Act (Unruh Act). (Civ. Code, § 51.)

We agree with plaintiffs the trial court erred as a matter of law in concluding federal regulation of marijuana in the Controlled Substances Act (21 U.S.C.

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[1] All further statutory references are to the Health and Safety Code unless otherwise specified.

§ 812 et seq.) preempted California's decision in the CUA and the MMPA to decriminalize specific medical marijuana activities under state law. We therefore reverse the judgment of dismissal and remand the matter to allow plaintiffs to pursue their declaratory judgment cause of action. The trial court, however, correctly concluded plaintiffs failed to state a cause of action under the Unruh Act, which is aimed at "business establishments" (Civ. Code, § 51, subd. (b)), not local government legislative acts. We therefore affirm that portion of the judgment.

I

FACTUAL AND PROCEDURAL BACKGROUND

In a provision entitled, "Medical Marijuana Dispensary Prohibited," the city ordinance that plaintiffs challenge provides: "It shall be unlawful for any person or entity to own, manage, conduct, or operate any Medical Marijuana Dispensary or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any Medical Marijuana Dispensary in the City of Anaheim." (Anaheim City Ord. No. 6067, ch. 4.20, § 4.20.030.)

Anaheim City Ordinance section 4.20.010.030 defines a "Medical Marijuana Dispensary or Dispensary" as "any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a qualified patient, a person with an identification card, or a primary caregiver."

The ordinance provides, in section 5, for misdemeanor punishment for "any person who violates any provision of this ordinance . . . ."

Plaintiffs' first cause of action sought a declaratory judgment that the state's medical marijuana laws preempted the city's ordinance. Based its conclusion federal law preempted the state's medical marijuana laws, the trial court sustained the

city's demurrer to plaintiffs' first cause of action, without leave to amend. The trial court also sustained without leave to amend the city's demurrer to plaintiffs' second cause of action, which asserted the city's ordinance discriminated against them on the basis of a "disability" or "medical condition" in violation of the Unruh Act. (Civ. Code, § 51.) The trial court observed, "Courts generally take a dim view of the assertion or claim to a right to do something that is illegal." The trial court also concluded the Unruh Act did not apply to legislative bodies but rather only to "business establishments." (Civ. Code, § 51.) Plaintiffs now appeal.

II

DISCUSSION

A. *Applicable Authority*

1. The CUA

California voters approved Proposition 215 in 1996, codified as the Compassionate Use Act at section 11362.5. (See *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1546 (*Trippet*); *People v. Tilehkooh* (2003) 113 Cal.App.4th 1433, 1436 (*Tilehkooh*).) Subdivision (d) of section 11362.5 provides: "Section 11357, relating to the possession of marijuana, and [s]ection 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."

Examining this language, *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 772-773 (*Urziceanu*), explained that "the Compassionate Use Act is a narrowly drafted statute designed to allow a qualified patient and his or her primary caregiver to possess and cultivate marijuana for the patient's personal use despite the penal laws that outlaw

these two acts for all others." The *Urziceanu* court observed that, apart from possession and cultivation, "the Compassionate Use Act did not alter the other statutory prohibitions related to marijuana, including those that bar the transportation, possession for sale, and sale of marijuana." (*Urziceanu*, *supra*, 132 Cal.App.4th at p. 773; see also *Trippet*, *supra*, 56 Cal.App.4th at p. 1550 [recognizing the CUA's literal terms left primary caregivers vulnerable for transporting marijuana down a hallway to their patients].) The court continued: "When the people of this state passed [the CUA], they declined to decriminalize marijuana on a wholesale basis. As a result, the courts have consistently resisted attempts by advocates of medical marijuana to broaden the scope of these limited specific exceptions. We have repeatedly directed the proponents of this approach back to the Legislature and the citizenry to address their perceived shortcomings with this law." (*Urziceanu*, at p. 773.) Accordingly, *Urziceanu* held: "A cooperative where two people grow, stockpile, and distribute marijuana to hundreds of qualified patients or their primary caregivers, while receiving reimbursement for these expenses, does not fall within the scope of the language of the Compassionate Use Act or the cases that construe it." (*Id.* at p. 773.) Later in its opinion, the *Urziceanu* court examined whether the terms of the MMPA required a different conclusion, as we discuss below.

As noted in *Urziceanu*, the exemptions provided in the CUA for a qualified patient to possess and cultivate medical marijuana also apply to his or her primary caregiver. The CUA defines a "primary caregiver" as "the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." (§ 11362.5, subd. (e).)

The California Supreme Court has explained that to be a primary caregiver under this section, an individual must show that "he or she (1) consistently provided

caregiving, (2) independent of any assistance in taking medical marijuana, (3) at or before the time he or she assumed responsibility for assisting with medical marijuana." (*People v. Mentch* (2008) 45 Cal.4th 274, 283 (*Mentch*).) The high court in *Mentch* concluded that a patient may not confer primary caregiver status merely by designating a person as a primary caregiver, nor does a person qualify simply by providing medical marijuana to the patient. (*Id.* at pp. 283-285.) Rather, the person must show "a caretaking relationship directed at the core survival needs of a seriously ill patient, not just one single pharmaceutical need." (*Id.* at p. 286.)

The electorate, in enacting the CUA, "directed the state to create a statutory plan to provide for the safe and affordable distribution of medical marijuana to qualified patients." (*People v. Hochanadel* (2009) 176 Cal.App.4th 997, 1014 (*Hochanadel*).) The electorate's stated intent in enacting the CUA was three-fold: first, 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 [designated illnesses] or any other illness for which marijuana provides relief"; second, to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes under the recommendation of a physician are not subject to criminal prosecution or sanction"; and third, 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." (§ 11362.5, subd. (b)(1)(A)-(C).)

2. The MMPA

In 2003, the Legislature enacted the Medical Marijuana Program Act, effective January 1, 2004, adding sections 11362.7 through 11362.83 to the Health and

Safety Code. (See *People v. Wright* (2006) 40 Cal.4th 81, 93 (*Wright*).) The express intent of the Legislature was to: "(1) Clarify the scope of the application of the [CUA] 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.*" (Stats. 2003, ch. 875, § 1, subd. (b)(1)-(3), italics added.) The MMPA also expressly stated: "It is . . . the intent of the Legislature to address additional issues that were not included within the [CUA], and that must be resolved in order to promote the fair and orderly implementation of the [CUA]." (*Id.*, subd. (c).) According to the act's legislative history, "*Nothing in* [*the MMPA*] *shall amend or change Proposition 215, nor prevent patients from providing a defense under Proposition 215. . . . The limits set forth in* [*the MMPA*] *only* serve to provide immunity from arrest for patients taking part in the voluntary ID card program, *they do not change [s]ection 11362.5* (Proposition 215) . . . ." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 420 (2003 Reg. Sess.) as amended Sept. 9, 2003, p. 6, italics added.)

In section 11362.71, the MMPA established a program to facilitate the "'prompt identification of qualified patients and their designated primary caregivers'" (*Wright*, *supra*, 40 Cal.4th at p. 93) via a voluntary identification card program, which the Legislature required counties to implement (§§ 11362.71, subd. (b); 11362.72; see *County of San Diego v. San Diego NORML* (2008) 165 Cal.App.4th 798, 811, 818, 825-

828 (*County of San Diego*) [holding federal law making marijuana illegal did not preempt the MMPA's identification card program]).

Particularly relevant to this appeal, the MMPA also added section 11362.775, which provides: "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 [possession of marijuana], 11358 [cultivation of marijuana], 11359 [possession for sale], 11360 [transportation], 11366 [maintaining a place for the sale, giving away or use of marijuana], 11366.5 [making available premises for the manufacture, storage or distribution of controlled substances], or 11570 [abatement of nuisance created by premises used for manufacture, storage or distribution of controlled substance]." (Italics added.)

In *Urziceanu*, the court observed that "[t]his new law 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." (*Urziceanu*, *supra*, 132 Cal.App. at p. 785.)

Adding detail to California's quilt of medical marijuana legislation, the MMPA, in section 11362.765, expressly immunizes from state criminal liability, in relation to lawful medical marijuana use: "*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." (§ 11362.765, subd. (b)(3), italics added; see *id.*, subd. (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"].)

The MMPA also expressly immunizes "[a] *qualified patient or a person with an identification card* who *transports or processes* marijuana for his or her own *personal* medical use." (§ 11362.765, subd. (b)(1), italics added.) Section 11362.765, subdivision (b)(2), similarly immunizes primary caregivers, specifically any "designated *primary caregiver* who *transports*, *processes*, *administers*, *delivers*, or *gives away* marijuana for medical purposes . . . *only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as the primary caregiver*." Subdivision (c) of section 11362.765 addresses compensation. It mandates that "[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."

The MMPA also "elaborates on" the definition of primary caregiver in the CUA. (*Hochanadel*, *supra*, 176 Cal.App.4th at p. 1008.) The MMPA reiterates the definition of a primary caregiver contained in the CUA, i.e., "the individual, designated

by a qualified patient . . . who has consistently assumed responsibility for the housing, health, or safety of that patient or person . . . ." (§ 11362.7, subd. (d).) The subdivision goes on to provide examples of the Legislature's view of persons qualifying as primary caregivers under this definition: (1) Owners and operators of clinics or care facilities; (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"; and (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." (§ 11362.7, subd. (d)(1)-(3).)

The MMPA bars individuals and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into for-profit enterprises. (§ 11362.765, subd. (a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].)

3. Attorney General Guidelines

Section 11362.81, subdivision (d), of the MMPA provides: "[T]he 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 [CUA]." On August 25, 2008, the California Attorney General issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" (A.G. Guidelines, or Guidelines) <http://ag.ca.gov/cms_attach ments/press/pdfs/n1601_ medicalmarijuanaguidelines.pdf> (as of Aug. 2, 2010). The A.G. Guidelines' stated

purpose is 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." (*Id.* at p. 1.)

The A.G. Guidelines provide a definition of "cooperatives" and "collectives." The Guidelines observe that "[n]o business may call itself a 'cooperative' (or 'co-op') unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code." (A.G. Guidelines, at p. 8; see Corp. Code, §§ 12201, 12300.) A cooperative "must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. [Citation.] . . . 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.' [Citation.]" (*Guidelines*, at p. 8, italics added.) Further, "[c]ooperatives must follow strict rules on organization, articles, elections, and *distributions of earnings*, and must report individual transactions from individual members each year." (*Ibid.*, italics added.) Turning to the dictionary, the A.G. Guidelines define a "collective" as "'a business, farm, etc., *jointly owned and operated* by the members of a group.' [Citation.]" (*Ibid.*, italics added.) Given this joint ownership and operation requirement, "a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members — including the allocation of costs and revenues." (*Ibid.*)

Pursuant to these definitions, the Attorney General concludes in the Guidelines that a cooperative or 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." (*A.G. Guidelines*, *supra*, at p. 8.)

The A.G. Guidelines articulate additional requirements for the lawful operation of cooperatives and collectives, including that they must be nonprofit operations. (A.G. Guidelines, *supra*, at p. 9.) They may "acquire marijuana *only from their constituent members,* because only marijuana grown by a qualified patient or his or her primary caregiver may be lawfully transported by, or distributed to, other members of a collective or cooperative. [Citation.] . . . *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 should also track and record the source of their marijuana." (*Id.* at p. 10, italics added.)

Distribution or sale to nonmembers is 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. [Citation.] 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." (A.G. Guidelines, *supra*, at p. 10.)

Finally, to aid law enforcement in determining whether marijuana-related activities comply with the CUA and MMPA, the A.G. Guidelines specifically address "Storefront Dispensaries." (A.G. Guidelines, *supra,* at p. 11.) The Attorney General concludes in the Guidelines that while "dispensaries, as such, are not recognized under the law," "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but . . . dispensaries that do not substantially comply with the guidelines [covering collectives and cooperatives] are likely operating outside the protections of [the CUA] and the MMP[A], and . . . 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.*" (A.G. Guidelines, *supra,* at p. 11, italics added.)

"While the Attorney General's views do not bind us [citation], they are entitled to considerable weight [citation]." (*Freedom Newspapers, Inc. v. Orange County Employees Retirement System* (1993) 6 Cal.4th 821, 829.)

B. The *MMPA Does Not Unconstitutionally Amend the CUA*

The city asserts the MMPA unconstitutionally amends the CUA. The California Constitution bars the Legislature from amending an initiative measure unless the measure itself authorizes amendment. (Cal. Const., art. II, § 10, subd. (c); *People v. Cooper* (2002) 27 Cal.4th 38, 44.) It is undisputed the CUA does not provide for legislative amendment. The city's challenge fails, however, because the MMPA does not amend the CUA, as the court in *Hochanadel*, *supra*, 176 Cal.App.4th 997 explained.

Hochanadel rejected the same amendment argument the city advances. There, "[t]he People assert[ed] that section 11362.775, which exempts medical marijuana patients, persons with valid medical marijuana identification cards and their primary caregivers who form collectives or cooperatives to cultivate marijuana from prosecution for several drug-related crimes, constituted an unconstitutional amendment of the CUA." (*Hochanadel*, *supra*, 176 Cal.App.4th at p. 1011.) Here, the city contends that section 11362.775 of the MMPA, "by dramatically changing the CUA[,] has unconstitutionally amended it."

In *Hochanadel*, the court explained this line of attack is "unavailing" because the MMPA "'amended provisions *of the Health and Safety Code* regarding regulation of drugs adopted by the Legislature, *not provisions of the CUA*." (*Hochanadel*, *supra*, 176 Cal.App.4th at p. 1013, italics added.) The court concluded: "'Because the MMPA's [cooperative and collective] program has no impact on the protections provided by the CUA, we reject [the] claim that those provisions are invalidated by . . . the California Constitution.'" (*Ibid.*, first bracket in original, new second bracket.) Elaborating, the court observed that section 11362.775 "did not constitute an amendment of the CUA as it was not intended to, and did not, alter the rights provided by the CUA. Rather, it identifies groups that may lawfully distribute medical marijuana to patients under the CUA. Thus it was designed to *implement*, not amend the CUA." (*Hochanadel*, at p. 1013, original italics.) "Indeed," the court noted, "the CUA itself directed the state to create a statutory plan to provide for the safe and affordable distribution of medical marijuana to qualified patients. (§ 11362.5, subd. (b)(1)(C).) Thus, in enacting section 11362.775 the Legislature created what the

CUA expressly contemplated and did not unconstitutionally amend the CUA." (*Hochanadel*, at p. 1014.)

We agree with *Hochanadel*. The city relies on language in *Urziceanu* stating that the MMPA "*represents a dramatic change* in the prohibitions on the use, distribution, and cultivation of marijuana . . . . Its specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medicinal marijuana cooperatives . . . ." (*Urziceanu*, *supra*, 132 Cal.App.4th at p. 785, italics added.) The initiative may have prompted the Legislature to add or change other laws, but this does not mean it amended the initiative.

