GARDEN GROVE

AGENDA

GARDEN GROVE PLANNING COMMISSION

REGULAR MEETING

DECEMBER 3, 2015

COURTYARD CENTER
12732 MAIN STREET

REGULAR SESSION – 7:00 P.M. COURTYARD CENTER

ROLL CALL: CHAIR O'NEILL, VICE CHAIR KANZLER
COMMISSIONERS MAI, MARGOLIN, PAREDES, ZAMORA

Members of the public desiring to speak on any item of public interest, including any item on the agenda except public hearings, must do so during Oral Communications at the beginning of the meeting. Each speaker shall fill out a card stating name and address, to be presented to the Recording Secretary, and shall be limited to five (5) minutes. Members of the public wishing to address public hearing items shall do so at the time of the public hearing.

Any person requiring auxiliary aids and services due to a disability should contact the City Clerk's office at (714) 741-5035 to arrange for special accommodations. (Government Code §5494.3.2).

All revised or additional documents and writings related to any items on the agenda, which are distributed to all or a majority of the Planning Commissioners within 72 hours of a meeting, shall be available for public inspection (1) at the Planning Services Division during normal business hours; and (2) at the Courtyard Center at the time of the meeting.

Agenda item descriptions are intended to give a brief, general description of the item to advise the public of the item's general nature. The Planning Commission may take legislative action it deems appropriate with respect to the item and is not limited to the recommended action indicated in staff reports or the agenda.

PLEDGE OF ALLEGIANCE TO THE FLAG OF THE UNITED STATES OF AMERICA

A. ORAL COMMUNICATIONS - PUBLIC

B. APPROVAL OF MINUTES: November 5, 2015

C. PUBLIC HEARING(S) (Authorization for the Chair to execute Resolution shall be included in the motion.)

C.1. CONDITIONAL USE PERMIT NO. CUP-053-2015
FRONT YARD DETERMINATION NO. FYD-002-2015

APPLICANT: ANH TRAM TRAN
LOCATION: NORTHWEST CORNER OF BROOKHURST STREET AND ORANGEWOOD AVENUE AT 11471 BROOKHURST STREET

REQUEST: Conditional Use Permit approval to operate a new pre-school, Angels Day Care, at 11471 Brookhurst Street, which will offer licensed child care services to children ages 2 to 6. The total licensed capacity will be limited to 35 children. Also, a Front Yard Determination to determine the Orangewood Street side of the corner lot as the front yard, and to designate Brookhurst Street as the street side yard. The site is in the C-1 (Neighborhood Commercial) zone. The project is exempt pursuant to CEQA Section 15301 – Existing Facilities and 15303 – New Construction or Conversion of Small Structures.

STAFF RECOMMENDATION: Approval of Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015, subject to the recommended conditions of approval.

C.2. AMENDMENT NO. A-015-2015

APPLICANT: CITY OF GARDEN GROVE
LOCATION: CITYWIDE

REQUEST: A City-initiated zoning text amendment to Title 9 of the Garden Grove Municipal Code pertaining to marijuana dispensaries and other commercial cannabis activity. The proposed code amendment would update existing provisions in Title 9 of the Garden Grove Municipal Code in a manner consistent with the recently enacted Medical Marijuana Regulation and Safety Act to clarify that the establishment, maintenance, or operation of marijuana dispensaries and related commercial cannabis activities, including the distribution, manufacture, cultivation and delivery of cannabis and/or cannibis products, continues to be prohibited throughout the City. In addition, the proposed code amendment would add one or more provisions to Title 9 declaratory of existing law that any use not specifically identified as a permitted use, conditionally permitted use, or incidental use in any zone or planned unit development area is a prohibited use in that zone or planned unit development area. The proposed code amendment is exempt from the provisions of the California Environmental Quality Act. The Planning Commission will be considering a recommendation to the City Council regarding the proposed code amendment.

STAFF RECOMMENDATION: Recommend that the Planning Commission adopt the proposed Resolution recommending approval of Amendment No. A-015-2015 to City Council.

D. MATTERS FROM COMMISSIONERS

E. MATTERS FROM STAFF

F. ADJOURNMENT

GARDEN GROVE PLANNING COMMISSION
Courtyard Center, 12732 Main Street, Garden Grove, CA 92840

Regular Meeting Minutes
Thursday, November 5, 2015

CALL TO ORDER: 6:30 p.m.

Staff announced that Commissioner Joe Pak resigned from the Commission.

ROLL CALL:

Chair O'Neill
Vice Chair Kanzler
Commissioner Mai
Commissioner Margolin
Commissioner Paredes
Commissioner Zamora

Absent: None. One vacancy.

PLEDGE OF ALLEGIANCE: Led by Commissioner Mai.

ORAL COMMUNICATIONS – PUBLIC: None.

October 1, 2015 MINUTES:

Action: Received and filed.

Motion: Margolin Second: Kanzler

Ayes:	(6)	Kanzler, Mai, Margolin, O'Neill, Paredes, Zamora
Noes:	(0)	None
Absent:	(0)	None

PUBLIC HEARING – MINOR MODIFICATION TO SITE PLAN NO. SP-230-99, MINOR MODIFICATION TO CONDITIONAL USE PERMIT NO. CUP-442-99. FOR PROPERTY LOCATED AT 8034 GARDEN GROVE BOULEVARD, EAST SIDE OF BEACH BOULEVARD, SOUTH OF GARDEN GROVE BOULEVARD.

Applicant: Aquazoom Car Washes, Inc.
Date: November 5, 2015

Request: Minor Modification approval to Site Plan No. SP-230-99 and Conditional Use Permit No. CUP-442-99 to allow the installation of a 2,180 square foot fabric canopy on a new vacuum system and teller pay area for an existing automatic car wash. The site is in the GGMU1 (Garden Grove Mixed Use 1) zone. The project is exempt pursuant to CEQA Section

15303 – New Construction or Conversion of Small Structures.

Action: Public Hearing held. Speaker(s): Ron Jones

Action: Resolution No. 5851-15 approved.

Motion: Kanzler Second: Zamora

Ayes:	(6)	Kanzler, Mai, Margolin, O'Neill, Paredes, Zamora
Noes:	(0)	None
Absent:	(0)	None

STUDY SESSION – REVIEW OF CALIFORNIA STATE POLYTECHNIC UNIVERSITY, POMONA (CAL POLY) 606 MOBILITY STUDY.

Lee-Anne Milburn presented an overview of the 606 Mobility Study. The Public and Staff then discussed and received input on the subject. A Re:Imagine booklet titled "Garden Grove, a Community in Motion" was handed out and included information on a Non-Motorized Mobility Network, an Open Space Network Enhancement, a 2060 Downtown Concept Plan, and a "Gardens and Groves" Theme.

MATTERS FROM COMMISSIONERS: Commissioner Zamora mentioned that trees near Target, north of Westminster Avenue were gone and replaced with bushes and rocks, and that a large Pine tree at the southwest corner of Westminster Avenue and Euclid Street was removed. Staff explained that if a tree was behind a sidewalk, it would be beyond the City's jurisdiction and that if a tree's roots lifted the sidewalk, they would address the roots, however, if there was the risk of the tree falling over, the tree would be removed. Staff added that trees could be replaced, and if Target was removing trees, Code Enforcement would investigate as there was a ratio of trees to parking spaces. Currently, some centers were using minimal landscaping due to the drought. Staff then mentioned that the City did an alternative landscaping outreach program a few years ago at the Gem Theater.

Commissioner Margolin asked staff for a breakdown of the City's graffiti removal process. Staff explained that Public Works would remove graffiti with paint, sand blasting, or a high-powered washer on right-of-ways in 72 hours or less, however, graffiti on buildings required staff to contact the property owner to remove the graffiti.

Commissioner Paredes asked staff to explain the joint agreements with schools for use of park land, and asked that for organizations such as AYSO and Pop Warner, who would need to be contacted to encourage partnerships. He also mentioned that parks with sports amenities seemed to be more popular than parks with pathways. Staff explained that joint-use facilities have been in place for many years, however, not all schools have them and that in regard to liability, the City would be responsible and would need to provide insurance.

Chair O'Neill thanked Commissioner Pak for his service and wished him well in taking care of his family.

MATTERS FROM STAFF: Staff announced that the next Planning Commission meeting on Thursday, November 19, 2015 would be cancelled and that the next regular meeting would be December 3rd. Also, a new Commissioner would be proposed at the next Council Meeting.

In response to Commissioner Mai's request at the last meeting, staff explained how to obtain street light for a neighborhood street and gave staff member Ana Neal as the contact. First, a formal application would be required, then a survey would be sent to the community, and if approved, the cost at $1,500 per light, would be distributed evenly to residents on the block or street, in addition, a maintenance fee would be charged to each home on the street at approximately $70 per month.

Commissioner Mai encouraged that everyone thank a veteran for Veteran's Day to let them know they are appreciated.

Chair O'Neill mentioned that there would be an event at the Orange County Fairgrounds on Veteran's Day at 10:00 a.m.

Staff wished everyone a nice Thanksgiving.

ADJOURNMENT: At 8:08 p.m. to the next Regular Meeting of the Garden Grove Planning Commission on Thursday, December 3, 2015, at 7:00 p.m. in the Courtyard Center, 12732 Main Street, Garden Grove.

Motion:	O'Neill	Second: Zamora
Ayes:	(6)	Kanzler, Mai, Margolin, O'Neill, Paredes, Zamora
Noes:	(0)	None
Absent:	(0)	None

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Judith Moore
Recording Secretary

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING STAFF REPORT

AGENDA ITEM NO.: C.1	**SITE LOCATION:** Northwest corner of Brookhurst Street and Orangewood Avenue at 11471 Brookhurst Street
HEARING DATE: December 3, 2015	**GENERAL PLAN:** Light Commercial
CASE NOS.: Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015	**ZONE:** C-1 (Neighborhood Commercial)
APPLICANT: Anh Tram T. Tran	**APN.:** 132-143-18
PROPERTY OWNER: Marian Pham for Lovers of the Holy Cross of Nha Trang	**CEQA DETERMINATION:** Exempt

REQUEST:

The applicant requests approval of Conditional Use Permit to operate a new child day care center, Angels Day Care, which will offer licensed child care services to children ages two (2) to six (6), with the total licensed capacity limited to be 35 children. In conjunction with this request, the applicant is also requesting approval of a Front Yard Determination to determine the Orangewood Avenue side of the corner lot as the front yard, and Brookhurst Street as the side street yard.

BACKGROUND:

The site has a General Plan Land Use designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial). The lot is approximately 11,688 square feet in size, and is improved with a single-story, 2,444 square foot, commercial building. The building was originally constructed in 1955 as a single-family home, but the building was converted into a commercial use in 1987.

The applicant recently purchased the property and proposes to operate a new child day care center named Angels Day Care. The applicant has been operating a separate day care center at 12351 Euclid Street named Nha Tran Pre-school since 2014. This center is currently licensed for 30 children ages two (2) to six (6) years old. The applicant proposes to relocate the day care center from the Euclid Street property to the subject property on Brookhurst Street.

On August 5, 2015, the Building Division Substandard Unit issued a stop work for the property as construction was being performed to the building without benefit of a building permit. The non-permitted work included demolition of interior walls, plumbing, and electrical work. On September 10, 2015, a second stop work order was issued for continued non-permitted construction, which included the installation of drywall, windows, doors, and lighting. The rear playground area was also

completed, which included the sandbox and the installation of the play equipment, and wrought-iron fencing to secure the play area.

In order to allow the operation of the proposed child day care center on the subject site, a Conditional Use Permit is required to regulate the operation of the child day care center, along with a Front Yard Determination to designate the Orangewood Avenue side of the property as the front yard, and Brookhurst Street as the side yard in order to accommodate the required and secured outdoor play area.

DISCUSSION:

The applicant proposes to operate a child day care center named Angels Day Care on the subject parcel. Building permits will be required in order to make all the necessary building and site improvements to convert the building into a child day care center.

Site Design:

Staff has worked with the applicant to make modifications to the existing site in order to improve on-site access and circulation for the proposed child day care center. The site is accessed from a 30'-0" wide drive approach located on Orangewood Avenue. A secondary driveway access to the site is provided at the rear of the property through an alley. The site consists of two (2) parking areas located at the front and rear of the property. A 12'-0" wide drive aisle currently connects the front and rear parking areas.

The lot is considered non-conforming since 1) the parcel is less than the required 15,000 square foot minimum lot size of the C-1 zone; 2) the parcel does not provide the required 15'-0" landscaped setbacks along Brookhurst Street and Orangewood Avenue; and 3) the parcel does not provide the required 20'-0" drive throat to the first parking space from the property line. Despite these deficiencies, the applicant has made every attempt to make improvements to the lot that will enhance the overall site design and circulation to accommodate the proposed child day care center.

The parking spaces located in the front parking area along Brookhurst Street will be restriped to provide perpendicular parking spaces to improve vehicle maneuverability in and out of these parking spaces. These parking spaces will be designated as employee parking in order to prevent vehicle congestion at the front of the property that can affect vehicles entering the site since no vehicular turn-around area is provided.

The circulation plan calls for a one-way design where patrons and employees enter the site from Orangewood Avenue and exit the site from the rear alley. The circulation plan for the site requires parents to enter the site from Orangewood

Avenue, and to circulate to the rear of the lot for drop-off and pick-up purposes. The parking spaces at the rear of the property will be available for parent parking. The Engineering Division has reviewed the plans and are requiring the width of the drive aisle, which connects the front and rear parking areas to be increased from 12'-0" to 16'-0" in order to provide for better on-site circulation and access between the two parking areas, especially during hours of drop-off and pick-up. The modification to the drive aisle will require that a portion of the building, located adjacent to the drive aisle, be reduced by 88 square feet (4 feet by 22 feet). The applicant has modified the plans to reflect the new 16'-0" wide drive aisle. A "No Exit" sign will be required to be placed adjacent to the Orangewood Avenue driveway to deter customers and employees from exiting the site from the Orangewood Avenue driveway. Also, a new landscape planter, approximately 289 square feet, will be installed within the front parking area.

Within the two parking areas, a total of ten (10) parking spaces will be provided to accommodate the proposed number of children. The City's parking code requires one (1) parking space for every six (6) children, and one (1) space per employee. The facility will have 35 children, and will have a total of four (4) employees, which will require a total of ten (10) parking spaces. All child drop-off and pick-up is required to occur on-site, and cannot occur on Orangewood Avenue, Brookhurst Street, or within the alley. The applicant is required to post signs on-site indicating that all drop-off and pick-up is to occur within the designated drop-off and pick-up area. The Public Works Department will also post no parking signs along the alley to deter customers from parking in the alley temporary. The applicant is also required to post a sign on the exterior face of the alley block wall indicating that no temporary day care parking, pick-up or drop-off is permitted within the alley. A condition of approval has been incorporated that reflects this requirement.

Additional improvements to the site include the removal of existing bollards located adjacent to the block wall in order to maintain the required 25'-0" vehicle back-up area. Also, the rear block wall located adjacent to the alley will be modified to maintain the required 25'-0" wide vehicle driveway exit. The existing wood monument sign located along the Brookhurst Street public right-of-way landscape area is required to be removed. Any new monument and wall signs will require Planning Division approval and a building permit.

The child day care center will have two (2) outdoor play areas, one located at the rear of the lot, and the other at the front of the lot along Brookhurst Street. The play areas are required to comply with all state licensing requirements for fencing, play equipment, and overall maintenance.

Currently, Brookhurst Street is considered the front of the property as the Municipal Code designates the narrowest portion of the lot as the front yard. The Municipal Code limits the height of new fences or walls within the front setback area, which is the first 15 feet of the property, to a maximum height of 3 feet tall. Since the

property has a zero front yard setback along Brookhurst Street, and in order to accommodate the required outdoor play area per the state's licensing requirement, the applicant proposes to locate part of the required outdoor play area along Brookhurst Street, which will encroach into the required front yard setback.

For corner lots with street frontage on two sides, a property owner can request that the City designate a side of the lot other than the narrowest portion as the front yard, instead. This process is referred to as a Front Yard Determination. In this case, the applicant is requesting a Front Yard Determination in order to designate the Orangewood Avenue side of the property as the front yard, and Brookhurst Street as the side yard in order to allow the outdoor play area and the proposed 5'-0" wrought iron fence to be installed along the Brookhurst Street property line.

Day Care Operation:

The day care center will have a new building area of 2,356 square feet, and will consist of five (5) classrooms with a combined area of 1,234 square feet, two (2) children's restrooms, two (2) staff restrooms, a front office, and a kitchen with a break room.

The proposed day care center will operate with a total of 35 children ages two (2) to six (6) years old, with a total of four (4) employees. The applicant has obtained pre-approval from the California Department of Social Services, Community Care Licensing Division verifying that, based on the amount of indoor and outdoor play area provided, the proposed child day care facility can operate with the proposed number of children.

The day care center will operate from 7:00 a.m. to 6:00 p.m., Monday through Friday. The applicant anticipates morning drop-off to occur between the hours of 7:00 a.m. to 9:00 a.m., and afternoon pick-up to occur between the hours of 2:00 p.m. to 6:00 p.m.

The Community Development Department has reviewed the request and is in support of the proposal.

