

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept.: City Manager
Subject: CONSIDERATION OF ORDINANCE
PROHIBITING THE ESTABLISHMENT
AND OPERATION OF MEDICAL
MARIJUANA DISPENSARIES

From: Thomas F. Nixon
Dept.: City Attorney
Date: September 23, 2008

OBJECTIVE

To transmit a recommendation from the Planning Commission for the approval of an ordinance prohibiting the establishment and operation of medical marijuana dispensaries.

BACKGROUND/DISCUSSION

On September 4, 2008, the Planning Commission recommended adoption of an ordinance prohibiting the establishment and operation of medical marijuana dispensaries in the City.

Proposition 215, the Compassionate Use Act of 1996 (the "Act"), allows the personal possession and cultivation of marijuana for seriously ill persons where that use is deemed appropriate and recommended by a physician. The Act provides limited immunity for the patient to raise a medical use defense to certain existing California criminal statutes relating to marijuana possession, use and cultivation.

As is discussed in the attached memorandum of Police Chief Joe Polisar and the documents which have been provided to the City Council and made available for public review in the City Clerk's office, many communities in which medical marijuana dispensaries have been located in California have experienced substantial adverse secondary impacts from the operation of these dispensaries, including but not limited to robberies, thefts, violent crimes and public use of marijuana in the vicinity of dispensaries. In addition, nearby businesses have suffered substantial impacts from second-hand marijuana smoke and loss of patrons due to the dispensaries. An index of the documents previously provided to the City Council and on file with the City Clerk's office is attached hereto.

Although the possession, use and cultivation of medical marijuana is illegal under federal law, nothing in the proposed ordinance is intended to enforce federal law regarding marijuana. Jurisdiction for such enforcement rests with federal authorities. The proposed ordinance does not prohibit persons in the City of Garden Grove from using or cultivating medical marijuana in accordance with the Act and the implementing

legislation enacted by the State. The ordinance simply recognizes the adverse secondary impacts to the health, safety and welfare of the community associated with medical marijuana dispensaries and, based on those impacts, amends the City's zoning code to prohibit the establishment and operation of medical marijuana dispensaries.

Numerous issues associated with medical marijuana have been the subject of litigation. The proposed ordinance is based in substantial part on the City of Anaheim's ordinance banning medical marijuana dispensaries. While that ordinance is currently the subject of a legal challenge, the Orange County Superior Court has upheld the ordinance. The matter is now on appeal.

FISCAL IMPACT

None

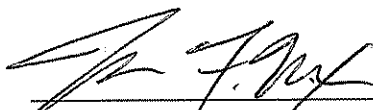
COMMUNITY VISION IMPLEMENTATION

The proposed ordinance seeks to maintain the health, safety and welfare of the community.

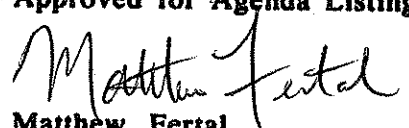
RECOMMENDATION

It is recommended that the City Council consider the adoption of the ordinance banning the establishment and operation of medical marijuana dispensaries. If the City Council determines that adoption of the ordinance is appropriate, it is recommended that the City Council:

- Read the ordinance by title only, waive further reading, and introduce the attached ordinance prohibiting the establishment and operation of medical marijuana dispensaries in the City.



Thomas F. Nixon
City Attorney

Approved for Agenda Listing

Matthew Fertal
City Manager

Attachments: Index of Documents
Supplemental Report of Police Chief Joe Polisar
Proposed Ordinance

Index of Documents

1. El Cerrito Police Department Memorandum of January 11, 2007
2. El Cerrito Police Department Memorandum of April 18, 2007
3. El Cerrito Police Department Memorandum of July 11, 2007
4. Medical Marijuana Dispensaries & Associated Issues – Presented to California Chiefs of Police Association (July to September 2007)
5. Medical Marijuana Dispensaries & Associated Issues – Presented to California Chiefs of Police Association (September to December 2007)
6. Medical Marijuana Dispensaries & Associated Issues – Presented to California Chiefs of Police Association (January to March 2008)
7. Medical Marijuana Dispensaries & Associated Issues – Presented to California Chiefs of Police Association (undated)
8. Report Re: Legal Issues Surrounding Medical Marijuana Dispensaries – Issued by City Attorney of the City of Los Angeles (10/19/06)
9. Memorandum of Randy Mendosa, Chief of Police of City of Arcata – Re Humbolt Marijuana Problems
10. Fullerton Police Department Memorandum re Medical Marijuana Dispensaries (9/20/06)
11. Fullerton Police Department Memorandum re Medical Marijuana Dispensaries (10/25/06)
12. Concord Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts (8/29/05)
13. Murder Investigation Report of Police Department of City of Pittsburg, California
14. Letter of T. Dewey, Chief of Police, Humbolt State University
15. Memorandum of J. DeRohan, Chief of Police, Morro Bay
16. Memorandum of M. Mayer re Regulating/Prohibiting Medical Marijuana Dispensaries (2/07)
17. Memorandum of Captain P. Hansen, Redding Police Department (4/26/07)
18. Memorandum of Captain Gary Jenkins, Claremont Police Department
19. Riverside County District Attorney’s Office White Paper re Medical Marijuana (9/06)
20. California Medical Marijuana Information
21. Qualified Patient’s Association v. City of Anaheim Minute Order (2/08/08)