The purpose of the Constitution's ban on legislative amendments is to """'jealously guard'""" the electorate's initiative power from intermeddling by the Legislature. (*People v. Kelly* (2010) 47 Cal.4th 1008, 1025, 1030 ["'No other state in the nation carries the concept of initiatives as "written in stone" to such lengths'" as California].) Accordingly, "amendments which *may* conflict with the subject matter of initiative measures must be accomplished by popular vote, as opposed to legislative[] enact[ment] . . . ." (*Proposition 103 Enforcement Project v. Quackenbush* (1998) 64 Cal.App.4th 1473, 1486, original italics.) Contrary to the city's position, however, the purpose of the constitutional ban on amendments is not implicated here. As the Supreme Court in *Kelly* observed, "[D]espite the strict bar on the Legislature's authority to amend initiative statutes, judicial decisions have observed that this body is not thereby precluded from enacting laws addressing the general subject matter of an initiative." (*Kelly*, at p. 1025.)

Hochanadel explained that the MMPA did not amend the CUA. Rather, the MMPA amended, consistent with the CUA, the Health and Safety Code provisions

barring the transportation, distribution and cooperative or collective cultivation of marijuana. (See *Hochanadel, supra,* 176 Cal.App.4th at p. 1013.) By providing immunity from prosecution for those activities when conducted in compliance with state law, the MMPA changed the Health and Safety Code. Because the CUA did not touch on these topics (see § 11362.5, subd. (d) [affording immunity only for personal possession and cultivation of medicinal marijuana]), it necessarily follows that the MMPA did not expand or restrict the CUA in the manner necessary to constitute an amendment (see *Franchise Tax Bd. v. Cory* (1978) 80 Cal.App.3d 772, 776 ["A statute which adds to or takes away from an existing statute is considered an amendment"]). Rather, without treading on the electorate's superior power, the Legislature properly acted within its sphere to define specific transportation, distribution, and collective or cooperative activities as noncriminal. (See *People v. Mills* (1978) 81 Cal.App.3d 171, 176-177 ["The definition of crime and the determination of punishment are foremost among those matters that fall within the legislative domain"].) Consequently, we reject the argument the MMPA constitutes an amendment of the CUA.

C. *Whether State Law Preempts the City's Ordinance*

1. Standing

Plaintiffs' first cause of action sought a declaratory judgment that the city's ordinance is preempted by state medical marijuana law embodied in the CUA and MMPA. The city contends plaintiffs lack standing to obtain declaratory relief. The city did not demur to plaintiffs' complaint on this ground, but lack of standing constitutes a jurisdictional defect and therefore may be raised at any time, even for the first time on appeal. (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 438; *Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1603-1604.) Plaintiffs' declaratory

judgment action requires an "actual controversy relating to the legal rights and duties of the respective parties." (Code Civ. Proc., § 1060.) "Courts will decline to resolve lawsuits that do not present a justiciable controversy, and justiciability 'involves the intertwined criteria of ripeness and standing.'" (*County of San Diego, supra,* 165 Cal.App.4th at p. 813.) The standing issue here consists of whether, simply put, plaintiffs have "incurred an injury capable of redress." (*New York Times Co. v. Superior Court* (1990) 51 Cal.3d 453, 466.)

The city argues plaintiffs can obtain no redress from a preemption determination because they cannot show they fall within the CUA's and MMPA's protection. But "[a] general demurrer is usually not an appropriate method for testing the merits of a declaratory relief action, because the plaintiff is entitled to a declaration of rights even if it is adverse to the plaintiff's interest." (Cal. Judges Benchbook: Civil Proceedings Before Trial (CJER 2d ed. 2008) Attacks on Pleadings, § 12.83, p. 52 (hereafter Judges Benchbook).) This is particularly true here because factual issues abound on whether plaintiffs' activities place them in the category of a lawful "cooperative" or "collective" under the MMPA, and whether plaintiffs are in fact "qualified patients" or "primary caregivers" under the Act. (See *ibid.* [demurrer inappropriate where factual issues remain].)

The city's oft-repeated, pejorative characterization of QPA as a "storefront dispensary," rather than a "cooperative" or "collective," is not persuasive. The city seems to suggest that any medical marijuana outlet it designates as a "dispensary" affronts California medical marijuana law.[2] The city's argument fails for two reasons.

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[2] As noted in *Mentch*, California is not alone, nor an outlier among the states in decriminalizing medical marijuana; at least 12 states have done so despite the continuing federal ban, and the majority of those states have established a more lenient

First, we are here after demurrer, and QPA is identified nowhere in the complaint or any judicially noticeable material as a "storefront dispensary." Second, the "dispensary" label — even assuming it is apt — is not dispositive. As the Attorney General observes in the A.G. Guidelines: while "dispensaries, as such, are not recognized under the law," "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law . . . ." (A.G. Guidelines, *supra*, p. 11.) We perceive no reason at this juncture to disagree with the Attorney General's assessment.

The city points to Mowdy's claim in the complaint that he is the "designated primary caregiver for the members of the Association," which consists of "*more than fifty* qualified patients" (italics added), as facts disqualifying him, QPA, and its members from state law protection. Relying on *Mentch*, the city observes "the many customers of a marijuana 'association,' here the Qualified Patients Ass'n (QPA), cannot execute pro forma designations of the QPA [or Mowdy] as their primary caregiver." (Original brackets.) The city concludes: "The QPA [or Mowdy] cannot qualify as a primary caregiver in these circumstances. A person purchasing marijuana for medicinal purposes cannot simply designate seriatim, and on an ad hoc basis, sales centers such as the QPA [or Mowdy] as the patient's 'primary caregiver.'" (Original brackets.) (See *Mentch*, *supra*, 45 Cal.4th at p. 284.)

But nothing in the complaint, nor any judicially noticeable material, discloses that Mowdy's relationship with QPA patients is one of mere pro forma designation. True, Mowdy's assertion he is a "primary caregiver" does not, by itself, establish he qualifies for that legal status under the CUA and the MMPA, for we do not

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threshold for creating an authorized primary caregiver relationship. (See *Mentch*, *supra*, 45 Cal.4th at p. 287, fn. 8.)

credit mere conclusions of law stated in the complaint. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) But neither may we prejudge, as the city would have us do, that Mowdy is not a legitimate "primary caregiver" absent facts that disqualify him. Nor, similarly, may we simply conclude QPA is not a collective or cooperative or that it is not comprised of qualified patients. A demurrer lies for lack of standing when the defect appears *on the face of the pleading or from judicially noticeable matters*. (See, e.g., *Carsten v. Psychology Examining Com.* (1980) 27 Cal.3d 793, 796; *Klopstock v. Superior Court* (1941) 17 Cal.2d 13, 19; *O'Flaherty v. Belgum* (2004) 115 Cal.App.4th 1044, 1095.) As discussed, that is not the case here. A summary judgment motion, not demurrer as the city would have it, may be deployed to "cut through the . . . pleadings" (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843) on whether Mowdy in fact qualifies as a primary caregiver and whether QPA is a collective, a cooperative or comprised of qualified patients. As we explain below, we do not reach the issue of whether state law preempts the city's ordinance. But at this stage of the proceedings, the city's attempt on appeal to torpedo plaintiffs' preemption claim on grounds the CUA and the MMPA do not apply to them is premature. (See Chemerinsky, Constitutional Law, Principles and Policies (2d ed. 2002) § 2.5, p. 78 [criticizing redressability determinations made prematurely on the basis of the pleadings].)

2. The State Law Preemption Issue Is Not Ripe For Our Review

We do not decide whether the CUA or the MMPA preempt the city's ordinance because we conclude the issue is not properly before us. Plaintiffs did not appeal the trial court's order denying their request for a preliminary injunction restraining enforcement of the ordinance on preemption grounds. (Code Civ. Proc., § 904.1, subd. (a)(6) [an order granting or denying an injunction is appealable]; *Socialist Workers etc. Committee v. Brown* (1975) 53 Cal.App.3d 879, 885, fn. 4 [same].) Plaintiffs provide no authority and make no argument concerning the legal standards for a preliminary injunction. Accordingly, we express no opinion on whether their request for a preliminary injunction should have been granted, or whether state law preempts the city's ordinance. The only issue before us is the trial court's ruling, founded on the preemptive power of federal law, sustaining the city's demurrer to the complaint without leave to amend.

True, the trial court expressed skepticism concerning plaintiffs' claim that state law preempts the city's ordinance. But the trial court's demurrer ruling refers specifically only to the CUA and the Unruh Civil Rights Act, not the MMPA. The authorities cited in the trial court's order, including *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal.4th 920 (*Ross*), did not involve the MMPA.[3] (See *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 680 ["'An opinion is not authority for propositions not considered'"].)

The trial court apparently did not consider whether the MMPA's provisions that are distinct from the CUA, including sections 11362.765 and 11362.775, preempt the

[3] In *Ross*, the Supreme Court concluded the CUA did not prohibit an employer from terminating an employee for using medical marijuana.

city's ordinance. The court in *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, held that the "general availability of injunctive relief under [s]ection 11570 against buildings and drug houses used to sell controlled substances is not affected by" *the CUA*. The Legislature subsequently enacted the MMPA. Sections 11362.765 and 11362.775 of the MMPA immunize operators of medical marijuana dispensaries — provided they are qualified patients, possess valid medical marijuana identification cards, or are primary caregivers — from prosecution under state nuisance abatement law (§ 11570) "solely on the basis" that they use any "building or place . . . for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance . . . ." Sections 11362.765 and 11362.775 also provide qualifying persons immunity from nonfederal criminal sanctions imposed "solely on the basis" of "open[ing] or maintain[ing] any place for the purpose of unlawfully selling, giving away, or using any controlled substance . . ." (§ 11366) or for "rent[ing], leas[ing], or mak[ing] available for use . . . [a] building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance . . ." (§ 11366.5).

Whether 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.[4] Unlike in *Ross*, where the Supreme Court observed

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[4] *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, on which the city relies, did not involve an ordinance like Anaheim's, which potentially contradicts sections 11362.765 and 11362.775 by making the use of property a crime "solely on the basis" of otherwise lawful medical marijuana activity. The city also relies on *City of Corona v. Naulls* (2008) 166 Cal.App.4th 418, which did not involve or discuss sections 11362.765 or 11362.775, nor sections 11366, 11366.5, or 11570. Additionally, unlike the scenario here, both *Kruse* and *Naulls* involved plaintiffs that ignored or circumvented established procedures for obtaining a business license, instead of seeking a declaratory judgment. And both cases involved temporary moratoriums rather than the permanent dispensary ban alleged here. Again, cases are not determinative for issues not considered.

that "[t]he operative provisions of the [CUA] do not speak to employment law" (42 Cal.4th at p. 928), the MMPA explicitly touches on land use law by proscribing in sections 11362.765 and 11362.775 the application of sections 11570, 11366, and 11366.5 to uses of property involving medical marijuana. Here, 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" in sections 11362.765 and 11362.775. Put another way, it seems odd the Legislature would disagree with federal policymakers about including medical marijuana in penal and drug house abatement legislation (compare 21 U.S.C. §§ 812 & 856 with §§ 11362.765 & 11362.775), but intend that local legislators could side with their federal — instead of state — counterparts in prohibiting and criminalizing property uses "solely on the basis" of medical marijuana activities. (§§ 11362.765 & 11362.775.) After all, local entities are creatures of the state, not the federal government.

But 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. They argue with much appeal, for example, that if the immunity from "criminal liability" provided in sections 11362.765 and 11362.775 applies to "the well-recognized quasi-criminal nature of [s]ection 11570," the "careful phrasing of the MMPA provides no suggestion that this narrow exclusion was intended to wholly eliminate *any* remedy for activities determined to be an *ordinary* nuisance under . . . legal authority" apart from section 11570.[5] (Original italics; see also 3 Witkin, Cal.

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[5] Observing that section 11570 "deems '*[e]very* building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance' to be a public nuisance," counsel for Tehama County, as amicus curiae for the city, argues: "At very most, the MMPA's exclusion of qualified

Proc. (5th ed. 2008) Actions, § 70, p. 144 [noting section 11570 qualifies as "civil in nature," but also "quasi-criminal in effect" and "character"].) We do not decide these issues.

As anxious as we, the parties, and amici curiae are to reach this important and interesting question of state preemption, this case in its present posture is not the occasion to do so. Because it appears the trial court, apart from the asserted fundamental defect of federal preemption, did not address or determine that plaintiffs failed to state a claim for declaratory relief under the MMPA, as opposed to the CUA or Unruh Civil Rights Act, it is not our province to do so in the first instance. Moreover, as noted,

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persons from [s]ection 11570 would preempt an ordinance that similarly attempted to proscribe every premises upon which qualified medical marijuana activities take place." (Original italics.) According to counsel, "Anaheim's Ordinance No. 6067 does no such thing. Rather, the Ordinance prohibits a certain *manner* of conducting such activities within City limits, specifically by regulating the number of persons that may engage in such activity upon a single premises. (See Anaheim Mun. Code, § 4.20.020 [defining a regulated dispensary as a 'facility or location where medical marijuana is made available to and/or distributed by or to *three or more*' qualified persons].)" (Original italics.)

The city views its ordinance as a complete ban on typical medical marijuana dispensaries. A ban accomplished by local legislation is lawful, according to the city, because "[t]he Legislature, in adopting the MMP[A], did not exempt qualified persons from a[ll] criminal or civil liability, only specified criminal statutes." The city also argues that the immunities provided in section 11362.775 apply, by the terms of the statute, only to collective or cooperative "cultivat[ion]" of medical marijuana. Conceivably, the agricultural and group nature of such an undertaking might heighten a local government's interest in regulating or banning such uses, particularly in a dense urban environment. If the city is correct, however, that the MMPA authorizes combined efforts only for cultivating marijuana and not for activities such as storing or dispensing it away from the cultivation site (compare § 11362.775 with § 11362.765), the absence of a collective or cooperative means to distribute medical marijuana to qualified persons may suggest the Legislature intended nearby access through widespread cultivation locations. On this view, local authorities would have grounds to ban typical dispensaries if they lack a role in the actual cultivation process, but perhaps not bar altogether, for example, cooperative marijuana gardens or collective cultivation sites where qualified patients or their primary caregivers could obtain their medication.

factual issues that we may not resolve on appeal remain, including whether plaintiffs qualify as primary caregivers or otherwise for the MMPA's asserted protection against an ordinance imposing criminal punishment for operating a dispensary, and the manner in which plaintiffs intend to conduct their medical marijuana activities.

In our common law tradition, the "legal rules that emerge from judicial opinions are 'precepts attaching a definite detailed legal consequence to a definite, detailed state of facts.'" (Aldisert, *In Memoriam* (2006) 154 U.Pa.L.Rev. 1025, 1030-1031, quoting Roscoe Pound in *Hierarchy of Sources and Forms in Different Systems of Law* (1933) 7 Tul.L.Rev. 475, 482.) Here, we have precious few facts concerning the plaintiffs' planned medical marijuana activities. At demurrer, on the few facts known about the manner in which QPA intends to operate, we cannot say plaintiffs have failed to state a cause of action to obtain declaratory judgment on whether the MMPA preempts the city's ordinance.