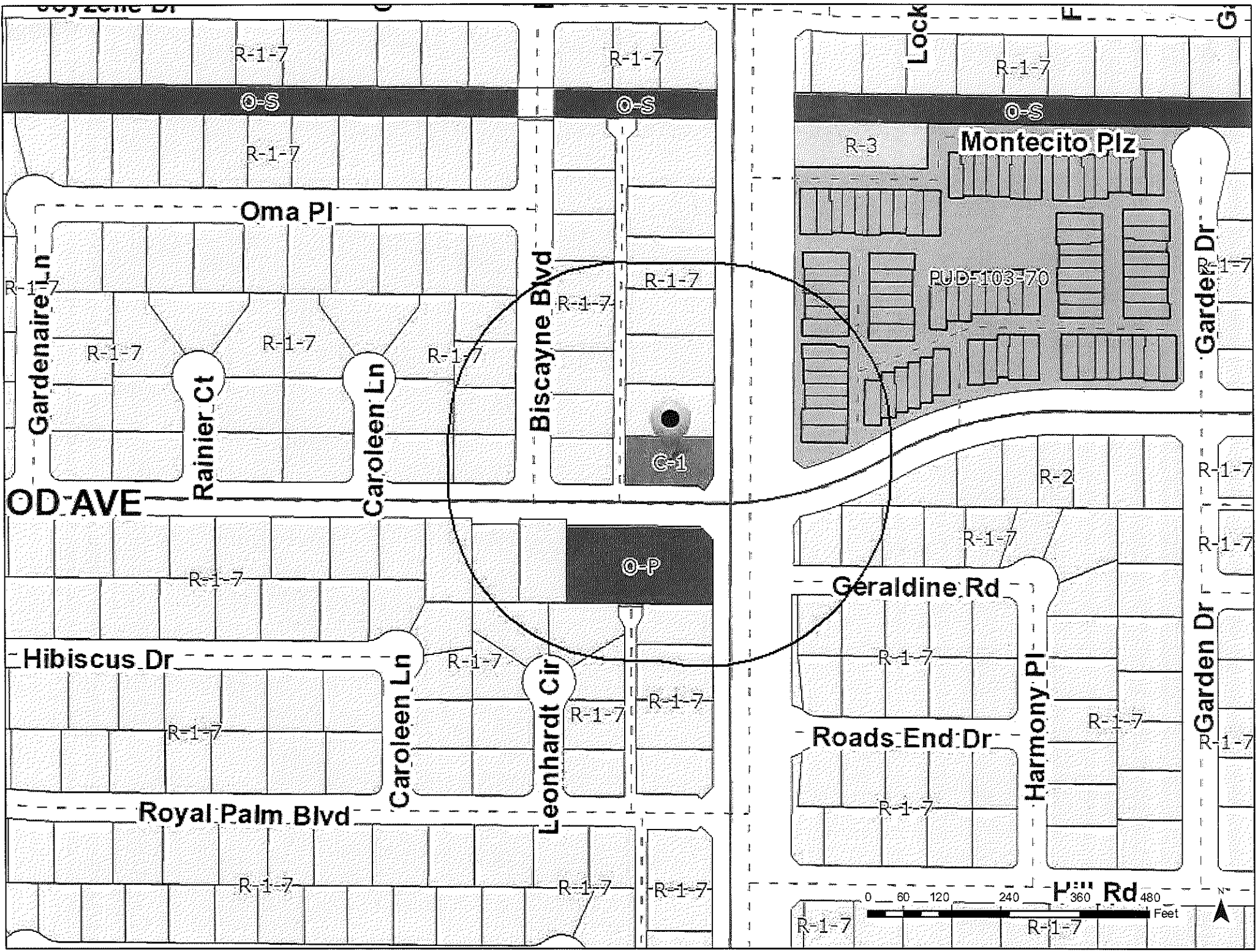
RECOMMENDATION:

Staff recommends that the Planning Commission take the following action:

1. Adopt Resolution No. 5852-15 approving Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015, subject to the recommended conditions of approval.

Lee Marino
Acting Planning Services Manager

By: Maria Parra
Urban Planner


R-1-7
O-S
R-3
Montecito Plz
PUD-103-70
Oma Pl
Gardenaire Ln
Rainier Ct
Caroleen Ln
Biscayne Blvd
Garden Dr
C-1
OD AVE
R-2
O-P
Geraldine Rd
Hibiscus Dr
Leonhardt Cir
Harmony Pl
Roads End Dr
Royal Palm Blvd
0 60 120 240 360 480
Feet
N

MATERIALS SPECIFICATIONS

CODE : 2013 CALIFORNIA BUILDING CODE
IN ALL CASES CALCULATIONS WILL SUPERSEDE THIS DESIGN CRITERIA SHEET

TIMBER

Douglas Fir-Larch #2 - 19% max. moisture content
It is recommended that lumber be free of heart center
Fb = 1100 psi / 1500 psi . Fv = 95 psi . E = 1.6 E6 psi

Glued Laminated Beams : Douglas Fir-Larch
Ind. App. Grade : Fb = 2400 psi , Fv = 165 . E = 1.8 E6 psi

PARALLAM PSL 2.0 E
Fb = 2900 psi . Fv = 290 psi , E = 2.0 E6 psi

MICROLLAM LVL M=L - Fb=2600 psi , Fv=285 psi , E=1.8 E6 psi

CONCRETE

1. Drypack shall be composed of one part Portland Cement to not more than three parts sand
2. All structural concrete .... f'c = 3000 psi
   All slab-on-grade / continuous footing / pads .... f'c = 2500 psi
   All concrete shall reach minimum compressive strength at 28 days

REINFORCING STEEL

1. All reinforcing shall be A.S.T.M. A-615-40 for #5 bars and smaller .
   All reinforcing shall be A.S.T.M. A-615-60 for #6 bars and larger
   Welded wire fabric to be A.S.T.M. A-185 , lap 1-1/2 spaces , 6" min.
2. Splicing of bars shall have lapping of 40 dia. or 2'-0" min. in all continuous concrete reinforcement (30 dia. for compression)
   Masonry reinforcement shall have lapping of 40 dia. or 2'-0". This is in all cases U.N.O.
3. All reinforcing bars shall be accurately and securely placed before pouring concrete , or grouting masonry
4. Concrete protection for reinforcement shall be at least equal to the diameter of the bars
   Cover shall be as follows . U.N.O. :
   A. Poured against earth .... 3"
   B. Poured against form below grade .... 2"
   C. Slabs on grade (from top of slab) .... 1"
   D. Columns and beams to main bars .... 2"

STRUCTURAL STEEL

1. Fabrication and erection of structural steel shall be in accordance with " specifications for the design , Fabrication and Erection of Structural Steel Buildings " AISC , current edition . Steel to conform to ASTM A36 . Round pipe columns shall conform to ASTM A53 , Grade B. Square / Rectangular steel tubes ASTM A500 , Grade B .
2. All welding shall be performed by certified welders , using the Electric Shielded Arc Process at license shops or otherwise approved by the Building Dept. Continuous inspection required for all field welding .
3. All steel exposed to weather shall be hot-dip galvanized after fabrication or other approved weatherproofing method .
4. Where frame is attached to structural steel , provide 1/2" ø bolt holes @ 4'-0" o.c. for attachment of nailers. See architectural drawings for finishes (Nelson studs 1/2" x 3" CPL may replace bolts)

MASONRY

1. Concrete block shall be of sizes shown on architectural drawings and / or called for in specifications and conform to ASTM C-90 , grade N medium weight units with max. linear shrinkage of 0.06 % .
2. All vertical reinforcing in masonry walls not retaining earth shall be located in the center of the wall (U.N.O.). retaining walls are to be as shown in details .
3. All cells with steels are to be solid grouted , except retaining walls where all cells are to be solid grouted

SHEAR WALL SCHEDULE

PANEL	SHEAR PANEL DESCRIPTION	V (PLF)	EXT. FOUNDATION ANCH. BOLTS	INT. FOUNDATION ANCH. BOLTS	UPPER FLOOR SILL PLATE NAILING
5	5/8" GYP. W/BD @ 7" O.C. - 1 SIDE	63	5/8" @ 60" O.C.	@ 60" O.C.	16D @ 12" O.C.
	5/8" GYP. W/BD @ 7" O.C. - 2 SIDES	125	5/8" @ 32" O.C.	@ 32" O.C.	16D @ 8" O.C.
6	1/2" GYP. W/BD @ 4" O.C. - 1 SIDE	125	5/8" @ 48" O.C.	@ 48" O.C.	16D @ 8" O.C.
	1/2" GYP. W/BD @ 4" O.C. - 2 SIDES	250	5/8" @ 24" O.C.	@ 24" O.C.	16D @ 4" O.C.
7	5/8" BLK GYP W/BD @ 4" O.C. - 1 SIDE	145	5/8" @ 42" O.C.	@ 42" O.C.	16D @ 8" O.C.
	5/8" BLK GYP W/BD @ 4" O.C. - 2 SIDES	290	5/8" @ 21" O.C.	@ 21" O.C.	16D @ 4" O.C.
8	7/8" STUCCO/ LATH W/ 11 GA NAILS 6" O.C. @ EDGE	180	5/8" @ 40" O.C.	@ 24" O.C.	16D @ 8" O.C.
9	7/8" STUCCO/ LATH W/ 11 GA NAILS 3" O.C. @ EDGE	360	5/8" @ 20" O.C.	@ 24" O.C.	16D @ 4" O.C.
10	3/8" STRUCT. I PLY W/BD @ 6" O.C. - 1 SIDE	230	5/8" @ 28" O.C.	@ 28" O.C.	16D @ 6" O.C.
	3/8" STRUCT. I PLY W/BD @ 6" O.C. - 2 SIDES	460	5/8" @ 14" O.C.	@ 14" O.C.	16D @ 3" O.C.
11	3/8" STRUCT. I PLY W/BD @ 4" O.C. - 1 SIDE	360	5/8" @ 18" O.C.	@ 18" O.C.	16D @ 4" O.C.
	3/8" STRUCT. I PLY W/BD @ 4" O.C. - 2 SIDES	720	5/8" @ 9" O.C.	@ 9" O.C.	16D @ 2" O.C.
12	3/8" STRUCT. I PLY W/BD @ 3" O.C. - 1 SIDE	460	5/8" @ 15" O.C.	@ 15" O.C.	16D @ 3" O.C.
	3/8" STRUCT. I PLY W/BD @ 3" O.C. - 2 SIDES	920	5/8" @ 7" O.C.	@ 7" O.C.	16D @ 2" O.C.
13	3/8" STRUCT. I PLY W/BD @ 2" O.C. - 1 SIDE	610	5/8" @ 12" O.C.	@ 12" O.C.	16D @ 2 1/2" O.C.
	3/8" STRUCT. I PLY W/BD @ 2" O.C. - 2 SIDES	1220	5/8" @ 6" O.C.	@ 6" O.C.	16D @ 1 1/2" O.C.

NOTES :

1. MINIMUM 3x NOMINAL FRAMING AT PANEL EDGES AND STAGGERED EDGE NAILING WHERE NAILS ARE SPACED 2 INCHES ON CENTER OR CLOSER (FOOTNOTE #) [illegible]
2. [illegible]
3. [illegible]
4. [illegible]
5. [illegible]
6. [illegible]
7. [illegible]

VICINITY MAP

TOTAL OCCUPANT LOAD :
CHILDREN : 36
STAFF : 04
TOTAL : 40 PERSON

LEGAL DESCRIPTION

PROJECT : ANGELS DAY CARE
ADRESS : 11471 BROOKHURST AVE
GARDEN GROVE , CA 92843
OWNERS : ANH TRAM TRAN
PHONE : (714) 725 - 2471
LOT SIZE : 96'-0" X 140'-0" = 13,440 S. FT. = 0.30 ACRES
ZONING : C - 2 (MIX USE)
OCCUPANCY : I - 4
BUILDING SPRINKLER : NONE
CONSTRUCTION TYPE : V - B
NO. OF STORIES : ONE

NOTES :
- THIS PROJECT SHALL COMPLY WITH ALL CODES BELOW :

- 2013 CALIFORNIA BUILDING CODE (CBC)
- 2013 CALIFORNIA RESIDENTIAL CODE (CRC)
- 2013 CALIFORNIA MECHANICAL CODE (CMC)
- 2013 CALIFORNIA PLUMBING CODE (CPC)
- 2013 CALIFORNIA FIRE CODE (CFC)
- 2013 CALIFORNIA ELECTRICAL CODE (CEC)
- 2013 CALIFORNIA ENERGY CODE
- 2013 CALIFORNIA GREEN BUILDING STANDARD CODE

- LOCAL MUNICIPLE CODE .
- PARKING PROVIDED : 09 SPACES
- HANDICAP PARKING : 01 SPACE

SCOPE OF WORKS

- APPLY FOR PRE - SCHOOL CHILD CARE ESTABLISHMENT AT THIS LOCATION AS INDICATE .

THE BUILDING WILL MODIFY TO MEET ACCESSIBLE TO THE DISABLED . SECTION 3411

SHEETS INDEX

SHT. NO.	DESCRIPTION
TS	LEGAL DESCRIPTION SCOPE OF WORKS SHEETS INDEX
ST1	EXISTING SITE PLAN
ST2	PROPOSAL SITE PLAN
A-1	EXISTING FLOOR PLAN GENERAL NOTES
A-2	DEMOLITION PLAN
A-3	IMPROVEMENT FLOOR PLAN
A-4	ELEVATIONS
A-5	REST ROOM FLOOR PLANS & DETAILS
A-6	HANDICAP RAMP DETAIL

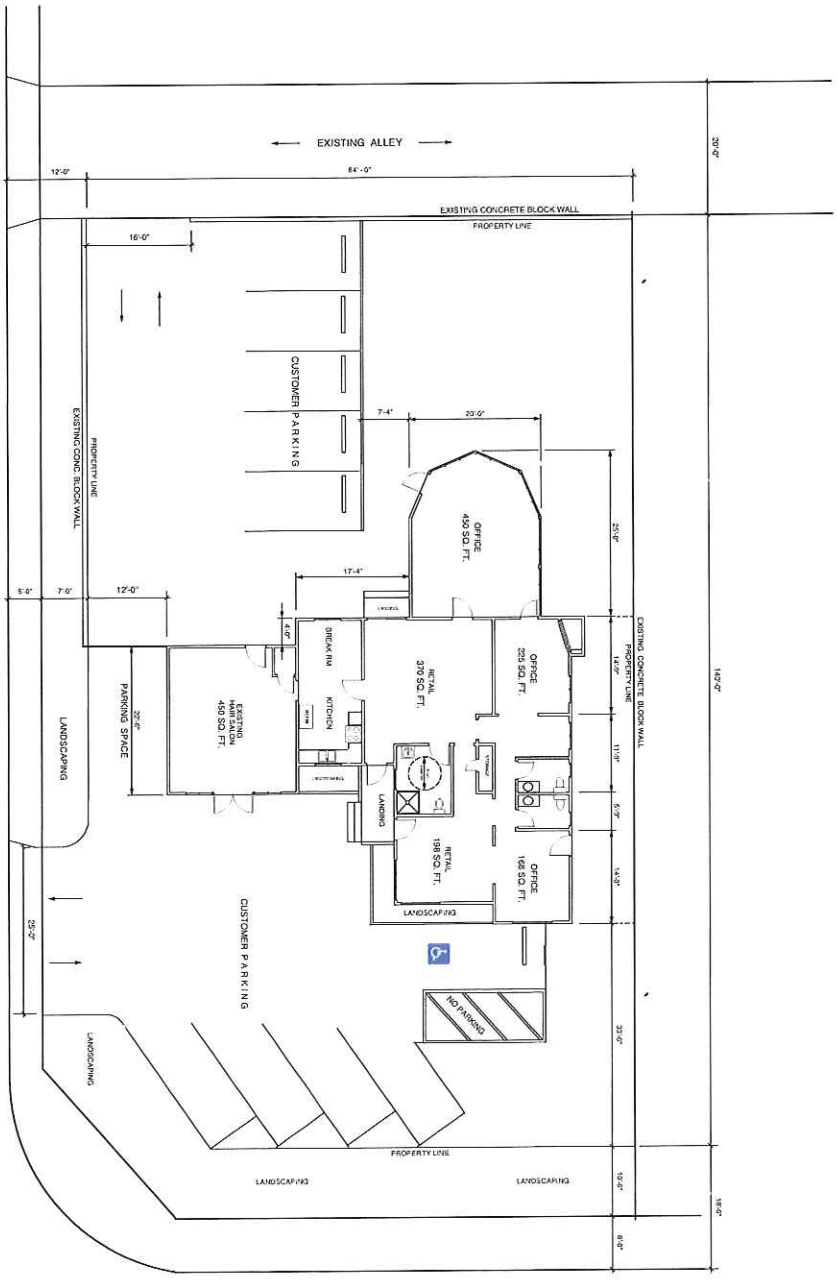
BAO DINH & ASSOCIATES
Resident & Commercial
6951 Fairman St.
Lakewood , CA 90713
(562) 421 - 5762

LEGAL DESCRIPTION
SCOPE OF WORKS
SHEETS INDEX

PROJECT : ANGELS DAY CARE
ADRESS : 11471 BROOKHURST AVE.
GARDEN GROVE , CA 92843
OWNER : ANH TRAM TRAN
PHONE : (562) 219 - 1962

07 - 25 - 2015
BAO DINH
1/8" = 1' - 0"

TS

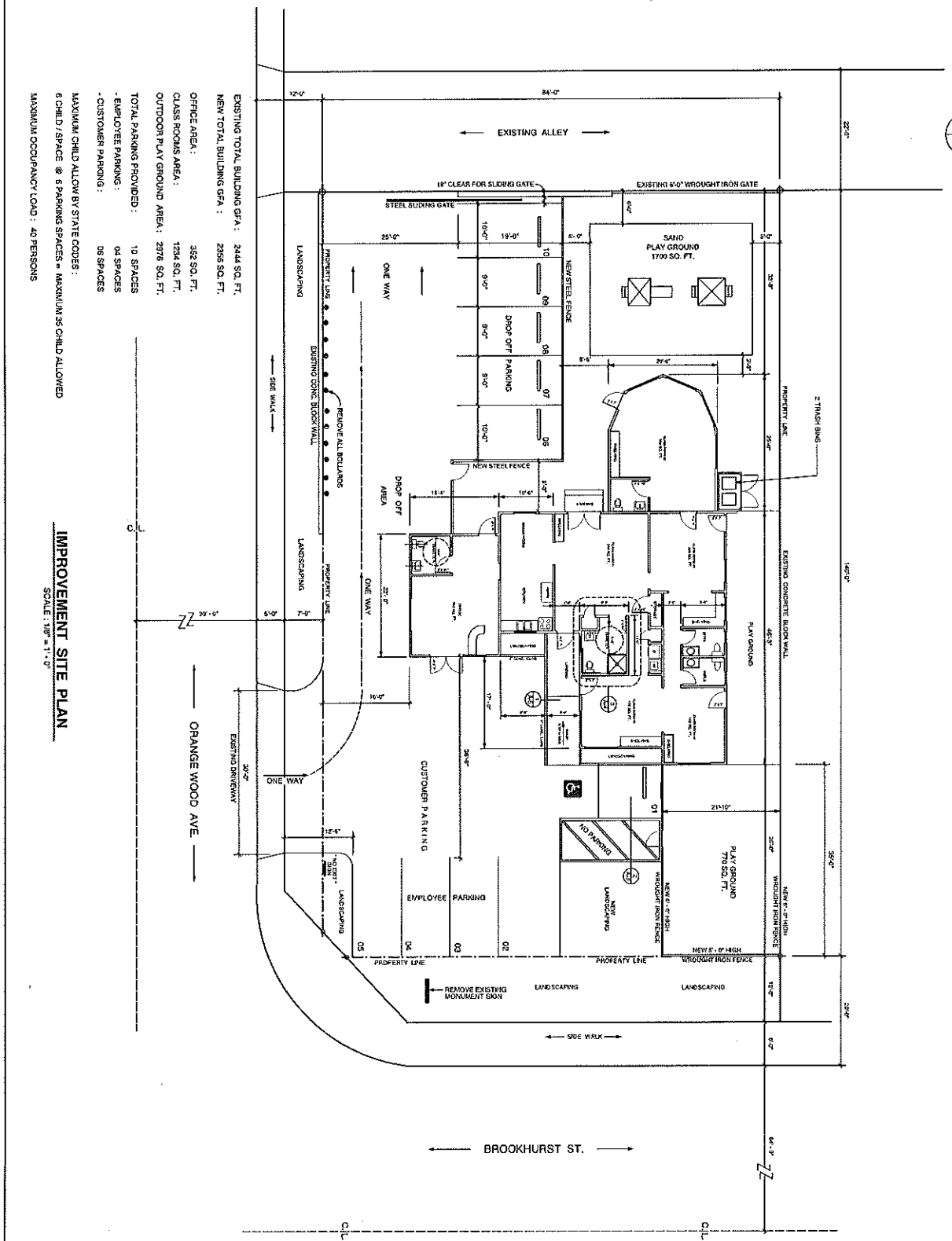


EXISTING SITE PLAN

SCALE : 1/8" = 1' - 0"

ST-1	07 - 25 - 2015	PROJECT : ANGELS DAY CARE ADRESS : 11471 BROOKHURST AVE. GARDEN GROVE , CA 92843 OWNER : ANH TRAM TRAN PHONE : (562) 219 - 1962	EXISTING SITE PLAN
1/8" = 1' - 0"	BAO DINH		

BAO DINH & ASSOCIATES
Resident & Commercial
6951 Fairman St.
Lakewood , CA. 90713
(562) 421 - 5762



EXISTING TOTAL BUILDING GFA : 2444 SQ. FT.
NEW TOTAL BUILDING GFA : 2356 SQ. FT.