City of Garden Grove

INTER-DEPARTMENT MEMORANDUM

To: Matthew Fertal
Dept.: City Manager
Subject: PROPOSED ORDINANCE BANNING
MEDICAL MARIJUANA DISPENSARIES

From: Joseph M. Polisar
Dept.: Police Department
Date: September 23, 2008

BACKGROUND

In 1996, California voters approved Proposition 215 (the Compassionate Use Act), which provides that seriously ill Californians have the right to obtain and use marijuana for medical purposes without criminal liability for violating certain other state laws prohibiting use, possession or cultivation of marijuana. The Compassionate Use Act allows for the use and cultivation of marijuana where medical use is deemed appropriate and has been recommended by a physician.

State law does not provide for the establishment of medical marijuana dispensaries. Currently, the City of Garden Grove's zoning code is silent in respect to this type of land use.

Over the past several months, the City has had numerous inquiries regarding the City's regulation of medical marijuana dispensaries and the potential for opening such facilities in the City. The City has previously declined to issue permits for such operations based upon the fact that the Garden Grove Municipal Code authorizes the City to decline to issue permits to a business which would be in violation of either federal or state law. A lawsuit was recently filed against the City of Orange, which has a similar provision in its municipal code, challenging that city's denial of a business license for a dispensary because its operation would be in violation of federal law. The initial ruling in that Orange County Superior Court case was adverse to the City of Orange.

Numerous cities have determined that there are adverse secondary impacts to the public health, safety and welfare resulting from the operation of medical marijuana dispensaries. As a result, Staff has been requested to prepare an amendment to the zoning code to address medical marijuana dispensaries.

DISCUSSION

I have closely followed the issue of the impacts that medical marijuana dispensaries are having in cities throughout California. The City Council has separately been provided with a substantial volume of documents prepared, in part, by police agencies throughout the state. This documentation establishes that the secondary impacts associated with the operation of medical marijuana dispensaries are virtually the same

wherever these facilities open. These businesses tend to be high volume cash operations. The marijuana sold also has a high value. Therefore, owners/employees of dispensaries are often heavily armed. Because of the value of the marijuana, the purchasers are often armed as well. The secondary impacts include the following:

- Armed robbery of dispensaries
- Armed robbery of customers leaving dispensaries
- Robberies of owners/employees/customers of dispensaries who are followed home after leaving a dispensary
- Murder of and injuries to both employees and customers of dispensaries
- Operators of dispensaries found to be felons, with drug trafficking and other serious criminal convictions
- Smoking of marijuana in public in the vicinity of dispensaries
- Loitering near dispensaries
- Owners of dispensaries threatened by drug-trafficking organizations which wish to take over the businesses
- Marijuana smoke from dispensaries permeating adjacent businesses and public hallways, adversely affecting the employees and patrons of nearby businesses and subjecting them to second-hand smoke, causing such businesses to lose customers
- Increased numbers of drivers under the influence of marijuana purchased from dispensaries
- Street dealers selling in the vicinity of dispensaries in an effort to undersell the dispensaries
- Street dealers with doctors' recommendations purchasing from dispensaries and then reselling on the street to those without recommendations

Merely listing these items does not really provide the full scope of the secondary impacts. For instance, in the two year period preceding January 2008, there were 13 robberies of medical marijuana dispensaries in the San Fernando Valley, along with 63 violent or major property crimes at these facilities. Not only are these facilities targets for street criminals, there is substantial evidence that organized crime is significantly involved in an increasing number of dispensaries. Money-laundering is a substantial component of many dispensary operations.

As recently as September 3, 2008, a marijuana dispensary (known as "Gifts From God Ministries") in Laguna Niguel was the subject of an armed robbery attempt. Two of the robbers were armed with semi-automatic weapons. A struggle occurred and shots were fired when a dispensary employee tackled one of the robbers and wrestled his gun

away. Three suspects were arrested in the event. A copy of the Orange County Register news article on the attempted robbery is Attachment 1.


Police investigations in dispensaries throughout the state have uncovered instances of doctors prescribing medical marijuana for just about any complaint or no complaint, not merely for serious illnesses. Some dispensaries have targeted high schools with their advertising, offering free medical marijuana evaluations and recommendations, and free samples.

Attachment 2 is an April 30, 2007 memorandum from Anaheim Police Chief John Welter which discusses the background of the Compassionate Use Act and many of the secondary impacts associated with the operation of medical marijuana dispensaries. I have reviewed Chief Welter's memorandum in detail and concur fully in his analysis and conclusions. I note that in his discussion on Page 7, Chief Welter refers to a lawsuit filed by the County of San Diego, among others, seeking to overturn the Compassionate Use Act, in part, based on inconsistency with federal law. Since the preparation of Chief Welter's memorandum, the Fourth District Court of Appeal has ruled against the County of San Diego in that litigation.