In sum, demurrer is not the proper context to reach and resolve the merits of plaintiffs' claim for declaratory judgment. "When," as here, "the complaint sets forth facts showing the existence of an actual controversy between the parties relating to their respective legal rights and duties and requests that these rights and duties be adjudged, the plaintiff has stated a legally sufficient complaint for declaratory relief. It is an abuse of discretion for a judge to sustain a demurrer to such a complaint and to dismiss the action, even if the judge concludes that the plaintiff is not entitled to a favorable declaration." (Judges Benchbook, *supra*, § 12.83, p. 52.) As noted, "the plaintiff is entitled to a declaration of rights even if it is adverse to the plaintiff's interest." (*Ibid.*) We express no opinion on the merits of the parties' positions, but instead remand to allow

the parties and the trial court to address these issues in further proceedings, including summary judgment or trial, if triable issues of fact remain unresolved.[6]

We now turn to the trial court's conclusion the city was entitled to prevail on demurrer based on federal preemption.

D. *Federal Law Does Not Preempt the CUA or the MMPA*

The city asserts, and the trial court agreed, that plaintiffs' complaint fails to state a cause of action for declaratory relief under the CUA and the MMPA because federal law preempts those enactments. Noting that the Controlled Substances Act (CSA) continues to prohibit the possession of marijuana even for medical users (see 21 U.S.C. §§ 812, 844(a); *Gonzales v. Raich* (2005) 545 U.S. 1, 26-29 (*Gonzales*); *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 491-495 (*Oakland Cannabis*)), the trial court viewed the CUA and the MMPA as an attempted "state[] override of federal law to make the drug marijuana legal, or . . . to make legal the sale of marijuana through medical marijuana dispensaries."

In *Gonzales*, the high court held intrastate growth and use of medical marijuana under the CUA did not place the defendants there beyond the CSA's reach, since Congress's plenary commerce power extends to these activities. (*Gonzales*, *supra*, 545 U.S. at pp. 17, 26-29.) And in *Oakland Cannibis*, the court held the CSA did not authorize an implied defense to its penal provisions based on medical necessity, even where a state strictly controlled access to medical marijuana. (*Oakland Cannibis*, *supra*, 532 U.S. at p. 491.) To the contrary, the terms of the CSA reflect Congress's conclusion that marijuana serves no medical purpose. (*Ibid.*) Relying on *Gonzales* and *Oakland*

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[6] Accordingly, we must deny as moot in this appeal the plaintiffs' request for judicial notice concerning the legislative history of the MMPA.

Cannibis and reasoning that states do not have authority to override federal law, the trial court found that federal law preempted the CUA and the MMPA. Accordingly, the trial court sustained without leave to amend the city's demurrer to the plaintiffs' first cause of action for a declaratory judgment that state law preempted the city's ordinance.

Whether federal law preempts state law is a legal issue that we review de novo. (*Spielholz v. Superior Court* (2001) 86 Cal.App.4th 1366, 1371 (*Spielholz*).) As we explain below, California's decision in the CUA and the MMPA to decriminalize *for purposes of state law* certain conduct related to medical marijuana does nothing to "override" or attempt to override federal law, which remains in force. (See, e.g., *Gonzales* and *Oakland Cannibis, supra*.) To the contrary, because the CUA and the MMPA do not mandate conduct that federal law prohibits, nor pose an obstacle to federal enforcement of federal law, the enactments' decriminalization provisions are not preempted by federal law.

Congress has the power to preempt state law under the Constitution's supremacy clause. (U.S. Const., art. VI, cl. 2; see, e.g., *Crosby v. National Foreign Trade Council* (2000) 530 U.S. 363, 372-374 (*Crosby*); *Gibbons v. Ogden* (1824) 22 U.S. 1, 211; *M'Culloch v. Maryland* (1819) 17 U.S. 316, 427.) "[T]here is," however, "a strong presumption against federal preemption when it comes to the exercise of historic police powers of the states. [Citations.] That presumption will not be overcome absent a clear and manifest congressional purpose." (*People v. Boultinghouse* (2005) 134 Cal.App.4th 619, 625 (*Boultinghouse*).) Because regulation of medical practices and state criminal sanctions for drug possession are historically matters of state police power, we must interpret any federal preemption in these areas narrowly. (*County of San Diego, supra*, 165 Cal.App.4th at pp. 822-823.)

Our Supreme Court has identified "four species of federal preemption: express, conflict, obstacle, and field. [Citation.] [¶] First, express preemption arises when Congress 'define[s] explicitly the extent to which its enactments pre-empt state law. [Citation.] Pre-emption fundamentally is a question of congressional intent, [citation], and when Congress has made its intent known through explicit statutory language, the courts' task is an easy one.' [Citations.] Second, conflict preemption will be found when simultaneous compliance with both state and federal directives is impossible. [Citations.] Third, obstacle preemption arises when '"under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."' [Citations.] Finally, field preemption, i.e., 'Congress' intent to pre-empt all state law in a particular area,' applies 'where the scheme of federal regulation is sufficiently comprehensive to make reasonable the inference that Congress "left no room" for supplementary state regulation.' [Citations.]" (*Viva! Internat. Voice for Animals v. Adidas Promotional Retail Operations, Inc.* (2007) 41 Cal.4th 929, 935-936, fn. omitted (*Viva!*).)

The first and the last of the foregoing categories do not apply here, given language in the CSA "demonstrat[ing] Congress intended to reject express and field preemption of state laws concerning controlled substances." (*County of San Diego, supra*, 165 Cal.App.4th at p. 819.) Specifically, section 903 of title 21 of the United States Code provides: "No provision of this subchapter shall be construed as indicating an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any State law on the same subject matter which would otherwise be within the authority of the State, *unless there is*

a positive conflict between that provision of this subchapter and that State law *so that the two cannot consistently stand together*." (Italics added.) With this language, Congress declined to assert express preemption in the area of controlled substances and directly foreswore field preemption (*County of San Diego*, at p. 819), leaving only conflict preemption and obstacle preemption as potential bases supporting the trial court's preemption ruling.

1. Conflict Preemption

Conflict preemption exists when "simultaneous compliance with both state and federal directives is impossible." (*Viva!*, *supra*, 41 Cal.4th at p. 936.) The city does not explain how any of the state law decriminalization provisions of the CUA or the MMPA create a positive conflict with federal law, so that it is impossible to comply with both federal and state laws. A claim of positive conflict might gain more traction if the state *required*, instead of merely exempting from state criminal prosecution, individuals to possess, cultivate, transport, possess for sale, or sell medical marijuana in a manner that violated federal law. But because neither the CUA or the MMPA require such conduct, there is no "positive conflict" with federal law, as contemplated for preemption under the CSA. (21 U.S.C. § 903.) In short, nothing in either state enactment purports to make it impossible to comply simultaneously with both federal and state law.

As we explained in *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, 385 (*Garden Grove*), "no conflict" arises "based on the fact that Congress has chosen to prohibit the possession of medical marijuana, while California has chosen not to." Simply put, "California's statutory framework has no impact on the legality of medical marijuana under federal law . . . ." (*Ibid.*; accord, *Hyland v. Fukuda* (9th Cir. 1978) 580 F.2d 977, 981 [state law allowing felons to carry guns not preempted

by contrary federal law since "there is no conflict between" the two].) As we observed in *Garden Grove*, the high court's decision in *Gonzales* demonstrated the absence of any conflict preventing coexistence of the federal and state regimes since "'[e]nforcement of the CSA can continue as it did prior to the [CUA].'" (*Garden Grove*, at p. 385.) No positive conflict exists because neither the CUA nor the MMPA require anything the CSA forbids.

The city asserts, without explanation, that "[t]he requirement that cities, in effect, permit storefront dispensaries to operate within their boundaries positively conflicts with the CSA." It is true that California and the federal government have conflicting views of the potential health benefits of marijuana. But that does not mean the application of state and federal laws are in conflict. If state law in fact preempts the city's ordinance — a question we have noted is not yet ripe in this proceeding, we discern nothing in the city's compliance with state law that would require the violation of federal law. The federal CSA does not direct local governments to exercise their regulatory, licensing, zoning, or other power in any particular way. Consequently, a city's compliance with state law in the exercise of its regulatory, licensing, zoning, or other power with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law. And we see no reason to suppose state law preemption of the ordinance would require a city or its employees or agents to operate a medical marijuana dispensary or otherwise engage in conduct prohibited by the CSA. The fact that some individuals or collectives or cooperatives might choose to act in the absence of state criminal law in a way that violates federal law does not implicate the city in any such violation. As we observed in *Garden Grove*, governmental entities do not incur aider and abettor or direct liability by complying with

their obligations under the state medical marijuana laws. (*Garden Grove*, *supra*, 157 Cal.App.4th at pp. 389-390; accord, *County of San Diego*, *supra*, 165 Cal.App.4th at p. 825, fn. 13.) Consequently, we conclude the city's positive conflict argument is without merit.

2. Obstacle Preemption

Obstacle preemption does not support the trial court's preemption determination either. A state enactment becomes a nullity under obstacle preemption when, "'"under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"' [Citations.]" (*Viva!*, *supra*, 41 Cal.4th at p. 936.) If the purpose of the federal act "'*cannot otherwise be accomplished* — if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect — the state law must yield to the regulation of Congress within the sphere of its delegated power.'" (*Crosby*, *supra*, 530 U.S. at p. 373, italics added.)

In *County of San Diego*, the court concluded the MMPA's "identification card laws do not pose a significant impediment to specific federal objectives embodied in the CSA" because the CSA's purpose "is to combat recreational drug use, not to regulate a state's medical practices." (*County of San Diego*, *supra*, 165 Cal.App.4th at pp. 826-827, citing *Gonzales v. Oregon* (2006) 546 U.S. 243, 272-273 [construing CSA as a "statute combating recreational drug use" rather than as an "expansive" interposition of "federal authority to regulate medicine"].)

Here, the city identifies section 11362.775, enacted by the MMPA, as the specific state statutory obstacle triggering federal preemption. According to the city, this section "poses a significant impediment" to the CSA's purpose of combating recreational

drug use because it "is *being abused* by persons and groups to open storefront dispensaries *for profit*." (Italics added.) As noted *ante*, however, the MMPA bars individuals and any collective, cooperative, or other group from transforming medical marijuana projects authorized under the MMPA into profiteering enterprises. (§ 11362.765, subd. (a) ["nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit"].)

The city further explains "[t]he 'obstacle' to federal goals presented by Section 11362.775 is the creation of the exemption for collectives," which is "being abused" "by allowing the diversion of 'medical' marijuana to those not qualified to use it." But the city's complaint is thus *not* that state law amounts to an obstacle to federal law, but that "abuse[]" or violation of state law does. These circumstances call for enforcement of the state law, not its abrogation. Upholding the law respects the state's authority to legislate in matters historically committed to its purview. (*Boultinghouse*, *supra*, 134 Cal.App.4th at p. 625.)

In any event, obstacle preemption only applies if the state enactment undermines or conflicts with federal law to such an extent that its purposes "'cannot otherwise be accomplished . . . .'" (*Crosby*, *supra*, 530 U.S. at p. 373-374 [holding Massachusetts law restricting purchase of goods or services from companies doing business in Burma conflicted with federal legislation delegating control of economic sanctions to the President].) Preemption theory, however, is not a license to commandeer state or local resources to achieve federal objectives. As Judge Kozinski has explained: "That patients may be more likely to violate federal law if the additional deterrent of state liability is removed may worry the federal government, but the proper response — according to *New York* and *Printz* — is to ratchet up the federal regulatory regime, *not* to

commandeer that of the state." *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 646, original italics [conc. opn.].)

On the facts presented in *County of San Diego*, the court noted "the unstated predicate" of the obstacle preemption argument was "that the federal government is entitled to conscript a state's law enforcement officers into enforcing federal enactments, over the objection of that state, and this entitlement will be obstructed to the extent the identification card precludes California's law enforcement officers from arresting medical marijuana users." (*County of San Diego, supra,* 165 Cal.App.4th at p. 827.) The court rejected the argument, as follows: "The argument falters on its own predicate because Congress does not have the authority to compel the states to direct their law enforcement personnel to enforce federal laws. In *Printz v. United States* (1997) 521 U.S. 898, . . . , the federal Brady Act purported to compel local law enforcement officials to conduct background checks on prospective handgun purchasers. The United States Supreme Court held the 10th Amendment to the United States Constitution deprived Congress of the authority to enact that legislation, concluding that 'in [*New York v. United States* (1992) 505 U.S. 144, . . . we ruled] that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.' [Citation.]" (*County of San Diego,* at pp. 827-828.)

Just as the federal government may not commandeer state officials for federal purposes, a city may not stand in for the federal government and rely on purported

federal preemption to implement federal legislative policy that differs from corresponding, express state legislation concerning medical marijuana. *Tilehkooh*, *supra*, 113 Cal.App.4th 1433 is instructive. There, the court held the CUA "provides a defense to a probation revocation based on marijuana possession or use." (*Id.* at p. 1445.) The People argued the defendant could not raise the CUA as a defense to revocation of his probation based on marijuana possession, citing the probation condition that the defendant obey not only the laws of California, but also the laws of the United States. The court, however, was not persuaded. It explained, "The People have misunderstood the role that the federal law plays in the state system. The California courts long ago recognized that state courts do not enforce the federal criminal statutes. 'The State tribunals have no power to punish crimes against the laws of the United States, *as such.* The same act may, in some instances, be an offense against the laws of both, and it is only as an offense against the State laws that it can be punished by the State, in any event.' [Citations.]" (*Id.* at pp. 1445-1446, fn. omitted.)

Continuing, the *Tilehkooh* court reasoned, "Since the state does not punish a violation of the federal law 'as such,' it can only reach conduct subject to the federal criminal law by incorporating the conduct into the state law.[7] The People do not claim they are enforcing a federal criminal sanction attached to the federal marijuana law. Rather, they seek to enforce the state sanction of probation revocation which is solely a creature of state law. [Citation.]" (*Tilehkooh*, *supra*, 113 Cal.App.4th at p. 1446.) But as *Tilehkooh* explained, "The state cannot do indirectly what it cannot do directly. That is what it seeks to do in revoking probation when it cannot punish the defendant under the criminal law. [¶] . . . [¶] California courts do not enforce the federal marijuana

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[7] We note such incorporation is still subject to analysis under the Constitution's Supremacy Clause.

possession laws when defendants prosecuted for marijuana possession have a qualified immunity under [the CUA]. Similarly, California courts should not enforce federal marijuana law for probationers who qualify for the immunity provided by [the CUA]." (*Id.* at pp. 1446-1447.)

These principles apply a fortiori to a city — a creature of the state. As we explained in *Garden Grove*, the city there could not "invoke and rely solely on federal law to justify a particular sanction (i.e., the destruction of Kha's [medical marijuana]) when Kha's conduct was consistent with, and indeed sanctioned under, state law." (*Garden Grove, supra*, 157 Cal.App.4th at p. 380.) "Applying the reason[ing] of *Tilehkooh*," we concluded that "judicial enforcement of federal drug policy is precluded in this case because the act in question — possession of medical marijuana — does not constitute an offense against the laws of both the state and the federal government." (*Ibid.*) Quoting *Tilehkooh*, we explained that "[b]ecause the act is strictly a federal offense," the city had "'no power to punish ... [it] ... *as such.*'" (*Garden Grove*, at p. 380, original italics.)