OFFICE AREA : 352 SQ. FT.
CLASS ROOMS AREA : 1234 SQ. FT.
OUTDOOR PLAY GROUND AREA : 2376 SQ. FT.

TOTAL PARKING PROVIDED : 10 SPACES
- EMPLOYEE PARKING : 04 SPACES
- CUSTOMER PARKING : 06 SPACES

MAXIMUM CHILD ALLOW BY STATE CODES :
6 CHILD / SPACE @ 6 PARKING SPACES = MAXIMUM 36 CHILD ALLOWED

MAXIMUM OCCUPANCY LOAD : 40 PERSONS

IMPROVEMENT SITE PLAN

SCALE : 1/8" = 1' - 0"

PROJECT	: ANGELS DAY CARE
ADRESS	: 11471 BROOKHURST AVE. GARDEN GROVE , CA 92843
OWNER	: ANH TRAM TRAN
PHONE	: (562) 219 - 1962

IMPROVEMENT SITE PLAN

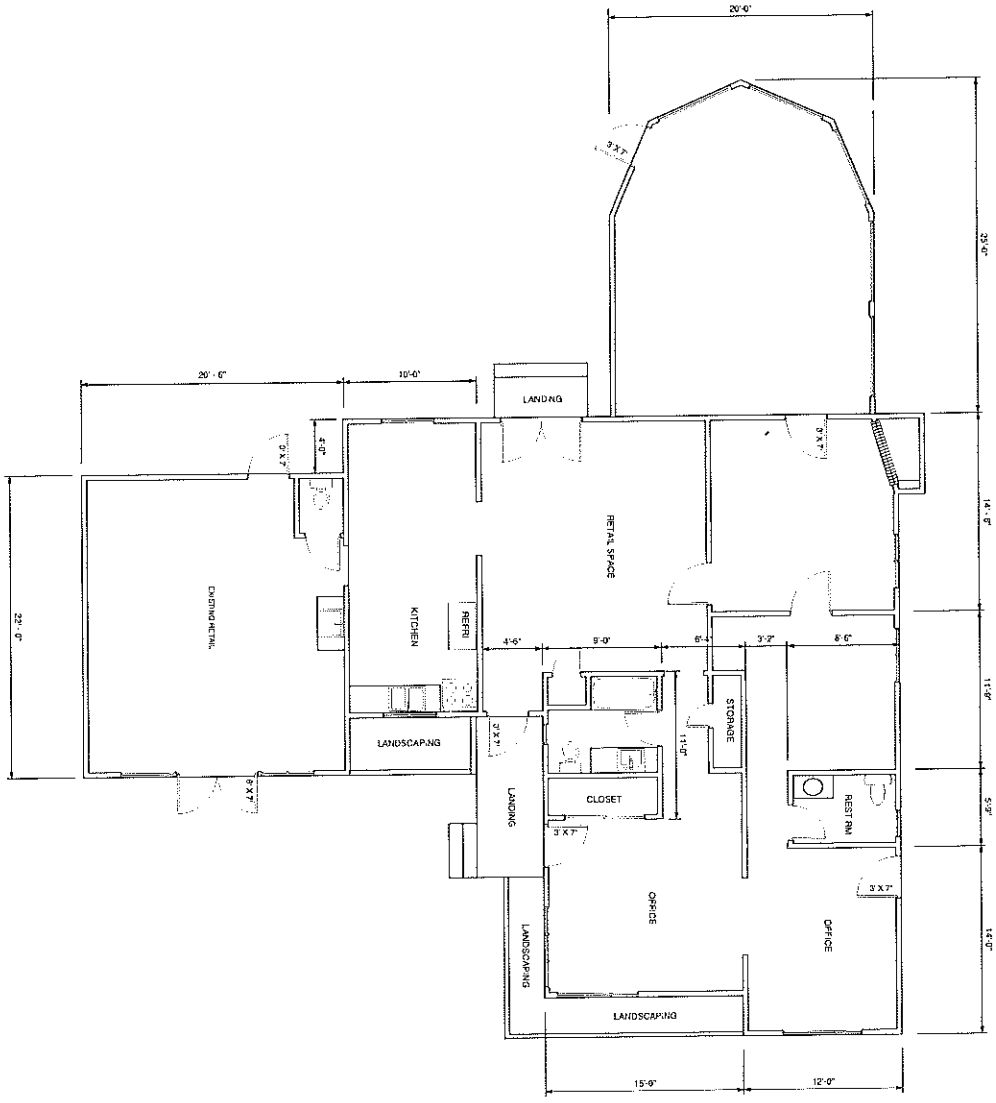
BAO DINH & ASSOCIATES
Resident & Commercial
6951 Fairman St.
Lakewood , CA. 90713
(562) 421 - 5762

ST-2

07 - 25 - 2015

BAO DINH

1/8" = 1' - 0"



EXISTING FLOOR PLAN

SCALE : 1/4" = 1'-0"

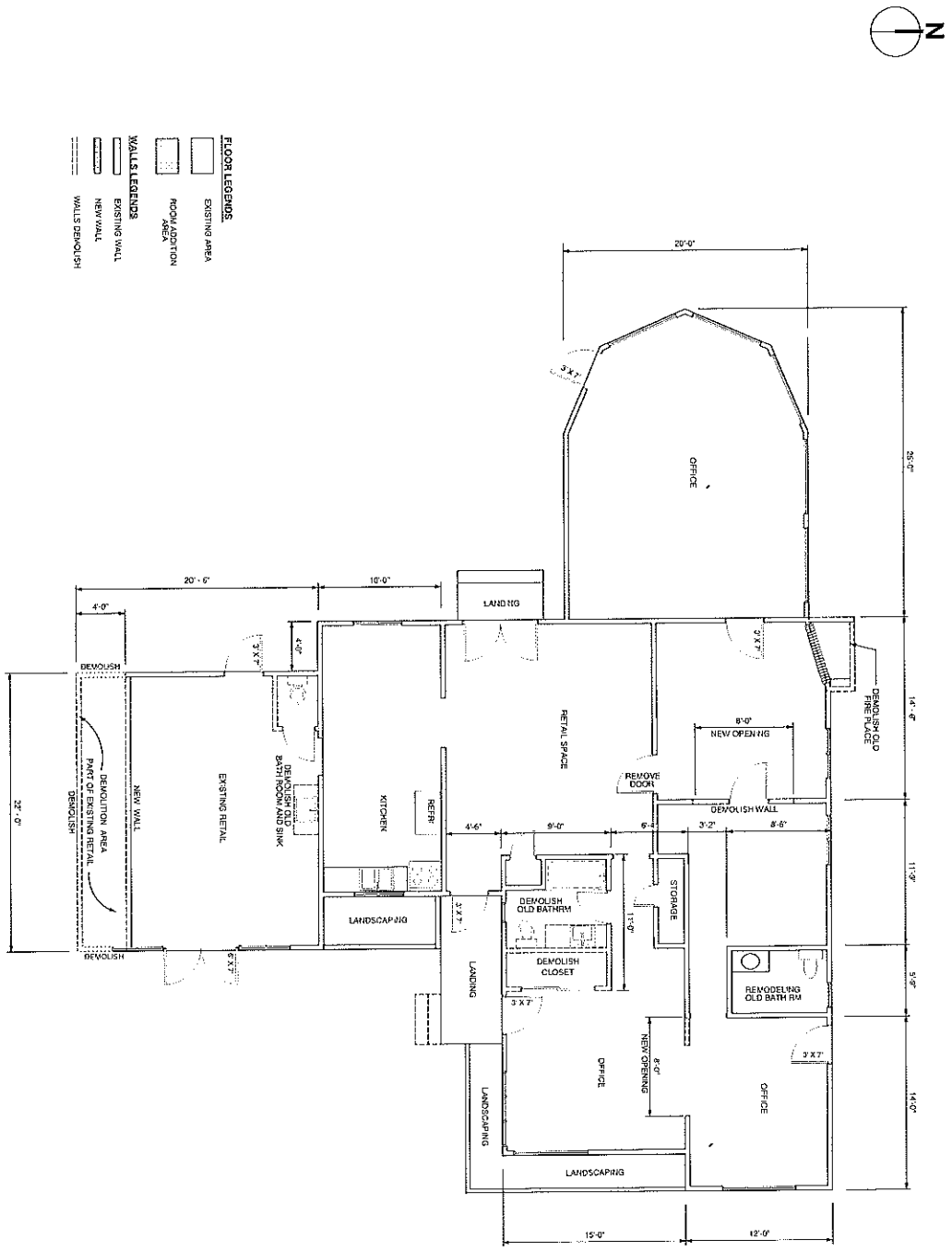
A-1	07 - 25 - 2015	
	BAO DINH	
	1/4" = 1'-0"	

PROJECT : ANGEL DAYCARE CENTER
ADRESS : 11471 BROOKHURST AVE.
GARDEN GROVE , CA 92843
OWNER : ANH TRAM TRAN
PHONE : (562) 219 - 1962

EXISTING FLOOR PLAN

GENERAL NOTES

BAO DINH & ASSOCIATES
Residential & Commercial
6951 Faroan St.
Lakewood , CA. 90713
(562) 421 - 5762



DEMOLITION FLOOR PLAN

SCALE : 1/4" = 1' - 0"

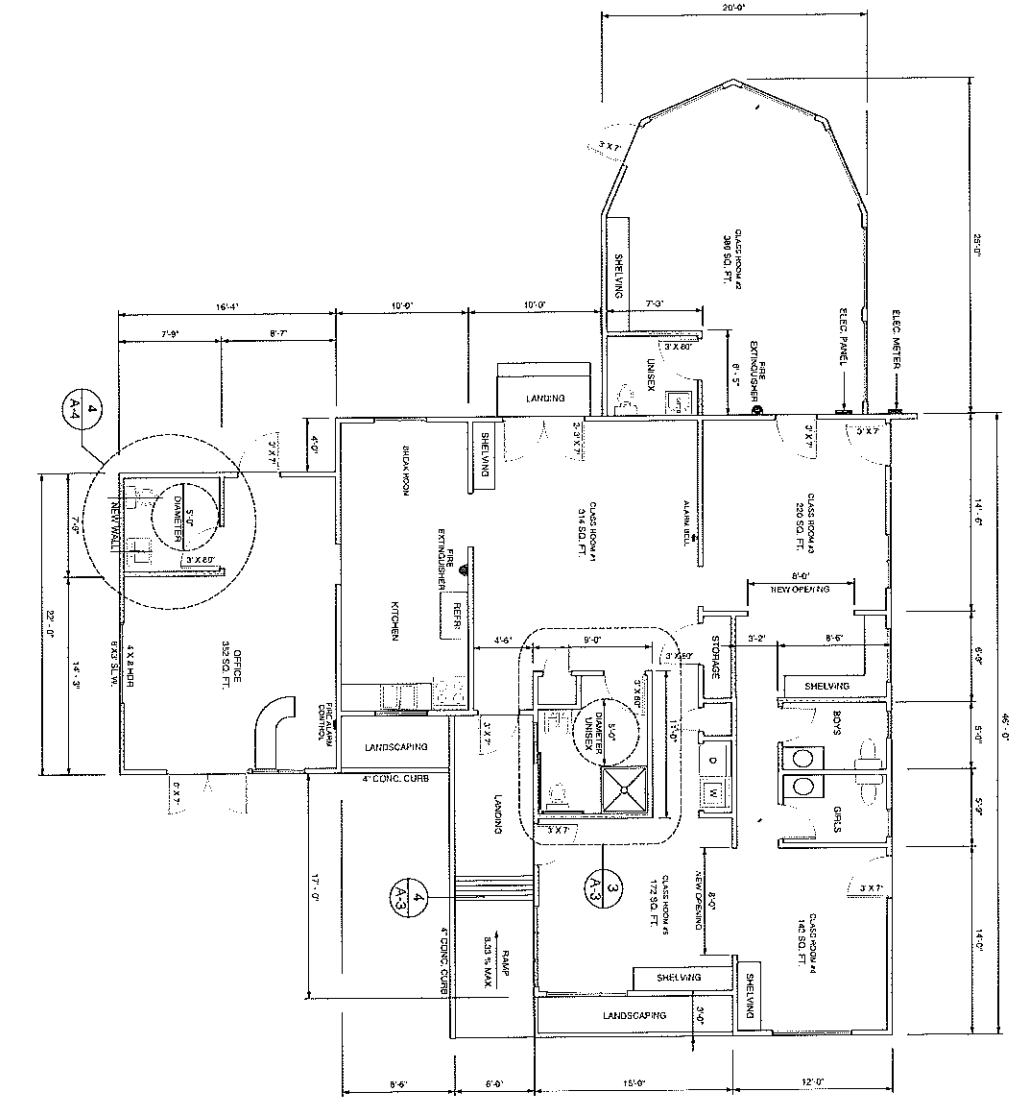
A-2	1/4" = 1' - 0"	BAO DINH	07 - 25 - 2015

PROJECT : ANGEL DAYCARE CENTER
ADRESS : 11471 BROOKHURST AVE.
GARDEN GROVE , CA 92843
OWNER : ANH TRAM TRAN
PHONE : (562) 219 - 1962

DEMOLITION FLOOR PLAN

GENERAL NOTES

BAO DINH & ASSOCIATES
Residential & Commercial
6951 Fairman St.
Lakewood , CA. 90713
(562) 421 - 5762



IMPROVEMENT FLOOR PLAN

SCALE : 1/4" = 1' - 0"

A-3

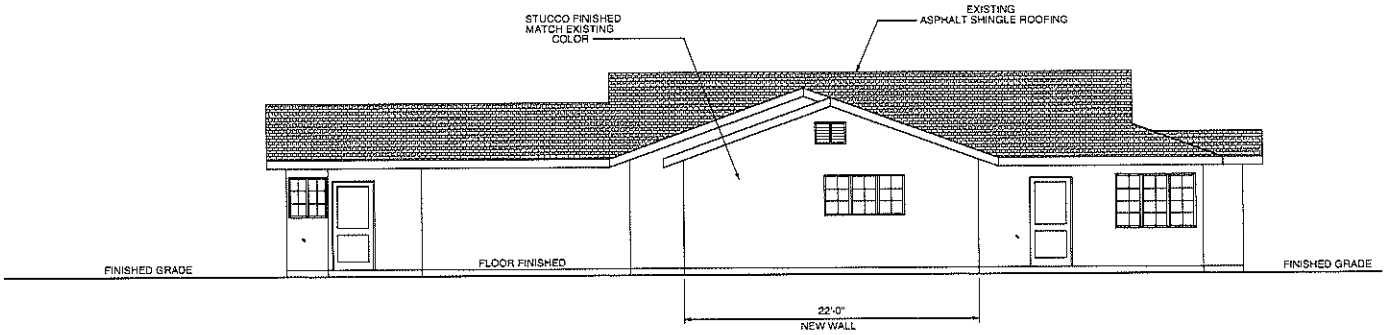
07 - 25 - 2015	
1/4" = 1' - 0"	
BAO DINH	

PROJECT : ANGEL DAYCARE CENTER
ADRESS : 11471 BROOKHURST AVE.
GARDEN GROVE , CA 92843
OWNER : ANH TRAM TRAN
PHONE : (562) 219 - 1962

IMPROVEMENT FLOOR PLAN

GENERAL NOTES

BAO DINH & ASSOCIATES
Residential & Commercial
6951 Farmin St.
Lakewood , CA. 90713
(562) 421 - 5782



SOUTH ELEVATION

SCALE : 1/4" = 1' - 0"

BAO DINH & ASSOCIATES
Residential & Commercial
6531 Fireman St.
Lakewood, CA. 90713
(562) 421 - 5762

ELEVATIONS
GENERAL NOTES

PROJECT : ANGEL DAYCARE CENTER
ADRESS : 11471 BROOKHURST AVE.
GARDEN GROVE , CA 92843
OWNER : ANH TRAN TRAN
PHONE : (562) 219 - 1962

07 - 25 - 2015
BAO DINH
1/4" = 1' - 0"

A-4

RESOLUTION NO. 5852-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE APPROVING CONDITIONAL USE PERMIT NO. CUP-053-2015 AND FRONT YARD DETERMINATION NO. FYD-002-2015 FOR PROPERTY LOCATED AT 11471 BROOKHURST STREET, ASSESSOR'S PARCEL NO. 132-143-18.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove does hereby approve Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015 for a property located on the northwest corner of Brookhurst Street and Orangewood Avenue at 11471 Brookhurst Street, Assessor's Parcel No. 132-143-18.

BE IT FURTHER RESOLVED in the matter of Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015, the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by Anh Tram Tran for Angels Day Care.

2. The applicant requests approval of Conditional Use Permit to operate a new child day care center, Angels Day Care, which will offer licensed child care services to children ages 2 to 6, with the total licensed capacity to be limited to 35 children. In conjunction with this request, the applicant is also requesting approval of a Front Yard Determination to determine the Orangewood Avenue side of the corner lot as the front yard, and Brookhurst Street as the side street yard.

3. The City of Garden Grove has determined that this project is exempt pursuant to Article 19, Section 15301, Existing Facilities, and Section 15303, New Construction or Conversion of Small Structures, of the California Environmental Quality Act.

4. The property has a General Plan Land Use designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial).

5. Existing land use, zoning, and General Plan designation of property within the vicinity of the subject property have been reviewed.

6. Report submitted by City Staff was reviewed.

7. Pursuant to a legal notice, a public hearing was held on December 3, 2015, and all interested persons were given an opportunity to be heard.

8. The Planning Commission gave due and careful consideration to the matter during its meeting of December 3, 2015.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Section 9.24.030 (Conditional Use Permits and Front Yard Determination), are as follows:

FACTS:

The site has a General Plan Land Use designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial). The lot is 11,688 square feet in size, and is improved with a single-story, 2,444 square foot, commercial building. The building was originally constructed in 1955 as a single-family home, but was converted into a commercial use in 1987.