The California Attorney General's office recently stated that it will step up enforcement against dispensaries operating on a for-profit basis in violation of the Compassionate Use Act. The United States Attorney in Northern California stated that he believes 90% of the medical marijuana dispensaries are for-profit businesses. A copy of the August 26, 2008 Orange County Register article reporting the statements of the California Attorney General and the United States Attorney in Northern California is Attachment 3.

I concur with the observations made by many other police organizations, that crime associated with dispensaries is under-reported. Dispensary owners and operators do not want to bring their operations into public focus because of the nature of their operations.

Based upon my experience in law enforcement, I believe that, if the City authorizes the operation of medical marijuana dispensaries, the City is highly likely to experience exactly the same types of secondary impacts that have occurred throughout the state, and as close as next door in Anaheim.



Joseph M. Polisar
Chief of Police

Attachments: Orange County Register Article dated September 6, 2008
Memorandum of Anaheim Police Chief John Welter dated April 30, 2007
Orange County Register Article dated August 26, 2008

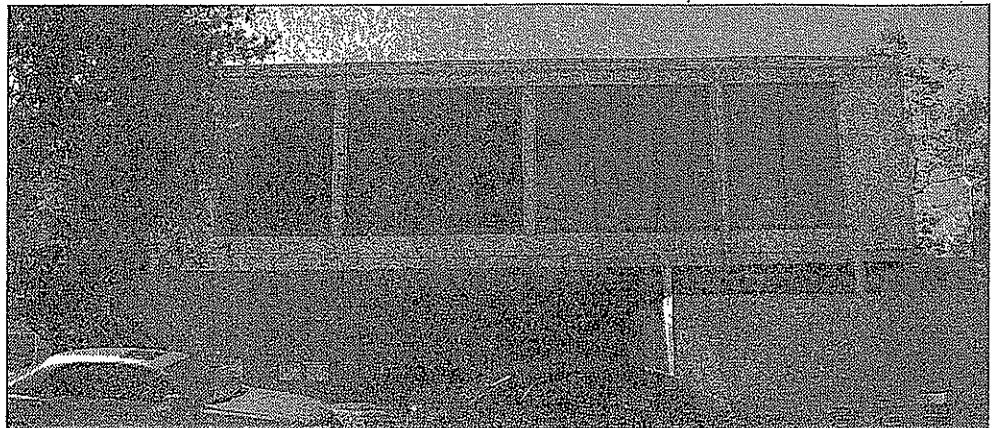
3 men arrested in attempt to rob marijuana dispensary

Authorities are also investigating the legitimacy of the Laguna Niguel operation.

By SALVADOR HERNANDEZ

and LOIS EVEZICH

THE ORANGE COUNTY REGISTER



LOIS EVEZICH, THE ORANGE COUNTY REGISTER

LAGUNA NIGUEL • Armed men searching for marijuana and cash at an office building Wednesday instead found themselves confronted by employees ready to protect their pot, authorities said.

One of the office workers tackled a gun-wielding robber and wrestled his gun away.

The Orange County Sheriff's Department arrested three men in the botched heist and are now wondering how a medical marijuana dispensary has been operating unnoticed.

Investigators have launched a parallel investigation into the legitimacy of the medical marijuana dispensary that was operating quietly at an industrial cul-de-sac in an unmarked suite, said Sgt. Andy Ferguson of the Sheriff's Department.

One man walked into the building at 27665 Forbes Road and at least three more tried to force their way inside the locked door about 3:30 p.m. Two of

Nondescript: The Laguna Niguel marijuana dispensary, named Gifts From God Ministries, operated out of this office building at 27665 Forbes Road.

them were armed with semi-automatic weapons, Ferguson said. Two shots were fired inside during the struggle but no one was wounded.

"The best we can tell, the people were there to steal the marijuana," Ferguson said.

But without knowing that the plain office suite was selling marijuana, visitors to the area would have no clue of what was sold inside, Ferguson said. Potential customers had to be buzzed in from employees inside.

The business is called Gifts From God Ministries. Laguna Niguel officials said



Collins



Munroe



York

they didn't know a medical marijuana facility leased the space, said Tim Casey, city manager.

The city received periodic inquiries over the years about applications and permits, but applicants were told the city's code prohibits such establishments.

According to city records, the space was registered by John Lana, who lists a San Clemente address. But in an Occupancy Information Form, the business description was left blank.

Calls to Lana's phone number listed in city records were not returned.

A representative of Transtar Inc., the managing company of the building, said the company had no comment on the incident or Gifts From God Ministries.

Investigators with the Sheriff's Department are looking for another two men involved in the robbery, Ferguson said.

No arrests have been made in the investigation of the facility.

Arsenio Lamont Collins, 18; Miles Kroy York, 19; and Michael Jeffrey Munroe, 20, were taken into custody on suspicion of attempted homicide, robbery and conspiracy to commit a crime.

"We don't have the whole story," Ferguson said.