The same is true here. The city may not justify its ordinance solely under federal law (*Garden Grove*; *Tilehkooh*), nor in doing so invoke federal preemption of state law that may invalidate the city's ordinance.[8] The city's obstacle preemption argument therefore fails.

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[8] In *People v. Moret* (2009) 180 Cal.App.4th 839, a concurring justice distinguished *Tilehkooh* based on the Legislature's subsequent enactment of section 11362.795, amending the MMPA. Section 11362.795, by specifying a defendant may seek confirmation from the trial court that he or she is allowed to use medical marijuana on probation, suggests the trial court may impose a no-use probation condition, despite the CUA and MMPA and independent of federal law. (*Moret*, at pp. 853-857 [conc. opn. of Haerle, J.].) This conclusion, however, does not undermine the rationale of *Tilehkooh*, but instead demonstrates that section 11362.795 operates as a matter of

Thus, the trial court erred when it sustained the city's demurrer on the basis of federal preemption. A petition for a declaratory judgment is itself a valid cause of action, and not merely a request for relief on other grounds. (Code Civ. Proc., § 1060.) Because the city has identified no defect on the face of plaintiffs' complaint concerning their cause of action for declaratory judgment that the city's ordinance is preempted by state law, the city's demurrer fails and we therefore reverse and remand for proceedings consistent with this opinion.

E. *The Trial Court Properly Sustained the City's Demurrer to Plaintiffs' Unruh Civil Rights Act Claim*

Plaintiffs contend the trial court erred by sustaining the city's demurrer to their second cause of action, in which they claimed the city's ordinance severely restricting or banning medical marijuana dispensaries, under threat of criminal prosecution, violated civil rights protected by the Unruh Act. (See Civ. Code, § 51, subd. (a); see generally, 8 Witkin, Summary of Cal. Law (10th ed. 2005) Constitutional Law, § 898(2) p. 376 (hereafter Witkin).) The Unruh Act's purpose "is to compel recognition of the equality of all persons in the right to the particular service offered by an organization or entity covered by the act." (*Curran v. Mount Diablo Council of the Boy Scouts* (1983) 147 Cal.App.3d 712, 733.) "Emanating from and modeled upon traditional 'public accommodations' legislation, the Unruh Act expanded the reach of such statutes from common carriers and places of public accommodation and recreation, e.g., railroads, hotels, restaurants, theaters and the like, to include 'all business

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state law and not federal preemption. Section 11362.795 has no bearing on the city's reliance on federal preemption to obtain demurrer.

establishments of every kind whatsoever.'" (*Marina Point, Ltd. v. Wolfson* (1982) 30 Cal.3d 721, 731.)

Specifically, the act's operative provision, Civil Code section 51, subdivision (b), provides: "All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, marital status, or sexual orientation are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever."

Our task in examining any enactment "is to ascertain and effectuate legislative intent. [Citations.] We turn first to the words of the statute themselves, recognizing that 'they generally provide the most reliable indicator of legislative intent.' [Citations.] When the language of a statute is 'clear and unambiguous' and thus not reasonably susceptible of more than one meaning, '"'"'there is no need for construction, and courts should not indulge in it."'"' [Citations.]" (*People v. Gardeley* (1996) 14 Cal.4th 605, 621.)

The trial court correctly concluded the Unruh Act does not apply to the city's enactment of legislation. In *Burnett v. San Francisco Police Department* (1995) 36 Cal.App.4th 1177 (*Burnett*), the court observed: "By its plain language, the Act bars discrimination based on 'sex, race, color, religion, ancestry, national origin, or disability' by '*business establishments.*' [Citation.] Nothing in the Act precludes *legislative bodies* from enacting ordinances which make age distinctions among adults." (*Id.* at pp. 1191-1192, original italics.) Because a city enacting legislation is not functioning as a "business establishment[]," we conclude the Unruh Act does not embrace plaintiffs'

claims against the city for discrimination based on a disability or medical condition calling for the use of medical marijuana.

A federal district court, in *Gibson v. County of Riverside* (2002) 181 F.Supp.2d 1057, 1093 (*Gibson*), has disagreed with *Burnett* on grounds that the Unruh Act forbids discrimination "in all business establishments" and not just *by* "business establishments." We are not persuaded. First, the decisions of the lower federal courts are not binding precedent (*Metalclad Corp. v. Ventana Environmental Organizational Partnership* (2003) 109 Cal.App.4th 1705, 1715), particularly on issues of state law. Second, while it is true that legislation may not immunize a business from Unruh Act claims for discrimination that occurs in that establishment (see *Gibson*, at p. 1093, relying on *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 737), it does not follow that enacting legislation, as here, transforms the governmental entity into a "business establishment[]" that is subject to a lawsuit under the express terms of the act.

Because the terms of the Unruh Act expressly apply to "business establishments," we see no room for its application to the city's legislative action here. Accordingly, we agree with *Burnett* and disagree with *Gibson*. The Unruh Act does not apply to the city in the circumstances here, and the trial court therefore properly sustained the city's demurrer to plaintiffs' second cause of action.

III

DISPOSITION

We affirm the trial court's order concluding plaintiffs failed to state an Unruh Act civil rights cause of action, but reverse the judgment of dismissal and reinstate plaintiffs' cause of action seeking declaratory judgment on whether the CUA or the MMPA preempt the city's ordinance. Each side shall bear its own costs for this appeal.

ARONSON, J.

WE CONCUR:

RYLAARSDAM, ACTING P. J.

FYBEL, J.

ATTACHMENT J

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MEMORANDUM

TO: Honorable Mayor and City Council Members

CC: Frank Oviedo, City Manager; Dave Hogan, Planning Director

FROM: The Office of the City Attorney

DATE: September 8, 2010

RE: Proposed Medical Marijuana Ordinance

INTRODUCTION

In 1996, California voters approved Proposition 215, also known as the "Compassionate Use Act of 1996," (the "CUA") codified as Health & Safety Code section 11362.5 *et seq.*[1] The stated purpose of the Proposition is "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use . . . has been recommended by a physician."[2] Under Proposition 215, the basic elements for the "legal" possession of marijuana are: (1) a physician's oral or written recommendation or approval, and (2) possession or cultivation for personal medical purposes.[3]

In 2003, the state legislature approved Senate Bill 420, called the Medical Marijuana Program Act ("MMPA") which enacted additional statutory guidance for those involved with medical marijuana use.[4] The MMPA created a voluntary medical marijuana ID card program, set the quantity of marijuana that a qualified patient or primary caregiver can possess, and created additional immunities from state marijuana laws, among other things.[5] Together, the statutes enacted by Proposition 215 and Senate Bill 420 comprise the legal framework for medical marijuana in California.

When the City of Wildomar ("City") incorporated in 2008, it adopted all of the ordinances that were in place in the County of Riverside. Sections 17.12.040 and 17.12.050 of the current Wildomar Municipal Code prohibit the establishment of medical

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[1] Proposition 215 passed by over a million votes, 55.6% in favor to 44.4% opposed, although the vote split showed more counties voted against Proposition 215 than voted in favor of medical marijuana.
[2] (Cal. Health & Safety Code § 11362.5(b)(1)(A).)
[3] (Cal. Health & Safety Code § 11362.5(d).)
[4] (Cal. Health & Safety Code §§ 11362.7-11362.83.)
[5] (Cal. Health & Safety Code §§ 11362.7-11362.83.)

marijuana dispensaries within the City other than through state licensed clinics, healthcare facilities, residential care facilities for life threatening illnesses, residential care facilities for the elderly and hospice or home health agencies. No exemption appears in this regulation for collective or cooperative organizations to dispense medical marijuana.

At the direction of the City Council, staff has prepared and is processing a proposed ordinance that would repeal Sections 17.12.040 and 17.12.050 of the Wildomar Municipal Code and permit medical marijuana collectives and cooperatives to operate within the City and to open dispensaries for distribution of medical marijuana to their members. That ordinance was presented to the Planning Commission for its review and recommendation to the City Council. The Planning Commission, after much discussion, chose to recommend that the City Council not adopt the ordinance, leaving the current prohibition against such uses in place. The Council now must decide whether to accept the Planning Commission's recommendation or to adopt the ordinance in its current form or with such amendments as the City Council may choose to make.

To assist the City Council in making its decision, we have been asked to review the current status of the law with regard to several practical and legal issues relating to medical marijuana. The first issue is whether California's permissive laws are preempted by the blanket federal prohibition set forth in the Controlled Substances Act ("CSA"). The next issue is whether cities must allow the collective and cooperative dispensaries permitted under the CUA and MMPA to exist within their jurisdictions or whether they may be prohibited at the local level. Technical issues regarding specific provisions and language of the proposed ordinance have also been questioned, as have the risk of adopting or failing to adopt a regulatory ordinance allowing collective and cooperative dispensaries within the City. The role of the Planning Commission as a policy advisory body and the nature of its proceedings have also been called into question. Finally, the effect a new initiative measure appearing on the November ballot that would legalize use of marijuana for any person over the age of 18 in California on any regulatory ordinance adopted by the City has also been questioned.

QUESTIONS PRESENTED

1. Does federal law preempt California's permissive medical marijuana laws?

2. Do California's CUA and MMPA mandate every City to permit collective and cooperative dispensaries for medical marijuana?

3. Concerns specific to the proposed ordinance:

   A. Does the language comply with current statutes and the Attorney General Guidelines?

   B. What limitations can or should the City impose on medical marijuana dispensaries?

   C. How can the ordinance be enforced?

   D. How can the City generate revenue from medical marijuana uses?

4. What is the proper role of the Planning Commission when it considers proposed legislation establishing policies and ordinances for the City of Wildomar?

5. What are the legal risks of approving the ordinance?

6. What are the legal risks of not approving the ordinance?

7. What happens if the City approves the ordinance and marijuana is legalized in November of 2010 for adult use in California?

SHORT ANSWERS

1. A recent ruling by a California Court of Appeal has held that federal law does not preempt California's medical marijuana laws. Because of the blanket federal prohibition against possession, use, transportation and sale of marijuana, however, members of collectives or cooperatives that are legal under California law may still be subject to arrest and prosecution by federal authorities under federal law. The current administration has stated that it does not intend to enforce federal restrictions against cooperatives and collectives operating consistent with state laws, but that policy may or may not be followed.

2. Pending litigation has not yet resolved the issue of whether California's law mandates cities to permit medical marijuana collectives and cooperatives and related dispensaries. Until a determination is made by a court of final jurisdiction, the legality of California's law will be in question. Local ordinances therefore, remain subject to legal challenge.

3. The Proposed Ordinance:

   A. The current ordinance language complies with state law and the attorney general guidelines. Little guidance is given in the CUA or the MMPA with regard to the language of ordinances addressing medical marijuana. The primary use being addressed, however, is the actual dispensing of the product to members of collectives or cooperatives. The proposed ordinance complies with the CUA and the MMPA.

   B. Under California law, the City may regulate hours of operation, the number of dispensaries within the City, the location, clientele and other aspects of the collectives and cooperatives that operate the dispensary.

   C. Enforcement of the City's ordinance through Code Enforcement efforts, both criminal and civil, is possible. The City's business license ordinance prohibits an unlawful business from obtaining a City license, so if a proposed dispensary cannot meet the City's regulations, no license can be issued and the business may not operate within the City.

   D. The City may enact a tax on medical marijuana sales, but to do so, will have to put that tax on the ballot for approval by the citizens. Fees for business licenses under the current ordinance may only be imposed to cover the administrative cost of issuing the license. A business license tax might be imposed, but that would again require a vote of the people. Voluntary payment of a fee under a contract with the City would very likely be subject to invalidation as an unapproved tax.

4. The Planning Commission, when considering legislation that will establish enforceable legal policies for the City of Wildomar, is empowered to hear and consider virtually any information that may come before it. Unlike a situation where a development proposal is evaluated by the Planning Commission to determine whether it meets City standards, when the Planning Commission advises on matters of policy, it may consider virtually any information and each Planning Commissioner may use his or her own judgment, values and goals in making a decision.

5. The legal risks of approving the ordinance are that it may ultimately be held to be unconstitutional because of federal preemption. In addition, anyone denied a permit to open a dispensary under the ordinance may bring a legal challenge to that action unless specific guidelines are spelled out for any limitations on the

approval of the required permit. Some or all of the provisions could be invalidated as a result.

6. The legal risks of not approving the ordinance are that collectives or cooperatives may open dispensaries without business licenses or permits or may bring legal action challenging the City's enforcement of its current ordinance that prohibits medical marijuana dispensaries. Those who deliberately violate City business license and permit requirements will require the City to bring legal action against them. Those who file legal actions challenging the City's authority to ban medical marijuana collective and cooperative dispensaries will require the City to defend its ordinance. Either situation will involve expenditure of public funds on the part of the City. The recent ruling in the *Qualified Patients Association, et al. v. City of Anaheim, (2010) Superior Court No. 07CC09524 ("Anaheim")* case, however, offers some protection from damages that would otherwise potentially arise from any civil rights claim related to enforcing a prohibition against medical marijuana dispensaries or collectives or cooperatives.

7. If Proposition 19 is approved by the electorate in November of 2010, it will have no effect on the proposed ordinance or on the City's right to regulate or prohibit the sale of marijuana within the City. Proposition 19 does not address collectives or cooperatives that are subject to the CUA or MMPA.

DISCUSSION

1. Federal Preemption

Of course, as is well-known by now, there is a major conflict between state and federal laws relating to the legality of local medical marijuana regulations. Under the federal Controlled Substances Act ("CSA"), 21 U.S.C. § 801 *et seq.*, marijuana is classified as a "Schedule I" drug, one that "has a high potential for abuse" and which "has no currently accepted medical use."[6] Despite the passage of Proposition 215 and Senate Bill 420 in California, from a federal perspective any marijuana possession, use, transportation, or distribution is illegal and carries criminal penalties and risk of imprisonment.[7] There is no "medical necessity" exception to these prohibitions.[8] Furthermore, the U.S. Supreme Court, in *Gonzales v. Raich*, 545 U.S. 1 (2004),

[6] (21 U.S.C. § 812(b)(1).)
[7] (21 U.S.C. § 841(a) & (b); *see also Gonzales v. Raich*, 125 S. Ct. 2195. 2211 (2004).)
[8] (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001).)

affirmed that the CSA, and its lack of a medical necessity exception, is constitutional as applied to the states.