The applicant proposes to operate a child day care center that will be licensed with a total of 35 children ages two (2) to six (6) years old, and with a total of four (4) employees. The day care center will operate from 7:00 a.m. to 6:00 p.m., Monday through Friday. A total of ten (10) parking spaces will be provided to accommodate the proposed day care. The applicant also proposes site and building improvements to accommodate the proposed child day care center.

In order to allow the operation of the proposed child day care center on the subject site, a Conditional Use Permit is required to regulate the operation of the child day care center. Also, a Front Yard Determination is required in order to designate the Orangewood Avenue side of the property as the front yard, and Brookhurst Street as the side yard in order to allow an outdoor play area that is secured with a 5'-0" tall wrought iron fence to be located along the Brookhurst Street property line.

FINDINGS AND REASONS:

1. That the proposed use will be consistent with the City's adopted General Plan.

   The subject site has a General Plan Land Use Designation of Light Commercial, and is zoned C-1 (Neighborhood Commercial). The Light Commercial land use designation allows for a range of commercial activities that serve local residential neighborhoods and the larger community. Child day care centers are allowed in the C-1 zone with a Conditional Use Permit.

2. That the requested use at the location proposed will not: adversely affect the health, peace, comfort, or welfare of the persons residing or working in the surrounding area, or unreasonably interfere with the use, enjoyment, or valuation of the property of other persons located in the vicinity of the site, or jeopardize, endanger, or otherwise constitute a menace to public health, safety, or general welfare.

   The proposed child day care center will not unreasonably interfere with the

use, enjoyment or valuation of the property of other persons located within the vicinity of the site, provided the conditions of approval are adhered to for the life of the project. The applicant proposes site improvements that will improve on-site access and circulation for the proposed child day care center. The facility will provide a total of ten (10) parking spaces that comply with the parking requirement for a child day care center. The child day care center will operate from 7:00 a.m. to 6:00 p.m., Monday through Friday, which are typical hours for child day care centers.

Approval of the Front Yard Determination will allow the proposed child day care center to accommodate a portion of the required outdoor play area along Brookhurst Street. A new wrought iron fence will be installed to secure the play area and does not exceed the maximum 7'-0" high fence requirements of the Municipal Code. A condition of approval has been included that requires the applicant to install clinging vines and/or shrubs along the exterior perimeter of the fence in order to deter graffiti and to enhance the street view of the fence.

Therefore, approval of the Conditional Use Permit and the Front Yard Determination will facilitate a use that is harmonious with the persons who work and live within the area, provided the conditions of approval are adhered to for the life of the project.

3. That the proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title or as is otherwise required in order to integrate such use with the uses in the surrounding area.

The site is 11,688 square feet in size. The applicant proposes modifications to the site to accommodate the proposed child day care center. The proposed improvements include widening the 12'-0" drive aisle to 16'-0" to provide adequate access between the parking areas, which includes removing 88 square feet of the building; reconfiguring the front parking area from angle parking spaces to perpendicular parking spaces; providing new landscaping within the front parking area; and widening the vehicle opening of the rear block wall to 25-0" wide. The applicant will provide the required outdoor play area that complies with the state's licensing requirements. A total of ten (10) parking spaces will be provided to accommodate the proposed child day care center as required by the Municipal Code.

Approval of the Front Yard Determination will allow the proposed child day care center to have a portion of the required outdoor play area along Brookhurst Street. The location of the outdoor play area can be accommodated on the site without interfering with the required parking area,

and will also allow for new landscaping to be installed along Brookhurst Street.

Therefore, approval of the Conditional Use Permit and the Front Yard Determination will facilitate a use that is harmonious with the persons who work and live within the area, provided the conditions of approval are adhered to for the life of the project.

4. That the proposed site is adequately served: by highways or streets or sufficient width and improved as necessary to carry the kind and quantity of traffic such as to be generated, and by other public or private service facilities as required.

The site is accessed from Orangewood Avenue and the rear alley, and has a fully developed street that provides adequate traffic circulation and driveway access to the parking area. The site is also sufficiently served by the public service facilities required, such as public utilities: gas, electric, water, and sewer facilities.

INCORPORATION OF FACTS AND REASONS SET FORTH IN STAFF REPORT

In addition to the foregoing, the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. The proposed Conditional Use Permit and Front Yard Determination do possess characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.24.030 (Conditional Use Permit).

2. In order to fulfill the purpose and intent of the Municipal Code and thereby promote the health, safety, and general welfare, the following Conditions of Approval, attached as Exhibit "A", shall apply to Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015.

EXHIBIT "A"

CONDITIONS OF APPROVAL

Conditional Use Permit No. CUP-053-2015

Front Yard Determination FYD-002-2015

11471 Brookhurst Street

CONDITIONS OF APPROVAL

General Conditions

1. Each owner of the property shall execute, and the applicant shall record against the property, a "Notice of Discretionary Permit Approval and Agreement with Conditions of Approval," as prepared by the City Attorney's Office, within 30 days of approval. The Conditional Use Permit and Front Yard Determination run with the land and are binding upon the property owner, his/her/its heirs, assigns, and successors in interest.

2. All Conditions of Approval set forth herein shall be binding on and enforceable against each of the following, and whenever used herein, the term "applicant" shall mean and refer to the project applicant, Anh Tram T. Tran for Angels Day Care, the owner(s) and tenant(s) of the property, and each of their respective successors and assigns, including all subsequent purchasers and/or tenants. The applicant and subsequent owner/operators of such business shall adhere to the conditions of approval for the life of the project, regardless of property ownership. Any changes of the conditions of approval require approval by the Planning Commission, except as otherwise provided herein.

3. This Conditional Use Permit and Front Yard Determination only authorizes the operation of a child day care center as identified on the site plan and floor plan attached to these Conditions of Approval. Approval of this Conditional Use Permit and Front Yard Determination shall not be construed to mean any waiver of applicable and appropriate zoning and other regulations; and wherein not otherwise specified, all requirements of the City of Garden Grove Municipal Code shall apply.

4. Minor modifications to the approved site plan, floor plan, and/or these Conditions of Approval may be approved by the Community Development Director, in his or her discretion. Proposed modifications to the approved floor plan, site plan, or Conditions of Approval that would result in the intensification of the project or create impacts that have not been previously addressed, and which are determined by the Community Development

Director not to be minor in nature shall be subject to approval of new and/or amended land use entitlements by the applicable City hearing body.

5. All conditions of approval shall be implemented at the applicant's expense, except where specified in the individual condition.

Building Services Division

6. All new restrooms shall be handicap accessible.

7. The applicant shall submit a plan for a change of occupancy.

8. The new use shall comply with all provisions of the California Building Code Standards.

Fire Department

9. The plans shall show all exterior gates and exit discharge. All exit gates shall show egress swing doors.

10. The applicant shall install emergency light, no knowledge hardware, and hardwired alarms.

Community Development Department

11. This approval shall allow the operation of a child day care center. There shall be no additional uses, activities, or changes in operation, or expansion of the use without first obtaining approval by the City through the appropriate process.

12. The child day care center shall operate only between the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.

13. The child day care center shall be licensed for a maximum license capacity of 35 children. Due to parking limitations, a maximum of four (4) employees shall be permitted on the property at any one time.

14. All children shall remain under the supervision of the operator or staff at all times, and shall not be permitted to wander or freely roam outside the building, except within the playground area.

15. A total of ten (10) on-site parking spaces shall be available on the property for the operation of the child day care center. The parking spaces shall be available at all times for employee and client parking. The four (4) parking

spaces located at the front parking area shall be designated for employee parking.

16. All child drop-off and pick-up shall occur on-site, and shall not occur within the public right-of-way along Orangewood Avenue, Brookhurst Street, or in the rear alley. The applicant shall posts sign on the exterior face of the alley block wall indicating that no temporary day care parking, pick-up or drop-off shall occur within the alley.

17. The applicant shall prepare a parking and circulation plan for the child day care center that is available for parents. The plan shall identify the on-site, one-way, circulation pattern for all vehicles. The plan shall identify the drive aisle located along Orangewood Avenue as the main entrance driveway with all exiting occurring through the rear alleyway access. The plan shall show the approved drop-off and pick-up area within the rear parking area. A copy of the parking and circulation plan shall be submitted to the Planning Division within 30-days from the date of this approval.

18. Directional signs shall be posted on-site that indicate the one-way circulation, and that identifying the drop-off and pick-up area within the rear parking lot. A sign shall be posted in the front parking area indicating no parking for drop-off or pick-up is permitted.

19. There shall be no vehicular exit from the Orangewood Avenue driveway during normal business hours. The applicant shall install a "No Right Turn" sign adjacent to the Orangewood Avenue driveway.

20. In the event traffic, circulation and/or parking problems develop at the site due to the operation of the day care center, as determined by the City Traffic Engineer or the Community Development Department, the applicant shall develop a plan to mitigate the identified issue(s). The applicant shall submit a plan for review and approval by the City Traffic Engineer and/or the Community Development Department. This plan may include a variety of solutions to be managed by the administration of the applicant.

21. The applicant shall be allowed to operate with the adequate number of individual trash container(s), as approved by Garden Grove Disposal, in lieu of providing a trash enclosure. The trash container(s) shall be kept on the property at all times; be kept away from public view; and secured in the location identified from the site plan, except during trash disposal and pick-up. The applicant shall provide proof from Garden Grove disposal allowing the use of the individual trash container(s) prior to the operation of the business; if no proof is submitted, the applicant shall construct a trash enclosure per City Standard B-502.

22. The rear block wall adjacent to the alley shall be modified to provide a 25'-0" drive aisle exit.

23. The existing bollards located adjacent to the drive aisle block wall shall be removed to maintain the required 25'-0" vehicle back-up area.

24. The applicant shall modify and increase the width of the 12'-0" wide drive aisle to 16'-0". Any modification to the width of this drive aisle shall be approved, and shall be designed to the satisfaction of the by the City's Engineering Division.

25. The applicant shall install a new landscape planter along Brookhurst Street, as shown on the site plan, that is separated from the parking spaces with a 4-inch curb. The applicant shall provide a landscape and irrigation plan for this landscape area to the Planning Division.

26. With this approval, Orangewood Avenue shall be designated as the front yard, and Brookhurst Street as the side yard. Any future modifications to the property shall observe the required development standards for the prescribed front and side yards as measured from the property lines.

27. The wrought iron fence proposed along Brookhurst Street to secure the outdoor play area shall not exceed a height of 7'-0". The fence shall be of a decorative design that includes architectural features, such as columns, to enhance the appearance of the fence. The applicant shall install clinging vines and shrubs along the exterior of the fence along the east and south sides in order to deter graffiti and to enhance the street view of the fence. The Planning Division shall review and approve the location of the proposed plants. The wrought iron fence shall maintain a 1'-0" setback from the Brookhurst Street property line in order to accommodate the required landscaping.

28. Any new block wall or fence constructed along the Orangewood Avenue front property line shall not exceed 36" inches (3'-0") in height. All walls and fences shall observe the required line-of-sight and vision clearances from the driveways.

29. No satellite dish antennas shall be installed on said premises unless and until plans have been submitted to and approved by the Community Development Department, Planning Division. Should satellite dish antenna(s) be proposed, they shall be placed and screened so that they are not visible from the public right-of-way or adjoining properties. No advertising materials shall be placed thereon.

30. All ground- or wall-mounted mechanical equipment shall be screened from view from any place on or off the property.

31. There shall be no outside storage of any goods or materials.

32. The applicant/property owner shall be responsible for providing adequate parking area lighting in compliance with City regulations. Lighting in the parking area shall be directed, positioned, or shielded in such a manner so as not to unreasonably illuminate adjacent properties.

33. The applicant shall be responsible for maintaining the facility, including the parking lot, landscaped area, walkways, and paved surfaces, free from graffiti, debris, and litter. Graffiti shall be removed from the project site and all parking lots under the control of the applicant within 120 hours of notification.

34. Signs shall comply with the City of Garden Grove sign requirements. No more than 15% of the total window area and clear doors shall bear advertising or signs of any sort. Any opaque material applied to the store front, such as window shall count toward the maximum window coverage area.

35. Any modifications to existing signs or the installation of new signs, ground or wall signs, shall require approval by the Community Development Department, Planning Services Division prior to issuance of a building permit.

36. Permits from the City of Garden Grove shall be obtained prior to displaying any temporary advertising devices (i.e., banners, flags, balloons, pennants).

37. The existing wood freestanding sign located within the Brookhurst Street right-of-way shall be removed.

38. A copy of the decision approving Conditional Use Permit No. CUP-053-2015 and Front Yard Determination No. FYD-002-2015, including the conditions of approval, shall be kept on the premises at all times.

39. The applicant shall, as a condition of project approval, at its sole expense, defend, indemnify and hold harmless the City, its officers, employees, agents and consultants from any claim, action, or proceeding against the City, its officers, agents, employees and/or consultants, which action seeks to set aside, void, annul or otherwise challenge any approval by the City Council, Planning Commission, Zoning Administrator, or other City decision-making body, or City staff action concerning CUP-053-2015 and FYD-002-2015. The applicant shall pay the City's defense costs, including attorney fees and all

other litigation related expenses, and shall reimburse the City for court costs, which the City may be required to pay as a result of such defense. The applicant shall further pay any adverse financial award, which may issue against the City, including but not limited to any award of attorney fees to a party challenging such project approval. The City shall retain the right to select its counsel of choice in any action referred to herein.

COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING STAFF REPORT

AGENDA ITEM NO.: C.2.	**SITE LOCATION:** Citywide
HEARING DATE: December 3, 2015	**GENERAL PLAN:** N/A
CASE NO.: Amendment No. A-015-2015	**ZONE:** N/A
APPLICANT: City of Garden Grove	
OWNER: N/A	**CEQA DETERMINATION:** Exempt

REQUEST:

That the Planning Commission hold a public hearing and make a recommendation to the City Council concerning adoption of an amendment to Title 9 of the Garden Grove Municipal Code to update the City's land use regulations pertaining to cannabis dispensaries, delivery, and cultivation pursuant to new State laws.

BACKGROUND:

In 2008, the Garden Grove City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city. This city-wide marijuana dispensary ban is currently codified in Section 9.16.020.100 of the Garden Grove Municipal Code. The City considers marijuana delivery services to be "dispensaries" that are prohibited by Section 9.16.020.100; however, delivery of marijuana is not expressly called out separately as a prohibited activity.

Ordinance No. 2734 does not directly address cultivation of medical marijuana. Marijuana cultivation is not an expressly permitted use authorized under the City's Land Use Code, however, and the City has historically interpreted its Land Use Code to prohibit any use that is not permitted expressly or through an interpretation of use.

On October 9, 2015, Governor Brown signed new legislation (AB 266, AB 243, and SB 643) collectively referred to as the Medical Marijuana Regulatory and Safety Act ("MMRSA"), which establishes a state-wide regulatory and licensing framework for the cultivation and distribution of medical marijuana. The MMRSA takes effect on January 1, 2016; however, many new state regulations must be developed, and the law will not be fully implemented until at least 2018.

The MMRSA generally does not preempt the authority of cities to regulate or prohibit medical marijuana dispensaries or the delivery or cultivation of medical marijuana. However, pursuant to the MMRSA, if a city wishes to preserve its right to prohibit the delivery and/or cultivation of medical marijuana, it must have an ordinance expressly doing do. With respect to the *cultivation* of medical marijuana, a city must have a land use ordinance in place that clearly regulates or prohibits such cultivation by March 1, 2016, or the State will automatically become the sole

licensing authority for individuals or entities seeking to cultivate marijuana in the city, and the city may lose its ability to regulate or prohibit this activity. Amendment No. A-015-2015 would preserve the status quo and prevent State preemption regarding the cultivation and delivery of medical marijuana in Garden Grove.

Because the City's laws pertaining to marijuana dispensaries and related activities are set forth in the Land Use Code, the Planning Commission must first conduct a public hearing and make a recommendation to the City Council regarding the proposed Amendment.

DISCUSSION:

Marijuana dispensaries, delivery and cultivation are each currently prohibited land use activities throughout the City. However, in light of new requirements in the MMRSA, the provisions of the City's Land Use Code pertaining to these activities need to be updated immediately, or the City may lose its ability to prohibit the cultivation or delivery of marijuana in the City.

The proposed Code Amendment would update existing provisions in Title 9 of the Garden Grove Municipal Code that pertain to medical marijuana to make them consistent with the recently enacted MMRSA and to preserve the City's ability to prohibit or regulate the delivery and cultivation of marijuana in the City. In addition, the proposed Code Amendment would add language to Title 9 expressly stating that any use not specifically identified as a permitted use, conditionally permitted use, or incidental use in any zoning district, planned unit development, or specific plan area is a prohibited use in that zone or planned unit development area.

The proposed Code Amendment is intended to preserve the status quo in Garden Grove pending the adoption of regulations for implementation of the MMRSA by the State, potential future State ballot initiatives and/or legislation concerning recreational use of marijuana, and further analysis and public discussion of the implicated policy issues.

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the proposed Resolution recommending approval of Amendment No. A-015-2015 to the City Council.

LEE MARINO
Acting Planning Services Manager

James D. Eggart

By: James Eggart
Assistant City Attorney

9.16.020.100 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 1362.7.

"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 Section11362.5, 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 1.04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.

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RESOLUTION NO. 5853-15

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF GARDEN GROVE RECOMMENDING THAT THE CITY COUNCIL APPROVE AMENDMENT NO. A-015-2015, AN AMENDMENT TO TITLE 9 OF THE GARDEN GROVE MUNICIPAL CODE TO UPDATE THE CITY'S LAND USE REGULATIONS PERTAINING TO CANNABIS DISPENSARIES, DELIVERY, AND CULTIVATION, AND TO CLARIFY THAT USES NOT EXPRESSLY PERMITTED ARE PROHIBITED.

BE IT RESOLVED that the Planning Commission of the City of Garden Grove, in a regular session assembled on December 3, 2015, hereby recommends approval of Amendment No. A-015-2015 to the City Council.

BE IT FURTHER RESOLVED in the matter of Amendment No. A-015-2015 the Planning Commission of the City of Garden Grove does hereby report as follows:

1. The subject case was initiated by the City of Garden Grove.

2. The City of Garden Grove proposes to amend Title 9 of the Garden Grove Municipal Code to update the City's land use regulations pertaining to cannabis dispensaries, delivery, and cultivation pursuant to new State laws and to clarify that uses not expressly permitted in the Land Use Code are prohibited.

3. The Planning Commission recommends the City Council find that the proposed Code Amendment is not subject to the California Environmental Quality Act ("CEQA"; Cal. Pub. Resources Code Section 21000 et seq.) pursuant to Section 15061(b)(3) of the State CEQA Guidelines (Cal. Code of Regs., Title 14, Section 15000 et seq.).

4. Report submitted by City Staff was reviewed.

5. Pursuant to a legal notice, a public hearing was held on December 3, 2015, and all interested persons were given an opportunity to be heard.