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or 949-454-7361

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TREASURES



City of Anaheim
POLICE DEPARTMENT
Special Operations Division

To: Dave Morgan, City Manager
From: Chief John Welter
Date: April 30, 2007
RE: **Medical Marijuana Dispensary (MMD) Ban Ordinance**

PROPOSITION 215

Proposition 215, the Compassionate Use Act of 1996, was approved by California voters with the intent to "ensure seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of [specified illnesses]." This proposition is codified under the California Health and Safety Code as 11362.5, and allows personal possession and cultivation of marijuana for medical purposes. This section does not provide the patient with absolute immunity from arrest, but provides limited immunity allowing the patient to raise a medical use defense.

Senate Bill 420 was signed into effect January 1, 2004 to clarify the scope of Proposition 215, and to allow cities and counties to adopt and enforce rules and regulations regarding the Act.

PROBLEMS WITH PROPOSITION 215

Marijuana is still classified federally as a Schedule I substance under the Controlled Substances Act. Schedule I drugs, which include heroin and LSD, have a high potential for abuse and serve no legitimate medical purpose in the United States. The California Health and Safety Code also classifies marijuana as a Schedule I drug.

As originally enacted, there is no specificity as to the strength, quality or quantity of marijuana to be used for medical purposes. Since its origin is also unregulated by the government, marijuana is obtained by patients through a variety of sources. It may be obtained through a health care provider, a cannabis club, cooperative, or illicitly on the black market.

Delta 9 Tetrahydrocannabinol, or THC, is the active ingredient in marijuana. Its concentration in marijuana varies greatly depending on a variety of factors such as geographic origin, plant lineage, method of growth, etc. The percentage of THC present in marijuana commonly available ranges from 3.5 % to almost 40 %. The effects marijuana has on a user vary greatly depending upon the strength of the marijuana (amongst other factors).

The California Medical Marijuana Information Report by the United States Department of Justice indicates large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. The local news is frequented with reports of large-scale marijuana grows being discovered on public lands, such as the Cleveland National Forest in Orange County recently, and the Angeles and Los Padres National Forests, just to our north. These large cultivations on public lands are of minimal cost to the growers, yet cost the State tens of millions of dollars to locate and eradicate. Since there is no "government grown" marijuana readily available for dispensaries, it is apparent the dispensaries obtain their marijuana from a variety of sources, including marijuana grown illegally on public land.

Marijuana is also obtained by the dispensaries through traditional illicit drug smuggling routes. Organized crime and other drug trafficking organizations are earning millions of dollars through the drug trade involving "medical marijuana." Some marijuana may arrive in California through interstate routes; however international corridors through Canada and Mexico are most common. Billions of dollars have been spent nationally attempting to eradicate these sources of illegal drugs, yet Proposition 215 encourages their continued use and actually makes them even more profitable with less risk. Law Enforcement officials in Mexico are currently being killed with greater frequency in part due to increased demand for marijuana in the United States. California is probably the nation's leading consumer of marijuana. Marijuana is now considered to be the nation's and California's highest grossing crop.

There are no scientific studies demonstrating a medical benefit from "smoking" marijuana. Marijuana is a "gateway drug" to other "harder" drug use and is dangerous, psychologically addictive and has a high potential for abuse. The Office of National Drug Control Policy has reported more persons are being admitted to treatment for marijuana use than heroin addiction.

Marijuana could never pass the Food and Drug Administrations pure drug standards. With hundreds of crude chemicals, including carcinogens stronger than those found in tobacco, the California and American Medical Associations and every other credible medical group oppose the use of medical marijuana. Since marijuana is not approved by the FDA, and is still a Schedule I drug, Prop 215 encourages citizens to violate Federal Law. There are only a few medical doctors who support marijuana's medical use and, will actually issue marijuana recommendations. The overwhelming majority of physicians will not issue recommendations for marijuana. However, Proposition 215 and SB 420 actually protect physicians who choose to approve medical marijuana use.

Proposition 215 does not address the consumption of marijuana by minors. Although the age limit for smoking tobacco is 18 and for the consumption of alcohol it is 21, there is no age restriction for marijuana consumption under the provisions of Proposition 215.

Marijuana is the most widely available drug and most abused illegal drug in California and the United States. Juvenile aged high school student's use of marijuana is a significant and growing problem. Marijuana is responsible for behavioral, intellectual and cognitive deficits. Marijuana use been linked to a higher incidence of throat cancer, and has severe pulmonary, reproductive and immune system side effects. Marijuana use is also known to trigger attacks of manic depression, schizophrenia and memory loss and an increase in teen suicides has reportedly been linked to marijuana use. Marijuana is a

predominant component of "polydrug" use, which is more frequently encountered today by law enforcement.

While marijuana dispensaries have attempted to "demonstrate their responsibility" by providing documentation to their customers indicating marijuana causes, "intoxication and effects on the nervous system which lead to slowed reaction time and loss of coordination which lasts for hours after ingestion and these affects make driving a car or operating machinery hazardous and therefore should be avoided while under the influence of marijuana." The dispensaries fail to clarify the real picture.

Studies have been conducted where licensed aircraft pilots were given a small dose of THC. Twenty-four hours later the pilots were placed in a flight simulator and all ten of the test subjects experienced errors in landing. A second similar study supported the first. Roughly 80% of the test subjects displayed signs of impairment 24 hours after the drug was consumed. Only one of the test subjects was aware of the fact his performance was being affected 24 hours after marijuana use. These and other similar tests indicate marijuana impair one's ability to operate a motor vehicle long after the noticeable effects have worn off.