Nevertheless, the California Attorney General's Office responded to the ruling in *Gonzales v. Raich* by issuing bulletins and press releases stating that the decision did not overrule Prop 215 and SB 420, and that medical marijuana will be legal in California until a federal court specifically rules that state law is preempted by federal law.[9] Since California medical marijuana law has not yet been expressly invalidated by the federal courts, state courts and agencies are likely to continue enforcing it. Furthermore, though the Bush administration took a tough stance on medical marijuana and the Drug Enforcement Agency was very active in raiding medical marijuana dispensaries and cooperatives, the Obama administration has publicly stated that it will not go after medical marijuana facilities that are operating within state law. That policy may or may not remain in effect in the future.

Many had hoped that the major pending *Anaheim* case dealing with the issue of medical marijuana, would finally resolve the questions of whether federal law preempts state law, whether state law preempts local law and whether failing to permit establishment and operation of medical marijuana collectives and cooperatives and their related dispensaries gives rise to civil rights claims and damages against public entities. The recent ruling in the case appears to resolve the federal preemption and civil rights issues, but fails to determine whether state law preempts cities from prohibiting or regulating medical marijuana facilities.

In the *Anaheim* case, an ordinance that is very similar to the one currently in effect in Wildomar was challenged by a medical marijuana patients' rights group. The Court of Appeal held that federal law does not preempt the CUA or the MMPA.[10] The Court of Appeal also declined to rule on the issue of whether California's state law preempted local regulation or prohibition of medical marijuana facilities and held that no civil rights liability attaches under the Unruh Act for denial by local agencies of medical marijuana uses.

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[9] (*See* Robert Anderson, Bulletin to All California Law Enforcement Agencies (June 9, 2005; June 22, 2005); *see also* Office of the Attorney General Press Release, June 6, 2005.)

[10] Importantly, the court of appeal found that the California State Legislature had full authority to adopt the MMPA as a means of implementing the CUA. The City of Anaheim had contended that the MMPA impermissibly attempted to amend the CUA without taking the question to the electorate as required. The court of appeal agreed with an earlier ruling in *Hochanadel* (2009) 176 Cal. App. 4th 997, holding that the MMPA did not amend the CUA but merely provided changes to other laws in order to implement it.

On the federal preemption issue, the *Anaheim* court determined that because the state did not legalize marijuana but simply decriminalized medical use of it, California's law does not conflict with federal law that makes possession, transportation and use a crime. The court notes that there is a strong presumption against federal preemption that can only be overcome by clear and manifest congressional purpose. The court then states that control of medical practices and state criminal sanctions for drug possession are historically matters of state police power. An extensive and somewhat befuddling analysis concludes that:

> "The city asserts, without explanation, that "[t]he requirement that cities, in effect, permit storefront dispensaries to operate within their boundaries positively conflicts with the CSA." It is true that California and federal government have conflicting views of the potential health benefits of marijuana. But that does not mean the application of state and federal laws are in conflict. If state law in fact preempts the city's ordinance – a question we have noted is not yet ripe in this proceeding, we discern nothing in the city's compliance with state law that would require the violation of federal law. The federal CSA does not direct local governments to exercise their regulatory, licensing, zoning, or other power in any particular way. Consequently, a city's compliance with state law in the exercise of its regulatory, licensing, zoning, or other power with respect to the operation of medical marijuana dispensaries that meet state law requirements would not violate conflicting federal law. <u>And we see no reason to suppose state law preemption of the ordinance would require a city or its employees or agents to operate a medical marijuana dispensary or otherwise engage in conduct prohibited by the CSA. The fact that some individuals or collectives or cooperatives might choose to act in the absence of state criminal law in a way that violates federal law does not implicate the city in any such violation.</u>" [Emphasis added.]

In summary, the Court of Appeal held that there is no overt, affirmative, unquestionable occupation of all law relating to marijuana in the CSA that precludes states from enacting ordinances that effectively legalize some use of marijuana contrary to the blanket prohibition set forth in the CSA. Thus, when a city enacts an ordinance that complies with state law but violates federal law, city employees and agents have no liability for violating federal law. The state, through its local governments, has simply enabled individuals who comply with the city's ordinance to escape criminal prosecution by the state. The clear inconsistency between state and federal law remains and it remains to be seen whether this view of federal preemption is ultimately sustained by the courts.

Finally, the California Attorney General's office contends in its Guidelines that the reason California's law is not preempted by federal law is because it does not legalize the use of medical marijuana. Rather it de-criminalizes that use under the state's tenth amendment reserved powers to determine not to punish certain marijuana offenses (*City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382). The theory is that the state has the authority to selectively enforce or not enforce federal law. The Attorney General's opinion does not have the force of law, however, significant deference is given to it by the courts.

2. State Preemption of Local Control of Medical Marijuana Uses

While the *Anaheim* ruling comments of the question on whether state law preempts local regulation, it does not rule one way or the other on the issue. The Court of Appeal has instead remanded the case to the trial court for factual determinations on that issue. As a result, the *Anaheim* case offers only limited guidance as to whether a city can lawfully prohibit medical marijuana collectives or cooperatives and their related dispensaries or even whether they may be regulated by zoning and permit requirements.

Although the *Anaheim* court declined to rule on the question of state preemption of local regulation and prohibition of medical marijuana uses, the Court of Appeal gave some indication of how it would be inclined to rule should the matter present itself to the court in an appropriate procedural format. The court stated,

> "Whether 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. Unlike in *Ross* , where the Supreme Court observed that 'the operative provisions of the [CUA] do not speak to employment law' (42 Cal.4th at p. 928), the MMPA

> explicitly touches on land use law by proscribing in sections 11362.765 and 11362.775 the application of sections 11570, 11366, and 11366.5 to uses of property involving medical marijuana. Here, 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' in sections 11362.765 and 11362.775. Put another way, it seems odd the Legislature would disagree with federal policymakers about including medical marijuana in penal and drug house abatement legislation (compare 21 U.S.C. §§812 &856 with §§11362.765 & 11362.775), but intend that local legislators could side with their federal – instead of state – counterparts in prohibiting and criminalizing property uses 'solely on the basis' of medical marijuana activities. (§§ 11362.765 & 11362.775) After all, local entities are creatures of the state, not the federal government." (*Anaheim, supra* at p. 22 of the ruling)

This language suggests that the Court of Appeal may be likely to rule that California's medical marijuana laws preempt any regulation or prohibition carrying criminal sanction by local governments that conflicts with the CUA or the MMPA when that issue comes before it in the future. The Court of Appeal does note that the issue of state preemption under the MMPA "is by no means clear-cut or easily resolved on first impressions." Whether the 4th District's preliminary thinking will be validated in future rulings or by the California Supreme Court, or by a case pursued in federal court remains unknown.

Regardless of the implications of the *Anaheim* case with regard to state preemption of local regulations, however, California courts have already determined that medical marijuana dispensaries owned and operated by individuals who are not primary caregivers or qualified patients are illegal, and the City may continue to prohibit this use. Guidelines prepared by the Attorney General specifically note that dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver and then making cash donations in exchange for medical marijuana do not qualify as collectives or cooperatives under California law (*Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1400).

3. SPECIFICS OF THE PROPOSED ORDINANCE

A. Dispensary, Collective or Cooperative?

One of the questions that has arisen concerning the proposed ordinance is the use of the term "dispensary." Some members of the community contend that the term dispensary should not be used and that all references to the sale or distribution of medical marijuana should be to collectives or cooperatives instead. The term dispensary was originally used in the ordinance adopted by the City of Laguna Woods and has not been challenged there, but it does not appear in either the CUA or the MMPA. In fact, little guidance is given in either of those measures as to how things should be defined or how the law should be implemented. A list of cities using the term dispensary and other words in medical marijuana ordinances is attached as an exhibit to the staff report on this item.

Section 17.12.040 of the Wildomar Municipal Code prohibits the establishment of medical marijuana dispensaries within the City. Section 17.12.050 defines a medical marijuana dispensary as:

> "[A]ny facility or location, whether fixed or mobile, where medical marijuana is made available to, distributed to, or distributed by, one or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card . . .. A "medical marijuana dispensary" shall not include the following uses, provided that such uses comply with this chapter and all other applicable laws, . . ., a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, 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, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code."

This definition of medical marijuana dispensary does not make any exception for collectives or cooperatives of qualified patients and primary caregivers. Therefore, under the Wildomar Municipal Code, medical marijuana collectives and cooperatives are considered to be dispensaries and are prohibited.

The *Anaheim* court also commented on the term "dispensaries" as follows:

> "The city's oft-repeated, pejorative characterization of QPA as a "storefront dispensary," rather than a "cooperative" or "collective" is not persuasive. The city seems to suggest that any medical marijuana outlet it designates as a "dispensary" affronts California medical marijuana law. The city's argument fails for two reasons. First we are here after demurrer, and QPA is identified nowhere in the complaint or any judicially noticeable material as a "storefront dispensary." Second, the "dispensary" label – even assuming it is apt – is not dispositive. As the Attorney General observes in the A.G. Guidelines: while "dispensaries, as such, are not recognized under the law," "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law (A.G. Guidelines, p. 11).

Thus, use of the term dispensary, especially when defined as being a part of the operation of collectives and cooperatives, does not affect the validity of the proposed ordinance.

In August of 2008, the California Attorney General published "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" (the "Guidelines") set forth as an exhibit to the staff report. The Guidelines were adopted pursuant to Health and Safety Code section 11362.81(d), which required the Attorney General to adopt "guidelines to ensure the security and non-diversion of marijuana grown for medical use."

It is important to note that the Guidelines are not binding and do not have the force of law. The courts do not have to follow the Guidelines in interpreting the state's medical marijuana laws, though the courts may look to them for guidance. Therefore, adherence to the Guidelines will not guarantee immunity from liability.

The Guidelines are meant to "help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so." The Guidelines do not provide any insight on whether a local government must allow medical marijuana dispensaries (or as the Guidelines call them, "collectives" or "cooperatives") to operate within their borders. The bulk of the Guidelines simply summarizes what the state's medical marijuana laws already provide with respect to who may possess medical marijuana and what they have to have in hand to legally obtain medical marijuana.

The Guidelines do provide some additional clarification on the terminology – "dispensaries" vs. "collectives" or "cooperatives." California medical marijuana law does

not use the term "dispensary." Nor does it use the term "collective" or "cooperative." Rather, the law provides that individuals may associate to "collectively or cooperatively" cultivate medical marijuana. (Health & Safety Code § 11362.775.) From this, the Attorney General has concluded that the law only recognizes "cooperatives" and "collectives," and not stand-alone "dispensaries." For a medical marijuana organization to call itself a "cooperative" it must be organized and registered with the state pursuant to the provisions governing cooperatives in the Corporations Code or Food and Agriculture Code. A "collective," on the other hand, is not defined in California law and there are no statutory restrictions on the use of the term or the operation of the entity.

The Guidelines recognize, however, that medical marijuana dispensaries may be a necessary part of a collective or cooperative medical marijuana operation. A dispensary is the central place or method for members of the collective or cooperative to obtain medical marijuana. The Guidelines recognize that a "dispensary" may be legal if it operates as a "cooperative" or "collective" as follows:

> "**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].)"

The ordinance before the City Council for consideration uses the term "dispensary," but defines a dispensary as a "a group of primary caregivers and/or qualified patients who collectively or cooperatively associate to cultivate and dispense Medical Marijuana." Thus, the terminology used in the ordinance is consistent with the Guidelines and, more importantly, with state law. Of course, the ordinance is a product of the City of Wildomar, and if the City Council wishes to use a term other than

dispensary to describe the functions that are to be regulated, it may do so. As noted previously, the ordinance is only written the way it is because the City Council directed staff to prepare an ordinance based on the Laguna Woods model.

B. Limitations on Use

Standard land use limitations affecting the hours of operation, location within in specific zoning areas, parking requirements and the like may be regulated by the City under its police powers. To the extent that such limitations are imposed, however, they should be objective and readily enforceable through the Code Enforcement process in the same manner that they would be enforced for any other retail business.

In addition to these standard land use regulations, many California cities limit the number of medical marijuana dispensaries that may legally operate within their borders. Most notably, the City of Los Angeles recently adopted an ordinance limiting the number of dispensaries in the city to 70, which will result in hundreds of medical marijuana dispensaries being shuttered. Most cities that have adopted limits on the number of medical marijuana dispensaries have set the cap much lower than Los Angeles. The cities of Oakland and West Hollywood allow four dispensaries and Berkeley allows three. The city of Jackson allows one dispensary, and the city of Arcata allows two, but has grandfathered in an additional two dispensaries. A review of the applicable statutes and case law did not yield any authority restricting a city's ability to limit the number of dispensaries operating within their borders.

Surprisingly, most cities that have adopted limits on the number of medical marijuana dispensaries have not included procedures in their ordinances on how to deal with the situation of having more applicants than there are slots open for medical marijuana dispensaries. However, due to the sheer volume of dispensaries operating in the city, the City of Los Angeles included a detailed procedure in its ordinance.[11] In short, the city prescreens all applicants for a medical marijuana dispensary permit and the names of all of the qualified applicants will be put in a drawing for a permit. The City of West Hollywood, however, uses a simpler process. "In the event that fewer than four collectives are operating under valid licenses at any time, consideration for additional licenses will be given in the order prospective applicants are placed on a wait list to be maintained by the city."[12]

[11] Los Angeles Municipal Code, Chapter IV, Article 5.1.
[12] West Hollywood Municipal Code § 5.70.030(6).

To effectively limit the number of dispensaries permitted in the City of Wildomar, some objective data should be reviewed to assure that whatever policy and procedures are adopted are fair, neutral and effective and can be administered even-handedly.

C. Enforcement

The Wildomar Municipal Code requires "every person conducting or carrying on a business" in the City to obtain a business license. (WMC § 5.72.030). Failure to do so is a misdemeanor under both Wildomar Municipal Code Section 1.03.010 and California Business & Professions Code Section 16240. In addition, conducting a business without a business license is a public nuisance. (WMC § 1.03.050; *City of Claremont v. Kruse,* (2009) 177 Cal.App.4th 1153). Finally, conducting an unlawful business is specifically prohibited as follows:

> "5.72.150 Unlawful business. No business license issued pursuant to this chapter shall be construed as authorizing the conduct of or continuance of any occupation, use or activity of any kind which is prohibited by county ordinance, state or federal law or regulation."

When the City of Wildomar incorporated Sections 17.040 and 17.050 of the County of Riverside Code into its municipal code, the City of Wildomar also made medical marijuana dispensary uses unlawful. Thus, while the City's business license ordinance does not contemplate extensive regulation of businesses, it does impose a requirement that a business be lawful in order to obtain a business license, and it requires such a license for all businesses. Accordingly, the opening and operation of a business in the City that is unlawful may be terminated and sanctioned.

The Court of Appeal for the Second District held in *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153, that the City of Claremont could abate a medical marijuana dispensary located within the City as a public nuisance because the dispensary opened without first obtaining a business license and use permit.[13] In that case, the City denied the business license and permit application of the Defendant and then, while the Defendant's appeal of the decision to the City Council was still pending, adopted a temporary moratorium on medical marijuana dispensaries, rendering the Defendant's appeal moot. The Defendant proceeded to open up his medical marijuana dispensary without a permit or business license from the City, and the City commenced a code enforcement action against the Defendant. The City obtained a permanent

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[13] *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.

injunction preventing the Defendant from operating a medical marijuana dispensary anywhere within the City, and the Court of Appeal upheld that injunction.