6. The Planning Commission gave due and careful consideration to the matter at its meeting on December 3, 2015.

BE IT FURTHER RESOLVED, FOUND AND DETERMINED that the facts and reasons supporting the conclusion of the Planning Commission, as required under Municipal Code Sections 9.32.030 are as follows:

FACTS:

Significant adverse impacts and negative secondary effects are often associated with cannabis dispensaries, delivery, cultivation, and other cannabis-related activities, including increased crime, burglaries, robberies, violence, property damage, and unauthorized or illegal use of cannabis. In addition, the cultivation or processing of

cannabis raises certain unique environmental and safety concerns. Pursuant to State law, cities are permitted to regulate, including to completely prohibit, cannabis-related land use activities, including dispensaries, delivery, and cultivation.

In 2008, the Garden Grove City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout the city. This city-wide marijuana dispensary ban is currently codified in Section 9.16.020.100 of the Garden Grove Municipal Code ("GGMC"). The City considers marijuana delivery services to be "dispensaries" that are prohibited by Section 9.16.020.100; however, delivery of marijuana is not expressly called out separately as a prohibited activity.

Ordinance No. 2734 does not directly address cultivation of medical marijuana. Marijuana cultivation is not an expressly permitted use authorized under the City's Land Use Code, however, and the City has historically interpreted its Land Use Code to prohibit any use that is not permitted expressly or through an interpretation of use.

On October 9, 2015, Governor Brown signed new legislation (AB 266, AB 243, and SB 643) collectively referred to as the Medical Marijuana Regulatory and Safety Act ("MMRSA"), which establishes a state-wide regulatory and licensing framework for the cultivation and distribution of medical marijuana. The MMRSA takes effect on January 1, 2016; however, many new state regulations must be developed, and the law will not be fully implemented until at least 2018.

The MMRSA generally does not preempt the authority of cities to regulate or prohibit medical marijuana dispensaries or the delivery or cultivation of medical marijuana. However, pursuant to the MMRSA, if a city wishes to preserve its right to prohibit the delivery and/or cultivation of medical marijuana, it must have an ordinance expressly doing do. With respect to the cultivation of medical marijuana, a city must have a land use ordinance in place that clearly regulates or prohibits such cultivation by March 1, 2016, or the State will become the sole licensing authority for individuals or entities seeking to cultivate marijuana in the city.

The City has proposed text amendments to Title 9 of the Municipal Code, which would update the City's land use regulations pertaining to marijuana/cannabis dispensaries, delivery, and cultivation pursuant to the Medical Marijuana Regulatory and Safety Act ("MMRSA"), and which would clarify that uses not expressly permitted in the Land Use Code are prohibited.

Pursuant to the proposed Code Amendment, all land use regulations specifically pertaining to marijuana/cannabis activities being conducted in the City would be consolidated in single, new Chapter in Title 9 of the GGMC. The provisions of existing GGMC Section 9.16.020.100 prohibiting medical marijuana dispensaries would be updated consistent with the MMRSA and the City's existing interpretation of Ordinance No. 2734 and would be relocated to the new Chapter in order to eliminate potential confusion regarding their application city-wide. Cannabis delivery would be expressly prohibited in the City, consistent with the City's current interpretation and

application of Ordinance No. 2734. The cultivation of cannabis would also be expressly prohibited in the City, consistent with the City's current interpretation of Title 9 prohibiting such activity.

The proposed Code Amendment would also add language to subsection D.7 of Section 9.32.030 of the GGMC expressly stating that any use not specifically identified as a permitted use, conditionally permitted use, or incidental use in any zoning district, planned unit development, or specific plan area is a prohibited use in that zone or planned unit development area. The addition of this language would merely further clarify application of the Land Use Code in a manner consistent with how the City has historically interpreted it.

FINDINGS AND REASONS:

1. The proposed Code Amendment is internally consistent with the goals, policies, and elements of the General Plan.

   Proposed Amendment No. A-015-2015 would clarify the existing status of marijuana/cannabis dispensaries, delivery, and cultivation as prohibited land uses and activities throughout the City and would preserve the status quo by preventing State preemption regarding the regulation of cultivation and delivery of marijuana/cannabis in Garden Grove, pending implementation of the Medical Marijuana Regulatory and Safety Act and further study of implicated policy issues by the City. The General Plan does not contain specific goals or policies pertaining to cannabis-related activities. However, continuing to prohibit cannabis dispensaries, delivery, and cultivation in the City is consistent with various policies in the City's Land Use Element, which encourage compatibility between uses and seek to protect residential areas from the effects of potentially incompatible uses.

2. The proposed Code Amendment will promote the public health, safety and welfare.

   Proposed Amendment No. A-015-2015 would clarify the existing status of marijuana/cannabis dispensaries, delivery, and cultivation as prohibited land uses and activities throughout the City and would preserve the status quo by preventing State preemption regarding the regulation of cultivation and delivery of marijuana/cannabis in Garden Grove, pending implementation of the Medical Marijuana Regulatory and Safety Act and further study of implicated policy issues by the City. The continued prohibition of cannabis dispensaries, delivery, and cultivation will promote the public health, safety and welfare by helping to prevent the significant adverse impacts and negative secondary effects often associated with these activities.

INCORPORATION OF FACTS AND FINDINGS SET FORTH IN STAFF REPORT:

In addition to the foregoing the Planning Commission incorporates herein by this reference, the facts and reasons set forth in the staff report.

BE IT FURTHER RESOLVED that the Planning Commission does conclude:

1. Amendment No. A-015-2015 possesses characteristics that would indicate justification of the request in accordance with Municipal Code Section 9.32.030.D.1 (Code Amendment).

2. The Planning Commission recommends that the City Council approve Amendment No. A-015-2015 and adopt an Ordinance incorporating the zoning text amendments described in Attachment "A" attached hereto.

Attachment A

Amendment No. A-015-2015

1. Repeal Section 9.16.020.100.

2. Add New Chapter 9.52 to read as follows:

CHAPTER 9.52 CANNABIS ACTIVITIES

9.52.010 Purpose, Findings and Definitions

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 marijuana dispensaries and delivery services from locating and operating in the City as stated in this section.

B. Definitions. As used in this chapter, the following terms, words and phrases have the meanings as defined in this section, unless another meaning is clearly apparent from the context:

"Cannabis" or "Marijuana" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the California Health and Safety Code. "Cannabis" includes, but is not limited to, "medical cannabis" as defined in California Business & Professions Code § 19300.5(ag). "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this definition, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

"Cannabis delivery" or "delivery of cannabis" means the transfer of cannabis or cannabis products from a dispensary to any person or entity at a location in the city. "Cannabis delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed, that enables individuals to arrange for or facilitate the transfer by a dispensary of cannabis or cannabis products. "Cannabis delivery includes, but is not limited to, "delivery" as defined in California Business & Professions Code § 19300.5(m).

"Cannabis dispensary," "marijuana dispensary" or "dispensary" means any association, business, facility, use, establishment, location, cannabis delivery service, cooperative, collective, or provider, whether fixed or mobile, that

possesses, processes, manufactures, distributes, makes available, or otherwise facilitates the distribution of cannabis or cannabis products to any person, including, but not limited to, a qualified patient, a person with an identification card, or a primary caregiver. The term "cannabis dispensary" includes, but is not limited to, a business, facility, use or location that engages "commercial cannabis activity" as defined in in California Business & Professions Code § 19300.5(k). The term "cannabis dispensary" shall not include the following facilities, locations or uses to the extent cannabis is dispensed by primary caregivers to qualified patients for medicinal use, as long as such use complies strictly with applicable law including, but not limited to, California Health and Safety Code section 11362.5 and 11362.7: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; or a residential hospice or home health agency licensed pursuant to Chapter 8 of Division 2 of the California Health and Safety Code.

"Cannabis cultivation" or "cultivation of cannabis" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

"Cannabis cultivation site" means any indoor or outdoor facility or location where cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities.

"Cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions and includes, but is not limited to, any "medical cannabis product" or "cannabis product," as defined in California Business & Professions Code § 19300.5(ag), and/or any "edible cannabis product" as defined in California Business & Professions Code § 19300.5(s).

"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.

"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.

"Qualified patient" is a person who is entitled to the protections of California Health and Safety Code Section11362.5, but who does not have an identification card issued by the State Department of Health Services.

C. 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.

9.52.020 Cannabis Dispensaries and Delivery Prohibited

A. Cannabis Dispensaries and Delivery Prohibited. Cannabis dispensaries and cannabis delivery are prohibited in all zoning districts, planned unit development districts, and specific plan areas in the city. It shall be unlawful for any person or entity to own, manage, conduct, or operate any cannabis dispensary or cannabis delivery service or to participate as an employee, contractor, agent or volunteer, or in any other manner or capacity, in any cannabis dispensary or cannabis delivery service in the City of Garden Grove.

B. Establishment or Maintenance of Cannabis Dispensaries Declared a Public Nuisance. The establishment, maintenance, or operation of a cannabis dispensary or cannabis delivery service as defined in this chapter 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 1.04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.

9.52.030 Cultivation of Cannabis

A. Cannabis Cultivation Prohibited. The cultivation of cannabis and/or the establishment, maintenance or operation of any cannabis cultivation site is prohibited in all zoning districts, planned unit development districts, and specific plan areas in the city.

B. Establishment or Maintenance of Cannabis Cultivation Site Declared a Public Nuisance. The establishment, maintenance, or operation of a cannabis cultivation site as defined in this chapter 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 1.04 of the Garden Grove Municipal Code, and/or any other law or ordinance that allows for the abatement of public nuisances.

3. Amend Subsection D.7 of Section 9.32.030 of Chapter 9.32 as follows (additions in bold/italics, deletions in strike-through):

7. Interpretation of Use.

a. Applicability.

i. ***Any use not specifically listed as a permitted use, incidental use, or conditional use shall be prohibited; provided, however, that*** ~~W~~***w***henever a use has not been specifically listed as a permitted use***,*** ***incidental use, or conditional use*** in a particular zone district, but similar uses are found to exist in that zone, the hearing body shall be responsible for interpreting whether or not the use is permitted in that zone district, and under what conditions.

ii. Any use determined to be inconsistent or not similar to other uses shall be required to file an application for an ordinance amendment.

b. Required Finding. That the proposed use is:

i. Similar in scale and operational characteristics to other uses permitted in that zone;

ii. Consistent with the intent of the general plan and the zone district;

iii. Compatible with other permitted uses.

SUPPLEMENTAL STAFF REPORT

AGENDA ITEM NO.: C.2.	**CASE NO.:** Amendment No. A-015-2015
HEARING DATE: December 3, 2015	**APPLICANT:** City of Garden Grove

The purpose of this supplemental report is to provide the Planning Commission with additional information and clarification regarding proposed Code Amendment No. A-015-2015.

SUMMARY OF MEDICAL MARIJUANA REGULATION & SAFETY ACT

The Medical Marijuana Regulation & Safety Act is comprised of three discreet pieces of legislation, each signed by the Governor on October 9, 2015. Assembly Bill (AB) 266 establishes a dual licensing structure requiring state licenses ***and*** a local license or permit for commercial cannabis businesses, with the State Department of Consumer Affairs heading an overall regulatory structure establishing minimum health and safety and testing standards. Assembly Bill (AB) 243 establishes a regulatory and licensing structure for cultivation sites under the Department of Food and Agriculture. Senate Bill (SB) 643 establishes criteria for licensing medical marijuana businesses, regulates physicians, and recognizes local authority to levy taxes and fees. Each of these three bills is attached to this report for the Planning Commission's reference and is summarized in more detail below.

AB 243

- Places the Department of Food and Agriculture (DFA) in charge of licensing and regulation of indoor and outdoor cultivation sites. Creates a Medical Cannabis Cultivation Program within the department.
- Mandates the Department of Pesticide Regulation (DPR) to develop standards for pesticides in marijuana cultivation, and maximum tolerances for pesticides and other foreign object residue.
- Mandates the Department of Public Health (DPH) to develop standards for production and labelling of all edible medical cannabis products.
- Assigns joint responsibility to DFA, Department of Fish and Wildlife (DFW), and the State Water Resources Control Board (SWRCB) to prevent illegal water diversion associated with marijuana cultivation from adversely affecting California fish population.
- Specifies that DPR, in consultation with SWRCB, is to develop regulations for application of pesticides in all cultivation.
- Specifies various types of cultivation licenses.
- Directs the multi-agency task force headed by DFW and SWRCB to expand its existing enforcement efforts to a statewide level to reduce adverse impacts of marijuana cultivation, including environmental impacts such as illegal discharge into waterways and poisoning of marine life and habitats.

- Prohibits cultivation of medical marijuana without first obtaining both a local license/permit and a state license. A person may not apply for a state license without first receiving a local license/permit or if the proposed cultivation will violate provisions of a local ordinance or regulation or if medical marijuana is prohibited by the local jurisdiction. *However, if a local jurisdiction does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or under the principles of permissive zoning, or chooses not to administer a conditional permit program, then commencing March 1, 2016, the state is the sole licensing authority for medical marijuana cultivation applicants.*

AB 266

- Establishes a statewide regulatory scheme, headed by the Bureau of Medical Marijuana Regulation (BMMR) within the Department of Consumer Affairs (DCA).
- Provides for dual licensing: state will issue licenses, and local governments will issue permits or licenses to operate marijuana businesses, according to local ordinances. State licenses will be issued beginning in January 2018.
- Revocation of a local license or permit will unilaterally terminate the ability of the business to operate in that jurisdiction.
- Expressly protects local licensing practices, zoning ordinances, and local constitutional police power.
- Caps total cultivation for a single licensee at four acres statewide, subject to local ordinances.
- *Requires local jurisdictions that wish to prevent delivery services from operating within their borders to enact an ordinance affirmatively banning this activity.*
- Specifies that DCA will issue the following licenses: Dispensary, Distributor, Transport, and Special Dispensary Status for licensees who have a maximum of three dispensaries. Specifies various sub-categories of licensees (indoor cultivation, outdoor cultivation, etc.)
- Limits cross-licensing to holding a single state license in up to two separate license categories, as specified. Prohibits medical marijuana licensees from also holding licenses to sell alcohol.
- Grandfathers in vertically integrated businesses (i.e. businesses that operate and control their own cultivation, manufacturing, and dispensing operations) if a local ordinance allowed or required such a business model and was enacted on or before July 1, 2015. Also requires such businesses to have operated in compliance with local ordinances, and to have been engaged in all the covered activities on July 1, 2015.
- Requires establishment of uniform health and safety standards, testing standards, and security requirements at dispensaries and during transport of the product.
- Specifies a standard for certification of testing labs, and specified minimum testing requirements. Prohibits testing lab operators from being licensees in any other category, and from holding a financial or ownership interest in any other category of licensed business.

- Includes a labor peace agreement under which unions agree not to engage in strikes, work stoppages, etc. and employers agree to provide unions reasonable access to employees for the purpose of organizing them. Specifies that such an agreement does not mandate a particular method of election.
- Provides for civil penalties for unlicensed activity, and specifies that applicable criminal penalties under existing law will continue to apply.
- Specifies that patients and primary caregivers are exempt from the state licensing requirement, and provides that their information is not to be disclosed and is confidential under the California Public Records Act.
- Phases out the existing model of marijuana cooperatives and collectives one year after DCA announces that state licensing has begun.

SB 643

- Directs the California Medical Board to prioritize investigation of excessive recommendations by physicians.
- Imposes fines ($5000.00) against physicians for violating prohibition against having a financial interest in a marijuana business.
- Recommendation for cannabis without a prior examination constitutes unprofessional conduct.
- Imposes restrictions on advertising for physician recommendations.
- Places DFA in charge of cultivation regulations and licensing, and requires a track and trace program.
- Codifies dual licensing (state license and local license or permit), and itemizes disqualifying felonies for state licensure.
- Places DPR in charge of pesticide regulation; DPH in charge of production and labelling of edibles.
- Upholds local power to levy fees and taxes (subject to applicable State constitutional and statutory requirements-such as the requirement of Proposition 218 for voter approval of general or special taxes).

WHAT IS THE CURRENT CITY POLICY REGARDING MEDICAL MARIJUANA DISPENSARIES?

It is the current policy of the City of Garden Grove that all medical marijuana dispensaries and cultivation operations are prohibited City-wide.

In 2008, the City Council adopted Ordinance No. 2734 prohibiting medical marijuana dispensaries throughout Garden Grove.

In 2011, the City Council adopted Ordinance Nos. 2797-A and 2798-A establishing an eligibility cut-off date and registration process for potential eligibility of medical marijuana dispensaries for future permits, pending adoption by the City of regulations governing the location and operation of medical marijuana dispensaries. However, the City Council never adopted any regulations allowing and regulating the location and/or operation of medical marijuana dispensaries in the City, and the

City Council voted to suspend the medical marijuana dispensary registration process in January 2012.

The City Council has not subsequently taken further formal action or provided different policy direction regarding the prohibition of medical marijuana dispensaries or cultivation operations. Thus, at the current time, it remains the official policy of the City that marijuana dispensaries and related activities are prohibited in Garden Grove.

WHAT IS THE BASIS FOR THE CITY'S CURRENT POLICY?

At the September 23, 2008 public hearing for Ordinance No. 2734, the City Council was provided with information pertaining to adverse secondary impacts to public health, safety and welfare associated with medical marijuana dispensaries, and the City Council made certain legislative findings in support of the prohibition of medical marijuana dispensaries when it adopted Ordinance No. 2734. Some of the reasons cited by the City Council in support of its adoption of Ordinance No. 2734 included the following:

- Jurisdictions permitting medical marijuana dispensaries have experienced increases in crime in the areas immediately surrounding medical marijuana dispensaries, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need.
- That it is difficult for law enforcement to distinguish between illegal marijuana grows and grows that qualify as medical exemptions, and that some self-designated "medical" marijuana growers may, in fact, be growing marijuana for illegal, "recreational" use.
- That the use, possession, distribution and sale of marijuana is a federal crime.
- That 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.

A copy of Ordinance No. 2734 containing the City Council's findings, along with a copy of the September 23, 2008 City Council Staff Report and evidentiary attachments is attached to this supplemental report. For the Planning Commission's reference, Staff has also provided copies of a 2009 white paper on marijuana dispensaries prepared by the California Police Chiefs Association and a 2010 paper on public safety issues related with medical marijuana in Orange County prepared by the Orange County Chiefs of Police and Sheriff's Association.

WHAT IS THE PURPOSE OF THE PROPOSED CODE AMENDMENT?

The proposed Code Amendment would serve *to maintain the status quo* in the City until such time as the City Council directs otherwise.

WHY IS IT NECESSARY TO ADOPT CODE AMENDMENTS TO MAINTAIN THE STATUS QUO?

The Medical Marijuana Regulatory and Safety Act allows cities to continue to adopt and enforce their own local ordinances regulating or banning marijuana dispensary, delivery, and cultivation operations, but requires that such local ordinances contain certain specific language to do so. Otherwise, the new State law may preempt local city laws. The current language of the Garden Grove Municipal Code needs to be updated to satisfy the requirements of the new State law in order to maintain the regulatory status quo in the City.