In the past few years Anaheim has become aware of this phenomenon and has experienced a number of fatal traffic collisions involving subjects under the influence of marijuana. Non-fatal traffic collisions involving marijuana-impaired drivers occur regularly.

AVAILABILITY

In 1985 the Food and Drug Administration (FDA) approved a THC medication known as Dronabinol, which is marketed under the trade name Marinol in a capsule form. Dronabinol is a synthetic THC, laboratory produced and available through traditional Physician prescriptions and obtained at Pharmacies. The drug is used for the treatment of nausea and vomiting in cancer patients undergoing chemotherapy and treating AIDS related anorexia by stimulating the appetite. Dosages are regulated at 2.5, 5 and 10 milligrams. Since Marinol has been tested and regulated by the FDA, its strength and quality remain constant.

Proposition 215 and SB 420 do not specifically deal with the issue of "where" patients obtain marijuana for medical purposes. Simply put, there are no government owned or operated marijuana cultivations, warehouses or retail outlets for medical marijuana in California. The law only designates a "qualified patient" or "primary caregiver" to grow, obtain or possess medical marijuana. If a "qualified patient" or "primary caregiver" does not cultivate marijuana, it is obtained illicitly either by the patient or caregiver or someone else who supplies it to them. Patients may also purchase marijuana through mail order or internet services.

Patients attempting to obtain marijuana legally may do so through dozens of medical marijuana dispensaries, cannabis clubs, collectives and cooperatives in Southern California. Numerous dispensaries, etc. exist in Los Angeles County along with at least two in Orange County, including one currently operating in Anaheim. The number of businesses appears to be expanding rapidly in Southern California. Many of the dispensaries and primary caregivers will deliver the marijuana to the patient at home.

OTHER JURISDICTIONS

Different jurisdictions have dealt with the medical marijuana issues in a variety of ways throughout the state. One jurisdiction in Los Angeles County researched the concept of having a "City operated" and regulated dispensary; however the project was discontinued prior to implementation.

The Northern California City of Hayward adopted ordinances to regulate the establishment and operation of medical marijuana facilities. However, after experiencing many problems at and around their dispensary, Hayward passed an ordinance to ban dispensaries in 2006.

In July 2004, the Northern California City of Rocklin became the first city in the state to approve and adopt a zoning ordinance effectively prohibiting medical marijuana dispensaries in their jurisdiction. This ordinance has not been overturned. Numerous other cities in the state have followed Rocklin's suit, banning MMD's, including Costa Mesa and Cypress. Fullerton has been considering the modification of their zoning ordinance to prohibit MMD's. They have currently extended their moratorium on opening MMD's to further consider their solution.

According to the California League of Cities as of September 2006, 141 cities surveyed have taken some action regarding MMD's. Seventy three cities have enacted moratoriums on these businesses allowing the city more time to study the issue. Twenty eight cities have chosen to allow MMD's and forty cities are prohibiting MMD's in their community. See Attachment 1.

Kurt Smith, the Director of Community Analysis and Technology for the City of Redlands summed up that community's response to medical marijuana. "Prevalence should not equal acceptance. Furthering the distribution and availability of marijuana increases the opportunity for crime and may further destabilize neighborhoods and endanger those at highest risk for its use- children in our community."

The Anaheim City Attorney's Office, Planning Department and Police Department have worked to be leaders in researching the topic of medical marijuana and dispensaries. We have shared our experience with an MMD, documentation and research with numerous other jurisdictions in California. We are proud to say two of those cities in this county and at least one outside the county have adopted ordinances prohibiting marijuana dispensaries. See Attachment 2.

In October 2006, the City of Los Angeles announced, while they had previously regulated MMD's, they have initiated a lengthy moratorium on the establishment of any new dispensaries. They have discovered the open dispensaries are not complying with regulations and appear to be in violation of criminal statutes.

Numerous recent raids by Federal DEA Agents on Dispensaries in Los Angeles and Palm Springs have resulted in criminal prosecutions and have uncovered other ongoing criminal enterprise at the MMD's. Courts have also recently ordered some dispensaries close for violating city ordinances regarding business permits and other imposed restrictions.

IMPACT ON ANAHEIM

The "420 Primary Caregivers" at 421 N. Brookhurst Street, Suite # 130 obtained a business license from the City of Anaheim on May 19, 2004. The type of business was listed as a primary caregiver. By the fall of 2004 the Police Department began to receive complaints from neighboring businesses in the multi-unit complex regarding "420 Primary Caregivers." In January 2005, the "420 Primary Caregivers" business and employees were robbed at gunpoint and physically beaten by three masked suspects who took both money and marijuana from the business.