Under the Wildomar Municipal Code and applicable provisions of state law, there are three different avenues for the enforcement of the business license requirement: criminal, civil and administrative.

(i) Criminal Enforcement Procedures

Because operating without a business license is a misdemeanor and not an infraction, this violation can be punished by up to six (6) months imprisonment in the County Jail and/or a fine up to $1,000. (Cal. Penal Code § 19.6; WMC § 1.03.010). The California Penal Code details the procedures that must be followed for misdemeanor cases. There are two different general procedures that the City may follow under the Penal Code:

1. An officer may issue a field citation to the offender and obtain the offender's written promise to appear at the date, time and location specified in the citation. The offender's promise to appear is a substitute for a physical arrest. The citation may operate as the criminal complaint in the matter, and if the offender fails to appear, a bench warrant will issue for the offender. (Cal. Penal Code § 853.6).

2. A criminal complaint may be filed with the court by the prosecuting attorney, along with declarations from the prosecuting attorney supporting an arrest warrant. If the arrest warrant issues, it may be executed by an officer and the arrestee must be brought before a magistrate within 48 hours of the arrest. (See Cal. Penal Code §§ 813-825, 948-950). This second option is usually taken if a code enforcement officer is unable to obtain the offender's written promise to appear on a field citation.

In lieu of imprisonment in the County Jail, the judge may place the criminal defendant on up to three (3) years of informal probation. (Cal. Penal Code §§ 1203a, 1203(a).) The probation may be revoked at any time if the City documents violations of the conditions of probation or additional code violations.

(ii) Civil Enforcement

Wildomar Municipal Code Section 1.03.050 provides that any code violation is deemed a public nuisance and may be summarily abated or abated by the City in a civil

action. Instead of arresting the offender and seeking criminal charges against him or her, the City may file a civil complaint for injunctive relief. (*City of Stockton v. Frisbie & Latta* (1928) 93 Cal.App. 277, 289-90; *City of San Mateo v. Hardy* (1944) 64 Cal.App. 2d 794; *San Francisco v. City Investment Corp.* (1971) 15 Cal.App.3d 1031.) If the City obtains an injunction ordering the defendant to remedy the code violation and the defendant does not comply, the City may seek civil or criminal contempt to enforce the injunction. (Cal. Civ. Proc. Code § 1218; Cal. Penal Code § 166(a)(4).)

It should be noted that civil enforcement of a business license ordinance against a medical marijuana dispensary that failed to obtain a business license prior to opening has been upheld recently by the Court of Appeal for the Second District. (*City of Claremont v. Kruse*, supra.) In that case, the City of Claremont obtained an injunction prohibiting the defendants from operating a medical marijuana dispensary anywhere within the City on the grounds that the medical marijuana dispensary was a nuisance per se.

The City may recover its abatement expenses from the defendants in a civil action pursuant to Wildomar Municipal Code Section 1.03.060. Recovery of expenses is typically not allowed in criminal actions.

(iii) Administrative Enforcement

The final enforcement option is administrative enforcement. The City adopted its administrative citation ordinance on May 27, 2009, and is codified in Section 1.03.080 of the Wildomar Municipal Code. Under this procedure, the City must first issue a notice of violation to the offenders and if the violation is not remedied in the period stated in the notice, and administrative citation may then issue, along with the applicable penalties. The penalty for the first violation is $100, $200 for the second violation, and $500 for the third and subsequent violations of the same ordinance within one year. Section 1.03.080 prescribes an appeal procedure.

D. How can the City Generate Revenue from Medical Marijuana Uses?

The City Council is considering adopting an ordinance permitting and regulating medical marijuana dispensaries within the City of Wildomar. One regulation that the City Council is considering is limiting the total number of medical marijuana dispensaries that may legally operate in the City. The City has also expressed an interest in taxing medical marijuana dispensaries to generate revenue. This memorandum summarizes the approaches other cities have taken to tax medical marijuana dispensaries and limit the number of dispensaries in their jurisdictions and

presents the steps that the City would need to take to implement these kinds of regulations.

In July of 2009, the voters in the City of Oakland overwhelmingly approved an amendment to their business tax ordinance that added a new section applicable to "cannabis businesses" and taxing the gross receipts of such businesses at the rate of $18 per every $1000 of gross receipts, or fractional part thereof.[14] Previously, cannabis businesses were taxed at the rate of $1.20 per every $1,000 of gross receipts under the "general retail business" classification in the City's business tax ordinance.

The City of Oakland was the first city in the nation to tax medical marijuana, and to date no other cities have adopted such taxes. However, in California the cities of San Jose, Berkeley and Sacramento are all considering adopting tax ordinances. The City of San Jose and Sacramento are in the very early stages of this process. The City of San Jose held a stakeholders meeting on June 7, 2010, to get input from the community to assist in their preparation of a draft tax ordinance. Sacramento officials had not yet brought an ordinance or resolution to the City Council for consideration; a recommendation was made to the City Council to consider adopting a business license tax or local sales tax on medical marijuana dispensaries as part of the City's budget hearings. The City of Berkeley is much farther along in the process of adopting a tax on medical marijuana dispensaries. Berkeley hopes to have the tax on the ballot this November. The draft ordinance prepared by the Berkeley city attorney mirrors the Oakland ordinance except that it includes an alternative tax formula for cannabis businesses that are also nonprofit organizations. Nonprofit organization cannabis businesses will be taxed based on the square footage of the business at the rate of $25 per square foot. Berkeley included this provision in its draft ordinance because the California Constitution exempts nonprofit organizations from any local tax based on gross receipts.[15]

Local government may impose taxes as expressly authorized by the Legislature.[16] The Legislature has authorized local governments to impose business license taxes and local sales and use taxes.[17] Any such tax imposed on medical marijuana dispensaries for the purpose of raising revenues for the City's general fund will be subject to the requirements of Proposition 218 (California Constitution Articles XIIIC and XIIID).

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[14] Oakland Municipal Code § 5.04.480.
[15] Cal. Const. Art. XIII, § 26; Cal. Gov. Code § 37101(c).
[16] Id. at § 24.
[17] Cal. Gov. Code § 37101(a).

> "No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote. . . . The election required by this subdivision shall be consolidated with a regularly scheduled general election for members of the governing body of the local government, except in cases of emergency declared by a unanimous vote of the governing body."[18]

The tax must be proposed by an ordinance or resolution approved by a 2/3rds vote of the City Council.[19] The ordinance or resolution must state the type of tax and rate of tax to be levied, the method of collection, and the date upon which an election shall be held on the issue.[20] The Oakland tax was presented to the voters at a special election because the Oakland City Council previously adopted a resolution declaring the existence of a fiscal emergency in the city and found that this fiscal emergency necessitating asking the voters to approve the increased tax before the next regular election.

In summary, the City may impose a tax on medical marijuana dispensaries to generate revenues for the City's general fund. However, the tax must be approved by a 2/3rds vote of the City Council and by a majority vote of the electorate. In addition, the City may limit the number of medical marijuana dispensaries that operate in the City and may establish procedures for determining who gets a permit in the event that there are more applicants than there are permits available.

4. ROLE OF THE PLANNING COMMISSION

Some questions have apparently arisen with regard to the process that occurred upon presentation of the proposed ordinance to the Planning Commission. Some individuals apparently believe that the Planning Commission went beyond its authority in listening to and considering various statements that were made in the proceedings and that somehow the "evidence" presented was not properly addressed. In order to evaluate the process that occurred, it is necessary to understand the role of the Planning Commission and the nature of the decision that was made.

The Planning Commission is a legislative body that has been created by the City Council to approve certain land use matters and to advise on other land use matters. The City Council has therefore delegated limited authority to the Planning Commission

[18] Cal. Const. Art. XIIIC, § 2(b).
[19] Cal. Gov. Code § 53724.
[20] Id.

in the area of land use. Projects that come before the Planning Commission are reviewed and either approved or denied outright or reviewed on an advisory basis and referred to the City Council for final decision making in accord with the Council's direction. Some of these decisions are what are called quasi-judicial and others are legislative in nature.

In general, legislative decisions involve adoption of local laws, policies or regulations of general applicability (*Karlson v. City of Camarillo* (1980) 100 Cal.App.3d 789, 799). Quasi-judicial decisions, by contrast, involve application of pre-existing laws, policies or regulations in a specific factual context (*San Diego Bldg. Contractors Ass'n. v. City Council* (1974) 13 Cal.3d 205,211).

Quasi-judicial decisions are those where either the Planning Commission or the City Council reviews a specific project to determine whether it complies with existing zoning, general plan and other regulatory standards within the community. In those cases, the rules have already been set and the Planning Commission or City Council essentially judges whether the rules have been complied with in making its decision. Courts have established a generic rule that variances, use permits, subdivision maps and similar proceedings are necessarily quasi-judicial (*Arnel Dev. Co. v. City of Costa Mesa* (1980) 28 Cal.3d 511, 519 n. 8).

Legislative decisions, in contrast, are those decisions that create new policies, law or regulations for the City. Only the City Council has the legislative authority to enact such ordinances. All zoning ordinances must be presented to the Planning Commission for review at a noticed public hearing and the Planning Commission then makes a recommendation on the proposed ordinance to the City Council (Government Code §§65854, 65855).

The City Council then has the legislative authority to approve, deny or amend the proposed ordinance, also through the public hearing process (Government Code §65856). If the City Council decides to amend the proposed ordinance in a manner that was not previously considered by the Planning Commission, the proposed ordinance must be referred to the Planning Commission for a report and recommendation, but no public hearing is required. If the Planning Commission does not make a recommendation within 40 days, the proposed modification is deemed approved (Government Code §65857).

The difference between quasi-judicial actions and legislative actions is significant. In a quasi-judicial action, due process rights attach to applicants and substantial evidence must appear in the record to support any decision that is made.

Because of this, Planning Commissioners and City Councilmembers must disclose *ex parte* communications that have occurred outside the public hearing process and must make findings in support of the actions they take.

When either the Planning Commission or the City Council is acting in a legislative capacity, however, there are essentially no standards that must be observed other than procedural requirements for adopting zoning ordinances. Evidence is not required to be presented or weighed and balanced to justify a change in zoning procedures or standards. In fact, a court of law may not even inquire into the actual motivations behind a legislative decision of a public body. Even if there are strong facts presented during public comment or by staff that run contrary to the decision that is made, there is no basis for legal challenge of a legislative action. After enactment of an ordinance it may be challenged on constitutional or other grounds, but not on the basis of the motivation behind its enactment.

In the present situation, because the Planning Commission was acting in its legislative capacity to advise the City Council on a policy matter with regard to the proposed ordinance, it had full authority to consider, reject, accept, refute or ignore information presented at the hearing on the proposed medical marijuana ordinance. Whether the presentations were accurate or fair is irrelevant to the decision that was made.

5. WHAT ARE THE RISKS OF APPROVING THE ORDINANCE?

The major risk is that the ordinance may be found to be invalid because of federal preemption. Although the court of appeal in *Anaheim* did not declare the ordinance there invalid, it did find that the federal law did not preempt state control of medical marijuana uses. The arguments advanced for this position were, in our opinion, somewhat attenuated, but nevertheless, they are on record and will have to be overturned or reversed in later proceedings if federal preemption is to be taken seriously as a mandate for prohibiting all use of marijuana under state law.

In addition to the federal preemption issue, those applying for permits from the City may challenge any negative determination depending on the even-handedness of the process leading to action by the City. Having clear, objective standards for issuance of permits for medical marijuana collectives and cooperatives and their related dispensaries will be critical to limiting the liability issues the City may face in the future.

Whatever system the City decides to enact for selecting a limited number of applicants to whom permits will be issued must be fair and equitable. At the present

time, we are informed that there are more than 20 applicants in Wildomar waiting to see how the City proceeds with regard to adoption of the proposed ordinance.

There may also be secondary effects associated with the medical marijuana dispensaries once they are approved and functioning. Concerns have been raised in some jurisdictions that threats of increased crime near or at medical marijuana facilities.

6. WHAT ARE THE RISKS OF NOT APPROVING THE ORDINANCE?

The major risk is that the ordinance that is currently in place prohibiting establishment of medical marijuana dispensaries in Wildomar may be invalidated and no regulations will exist within the City. Should that occur, the City may wish to impose a moratorium on medical marijuana uses pending review of its zoning codes and development of new regulations. Such a moratorium could extend the time for adoption of new rules a maximum of two years.

In view of the recent ruling in the *Anaheim* case, potential liability associated with a civil rights claim has been dramatically reduced because the court of appeal has held that a prohibition against medical marijuana collectives and cooperatives and their related dispensaries do not violate the civil rights provisions of the Unruh Act. As a result of that ruling, the effect of a successful legal challenge to the City's current law would be limited to invalidation of the law and potentially liability for attorneys fees.

7. WHAT HAPPENS IF THE CITY APPROVES THE ORDINANCE AND MARIJUANA IS LEGALIZED FOR ADULT USE IN CALIFORNIA IN NOVEMBER OF 2010?

Proposition 19, which will appear on the November 2, 2010 ballot, if approved, will legalize the cultivation and possession of marijuana for personal consumption. The proposition, however, does not make retail sales automatically legal. Under the measure, local governments are authorized to adopt an ordinance that allows retail sales, but they are not required to adopt such ordinances. Here's what the initiative says.

> "Notwithstanding any other provision of state or local law, a local government may adopt ordinances, regulations, or other acts having the force of law to control, license, regulate, permit or otherwise authorize, with conditions, the following:

1. Cultivation, processing, distribution, the safe and secure transportation, sale and possession for sale of cannabis, but only by persons and in amounts lawfully authorized;

2. Retail sale of not more than one ounce per transaction, in licensed premises, to persons 21 years or older, for personal consumption and not for resale;

3. Appropriate controls on cultivation, transportation, sales, and consumption of cannabis to strictly prohibit access to cannabis by persons under the age of 21;

4. Age limits and controls to ensure that all persons present in, employed by, or in any way involved in the operation of, any such licensed premises are 21 or older;

5. Consumption of cannabis within licensed premises;

6. Safe and secure transportation of cannabis from a licensed premises for cultivation or processing, to a licensed premises for sale or on-premises consumption of cannabis;

7. Prohibit and punish through civil fines or other remedies the possession, sale, possession for sale, cultivation, processing, or transportation of cannabis that was not obtained lawfully from a person pursuant to this section or section 11300;

8. Appropriate controls on licensed premises for sale, cultivation, processing, or sale and on-premises consumption, of cannabis, including limits on zoning and land use, locations, size, hours of operation, occupancy, protection of adjoining and nearby properties and persons from unwanted exposure, advertising, signs and displays, and other controls necessary for protection of the public health and welfare;

9. Appropriate environmental and public health controls to ensure that any licensed premises minimizes any harm to the environment, adjoining and nearby landowners, and persons passing by;

10. Appropriate controls to restrict public displays, or public consumption of cannabis;

11. Appropriate taxes or fees pursuant to section 11302;

12. Such larger amounts as the local authority deems appropriate and proper under local circumstances, than those established under section 11300(a) for personal possession and cultivation, or under this section for commercial cultivation, processing, transportation and sale by persons authorized to do so under this section;

13. Any other appropriate controls necessary for protection of the public health and welfare."

The regulations contained in the proposed ordinance for Wildomar imposes land use restrictions on the location of dispensaries and appears to fully comply with the provisions of Proposition 19. While Proposition 19 may result in more applications to open dispensaries in Wildomar, it will not otherwise affect the regulations that have been proposed.