WHY IS IT NECESSARY FOR THE CITY TO ADOPT CODE AMENDMENTS *NOW*?

Pursuant to a provision in the new State law, the State becomes the sole licensing authority for cultivation of marijuana in a city if that city does not have a land use regulation or ordinance in place as of March 1, 2016 clearly regulating or prohibiting the cultivation of marijuana. Although the City interprets is Land Use Code to prohibit stand-alone marijuana cultivation operations because such uses are not expressly permitted or conditionally permitted, the Land Use Code does not contain an express prohibition of marijuana cultivation. In order to ensure the City's ability to continue to prohibit marijuana cultivation, or to adopt its own future local regulations governing this activity, is preserved, the City Council should adopt an ordinance that expressly regulates or prohibits the cultivation of medical marijuana by January 26, 2016 (in order that the ordinance takes effect by March 1, 2016). If the City does not do so, it may lose its ability to adopt or enforce its own future local regulations regarding marijuana cultivation.

IF AMENDMENT NO. A-015-2015 IS ADOPTED, WHAT EFFECT WILL IT HAVE ON FUTURE CITY COUNCIL POLICY DECISIONS PERTAINING TO THE REGULATION OF MEDICAL MARIJUANA RELATED ACTIVITIES IN LIGHT OF THE NEW STATE LAW?

None. Amendment No. A-015-2015 would preserve the status quo regarding the City's regulation of medical marijuana-related activities for the time being, but would not preclude the City Council from adopting a subsequent ordinance in the future that changes how the City chooses to regulate such activities.

The Medical Marijuana Regulatory and Safety Act establishes a basic framework for State regulation of commercial cannabis activities, but it calls for multiple State agencies to develop the detailed regulations that will be necessary to implement that basic framework. This State regulatory scheme will not be implemented immediately; it is anticipated that it will take approximately two years for the State

to develop the necessary regulations and regulatory infrastructure called for under the new State law, and the State will not begin issuing licenses until 2018. During this two year period, local regulations will continue to prevail. Once the new State regulations are developed, cities and counties will have an opportunity to better evaluate their own local regulatory schemes and policies vis-à-vis the new State regulatory framework.

CONCLUSION

Staff recognizes that the topic of whether and how to regulate marijuana dispensaries, marijuana delivery services, and marijuana cultivation is a difficult and complicated one regarding which opinions may vary. The City's policies regarding these matters are ultimately determined by the City Council. As reflected by the prior actions of the City Council, the City's current policy is to prohibit all such marijuana-related activities City-wide. Unless and until the City Council directs otherwise, Staff is not in a position to recommended changes to the City's current policy, and the proposed Code Amendments are not intended to do so. Rather, Amendment No. A-015-2015 reflects Staff's recommendation as to how best *to maintain the status quo* in light of the provisions of the newly enacted Medical Marijuana Regulatory and Safety Act, while at the same time establishing a legal framework that it is conducive to future modifications.

LEE MARINO
Acting Planning Services Manager

By: James Eggart
Assistant City Attorney

Attachments

1. Assembly Bill 243
2. Assembly Bill 266
3. Senate Bill 643
4. Ordinance No. 2734
5. City Council Staff Report Re Ordinance No. 2734
6. White Paper on Marijuana Dispensaries by California Police Chiefs Association
7. Report Regarding: Public Safety Issues Related to Medical Marijuana in Orange County by Orange County Chiefs of Police and Sheriff's Association

Senate Bill No. 643

CHAPTER 719

An act to amend Sections 144, 2220.05, 2241.5, and 2242.1 of, to add Sections 19302.1, 19319, 19320, 19322, 19323, 19324, and 19325 to, to add Article 25 (commencing with Section 2525) to Chapter 5 of Division 2 of, and to add Article 6 (commencing with Section 19331), Article 7.5 (commencing with Section 19335), Article 8 (commencing with Section 19337), and Article 11 (commencing with Section 19348) to Chapter 3.5 of Division 8 of, the Business and Professions Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

SB 643, McGuire. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 6, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would, among other things, set forth standards for a physician and surgeon prescribing medical cannabis and require the Medical Board of California to prioritize its investigative and prosecutorial resources to identify and discipline physicians and surgeons that have repeatedly recommended excessive cannabis to patients for medical purposes or repeatedly recommended cannabis to patients for medical purposes without a good faith examination, as specified. The bill would require the Bureau of Medical Marijuana to require an applicant to furnish a full set of fingerprints for the purposes of conducting criminal history record checks. The bill would prohibit a physician and surgeon who recommends cannabis to a patient for a medical purpose from accepting, soliciting, or offering any form of remuneration from a facility licensed under the Medical Marijuana Regulation and Safety Act. The bill would make a violation of this prohibition a misdemeanor, and by creating a new crime, this bill would impose a state-mandated local program.

This bill would require the Governor, under the Medical Marijuana Regulation and Safety Act, to appoint, subject to confirmation by the Senate, a chief of the Bureau of Medical Marijuana Regulation. The act would require the Department of Consumer Affairs to have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the transportation and storage, unrelated to manufacturing, of medical marijuana, and would authorize the department to collect fees for its regulatory activities and impose specified duties on this department in this regard. The act would require the Department of Food and Agriculture to administer the provisions of the act related to, and associated with, the cultivation, and transportation of, medical cannabis and would impose specified duties on this department in this regard. The act would require the State Department of Public Health to administer the provisions of the act related to, and associated with, the manufacturing and testing of medical cannabis and would impose specified duties on this department in this regard.

This bill would authorize counties to impose a tax upon specified cannabis-related activity.

This bill would require an applicant for a state license pursuant to the act to provide a statement signed by the applicant under penalty of perjury, thereby changing the scope of a crime and imposing a state-mandated local program.

This bill would set forth standards for the licensed cultivation of medical cannabis, including, but not limited to, establishing duties relating to the environmental impact of cannabis and cannabis products. The bill would also establish state cultivator license types, as specified.

(2) This bill would provide that its provisions are severable.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meeting of public bodies or the writings of public bodies or the writings of public officials and agencies be adopted with finding demonstrating the interest protected by the limitation and the need for protecting that interest. The bill would make legislative findings to that effect.

(5) The bill would become operative only if AB 266 and AB 243 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

The people of the State of California do enact as follows:

SECTION 1. Section 144 of the Business and Professions Code is amended to read:

144. (a) Notwithstanding any other provision of law, an agency designated in subdivision (b) shall require an applicant to furnish to the agency a full set of fingerprints for purposes of conducting criminal history record checks. Any agency designated in subdivision (b) may obtain and receive, at its discretion, criminal history information from the Department of Justice and the United States Federal Bureau of Investigation.

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

(1) California Board of Accountancy.

(2) State Athletic Commission.

(3) Board of Behavioral Sciences.

(4) Court Reporters Board of California.

(5) State Board of Guide Dogs for the Blind.

(6) California State Board of Pharmacy.

(7) Board of Registered Nursing.

(8) Veterinary Medical Board.

(9) Board of Vocational Nursing and Psychiatric Technicians.

(10) Respiratory Care Board of California.

(11) Physical Therapy Board of California.

(12) Physician Assistant Committee of the Medical Board of California.

(13) Speech-Language Pathology and Audiology and Hearing Aid Dispenser Board.

(14) Medical Board of California.

(15) State Board of Optometry.

(16) Acupuncture Board.

(17) Cemetery and Funeral Bureau.

(18) Bureau of Security and Investigative Services.

(19) Division of Investigation.

(20) Board of Psychology.

(21) California Board of Occupational Therapy.

(22) Structural Pest Control Board.

(23) Contractors' State License Board.

(24) Naturopathic Medicine Committee.

(25) Professional Fiduciaries Bureau.

(26) Board for Professional Engineers, Land Surveyors, and Geologists.

(27) Bureau of Medical Marijuana Regulation.

(c) For purposes of paragraph (26) of subdivision (b), the term "applicant" shall be limited to an initial applicant who has never been registered or licensed by the board or to an applicant for a new licensure or registration category.

SEC. 2. Section 2220.05 of the Business and Professions Code is amended to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its

investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Repeated acts of clearly excessive recommending of cannabis to patients for medical purposes, or repeated acts of recommending cannabis to patients for medical purposes without a good faith prior examination of the patient and a medical reason for the recommendation.

(5) Sexual misconduct with one or more patients during a course of treatment or an examination.

(6) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 3. Section 2241.5 of the Business and Professions Code is amended to read:

2241.5. (a) A physician and surgeon may prescribe for, or dispense or administer to, a person under his or her treatment for a medical condition dangerous drugs or prescription controlled substances for the treatment of pain or a condition causing pain, including, but not limited to, intractable pain.

(b) No physician and surgeon shall be subject to disciplinary action for prescribing, dispensing, or administering dangerous drugs or prescription controlled substances in accordance with this section.

(c) This section shall not affect the power of the board to take any action described in Section 2227 against a physician and surgeon who does any of the following:

(1) Violates subdivision (b), (c), or (d) of Section 2234 regarding gross negligence, repeated negligent acts, or incompetence.

(2) Violates Section 2241 regarding treatment of an addict.

(3) Violates Section 2242 or 2525.3 regarding performing an appropriate prior examination and the existence of a medical indication for prescribing, dispensing, or furnishing dangerous drugs or recommending medical cannabis.

(4) Violates Section 2242.1 regarding prescribing on the Internet.

(5) Fails to keep complete and accurate records of purchases and disposals of substances listed in the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code) or controlled substances scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Sec. 801 et seq.), or pursuant to the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. A physician and surgeon shall keep records of his or her purchases and disposals of these controlled substances or dangerous drugs, including the date of purchase, the date and records of the sale or disposal of the drugs by the physician and surgeon, the name and address of the person receiving the drugs, and the reason for the disposal or the dispensing of the drugs to the person, and shall otherwise comply with all state recordkeeping requirements for controlled substances.

(6) Writes false or fictitious prescriptions for controlled substances listed in the California Uniform Controlled Substances Act or scheduled in the federal Comprehensive Drug Abuse Prevention and Control Act of 1970.

(7) Prescribes, administers, or dispenses in violation of this chapter, or in violation of Chapter 4 (commencing with Section 11150) or Chapter 5 (commencing with Section 11210) of Division 10 of the Health and Safety Code.

(d) A physician and surgeon shall exercise reasonable care in determining whether a particular patient or condition, or the complexity of a patient's treatment, including, but not limited to, a current or recent pattern of drug abuse, requires consultation with, or referral to, a more qualified specialist.

(e) Nothing in this section shall prohibit the governing body of a hospital from taking disciplinary actions against a physician and surgeon pursuant to Sections 809.05, 809.4, and 809.5.

SEC. 4. Section 2242.1 of the Business and Professions Code is amended to read:

2242.1. (a) No person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished, dangerous drugs or dangerous devices, as defined in Section 4022, on the Internet for delivery to any person in this state, without an appropriate prior examination and medical indication, except as authorized by Section 2242.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or entity that has committed the violation to either

a fine of up to twenty-five thousand dollars ($25,000) per occurrence pursuant to a citation issued by the board or a civil penalty of twenty-five thousand dollars ($25,000) per occurrence.

(c) The Attorney General may bring an action to enforce this section and to collect the fines or civil penalties authorized by subdivision (b).

(d) For notifications made on and after January 1, 2002, the Franchise Tax Board, upon notification by the Attorney General or the board of a final judgment in an action brought under this section, shall subtract the amount of the fine or awarded civil penalties from any tax refunds or lottery winnings due to the person who is a defendant in the action using the offset authority under Section 12419.5 of the Government Code, as delegated by the Controller, and the processes as established by the Franchise Tax Board for this purpose. That amount shall be forwarded to the board for deposit in the Contingent Fund of the Medical Board of California.

(e) If the person or entity that is the subject of an action brought pursuant to this section is not a resident of this state, a violation of this section shall, if applicable, be reported to the person's or entity's appropriate professional licensing authority.

(f) Nothing in this section shall prohibit the board from commencing a disciplinary action against a physician and surgeon pursuant to Section 2242 or 2525.3.

SEC. 5. Article 25 (commencing with Section 2525) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 25. Recommending Medical Cannabis

2525. (a) It is unlawful for a physician and surgeon who recommends cannabis to a patient for a medical purpose to accept, solicit, or offer any form of remuneration from or to a facility issued a state license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8, if the physician and surgeon or his or her immediate family have a financial interest in that facility.

(b) For the purposes of this section, "financial interest" shall have the same meaning as in Section 650.01.

(c) A violation of this section shall be a misdemeanor punishable by up to one year in county jail and a fine of up to five thousand dollars ($5,000) or by civil penalties of up to five thousand dollars ($5,000) and shall constitute unprofessional conduct.

2525.1. The Medical Board of California shall consult with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, on developing and adopting medical guidelines for the appropriate administration and use of medical cannabis.

2525.2. 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 shall not recommend medical

cannabis to a patient, unless that person is the patient's attending physician, as defined by subdivision (a) of Section 11362.7 of the Health and Safety Code.

2525.3. Recommending medical cannabis to a patient for a medical purpose without an appropriate prior examination and a medical indication constitutes unprofessional conduct.

2525.4. It is unprofessional conduct for any attending physician recommending medical cannabis to be employed by, or enter into any other agreement with, any person or entity dispensing medical cannabis.

2525.5. (a) A person shall not distribute any form of advertising for physician recommendations for medical cannabis in California unless the advertisement bears the following notice to consumers:

NOTICE TO CONSUMERS: The Compassionate Use Act of 1996 ensures that seriously ill Californians have the right to obtain and use cannabis for medical purposes where 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 medical cannabis. Recommendations must come from an attending physician as defined in Section 11362.7 of the Health and Safety Code. Cannabis is a Schedule I drug according to the federal Controlled Substances Act. Activity related to cannabis use is subject to federal prosecution, regardless of the protections provided by state law.

(b) Advertising for attending physician recommendations for medical cannabis shall meet all of the requirements in Section 651. Price advertising shall not be fraudulent, deceitful, or misleading, including statements or advertisements of bait, discounts, premiums, gifts, or statements of a similar nature.

SEC. 6. Section 19302.1 is added to the Business and Professions Code, to read:

19302.1. (a) The Governor shall appoint a chief of the bureau, subject to confirmation by the Senate, at a salary to be fixed and determined by the director with the approval of the Director of Finance. The chief shall serve under the direction and supervision of the director and at the pleasure of the Governor.

(b) Every power granted to or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy or assistant director or by the chief, subject to conditions and limitations that the director may prescribe. In addition to every power granted or duty imposed with this chapter, the director shall have all other powers and duties generally applicable in relation to bureaus that are part of the Department of Consumer Affairs.

(c) The director may employ and appoint all employees necessary to properly administer the work of the bureau, in accordance with civil service laws and regulations.

(d) The Department of Consumer Affairs shall have the sole authority to create, issue, renew, discipline, suspend, or revoke licenses for the

transportation, storage unrelated to manufacturing activities, distribution, and sale of medical marijuana within the state and to collect fees in connection with activities the bureau regulates. The bureau may create licenses in addition to those identified in this chapter that the bureau deems necessary to effectuate its duties under this chapter.

(e) The Department of Food and Agriculture shall administer the provisions of this chapter related to and associated with the cultivation of medical cannabis. The Department of Food and Agriculture shall have the authority to create, issue, and suspend or revoke cultivation licenses for violations of this chapter. The State Department of Public Health shall administer the provisions of this chapter related to and associated with the manufacturing and testing of medical cannabis.

SEC. 7. Section 19319 is added to the Business and Professions Code, to read:

19319. (a) A qualified patient, as defined in Section 11362.7 of the Health and Safety Code, who cultivates, possesses, stores, manufactures, or transports cannabis exclusively for his or her personal medical use but who does not provide, donate, sell, or distribute cannabis to any other person is not thereby engaged in commercial cannabis activity and is therefore exempt from the licensure requirements of this chapter.

(b) A primary caregiver who cultivates, possesses, stores, manufactures, transports, donates, or provides cannabis exclusively for the personal medical purposes of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 of the Health and Safety Code, but who does not receive remuneration for these activities except for compensation in full compliance with subdivision (c) of Section 11362.765 of the Health and Safety Code, is exempt from the licensure requirements of this chapter.

SEC. 8. Section 19320 is added to the Business and Professions Code, to read:

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

SEC. 9. Section 19322 is added to the Business and Professions Code, to read:

19322. (a) A person or entity shall not submit an application for a state license issued by the department pursuant to this chapter unless that person or entity has received a license, permit, or authorization by a local jurisdiction. An applicant for any type of state license issued pursuant to this chapter shall do all of the following:

(1) Electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice for the purpose of obtaining information as to the existence and content of a record of state or federal convictions and arrests, and information as to the existence and content of a record of state or federal convictions and arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance, pending trial or appeal.

(A) The Department of Justice shall provide a response to the licensing authority pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(B) The licensing authority shall request from the Department of Justice subsequent notification service, as provided pursuant to Section 11105.2 of the Penal Code, for applicants.

(C) The Department of Justice shall charge the applicant a fee sufficient to cover the reasonable cost of processing the requests described in this paragraph.

(2) Provide documentation issued by the local jurisdiction in which the proposed business is operating certifying that the applicant is or will be in compliance with all local ordinances and regulations.

(3) Provide evidence of the legal right to occupy and use the proposed location. For an applicant seeking a cultivator, distributor, manufacturing, or dispensary license, provide a statement from the owner of real property or their agent where the cultivation, distribution, manufacturing, or dispensing commercial medical cannabis activities will occur, as proof to demonstrate the landowner has acknowledged and consented to permit

cultivation, distribution, manufacturing, or dispensary activities to be conducted on the property by the tenant applicant.

(4) If the application is for a cultivator or a dispensary, provide evidence that the proposed location is located beyond at least a 600-foot radius from a school, as required by Section 11362.768 of the Health and Safety Code.

(5) Provide a statement, signed by the applicant under penalty of perjury, that the information provided is complete, true, and accurate.

(6) (A) For an applicant with 20 or more employees, provide a statement that the applicant will enter into, or demonstrate that it has already entered into, and abide by the terms of a labor peace agreement.

(B) For the purposes of this paragraph, "employee" does not include a supervisor.

(C) For purposes of this paragraph, "supervisor" means an individual having authority, in the interest of the licensee, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(7) Provide the applicant's seller's permit number issued pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code or indicate that the applicant is currently applying for a seller's permit.

(8) Provide any other information required by the licensing authority.

(9) For an applicant seeking a cultivation license, provide a statement declaring the applicant is an "agricultural employer," as defined in the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code), to the extent not prohibited by law.

(10) For an applicant seeking licensure as a testing laboratory, register with the State Department of Public Health and provide any information required by the State Department of Public Health.

(11) Pay all applicable fees required for licensure by the licensing authority.

(b) For applicants seeking licensure to cultivate, distribute, or manufacture medical cannabis, the application shall also include a detailed description of the applicant's operating procedures for all of the following, as required by the licensing authority:

(1) Cultivation.

(2) Extraction and infusion methods.