On April 5, 2005 members of the Anaheim Police Department met with the Property Management Company, owners and representatives from the businesses at 421 N Brookhurst Street to discuss their concerns. The main issue had become safety for employees of businesses near "420 Primary Caregivers." Many businesses believed they too would become victims of a robbery or shooting, based on the previous robbery. Patrons were also scared to use the public restrooms in the complex because of the perception that many customers at "420 Primary Caregivers" are criminals not patients. Other issues concerning the patrons included use of marijuana in the parking lot surrounding the complex, the strong marijuana odor in the ventilation system, and continued interruption of neighboring businesses by "420 Primary Caregivers" customers. Many businesses expressed they believed they were losing their own clients based on the clientele of "420 Primary Caregivers" loitering in the courtyard and parking area at the complex.

Two businesses terminated their lease at the property and moved. A law office, specializing in criminal defense, and a ten year occupant at the property, moved out of Anaheim to another city citing, "marijuana smoke has inundated [their office]...and they can no longer continue to provide a safe, professional location for...clients and employees." A healthcare business moved after six years, citing their business was repeatedly interrupted and mistaken multiple times each day for "the store that has the marijuana." The owner "fears he or his employee may be shot if they are robbed by mistake and the suspects do not believe they do not have marijuana." The property manager indicated at least five other businesses had inquired about terminating their leases for reasons related to "420 Primary Caregivers." Both businesses that left the development indicated their moving expenses were costly, but felt it was the only acceptable alternative.

"420 Primary Caregivers" is operating in close proximity to Brookhurst Junior High School, Juliette Low Elementary School, the Brookhurst Community Center, Brookhurst Park, Tiger Woods Learning Center, Dad Miller Golf Course and a day care center. Also nearby are Savanna, Gilbert-East, Fairmont and Servite High Schools and Melbourne Gauer Elementary School.

Arrests have been made of "qualified patients" purchasing marijuana with a Doctor's recommendation, and then supply it to their friends for illicit use. Criminal investigation has also revealed the business is obtaining its marijuana from a variety of sources including marijuana smuggled into the United States from South or Central America. Besides selling a variety of qualities of dried marijuana, the business also sells marijuana plants and food products made with concentrated cannabis, heavily laden with THC.

Three subjects related to "420 Primary Caregivers," including the business owner and his wife, have been arrested and charged by the Orange County District Attorney's Office

with multiple felony counts including possessing marijuana for sale and child endangerment. A substantial sum of cash has also been seized from the defendants pursuant to asset forfeiture laws. The Police Department has conservatively estimated the "420 Primary Caregivers" business to be generating approximately \$ 50,000.00 a week income.

RECENT DEVELOPMENTS

Under the Federal Controlled Substances Law there is no Compassionate Use Act. However, eleven states including California have laws allowing medical marijuana or are sympathetic to the issue. The United States Supreme Court addressed the issue of medical marijuana distribution by dispensaries in *United States v. Oakland Cannabis Buyers' Cooperative and Jeffrey Jones* (532 U.S. 483) in May 2001, ruling there is no medical necessity defense under federal law. This makes the distribution of marijuana through a medical marijuana dispensary illegal under federal law.

On June 6, 2005 the United States Supreme Court ruled on the *Raich and Monson v. Ashcroft* (352 F. 3d. 1222, 1228) case. The decision on this medical marijuana case from Northern California allows Federal Agencies to continue to enforce Federal Law in states with Compassionate Use/ Medical Marijuana laws.

Numerous investigations into California medical marijuana dispensaries and providers have resulted in seizures of marijuana and assets valued in the hundreds of millions of dollars. The United States Attorney has indicated the marijuana dispensaries are illegally cultivating marijuana, laundering money and distributing other illegal drugs.

Due to the extensive financial success of the "420 Primary Caregivers" in Anaheim, numerous individuals and groups have inquired about obtaining business licenses to open and operate marijuana dispensaries in Anaheim. The Planning Department has referred these applicants to the Police Department and most have been successfully discouraged from pursuing their interest here. One businessman was not dissuaded and signed a commercial lease for five years on North Harbor Boulevard to open a marijuana dispensary. The Police Department contacted the property owner prior to the business opening to inquire about the owner's knowledge of the type of business. The owner was unaware of the businessman's intent and the owner terminated the lease agreement. Another dispensary opened and when the employees became aware of the Police Department's knowledge of their business, they quickly closed their operation.

The Raich decision caused the "420 Primary Caregivers" to cease selling marijuana from their business on Brookhurst temporarily. The business was still operating at the location to register new "patients," take orders for delivery and to supply customers with a secret access code to order marijuana from the business via the internet.

Late in 2006 "420 Primary Caregivers" reopened its doors for retail sales of marijuana. Since reopening, the Police Department has received complaints from two businesses regarding the marijuana dispensary. One business in the complex at 421 N Brookhurst cited concerns regarding marijuana smoking on the property, the proximity to local schools and the children who pass directly by the business on their way to and from school. Another business, not in the complex but nearby, had been mistaken for being a marijuana dispensary and had expressed concern for its employees due to the aggressive nature of the subjects demanding marijuana.

In December 2006, the property management company did not renew the lease at 421 N. Brookhurst for 420 Primary Caregivers. The business moved a short distance away to 231 N Brookhurst and continues to operate. The Police Department has already received complaints regarding the activity in the mixed zoning residential/ commercial area.