Respectfully submitted,

Julie Biggs

Julie Hayward Biggs, City Attorney
Erica Ball, Deputy City Attorney
of Burke, Williams & Sorensen, LLP

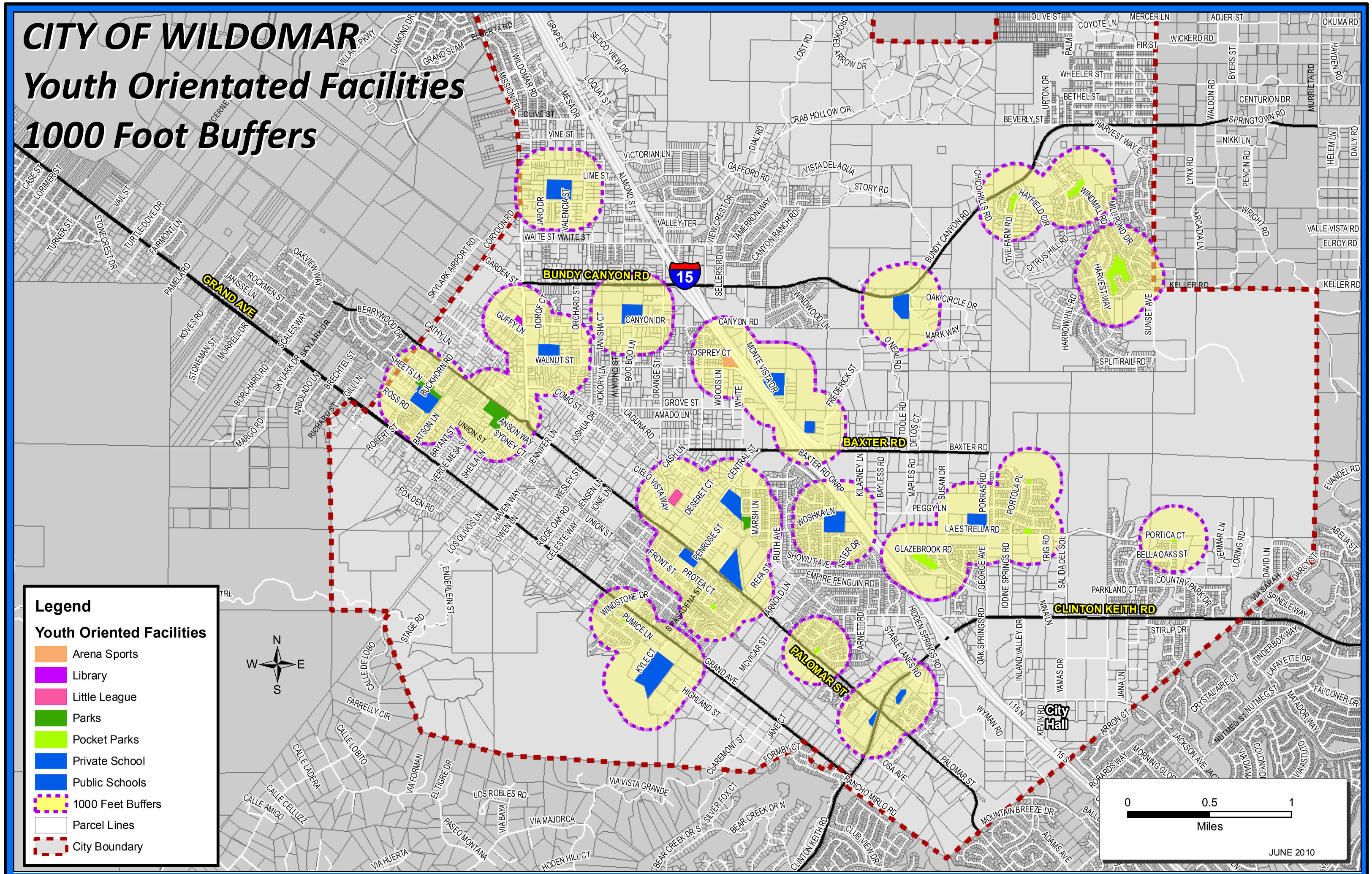
ATTACHMENT K

CITIES AND COUNTIES WITH ORDINANCES THAT ALLOW MEDICAL MARIJUANA DISPENSARIES/COOPERATIVES/COLLECTIVES

CITY/COUNTY	USES THE TERM "DISPENSARY"	USES "DISPENSARY" BUT DEFINES IT AS A "COOPERATIVE" OR "COLLECTIVE"	USES "COOPERATIVE" OR "COLLECTIVE"	OTHER
Albany	X			
Angels Camp	X			
Berkeley	X		X	
Citrus Heights	X			
Cotati	X	X	X	
Diamond Bar	X			
Dunsmuir	X			
Elk Grove				X
Eureka			X	X
Fort Bragg	X			
Jackson	X			
Laguna Woods	X			
Long Beach			X	
Los Angeles			X	
Malibu	X			
Martinez	X			
Oakland		X	X	
Palm Springs			X	
Placerville		X		
Plymouth	X			
Redding			X	
Ripon	X			
San Francisco		X		
San Mateo			X	
Santa Barbara		X	X	
Santa Cruz	X			
Santa Rosa		X	X	
Sebastopol		X	X	
Selma	X		X	
Sutter Creek	X			
Tulare	X		X	
Visalia	X		X	
West Hollywood	X	X		
Whittier	X			
Alameda County	X			
Calaveras County	X			
Kern County	X			
Los Angeles County	X			
San Luis Obispo Co	X			
San Mateo County			X	
Santa Barbara Co		X		
Santa Clara County	X			
Sonoma County		X		
TOTALS:	**27**	**10**	**16**	**2**

ATTACHMENT L

CITY OF WILDOMAR
Youth Orientated Facilities
1000 Foot Buffers



CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #3.1
GENERAL BUSINESS
Meeting Date: September 8, 2010

TO: Mayor and City Council

FROM: Gary Nordquist, Assistant City Manager

SUBJECT: Intent to Participate in the Southwest Communities Financing Authority

STAFF REPORT

RECOMMENDATION:
That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER OF INTENT, IDENTIFYING DESIRED CONDITIONS, FOR THE CITY OF WILDOMAR TO JOIN THE SOUTHWEST COMMUNITIES FINANCING AUTHORITY

BACKGROUND:
In April 2005, the cities of Canyon Lake, Lake Elsinore, Murrieta, Temecula and Riverside County formed the Southwest Communities Finance Authority (SCFA) as a Joint Powers Authority (JPA) as they had mutual interests in joining together to develop within the geographic area common to all cities, a plan or program to construct and operate an animal shelter. During January 2006, the SCFA entered into a Memorandum of Understanding (MOU) with Animal Friends of the Valleys (AFV).

Key points of the MOU were that AFV would:

- Provide 3+ acres for a shelter site;
- Provide plans for an animal shelter;
- Own the shelter once bonds issued to construct the shelter were paid off;
- Continue to provide sheltering services to member agencies after AFV takes ownership.

The County of Riverside issued $15.1 million of bonds on behalf of the SCFA for construction of the 32,000 square foot shelter located on Mission Trail in the area of Wildomar. Construction began in 2007 and is planned to be completed and operational by October 2010.

All members of the SCFA proportionately share the Repayment of Debt, Administrative Costs, Operational Costs, Credit Enhancement Fees and Field Service Costs. Most costs are allocated based on each members anticipated usage of the shelter (number of animals sheltered by each agency).

At the time these plans, allocations and decisions were being made, Wildomar was still part of the unincorporated area of Riverside County. With Riverside County acting on

behalf of the Wildomar area, it was assumed that this area would share in the costs of the SCFA and animal controls services. After Wildomar incorporated in July 2008 and was not in the SCFA, their original financial plan was no longer appropriate. Consequently, SCFA has encouraged the City of Wildomar to join and participate as a full member of the JPA. The initial cost for participation and field service was over $342,000. The City of Wildomar's cost for similar services was $172,000 in the last fiscal year.

DISCUSION:

The City of Wildomar, since August 2009 has contracted with AFV, from their current location in the City of Lake Elsinore for animal sheltering and field services. The monthly cost is $7,500 ($90,000/year) plus AFV retains all City revenues for animal licensing and citations (approx. $82,250 annually). The equivalent annual cost is $172,250 excluding the credit for revenues. When AFV relocates to the new facility, the current agreement will no longer apply and the City of Wildomar will need to enter into a new arrangement for animal control services.

During the past year, the City's Ad-Hoc Animal Control Committee, consisting of Mayor Bridgette Moore and City Council Member Bob Cashman, have been researching various options for this service. The Committee has participated in meetings with two subcommittee members of the SCFA. The initial cost for services totaled $424,195 (SCFA $274,715 and AFV $149,480) with revenues estimated at $82,250 for a net cost of $341,945. Considering the City's financial position and potential fiscal impacts of pending court cases, this initial cost for services had to be revised. After several meetings at a staff level and a final meeting with the joint subcommittee of the City and the JPA, a concept of costs, conditions and services for the City of Wildomar to join the SCFA was ready for board members consideration.

The initial step in this process is for the City of Wildomar's Council to agree to the negotiated deal points for membership. Following Council action each of the SCFA member's Councils or Boards will be asked to agree to the conditions of Wildomar's membership. Following approvals, a contract will be presented to the City of Wildomar and the SCFA Board.

The conditions for the City of Wildomar's Council to review and approve are:

1. Based on percentage of usage (12.4%), Annual Debt /Lease Payment will be $142,700 per year.
2. The County's annual administrative fee of $5,000 per year is waived.
3. The annual Housing costs (shelter operations); based on usage will be $108,646 per year.
4. County Credit Enhancement Fees of $33,965 will be credited as a loan to the City.
5. Municipal Services Fiscal Impact Fee will be credited to the City of Wildomar from the first $6,000 annually generated from the facility.
6. The City agrees increasing animal license fees (estimated at $17,345).
7. Animal Field Services hours will be reduced and agrees to pay $75,000 annually.
8. Revenues of $82,250 will be retained by AFV to be used to offset operations annually.

9. Indemnify the City of Wildomar.
10. Within 1 year, review the cost allocation methodology.

FISCAL IMPACT:

The recommended costs are within the Adopted FY 2010/11 Budget for Animal Control Services.

ALTERNATIVES:

1. Take no action
2. Provide staff with further direction.

Submitted by:	Approved by:
_____	_____
Gary Nordquist Assistant City Manager	Frank Oviedo City Manager

Attachment: (1*)* *Wildomar's Cost Proposal.*

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, AUTHORIZING THE CITY MANAGER TO EXECUTE A LETTER OF INTENT, IDENTIFYING DESIRED CONDITIONS, FOR THE CITY OF WILDOMAR TO JOIN THE SOUTHWEST COMMUNITIES FINANCIAL AUTHORITY.

WHEREAS, the City of Wildomar intends to join the Southwest Communities Financing Authority, which provides for the sheltering of animals within the city limits of Wildomar; and

WHEREAS, the City of Wildomar's intention to participate as a member of the SCFA is conditioned upon the following:

1. The cost allocation percentage of usage for FY 2010-11 is 12.4%;
2. Annual Debt /Lease Payment will not exceed $142,700 for FY 2010-11.
3. The County's annual administrative fee is not applied.
4. The annual Housing costs (shelter operations); based on usage will not exceed $108,646 for FY 2010-11.
5. County Credit Enhancement Fees are not applied.
6. SCFA recognizes the shelter's fiscal impact on the City of Wildomar's municipal services and will make best efforts to mitigate this impact.
7. The City of Wildomar will make best efforts to increase animal control service revenues
8. SCFA indemnifies the City of Wildomar.
9. Within 1 year, SCFA will review the cost allocation methodology.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA AS FOLLOWS:

Authorizes the City Manager to execute a letter of intent with SCFA and the City of Wildomar.

PASSED, APPROVED, AND ADOPTED this 8th day of September, 2010.

_____
Bridgette Moore
Mayor

APPROVED AS TO FORM:

_____
Julie Hayward Biggs
City Attorney

ATTEST:

_____
Debbie A. Lee, CMC
City Clerk

Attachment A

Southwest Communities Financing Authority

City of Wildomar's Costs as Member

		Lease Payment	Operational Costs (1)	Total Lease Pmt
Lake Elsinore	25.1%	$301,560	$251,355	$552,915
Temecula	15.6%	186,900	155,808	342,708
Murrieta	16.9%	202,335	168,668	371,003
Canyon Lake	1.9%	22,470	18,705	41,175
County	28.1%	320,600	280,582	601,182
Wildomar	12.5%	149,835	124,880	274,715
	100.0%	$1,183,700	$1,000,000	$2,183,700

(1) Annual operational cost of $1 million is an estimate only.

Original Cost Presentation to Wildomar.

City of Wildomar
Animal Control Services

	Wildomar's Proposal	Original Proposal
2009 Animal Percentage for Wildomar	***12.4%***	
Annual Debt/Lease Payment	$ 142,700	$ -
Annual Administrative (JPA Admin) Fees	-	-
Subtotal 1	**142,700**	**149,835**
Annual Housing(shelter op's) Costs	108,646	124,880
Subtotal 2	**251,346**	274,715
County's Credit Enhance Fee	(33,965)	
Subtotal 3	**217,381**	**274,715**
Wildomar's Municipal Services Impact Fee	(6,000)	
Subtotal 4	**211,381**	**274,715**
Annual Field Services	75,000	
License Revenue	(82,280)	
Subtotal 5	**204,101**	
Wildomars Increased Licensing Fees	(17,345)	
Annual Total	**$ 186,756**	
10 month Pro-Rated Cost	**$ 149,404.80**	
	10 month pro-rated cost	
	Op's Cost Reduced *50% Field Service* *License Fee Increased* *Allocation Formula Opener* *Indemnity* *Facilty Generated Costs/Fees to COW*	

CITY OF WILDOMAR – CITY COUNCIL
Agenda Item #3.2
GENERAL BUSINESS
Meeting Date: September 8, 2010

TO: Mayor and City Council

FROM: Gary Nordquist, Assistant City Manager

SUBJECT: Medical Benefits

STAFF REPORT

RECOMMENDATION:
That the City Council adopt a Resolution entitled:

RESOLUTION NO. 2010 - _____
A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS

BACKGROUND/DISCUSSION:
The City initially used an insurance broker to assist in securing health insurance benefits for the City. Currently, the City provides medical coverage to its Council Members and full time employees through Aetna. While Aetna is a well known provider of medical insurance, Council Members and full time employees are limited to one carrier. Furthermore, Aetna's quotes are based on gender and age for the City due to its "Small Group" rating. After conducting further research on the medical insurance benefits available to cities, quotes were obtained from California Public Employees Retirement System (CalPERS) Health and Alliant Insurance Services (risk pool).