(3) The transportation process.

(4) Inventory procedures.

(5) Quality control procedures.

SEC. 10. Section 19323 is added to the Business and Professions Code, to read:

19323. (a) The licensing authority shall deny an application if either the applicant or the premises for which a state license is applied do not qualify for licensure under this chapter.

(b) The licensing authority may deny the application for licensure or renewal of a state license if any of the following conditions apply:

(1) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter, including but not limited to, any requirement imposed to protect natural resources, instream flow, and water quality pursuant to subdivision (a) of Section 19332.

(2) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 2 (commencing with Section 480) of Division 1.5.

(3) A local agency has notified the licensing authority that a licensee or applicant within its jurisdiction is in violation of state rules and regulation relating to commercial cannabis activities, and the licensing authority, through an investigation, has determined that the violation is grounds for termination or revocation of the license. The licensing authority shall have the authority to collect reasonable costs, as determined by the licensing authority, for investigation from the licensee or applicant.

(4) The applicant has failed to provide information required by the licensing authority.

(5) The applicant or licensee has been convicted of an offense that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, except that if the licensing authority determines that the applicant or licensee is otherwise suitable to be issued a license and granting the license would not compromise public safety, the licensing authority shall conduct a thorough review of the nature of the crime, conviction, circumstances, and evidence of rehabilitation of the applicant, and shall evaluate the suitability of the applicant or licensee to be issued a license based on the evidence found through the review. In determining which offenses are substantially related to the qualifications, functions, or duties of the business or profession for which the application is made, the licensing authority shall include, but not be limited to, the following:

(A) A felony conviction for the illegal possession for sale, sale, manufacture, transportation, or cultivation of a controlled substance.

(B) A violent felony conviction, as specified in subdivision (c) of Section 667.5 of the Penal Code.

(C) A serious felony conviction, as specified in subdivision (c) of Section 1192.7 of the Penal Code.

(D) A felony conviction involving fraud, deceit, or embezzlement.

(6) The applicant, or any of its officers, directors, or owners, is a licensed physician making patient recommendations for medical cannabis pursuant to Section 11362.7 of the Health and Safety Code.

(7) The applicant or any of its officers, directors, or owners has been subject to fines or penalties for cultivation or production of a controlled substance on public or private lands pursuant to Section 12025 or 12025.1 of the Fish and Game Code.

(8) The applicant, or any of its officers, directors, or owners, has been sanctioned by a licensing authority or a city, county, or city and county for unlicensed commercial medical cannabis activities or has had a license revoked under this chapter in the three years immediately preceding the date the application is filed with the licensing authority.

(9) Failure to obtain and maintain a valid seller's permit required pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

SEC. 11. Section 19324 is added to the Business and Professions Code, to read:

19324. Upon the denial of any application for a license, the licensing authority shall notify the applicant in writing. Within 30 days of service of the notice, the applicant may file a written petition for a license with the licensing authority. Upon receipt of a timely filed petition, the licensing authority shall set the petition for hearing. The hearing shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

SEC. 12. Section 19325 is added to the Business and Professions Code, to read:

19325. An applicant shall not be denied a state license if the denial is based solely on any of the following:

(a) A conviction or act that is substantially related to the qualifications, functions, or duties of the business or profession for which the application is made for which the applicant or licensee has obtained a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(b) A conviction that was subsequently dismissed pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

SEC. 13. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19332.5. (a) Not later than January 1, 2020, the Department of Food and Agriculture in conjunction with the bureau, shall make available a certified organic designation and organic certification program for medical marijuana, if permitted under federal law and the National Organic Program (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)), and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The bureau may establish appellations of origin for marijuana grown in California.

(c) It is unlawful for medical marijuana to be marketed, labeled, or sold as grown in a California county when the medical marijuana was not grown in that county.

(d) It is unlawful to use the name of a California county in the labeling, marketing, or packaging of medical marijuana products unless the product was grown in that county.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 14. Article 7.5 (commencing with Section 19335) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 7.5. Unique Identifier and Track and Trace Program

19335. (a) The Department of Food and Agriculture, in consultation with the bureau, shall establish a track and trace program for reporting the movement of medical marijuana items throughout the distribution chain that utilizes a unique identifier pursuant to Section 11362.777 of the Health and Safety Code and secure packaging and is capable of providing information that captures, at a minimum, all of the following:

(1) The licensee receiving the product.

(2) The transaction date.

(3) The cultivator from which the product originates, including the associated unique identifier, pursuant to Section 11362.777 of the Health and Safety Code.

(b) (1) The Department of Food and Agriculture shall create an electronic database containing the electronic shipping manifests which shall include, but not be limited to, the following information:

(A) The quantity, or weight, and variety of products shipped.

(B) The estimated times of departure and arrival.

(C) The quantity, or weight, and variety of products received.

(D) The actual time of departure and arrival.

(E) A categorization of the product.

(F) The license number and the unique identifier pursuant to Section 11362.777 of the Health and Safety Code issued by the licensing authority for all licensees involved in the shipping process, including cultivators, transporters, distributors, and dispensaries.

(2) (A) The database shall be designed to flag irregularities for all licensing authorities in this chapter to investigate. All licensing authorities pursuant to this chapter may access the database and share information related to licensees under this chapter, including social security and individual taxpayer identifications notwithstanding Section 30.

(B) The Department of Food and Agriculture shall immediately inform the bureau upon the finding of an irregularity or suspicious finding related to a licensee, applicant, or commercial cannabis activity for investigatory purposes.

(3) Licensing authorities and state and local agencies may, at any time, inspect shipments and request documentation for current inventory.

(4) The bureau shall have 24-hour access to the electronic database administered by the Department of Food and Agriculture.

(5) The Department of Food and Agriculture shall be authorized to enter into memoranda of understandings with licensing authorities for data sharing purposes, as deemed necessary by the Department of Food and Agriculture.

(6) Information received and contained in records kept by the Department of Food and Agriculture or licensing authorities for the purposes of administering this section are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter or a local ordinance.

(7) Upon the request of a state or local law enforcement agency, licensing authorities shall allow access to or provide information contained within the database to assist law enforcement in their duties and responsibilities pursuant to this chapter.

19336. (a) Chapter 4 (commencing with Section 55121) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the bureau's collection of the fees, civil fines, and penalties imposed pursuant to this chapter.

(b) Chapter 8 (commencing with Section 55381) of Part 30 of Division 2 of the Revenue and Taxation Code shall apply with respect to the disclosure of information under this chapter.

SEC. 15. Article 8 (commencing with Section 19337) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 8. Licensed Transporters

19337. (a) A licensee authorized to transport medical cannabis and medical cannabis products between licenses shall do so only as set forth in this chapter.

(b) Prior to transporting medical cannabis or medical cannabis products, a licensed transporter of medical cannabis or medical cannabis products shall do both of the following:

(1) Complete an electronic shipping manifest as prescribed by the licensing authority. The shipping manifest must include the unique identifier, pursuant to Section 11362.777 of the Health and Safety Code, issued by the Department of Food and Agriculture for the original cannabis product.

(2) Securely transmit the manifest to the bureau and the licensee that will receive the medical cannabis product. The bureau shall inform the Department of Food and Agriculture of information pertaining to commercial cannabis activity for the purpose of the track and trace program identified in Section 19335.

(c) During transportation, the licensed transporter shall maintain a physical copy of the shipping manifest and make it available upon request to agents of the Department of Consumer Affairs and law enforcement officers.

(d) The licensee receiving the shipment shall maintain each electronic shipping manifest and shall make it available upon request to the Department of Consumer Affairs and any law enforcement officers.

(e) Upon receipt of the transported shipment, the licensee receiving the shipment shall submit to the licensing agency a record verifying receipt of the shipment and the details of the shipment.

(f) Transporting, or arranging for or facilitating the transport of, medical cannabis or medical cannabis products in violation of this chapter is grounds for disciplinary action against the license.

19338. (a) This chapter shall not be construed to authorize or permit a licensee to transport or cause to be transported cannabis or cannabis products outside the state, unless authorized by federal law.

(b) A local jurisdiction shall not prevent transportation of medical cannabis or medical cannabis products on public roads by a licensee transporting medical cannabis or medical cannabis products in compliance with this chapter.

SEC. 16. Article 11 (commencing with Section 19348) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 11. Taxation

19348. (a) (1) A county may impose a tax on the privilege of cultivating, dispensing, producing, processing, preparing, storing, providing, donating, selling, or distributing medical cannabis or medical cannabis products by a licensee operating pursuant to this chapter.

(2) The board of supervisors shall specify in the ordinance proposing the tax the activities subject to the tax, the applicable rate or rates, the method of apportionment, if necessary, and the manner of collection of the tax. The tax may be imposed for general governmental purposes or for purposes specified in the ordinance by the board of supervisors.

(3) In addition to any other method of collection authorized by law, the board of supervisors may provide for the collection of the tax imposed pursuant to this section in the same manner, and subject to the same penalties and priority of lien, as other charges and taxes fixed and collected by the county. A tax imposed pursuant to this section is a tax and not a fee or special assessment. The board of supervisors shall specify whether the tax applies throughout the entire county or within the unincorporated area of the county.

(4) The tax authorized by this section may be imposed upon any or all of the activities set forth in paragraph (1), as specified in the ordinance, regardless of whether the activity is undertaken individually, collectively, or cooperatively, and regardless of whether the activity is for compensation or gratuitous, as determined by the board of supervisors.

(b) A tax imposed pursuant to this section shall be subject to applicable voter approval requirements imposed by law.

(c) This section is declaratory of existing law and does not limit or prohibit the levy or collection of any other fee, charge, or tax, or a license or service fee or charge upon, or related to, the activities set forth in subdivision (a) as otherwise provided by law. This section shall not be construed as a limitation upon the taxing authority of a county as provided by law.

(d) This section shall not be construed to authorize a county to impose a sales or use tax in addition to the sales and use tax imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 of the Revenue and Taxation Code.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. The Legislature finds and declares that Section 14 of this act, which adds Section 19335 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 19. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 20. This act shall become operative only if Assembly Bill 266 and Assembly Bill 243 of the 2015–16 Session are enacted and take effect on or before January 1, 2016.

O

Assembly Bill No. 266

CHAPTER 689

An act to amend Sections 27 and 101 of, to add Section 205.1 to, and to add Chapter 3.5 (commencing with Section 19300) to Division 8 of, the Business and Professions Code, to amend Section 9147.7 of the Government Code, to amend Section 11362.775 of the Health and Safety Code, to add Section 147.5 to the Labor Code, and to add Section 31020 to the Revenue and Taxation Code, relating to medical marijuana.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 266, Bonta. Medical marijuana.

(1) Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill, among other things, would enact the Medical Marijuana Regulation and Safety Act for the licensure and regulation of medical marijuana and would establish within the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the Director of Consumer Affairs. The bill would require the director to administer and enforce the provisions of the act.

This bill would also require the Board of Equalization, in consultation with the Department of Food and Agriculture, to adopt a system for reporting the movement of commercial cannabis and cannabis products.

This bill would impose certain fines and civil penalties for specified violations of the act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account.

(2) Under existing law, certain persons with identification cards, who associate within the state in order collectively or cooperatively to cultivate marijuana for medical purposes, are not solely on the basis of that fact subject to specified state criminal sanctions.

This bill would repeal these provisions upon the issuance of licenses by licensing authorities pursuant to the Medical Marijuana Regulation and Safety Act, as specified, and would instead provide that actions of licensees with the relevant local permits, in accordance with the act and applicable local ordinances, are not offenses subject to arrest, prosecution, or other sanction under state law.

(3) This bill would provide that its provisions are severable.

(4) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(6) The bill would provide that it shall become operative only if SB 643 and AB 243 of the 2015–16 Regular Session are also enacted and become operative.

The people of the State of California do enact as follows:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or her address of record, to provide a

physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical

social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, and registered psychologists.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 101 of the Business and Professions Code is amended to read:

101. The department is comprised of the following:

(a) The Dental Board of California.

(b) The Medical Board of California.

(c) The State Board of Optometry.

(d) The California State Board of Pharmacy.

(e) The Veterinary Medical Board.

(f) The California Board of Accountancy.

(g) The California Architects Board.

(h) The Bureau of Barbering and Cosmetology.

(i) The Board for Professional Engineers and Land Surveyors.

(j) The Contractors' State License Board.

(k) The Bureau for Private Postsecondary Education.

(*l*) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation.

(m) The Board of Registered Nursing.

(n) The Board of Behavioral Sciences.

(o) The State Athletic Commission.

(p) The Cemetery and Funeral Bureau.

(q) The State Board of Guide Dogs for the Blind.

(r) The Bureau of Security and Investigative Services.

(s) The Court Reporters Board of California.

(t) The Board of Vocational Nursing and Psychiatric Technicians.

(u) The Landscape Architects Technical Committee.

(v) The Division of Investigation.

(w) The Bureau of Automotive Repair.
(x) The Respiratory Care Board of California.
(y) The Acupuncture Board.
(z) The Board of Psychology.
(aa) The California Board of Podiatric Medicine.
(ab) The Physical Therapy Board of California.
(ac) The Arbitration Review Program.
(ad) The Physician Assistant Committee.
(ae) The Speech-Language Pathology and Audiology Board.
(af) The California Board of Occupational Therapy.
(ag) The Osteopathic Medical Board of California.
(ah) The Naturopathic Medicine Committee.
(ai) The Dental Hygiene Committee of California.
(aj) The Professional Fiduciaries Bureau.
(ak) The State Board of Chiropractic Examiners.
(al) The Bureau of Real Estate.
(am) The Bureau of Real Estate Appraisers.
(an) The Structural Pest Control Board.
(ao) The Bureau of Medical Marijuana Regulation.
(ap) Any other boards, offices, or officers subject to its jurisdiction by law.

SEC. 3. Section 205.1 is added to the Business and Professions Code, to read:

205.1. Notwithstanding subdivision (a) of Section 205, the Medical Marijuana Regulation and Safety Act Fund is a special fund within the Professions and Vocations Fund, and is subject to subdivision (b) of Section 205.

SEC. 4. Chapter 3.5 (commencing with Section 19300) is added to Division 8 of the Business and Professions Code, to read:

CHAPTER 3.5. MEDICAL MARIJUANA REGULATION AND SAFETY ACT

Article 1. Definitions

19300. This act shall be known and may be cited as the Medical Marijuana Regulation and Safety Act.

19300.5. For purposes of this chapter, the following definitions shall apply:

(a) "Accrediting body" means a nonprofit organization that requires conformance to ISO/IEC 17025 requirements and is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement for Testing.

(b) "Applicant," for purposes of Article 4 (commencing with Section 19319), means the following:

(1) Owner or owners of a proposed facility, including all persons or entities having ownership interest other than a security interest, lien, or encumbrance on property that will be used by the facility.

(2) If the owner is an entity, "owner" includes within the entity each person participating in the direction, control, or management of, or having a financial interest in, the proposed facility.

(3) If the applicant is a publicly traded company, "owner" means the chief executive officer or any person or entity with an aggregate ownership interest of 5 percent or more.

(c) "Batch" means a specific quantity of medical cannabis or medical cannabis products that is intended to have uniform character and quality, within specified limits, and is produced according to a single manufacturing order during the same cycle of manufacture.

(d) "Bureau" means the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(e) "Cannabinoid" or "phytocannabinoid" means a chemical compound that is unique to and derived from cannabis.

(f) "Cannabis" means all parts of the plant Cannabis sativa Linnaeus, Cannabis indica, or Cannabis ruderalis, whether growing or not; the seeds thereof; the resin, whether crude or purified, extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin. "Cannabis" also means the separated resin, whether crude or purified, obtained from marijuana. "Cannabis" also means marijuana as defined by Section 11018 of the Health and Safety Code as enacted by Chapter 1407 of the Statutes of 1972. "Cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. For the purpose of this chapter, "cannabis" does not mean "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(g) "Cannabis concentrate" means manufactured cannabis that has undergone a process to concentrate the cannabinoid active ingredient, thereby increasing the product's potency. An edible medical cannabis product is not considered food, as defined by Section 109935 of the Health and Safety Code, or a drug, as defined by Section 109925 of the Health and Safety Code.

(h) "Caregiver" or "primary caregiver" has the same meaning as that term is defined in Section 11362.7 of the Health and Safety Code.

(i) "Certificate of accreditation" means a certificate issued by an accrediting body to a licensed testing laboratory, entity, or site to be registered in the state.

(j) "Chief" means Chief of the Bureau of Medical Marijuana Regulation within the Department of Consumer Affairs.

(k) "Commercial cannabis activity" includes cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product, except as set forth in Section 19319, related to qualifying patients and primary caregivers.

(*l*) "Cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of cannabis.

(m) "Delivery" means the commercial transfer of medical cannabis or medical cannabis products from a dispensary, up to an amount determined by the bureau to a primary caregiver or qualified patient as defined in Section 11362.7 of the Health and Safety Code, or a testing laboratory. "Delivery" also includes the use by a dispensary of any technology platform owned and controlled by the dispensary, or independently licensed under this chapter, that enables qualified patients or primary caregivers to arrange for or facilitate the commercial transfer by a licensed dispensary of medical cannabis or medical cannabis products.

(n) "Dispensary" means a facility where medical cannabis, medical cannabis products, or devices for the use of medical cannabis or medical cannabis products are offered, either individually or in any combination, for retail sale, including an establishment that delivers, pursuant to express authorization by local ordinance, medical cannabis and medical cannabis products as part of a retail sale.

(o) "Dispensing" means any activity involving the retail sale of medical cannabis or medical cannabis products from a dispensary.

(p) "Distribution" means the procurement, sale, and transport of medical cannabis and medical cannabis products between entities licensed pursuant to this chapter.

(q) "Distributor" means a person licensed under this chapter to engage in the business of purchasing medical cannabis from a licensed cultivator, or medical cannabis products from a licensed manufacturer, for sale to a licensed dispensary.

(r) "Dried flower" means all dead medical cannabis that has been harvested, dried, cured, or otherwise processed, excluding leaves and stems.

(s) "Edible cannabis product" means manufactured cannabis that is intended to be used, in whole or in part, for human consumption, including, but not limited to, chewing gum. An edible medical cannabis product is not considered food as defined by Section 109935 of the Health and Safety Code or a drug as defined by Section 109925 of the Health and Safety Code.

(t) "Fund" means the Medical Marijuana Regulation and Safety Act Fund established pursuant to Section 19351.

(u) "Identification program" means the universal identification certificate program for commercial medical cannabis activity authorized by this chapter.

(v) "Labor peace agreement" means an agreement between a licensee and a bona fide labor organization that, at a minimum, protects the state's proprietary interests by prohibiting labor organizations and members from engaging in picketing, work stoppages, boycotts, and any other economic interference with the applicant's business. This agreement means that the

applicant has agreed not to disrupt efforts by the bona fide labor organization to communicate with, and attempt to organize and represent, the applicant's employees. The agreement shall provide a bona fide labor organization access at reasonable times to areas in which the applicant's employees work, for the purpose of meeting with employees to discuss their right to representation, employment rights under state law, and terms and conditions of employment. This type of agreement shall not mandate a particular method of election or certification of the bona fide labor organization.