On April 17, 2007 the Orange County Board of Supervisors met and discussed the County's Policy on the Medical Marijuana Program Act. The Board approved having Orange County Health Care propose a policy, which will be reviewed for possible implementation in 90 days. Senate Bill 420 requires counties to participate in the state program of verifying eligibility of individuals, validating prescriptions and processing identification cards on behalf of the State. As of March 2007, twenty five counties have implemented programs and thirty four have not. Riverside County is the only Southern California County with a program.

San Diego, San Bernardino, Merced and Riverside Counties had joined in a lawsuit against the State of California seeking to overturn the Compassionate Use Act. These counties cited the state law conflicts with federal law and an international narcotics treaty signed by the United States in 1961. The Superior Court rejected the lawsuit stating it does not conflict with federal law. San Diego County Board of Supervisors has decided to appeal the decision to the 4th District Court of Appeal. The court has not ruled on the case.

CONCLUSION

Jurisdictions deciding to allow and regulate medical marijuana dispensaries report experiencing numerous negative impacts or secondary effects on their communities. The information provided comes from the following jurisdictions: Roseville, Oakland, Hayward, Lake County and Fairfax, but many effects have already been felt in Anaheim.

These negative experiences include:

- Street level dealers selling to those going to the dispensary at a lower price.
- Public marijuana smoking around the dispensary and at nearby parks.
- Increased marijuana DUI accidents/ arrests.
- Increased burglaries and robberies at/near the dispensaries.
- Marijuana dealers obtain a doctor's recommendation to obtain marijuana from the dispensary, and then conduct illegal street sales to those who do not have a recommendation
- Criminals are robbing medical use patients of their cash and/or marijuana.
- Other illegal drugs are sold at the dispensaries.
- Dispensaries are obtaining marijuana from illicit dealers.
- Dispensaries attract criminals from outside the immediate area.
- Minors become involved illegally in marijuana use.

-Legitimate businesses near dispensaries experience problems with perceptions of lack of safety for clients and employees and suffer actual financial loss due to increased criminal activity decreasing clients desire to frequent the legitimate business.

All of these negative impacts on the community can be avoided if marijuana dispensaries are not allowed to open or operate in the community.

RECOMMENDATION

Establish a City Ordinance prohibiting the establishment and operation of Medical Marijuana Dispensaries in the City of Anaheim.

August 26, 2008

The Orange County Register

REGION

Brown opens a way to pot prosecutions

Attorney general's nonbinding ruling may make it easier for police to help feds close some marijuana outlets.

By PAUL ELIAS
THE ASSOCIATED PRESS

SAN FRANCISCO • Attorney General Jerry Brown said Monday that for-profit medical marijuana dispensaries are likely operating illegally in California, a move that opens the way for police to join federal authorities in shutting down such enterprises.

There are an estimated 300 so-called "storefront" dispensaries operating in various business guises in the state, and little agreement on how many are operating as for-profits.

In nonbinding guidelines released Monday, Brown said formal cooperatives registered under the state's Food and Agricultural Code, or organized as less formal "collectives," are legal under California law.

But he said that anyone running a for-profit storefront dispensary not operating as either a registered cooperative or collective may be arrested and prosecuted by local authorities.

"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," he said.

Brown also suggested that all patients receiving doctors' recommendations to use marijuana obtain identity cards that each county is required to issue.

The guidelines were meant to clarify the state's medical marijuana laws, which have caused varied and confused responses from local law enforcement while prompting an aggressive federal crackdown.

Federal law makes marijuana illegal in all circumstances, and the U.S. Su-

"Dispensaries that merely require patients to complete a form ... are likely unlawful."

preme Court ruled in 2005 that the state law doesn't shield California users, sellers and growers from federal prosecution.

Northern California's chief federal prosecutor, U.S. Attorney Joseph Russoniello, said federal officials are targeting "commercial traffickers" rather than "caregivers."

He said he believes 90 percent of the dispensaries are for-profit businesses that run afoul of Brown's

guidelines.

Russoniello also said that he believes that the state system that hands out identity cards to patients whose doctors recommend medical marijuana is rife with "an enormous amount of scam and fraud."

On Friday, agents with the California Bureau of Narcotics raided a dispensary in Los Angeles' Northridge neighborhood called Today's Healthcare and seized 1.1 million plants valued at \$6.6 million.

Two men were also arrested with three pounds of marijuana and \$9,000 in cash was confiscated.

In his finding, the attorney general advised local law enforcement officials that each legitimate dispensary can grow six mature or 12 immature plants per qualified patient, each of whom need a doctor's recommendation to smoke marijuana to ease health ills.

Each dispensary can also have a half-pound of dried marijuana for each qualified patient.

"We think the vast majority of dispensaries in California will be in compliance," said Joe Elford, the top lawyer for the marijuana advocacy group Americans for Safe Access.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE AMENDING TITLE 9 CHAPTER 08 OF THE GARDEN GROVE MUNICIPAL CODE TO ADD SECTION 110 PERTAINING TO MEDICAL MARIJUANA DISPENSARIES.