CalPERS Health has medical plans and rates comparable to those of an independent insurance broker and provides a variety of plans for members (Kaiser, Blue Shield HMO and several PERS customized PPO plans. Should the City become a CalPERS Heath member, the City would enjoy the benefit of "Group Rates" which are available to all CalPERS participating agencies based on the county in which the city is located. This feature provides the City with the same opportunities and protection as large organizations, which will benefit the City during these uncertain times in this industry.

Alliant Insurance Services has a "risk pool" where members can also benefit from discounted pricing for medical, dental, vision, life, and long term disability benefits. The rates are group rates available to agencies who would like to join the joint powers authority. However, due to

Alliant's requirement of a 3 year contract, City staff is not recommending this as the preferred medical benefit program.

For cost comparison purposes, if an assumption is made that all current City employees are to switch their medical coverage to Kaiser (under CalPERS Health), at the same coverage level (single, 2 party or family) then the total cost of Kaiser and the total cost of the City's current medical plan, Aetna, is roughly the same amount, considering Kaiser includes vision coverage. The Kaiser program rates are at the midpoint of all CalPERS Health plans. Other medical plans offered by CalPERS Health include Blue Shield HMOs and PPOs.

Attachment A of this report illustrates this comparison of plans offered for select coverage options and also lists the CalPERS Health Premiums rate sheet for all plans offered.

Another feature of the CalPERS Health program is the retiree medical component and it's portability with other CalPERS agencies. Similar to the CalPERS retirement program a member can accumulate their years of membership within the CalPERS Health program and they would be credited with that time with reciprocating agencies. This would be an enhancement to recruiting future staff.

The CalPERS Health program requires that the City be subject to the Public Employees' Medical and Hospital Care Act (PEMHCA) and to fix the employer's contribution for employees and annuitants at different amounts. City staff is recommending employer's contribution for employees to be set at the $105 minimum per month and the $1 minimum per month per retiree without a vesting clause. These amounts will be increased annually by the 5% minimum of the monthly contribution amounts stated above multiplied by the number of years of the City's participation in PEMHCA (CalPERS Health).

Attachment B provides an example of this payment schedule. The $105 component would be included in the monthly premium rate which is limited to the City's $1,200 per month cafeteria plan allowance. The $1 per month contribution to a future City retiree would come from the City's Other Public Employee Benefits fund which will be funded from savings of the City's cafeteria plan allowance. .

Based on a comparison between CalPERS Health, Alliant Insurance Services and Aetna, CalPERS Health offers the best variety of medical carriers, plans and rates without the requirement of a contract for any length of time. The plan also provides the retiree with an opportunity for a defined health care program at minimal expense to the city for partial premium contributions. Therefore, staff recommends the City Council contract with CalPERS Health and adopt Resolution No. 2010-___ as required by CalPERS Health for the City's medical benefits.

In the upcoming months, City staff will be revisiting other employee insurance benefits (dental, vision, life insurance, long term disability and other ancillary benefits) for price comparison and plan options.

FISCAL IMPACTS: There is no fiscal impact as the costs of the recommendations are within the adopted budget for medical benefits. Additionally, in the next few months, City staff will be revisiting other employee insurance benefits (dental, vision, life insurance, long term disability and other ancillary benefits) for price comparison, plan options and cost reductions.

ALTERNATIVES:

1. Take no action
2. Provide staff with further direction.

Submitted by:	Approved by:
_____	_____
Gary Nordquist	Frank Oviedo
Assistant City Manager	City Manager

Attachments:

Resolution No. 2010-____

A. Comparison of Medical Plans and Rates.

B. 20 year Schedule of Estimated Monthly Costs and Payments.

RESOLUTION NO. 2010 - _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WILDOMAR, CALIFORNIA, ELECTING TO BE SUBJECT TO PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT AND FIXING THE EMPLOYER'S CONTRIBUTION FOR EMPLOYEES AND THE EMPLOYER'S CONTRIBUTION FOR ANNUITANTS AT DIFFERENT AMOUNTS

WHEREAS, Government Code Section 22922(b) provides the benefits of the Public Employees' Medical and Hospital Care Act to employees and annuitants of local agencies contracting with the Public Employees' Retirement System on proper application by a local agency; and

WHEREAS, Government Code Section 22892(c) provides that a contracting agency may fix the amount of the employer's contribution for employees and the employer's contribution for annuitants at different amounts, provided that the monthly contribution for annuitants is annually increased to equal an amount not less than the number of years the contracting agency has been subject to this subdivision multiplied by 5 percent of the current monthly contribution for employees, until such time as the amounts are equal; and

WHEREAS, the City of Wildomar, hereinafter referred to as Public Agency is a local agency contracting with the Public Employees' Retirement System; and

WHEREAS, the Public Agency desires to obtain for its employees and annuitants the benefit of the Act and to accept the liabilities and obligations of an employer under the Act and Regulations.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

A. That the Public Agency elect, and it does hereby elect, to be subject to the provisions of the Act; and

B. That the employer's contribution for each employee shall be the amount necessary to pay the full cost of his enrollment, including the enrollment of his family members in a health benefits plan up to a maximum of $105.00 per month; and

C. That the employer's contribution for each annuitant shall be the amount necessary to pay the cost of his enrollment, including the enrollment of his family members, in a health benefits plan up to a maximum of $1.00 per month; and

D. That the employer's contribution for each annuitant shall be increased annually by five percent of the monthly contribution for employees, multiplied by number of years of employer's participation in PEMHCA, until such time as the contributions are equal;

   And that the contributions for employees and annuitants shall be in addition to those amounts contributed by the Public Agency for administrative fees and to the Contingency Reserve Fund; and

E. That the City of Wildomar has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above; and

F. That the executive body appoint and direct, and it does hereby appoint and direct, Assistant City Manager to file with the Board of Administration of the Public Employees' Retirement System a verified copy of this Resolution, and to perform on behalf of said Public Agency all functions required of it under the Act and Regulations of the Board of Administration; and

G. That coverage under the Act be effective on October 1, 2010.

PASSED, APPROVED AND ADOPTED this 8th day of September, 2010.

_____
Bridgette Moore
Mayor

APPROVED AS TO FORM:

_____
Julie Hayward Biggs
City Attorney

ATTEST:

_____
Debbie A. Lee, CMC
City Clerk

Attachment A

Attachment A

	CalPERS Programs			Alliant	Aetna Programs			
	PERS Blue Shield Access + (HMO)	Kaiser	PERS Choice	Premium HMO	HMO $20	HMO $30	MC $1000 70/50	MC $500 80/60
Single	$ 567.87	$ 477.95	$ 516.28	$ 545.76	$ 538.00		$ 667.00	
2 Party	$ 1,135.74	$ 955.90	$ 1,032.56	$ 1,092.66		$ 1,409.00		
Family	$ 1,476.46	$ 1,242.67	$ 1,342.33	$ 1,420.11	$ 1,042.00	$ 749.00		$ 921.00

Note: Not all plans are listed. Only comparable HMO and PPO plans are listed above for CalPERS and Alliant.
Aetna rates are based on male/female and age range.
Kaiser rates include vision coverage.
All rates are for the 2011 plan year.

Assumption: If the current coverage of employees (single, 2 party, family) under the Aetna medical plans were extended to Kaiser coverage the total cost to the employer would be nearly the same.

Employee	Kaiser	Aetna	Guardian Vision	Total Aetna & Guardian
1	$ 1,242.67	$ 1,042.00	$ 22.91	$ 1,064.91
2	$ 477.95	$ 667.00	$ 22.91	$ 689.91
3	$ 1,242.67	$ 749.00	$ 22.91	$ 771.91
4	$ 477.95	$ 538.00	$ 12.61	$ 550.61
5	$ 1,242.67	$ 921.00	$ 33.19	$ 954.19
6	$ 955.90	$ 1,409.00	$ 22.91	$ 1,431.91
	$ 5,639.81	$ 5,326.00	$ 137.44	**$ 5,463.44**

CalPERS 2011 Health Premiums - Regional Contracting Agencies Only

Basic	2010			2011		
	Single	*2-Party*	*Family*	*Single*	*2-Party*	*Family*
Basic Premium Rates - Bay Area						
Alameda, Amador, Contra Costa, Marin, Napa, Nevada, San Francisco, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Solano, Sonoma, Sutter, Yolo, Yuba						
Blue Shield Access+	$577.33	$1,154.66	$1,501.06	$675.51	$1,351.02	$1,756.33
Blue Shield NetValue	500.35	1,000.70	1,300.91	581.24	1,162.48	1,511.22
Kaiser CA	532.56	1,065.12	1,384.66	568.99	1,137.98	1,479.37
PERS Choice	508.74	1,017.48	1,322.72	563.40	1,126.80	1,464.84
PERS Select	474.93	949.86	1,234.82	492.68	985.36	1,280.97
PERSCare	868.17	1,736.34	2,257.24	893.95	1,787.90	2,324.27
Basic Premium Rates - Sacramento						
El Dorado, Placer, Sacramento						
Blue Shield Access+	$519.57	$1,039.14	$1,350.88	$609.14	$1,218.28	$1,583.76
Blue Shield NetValue	473.48	946.96	1,231.05	541.43	1,082.86	1,407.72
Kaiser CA	502.56	1,005.12	1,306.66	524.51	1,049.02	1,363.73
PERS Choice	458.36	916.72	1,191.74	524.04	1,048.08	1,362.50
PERS Select	427.90	855.80	1,112.54	458.27	916.54	1,191.50
PERSCare	782.19	1,564.38	2,033.69	831.50	1,663.00	2,161.90
Basic Premium Rates - Los Angeles Area						
Los Angeles, San Bernardino, Ventura						
Blue Shield Access+	$424.69	$849.38	$1,104.19	$496.93	$993.86	$1,292.02
Blue Shield NetValue	368.06	736.12	956.96	427.58	855.16	1,111.71
Kaiser CA	413.17	826.34	1,074.24	434.00	868.00	1,128.40
PERS Choice	452.41	904.82	1,176.27	496.15	992.30	1,289.99
PERS Select	422.35	844.70	1,098.11	433.87	867.74	1,128.06
PERSCare	772.05	1,544.10	2,007.33	787.24	1,574.48	2,046.82
Basic Premium Rates - Other Southern California						
Fresno, Imperial, Inyo, Kern, Kings, Madera, Riverside, Orange, San Diego, San Luis Obispo, Santa Barbara, Tulare						
Blue Shield Access+	$485.29	$970.58	$1,261.75	$567.87	$1,135.74	$1,476.46
Blue Shield NetValue	420.59	841.18	1,093.53	488.62	977.24	1,270.41
Kaiser CA	454.99	909.98	1,182.97	477.95	955.90	1,242.67
PERS Choice	472.83	945.66	1,229.36	516.28	1,032.56	1,342.33
PERS Select	441.41	882.82	1,147.67	451.48	902.96	1,173.85
PERSCare	806.89	1,613.78	2,097.91	819.18	1,638.36	2,129.87
Basic Premium Rates - Other Northern California						
Alpine, Butte, Calaveras, Colusa, Del Norte, Glenn, Humboldt, Lake, Lassen, Mariposa, Mendocino, Merced, Modoc, Mono, Monterey, Plumas, San Benito, Shasta, Sierra, Siskiyou, Stanislaus, Tehama, Trinity, Tuolumne						
Blue Shield Access+	$586.02	$1,172.04	$1,523.65	$685.67	$1,371.34	$1,782.74
Kaiser CA	539.49	1,078.98	1,402.67	574.32	1,148.64	1,493.23
PERS Choice	492.41	984.82	1,280.27	548.78	1,097.56	1,426.83
PERS Select	459.69	919.38	1,195.19	479.90	959.80	1,247.74
PERSCare	840.31	1,680.62	2,184.81	870.76	1,741.52	2,263.98
Basic Premium Rates - Out of State						
Kaiser/Out of State	$724.69	$1,449.38	$1,884.19	$785.28	$1,570.56	$2,041.73
PERS Choice	579.58	1,159.16	1,506.91	636.97	1,273.94	1,656.12
PERSCare	989.07	1,978.14	2,571.58	1,010.68	2,021.36	2,627.77

Medicare	2010			2011		
	Single	*2-Party*	*Family*	*Single*	*2-Party*	*Family*
Medicare Premium Rates - All Regions						
Blue Shield Access+	$299.53	$599.06	$898.59	$337.88	$675.76	$1,013.64
Blue Shield NetValue	299.53	599.06	898.59	337.88	675.76	1,013.64
Kaiser CA	298.36	596.72	895.08	282.30	564.60	846.90
Kaiser/Out of State	319.34	638.68	958.02	354.81	709.62	1,064.43
PERS Choice	356.09	712.18	1,068.27	375.88	751.76	1,127.64
PERS Select	356.09	712.18	1,068.27	375.88	751.76	1,127.64
PERSCare	410.60	821.20	1,231.80	433.66	867.32	1,300.98

Basic	2010			2011		
	Single	*2-Party*	*Family*	*Single*	*2-Party*	*Family*
PORAC	484.00	906.00	1,151.00	527.00	987.00	1,254.00

Medicare	2010			2011		
	Single	*2-Party*	*Family*	*Single*	*2-Party*	*Family*
PORAC	363.00	723.00	1,157.00	418.00	833.00	1,331.00

Attachment B

Attachment B

Assumption

Adjustment in Medical Care Component (for years 2011 through 2020): 5.00%

												Estimates calculated by City based on $7 increase per year on active employees									
Year	**2010**	**2011**	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**
Year in Program	0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Required minimum monthly contribution for active employees (Amount is included as part of monthly allowance)	$105	$108	$113	$119	$125	$131	$138	$145	$152	$160	$168	$175	$182	$189	$196	$203	$210	$217	$224	$231	$238
Minimum required monthly contribution for retirees	$1.00	$5.40	$11.34	$17.86	$25.00	$32.82	$41.35	$50.66	$60.79	$71.80	$83.77	$96.00	$108.93	$122.55	$136.88	$151.91	$167.63	$184.06	$201.19	$219.02	$237.54
Minimum required annual contribution for retirees	$12.00	$64.80	$136.08	$214.33	$300.06	$393.82	$496.22	$607.87	$729.44	$861.65	$1,005.26	$1,151.99	$1,307.11	$1,470.64	$1,642.56	$1,822.89	$2,011.62	$2,208.74	$2,414.27	$2,628.20	$2,850.52
Percent of Active Employee Contribution	0%	5%	10%	15%	20%	25%	30%	35%	40%	45%	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%

Note: For years 2011 through 2020, the minimum active employee contribution are only estimates based on the "Adjustment in Medical Care Component."

Example: For an employee who has worked at the City for 10 years and retires, the City would be required to pay $83.77 towards that retiree's medical insurance premium.