City Attorney's Summary

This Ordinance adds Section 110 to Title 9 Chapter 08 of the Garden Grove Municipal Code to prohibit the establishment and operation of medical marijuana dispensaries in the City.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE FINDS AND DETERMINES AS FOLLOWS:

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

B. In 1996, the voters of the State of California approved Proposition 215, known as the "Compassionate Use Act" ("Act") (codified as Health and Safety (H & S) Code section 11362.5 et seq.).

C. The Act creates a limited exception from criminal liability under California law as opposed to federal law for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

D. On January 1, 2004, SB 420 went into effect. SB 420, known as the "Medical Marijuana Program Act" (codified as Health and Safety Code Sections 11362.7 through 11362.63) ("MMP") was enacted by the State Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420; it does not, however, address the role of dispensaries, nor does it require municipalities to provide for medical marijuana dispensaries.

E. The City Council takes legislative notice, based on the materials presented to the City Council during the legislative process leading to the enactment of this ordinance, of the fact that several California cities and counties which have permitted the establishment of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. According to these communities, according to news stories widely reported, and

according to medical marijuana advocates, medical marijuana dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City of Garden Grove reasonably could anticipate experiencing similar adverse impacts and effects.

F. The Drug Enforcement Agency (“DEA”), the federal agency charged with enforcing the federal Controlled Substances Act, has expressed its view that “[l]ocal and state law enforcement counterparts cannot distinguish between illegal marijuana grows and grows that qualify as medical exemptions” and that “many self-designated medical marijuana growers are, in fact, growing marijuana for illegal, ‘recreational’ use.” While the City Council in no manner intends or undertakes by the adoption of this ordinance to enforce federal law, the City Council recognizes that the comments by the DEA reflect to some extent the adverse secondary impacts identified above.

G. The City Council further takes legislative notice that concerns about non-medical marijuana use arising in connection with Proposition 215 and the MMP also have been recognized by state and federal courts. See, e.g., *People ex rel. Lungren v. Peron*, 59 Cal. App. 4th 1383, 1386-1387 (1997); *Gonzales v. Raich*, 125 S.Ct. 2195, 2214 n. 43 (2005).

H. The City Council further takes legislative notice that the use, possession, distribution and sale of marijuana remain a federal crime under the CSA; that the federal courts have recognized that despite California’s Act and MMP, marijuana is deemed to have no accepted medical use (*Gonzales v. Raich*, 125 S. Ct. 2195; *United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483 (2001)); that medical necessity has been ruled not to be a defense to prosecution under the CSA (*United States v. Oakland Cannabis Buyers’ Cooperative*, 532 U.S. 483); and that the federal government properly may enforce the CSA despite the Act and MMP. (*Gonzales v. Raich*, 125 S. Ct. 2195.)

I. Allowing medical marijuana dispensaries and issuing permits or other entitlements providing for the establishment and/or operation of medical marijuana dispensaries results in increased demands for police patrols and responses, which the City’s police department is not adequately staffed to handle and further poses a significant threat to the public health, safety and welfare.

THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 9 Chapter 08 of the Garden Grove Municipal Code is hereby amended to add Section 110 to read as follows:

SECTION 110: MEDICAL MARIJUANA DISPENSARIES PROHIBITED

(a) Purpose and Findings.

The City Council finds that in order to serve the public health, safety, and welfare of the residents and businesses within the City, the declared purpose of this chapter is to prohibit medical marijuana dispensaries from locating in the City as stated in this section.

(b) Definitions.

The following terms and phrases, whenever used in this section, shall be construed as defined in this section:

“Identification card” is a document issued by the State Department of Health Services and/or the County of Orange Health Care Agency which identifies a person authorized to engage in the medical use of marijuana and the person’s designated primary caregiver, if any.

“Medical marijuana” is marijuana used 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 serious medical condition for which marijuana is deemed to provide relief as defined in subsection (h) of Health and Safety Code Section 11362.7.

“Medical marijuana dispensary” or “dispensary” is any facility or location where medical marijuana is made available to and/or distributed by or to three or more individuals who fall into one or more of the following categories: a qualified patient, a person with an identification card, or a primary caregiver. Each of these terms is defined herein and shall be interpreted in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7 et seq. as such sections may be amended from time to time.

“Primary caregiver” is 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.

“Physician” is an individual who meets the definition as set forth in California Health and Safety Code Section 11362.7(a), as such section may be amended from time to time, which as of the date of this ordinance is “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.”

“Qualified patient” is a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have an identification card issued by the State Department of Health Services.

(c) Medical Marijuana Dispensary Prohibited.

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 Garden Grove.

(d) Use or Activity Prohibited By State Law or Federal Law.

Nothing contained in this chapter shall be deemed to permit or authorize any use or activity which is otherwise prohibited by any state or federal law.

(e) Establishment or Maintenance of Medical Marijuana Dispensaries Declared a Public Nuisance.

The establishment, maintenance, or operation of a medical marijuana dispensary as defined in this section within the city limits of the City of Garden Grove is declared to be a public nuisance and enforcement action may be taken and penalties assessed pursuant to Title 1, Chapter 04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.

SECTION 2. Compliance with California Environmental Quality Act. The City Council finds that this Ordinance is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly and concerns general policy and procedure making.

SECTION 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City and published once within fifteen days after passage and adoption as

may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.