(w) "Licensing authority" means the state agency responsible for the issuance, renewal, or reinstatement of the license, or the state agency authorized to take disciplinary action against the license.

(x) "Cultivation site" means a facility where medical cannabis is planted, grown, harvested, dried, cured, graded, or trimmed, or that does all or any combination of those activities, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(y) "Manufacturer" means a person that conducts the production, preparation, propagation, or compounding of manufactured medical cannabis, as described in subdivision (ae), or medical cannabis products either directly or indirectly or by extraction methods, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis at a fixed location that packages or repackages medical cannabis or medical cannabis products or labels or relabels its container, that holds a valid state license pursuant to this chapter, and that holds a valid local license or permit.

(z) "Testing laboratory" means a facility, entity, or site in the state that offers or performs tests of medical cannabis or medical cannabis products and that is both of the following:

(1) Accredited by an accrediting body that is independent from all other persons involved in the medical cannabis industry in the state.

(2) Registered with the State Department of Public Health.

(aa) "Transporter" means a person issued a state license by the bureau to transport medical cannabis or medical cannabis products in an amount above a threshold determined by the bureau between facilities that have been issued a state license pursuant to this chapter.

(ab) "Licensee" means a person issued a state license under this chapter to engage in commercial cannabis activity.

(ac) "Live plants" means living medical cannabis flowers and plants, including seeds, immature plants, and vegetative stage plants.

(ad) "Lot" means a batch, or a specifically identified portion of a batch, having uniform character and quality within specified limits. In the case of medical cannabis or a medical cannabis product produced by a continuous process, "lot" means a specifically identified amount produced in a unit of time or a quantity in a manner that ensures its having uniform character and quality within specified limits.

(ae) "Manufactured cannabis" means raw cannabis that has undergone a process whereby the raw agricultural product has been transformed into a concentrate, an edible product, or a topical product.

(af) "Manufacturing site" means a location that produces, prepares, propagates, or compounds manufactured medical cannabis or medical cannabis products, directly or indirectly, by extraction methods, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and is owned and operated by a licensee for these activities.

(ag) "Medical cannabis," "medical cannabis product," or "cannabis product" means a product containing cannabis, including, but not limited to, concentrates and extractions, intended to be sold for use by medical cannabis patients in California pursuant to the Compassionate Use Act of 1996 (Proposition 215), found at Section 11362.5 of the Health and Safety Code. For the purposes of this chapter, "medical cannabis" does not include "industrial hemp" as defined by Section 81000 of the Food and Agricultural Code or Section 11018.5 of the Health and Safety Code.

(ah) "Nursery" means a licensee that produces only clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of medical cannabis.

(ai) "Permit," "local license," or "local permit" means an official document granted by a local jurisdiction that specifically authorizes a person to conduct commercial cannabis activity in the local jurisdiction.

(aj) "Person" means an individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit and includes the plural as well as the singular number.

(ak) "State license," "license," or "registration" means a state license issued pursuant to this chapter.

(al) "Topical cannabis" means a product intended for external use. A topical cannabis product is not considered a drug as defined by Section 109925 of the Health and Safety Code.

(am) "Transport" means the transfer of medical cannabis or medical cannabis products from the permitted business location of one licensee to the permitted business location of another licensee, for the purposes of conducting commercial cannabis activity authorized pursuant to this chapter.

19300.7. License classifications pursuant to this chapter are as follows:

(a) Type 1 = Cultivation; Specialty outdoor; Small.
(b) Type 1A = Cultivation; Specialty indoor; Small.
(c) Type 1B = Cultivation; Specialty mixed-light; Small.
(d) Type 2 = Cultivation; Outdoor; Small.
(e) Type 2A = Cultivation; Indoor; Small.
(f) Type 2B = Cultivation; Mixed-light; Small.
(g) Type 3 = Cultivation; Outdoor; Medium.
(h) Type 3A = Cultivation; Indoor; Medium.
(i) Type 3B = Cultivation; Mixed-light; Medium.
(j) Type 4 = Cultivation; Nursery.
(k) Type 6 = Manufacturer 1.
(*l*) Type 7 = Manufacturer 2.
(m) Type 8 = Testing.

(n) Type 10 = Dispensary; General.
(o) Type 10A = Dispensary; No more than three retail sites.
(p) Type 11 = Distribution.
(q) Type 12 = Transporter.

Article 2. Administration

19302. There is in the Department of Consumer Affairs the Bureau of Medical Marijuana Regulation, under the supervision and control of the director. The director shall administer and enforce the provisions of this chapter.

19303. Protection of the public shall be the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions under this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

19304. The bureau shall make and prescribe reasonable rules as may be necessary or proper to carry out the purposes and intent of this chapter and to enable it to exercise the powers and duties conferred upon it by this chapter, not inconsistent with any statute of this state, including particularly this chapter and Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the performance of its duties, the bureau has the power conferred by Sections 11180 to 11191, inclusive, of the Government Code.

19305. Notice of any action of the licensing authority required by this chapter to be given may be signed and given by the director or an authorized employee of the department and may be made personally or in the manner prescribed by Section 1013 of the Code of Civil Procedure.

19306. (a) The bureau may convene an advisory committee to advise the bureau and licensing authorities on the development of standards and regulations pursuant to this chapter, including best practices and guidelines to ensure qualified patients have adequate access to medical cannabis and medical cannabis products. The advisory committee members shall be determined by the chief.

(b) The advisory committee members may include, but not be limited to, representatives of the medical marijuana industry, representatives of medical marijuana cultivators, appropriate local and state agencies, appropriate local and state law enforcement, physicians, environmental and public health experts, and medical marijuana patient advocates.

19307. A licensing authority may make or cause to be made such investigation as it deems necessary to carry out its duties under this chapter.

19308. For any hearing held pursuant to this chapter, the director, or a licensing authority, may delegate the power to hear and decide to an administrative law judge. Any hearing before an administrative law judge shall be pursuant to the procedures, rules, and limitations prescribed in

Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

19309. In any hearing before a licensing authority pursuant to this chapter, the licensing authority may pay any person appearing as a witness at the hearing at the request of the licensing authority pursuant to a subpoena, his or her actual, necessary, and reasonable travel, food, and lodging expenses, not to exceed the amount authorized for state employees.

19310. The department may on its own motion at any time before a penalty assessment is placed into effect and without any further proceedings, review the penalty, but such review shall be limited to its reduction.

Article 3. Enforcement

19311. Grounds for disciplinary action include:

(a) Failure to comply with the provisions of this chapter or any rule or regulation adopted pursuant to this chapter.

(b) Conduct that constitutes grounds for denial of licensure pursuant to Chapter 3 (commencing with Section 490) of Division 1.5.

(c) Any other grounds contained in regulations adopted by a licensing authority pursuant to this chapter.

(d) Failure to comply with any state law, except as provided for in this chapter or other California law.

19312. Each licensing authority may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee is found to have committed any of the acts or omissions constituting grounds for disciplinary action. The disciplinary proceedings under this chapter shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director of each licensing authority shall have all the powers granted therein.

19313. Each licensing authority may take disciplinary action against a licensee for any violation of this chapter when the violation was committed by the licensee's agent or employee while acting on behalf of the licensee or engaged in commercial cannabis activity.

19313.5. Upon suspension or revocation of a license, the licensing authority shall inform the bureau. The bureau shall then inform all other licensing authorities and the Department of Food and Agriculture.

19314. All accusations against licensees shall be filed by the licensing authority within five years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the licensing authority, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within five years after such discovery.

19315. (a) Nothing in this chapter shall be interpreted to supersede or limit existing local authority for law enforcement activity, enforcement of local zoning requirements or local ordinances, or enforcement of local permit or licensing requirements.

(b) Nothing in this chapter shall be interpreted to require the Department of Consumer Affairs to undertake local law enforcement responsibilities, enforce local zoning requirements, or enforce local licensing requirements.

(c) Nothing in this chapter shall be interpreted to supersede or limit state agencies from exercising their existing enforcement authority under the Fish and Game Code, the Water Code, the Food and Agricultural Code, or the Health and Safety Code.

19316. (a) Pursuant to Section 7 of Article XI of the California Constitution, a city, county, or city and county may adopt ordinances that establish additional standards, requirements, and regulations for local licenses and permits for commercial cannabis activity. Any standards, requirements, and regulations regarding health and safety, testing, security, and worker protections established by the state shall be the minimum standards for all licensees statewide.

(b) For facilities issued a state license that are located within the incorporated area of a city, the city shall have full power and authority to enforce this chapter and the regulations promulgated by the bureau or any licensing authority, if delegated by the state. Notwithstanding Sections 101375, 101400, and 101405 of the Health and Safety Code or any contract entered into pursuant thereto, or any other law, the city shall further assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee, including a county health officer, without liability, cost, or expense to the county.

(c) Nothing in this chapter, or any regulations promulgated thereunder, shall be deemed to limit the authority or remedies of a city, county, or city and county under any provision of law, including, but not limited to, Section 7 of Article XI of the California Constitution.

19317. (a) The actions of a licensee, its employees, and its agents that are (1) permitted pursuant to both a state license and a license or permit issued by the local jurisdiction following the requirements of the applicable local ordinances, and (2) conducted in accordance with the requirements of this chapter and regulations adopted pursuant to this chapter, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

(b) The actions of a person who, in good faith, allows his or her property to be used by a licensee, its employees, and its agents, as permitted pursuant to both a state license and a local license or permit following the requirements of the applicable local ordinances, are not unlawful under state law and shall not be an offense subject to arrest, prosecution, or other sanction under state law, or be subject to a civil fine or be a basis for seizure or forfeiture of assets under state law.

19318. (a) A person engaging in commercial cannabis activity without a license required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the court may order the destruction of medical cannabis associated with that violation in accordance with Section 11479 of the Health and Safety Code. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section by a licensing authority shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General on behalf of the people, the penalty collected shall be deposited into the Medical Cannabis Fines and Penalties Account established pursuant to Section 19351. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person engaging in commercial cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

Article 4. Licensing

19320. (a) Licensing authorities administering this chapter may issue state licenses only to qualified applicants engaging in commercial cannabis activity pursuant to this chapter. Upon the date of implementation of regulations by the licensing authority, no person shall engage in commercial cannabis activity without possessing both a state license and a local permit, license, or other authorization. A licensee shall not commence activity under the authority of a state license until the applicant has obtained, in addition to the state license, a license or permit from the local jurisdiction in which he or she proposes to operate, following the requirements of the applicable local ordinance.

(b) Revocation of a local license, permit, or other authorization shall terminate the ability of a medical cannabis business to operate within that local jurisdiction until the local jurisdiction reinstates or reissues the local license, permit, or other required authorization. Local authorities shall notify the bureau upon revocation of a local license. The bureau shall inform relevant licensing authorities.

(c) Revocation of a state license shall terminate the ability of a medical cannabis licensee to operate within California until the licensing authority reinstates or reissues the state license. Each licensee shall obtain a separate license for each location where it engages in commercial medical cannabis activity. However, transporters only need to obtain licenses for each physical location where the licensee conducts business while not in transport, or any equipment that is not currently transporting medical cannabis or medical cannabis products, permanently resides.

(d) In addition to the provisions of this chapter, local jurisdictions retain the power to assess fees and taxes, as applicable, on facilities that are licensed pursuant to this chapter and the business activities of those licensees.

(e) Nothing in this chapter shall be construed to supersede or limit state agencies, including the State Water Resources Control Board and Department of Fish and Wildlife, from establishing fees to support their medical cannabis regulatory programs.

19321. (a) The Department of Consumer Affairs, the Department of Food and Agriculture, and the State Department of Public Health shall promulgate regulations for implementation of their respective responsibilities in the administration of this chapter.

(b) A license issued pursuant to this section shall be valid for 12 months from the date of issuance. The license shall be renewed annually. Each licensing authority shall establish procedures for the renewal of a license.

(c) Notwithstanding subdivision (a) of Section 19320, a facility or entity that is operating in compliance with local zoning ordinances and other state and local requirements on or before January 1, 2018, may continue its operations until its application for licensure is approved or denied pursuant to this chapter. In issuing licenses, the licensing authority shall prioritize any facility or entity that can demonstrate to the authority's satisfaction that it was in operation and in good standing with the local jurisdiction by January 1, 2016.

(d) Issuance of a state license or a determination of compliance with local law by the licensing authority shall in no way limit the ability of the City of Los Angeles to prosecute any person or entity for a violation of, or otherwise enforce, Proposition D, approved by the voters of the City of Los Angeles on the May 21, 2013, ballot for the city, or the city's zoning laws. Nor may issuance of a license or determination of compliance with local law by the licensing authority be deemed to establish, or be relied upon, in determining satisfaction with the immunity requirements of Proposition D or local zoning law, in court or in any other context or forum.

Article 5. Medical Marijuana Regulation

19326. (a) A person other than a licensed transporter shall not transport medical cannabis or medical cannabis products from one licensee to another licensee, unless otherwise specified in this chapter.

(b) All licensees holding cultivation or manufacturing licenses shall send all medical cannabis and medical cannabis products cultivated or manufactured to a distributor, as defined in Section 19300.5, for quality assurance and inspection by the Type 11 licensee and for a batch testing by a Type 8 licensee prior to distribution to a dispensary. Those licensees holding a Type 10A license in addition to a cultivation license or a manufacturing license shall send all medical cannabis and medical cannabis products to a Type 11 licensee for presale inspection and for a batch testing by a Type 8 licensee prior to dispensing any product. The licensing authority shall fine a licensee who violates this subdivision in an amount determined by the licensing authority to be reasonable.

(c) (1) Upon receipt of medical cannabis or medical cannabis products by a holder of a cultivation or manufacturing license, the Type 11 licensee shall first inspect the product to ensure the identity and quantity of the product and then ensure a random sample of the medical cannabis or medical cannabis product is tested by a Type 8 licensee prior to distributing the batch of medical cannabis or medical cannabis products.

(2) Upon issuance of a certificate of analysis by the Type 8 licensee that the product is fit for manufacturing or retail, all medical cannabis and medical cannabis products shall undergo a quality assurance review by the Type 11 licensee prior to distribution to ensure the quantity and content of the medical cannabis or medical cannabis product, and for tracking and taxation purposes by the state. Licensed cultivators and manufacturers shall package or seal all medical cannabis and medical cannabis products in tamper-evident packaging and use a unique identifier, as prescribed by the Department of Food and Agriculture, for the purpose of identifying and tracking medical cannabis or medical cannabis products. Medical cannabis and medical cannabis products shall be labeled as required by Section 19347. All packaging and sealing shall be completed prior to medical cannabis or medical cannabis products being transported or delivered to a licensee, qualified patient, or caregiver.

(3) This section does not limit the ability of licensed cultivators, manufacturers, and dispensaries to directly enter into contracts with one another indicating the price and quantity of medical cannabis or medical cannabis products to be distributed. However, a Type 11 licensee responsible for executing the contract is authorized to collect a fee for the services rendered, including, but not limited to, costs incurred by a Type 8 licensee, as well as applicable state or local taxes and fees.

(d) Medical cannabis and medical cannabis products shall be tested by a registered testing laboratory, prior to retail sale or dispensing, as follows:

(1) Medical cannabis from dried flower shall, at a minimum, be tested for concentration, pesticides, mold, and other contaminants.

(2) Medical cannabis extracts shall, at a minimum, be tested for concentration and purity of the product.

(3) This chapter shall not prohibit a licensee from performing on-site testing for the purposes of quality assurance of the product in conjunction

with reasonable business operations. On-site testing by the licensee shall not be certified by the State Department of Public Health.

(e) All commercial cannabis activity shall be conducted between licensees, when these are available.

19327. (a) A licensee shall keep accurate records of commercial cannabis activity.

(b) All records related to commercial cannabis activity as defined by the licensing authorities shall be maintained for a minimum of seven years.

(c) The bureau may examine the books and records of a licensee and inspect the premises of a licensee as the licensing authority or a state or local agency deems necessary to perform its duties under this chapter. All inspections shall be conducted during standard business hours of the licensed facility or at any other reasonable time.

(d) Licensees shall keep records identified by the licensing authorities on the premises of the location licensed. The licensing authorities may make any examination of the records of any licensee. Licensees shall also provide and deliver copies of documents to the licensing agency upon request.

(e) A licensee or its agent, or employee, that refuses, impedes, obstructs, or interferes with an inspection of the premises or records of the licensee pursuant to this section has engaged in a violation of this chapter.

(f) If a licensee or an employee of a licensee fails to maintain or provide the records required pursuant to this section, the licensee shall be subject to a citation and fine of thirty thousand dollars ($30,000) per individual violation.

19328. (a) A licensee may only hold a state license in up to two separate license categories, as follows:

(1) Type 1, 1A, 1B, 2, 2A, or 2B licensees may also hold either a Type 6 or 7 state license.

(2) Type 6 or 7 licensees, or a combination thereof, may also hold either a Type 1, 1A, 1B, 2, 2A, or 2B state license.

(3) Type 6 or 7 licensees, or a combination thereof, may also hold a Type 10A state license.

(4) Type 10A licensees may also hold either a Type 6 or 7 state license, or a combination thereof.

(5) Type 1, 1A, 1B, 2, 2A, or 2B licensees, or a combination thereof, may also hold a Type 10A state license.

(6) Type 10A licensees may apply for Type 1, 1A, 1B, 2, 2A, or 2B state license, or a combination thereof.

(7) Type 11 licensees shall apply for a Type 12 state license, but shall not apply for any other type of state license.

(8) Type 12 licensees may apply for a Type 11 state license.

(9) A Type 10A licensee may apply for a Type 6 or 7 state license and hold a 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination thereof if, under the 1, 1A, 1B, 2, 2A, 2B, 3, 3A, 3B, 4 or combination of licenses thereof, no more than four acres of total canopy size of cultivation by the licensee is occurring throughout the state during the period that the respective licenses

are valid. All cultivation pursuant to this section shall comply with local ordinances. This paragraph shall become inoperative on January 1, 2026.

(b) Except as provided in subdivision (a), a person or entity that holds a state license is prohibited from licensure for any other activity authorized under this chapter, and is prohibited from holding an ownership interest in real property, personal property, or other assets associated with or used in any other license category.

(c) (1) In a jurisdiction that adopted a local ordinance, prior to July 1, 2015, allowing or requiring qualified businesses to cultivate, manufacture, and dispense medical cannabis or medical cannabis products, with all commercial cannabis activity being conducted by a single qualified business, upon licensure that business shall not be subject to subdivision (a) if it meets all of the following conditions:

(A) The business was cultivating, manufacturing, and dispensing medical cannabis or medical cannabis products on July 1, 2015, and has continuously done so since that date.

(B) The business has been in full compliance with all applicable local ordinances at all times prior to licensure.

(C) The business is registered with the State Board of Equalization.

(2) A business licensed pursuant to paragraph (1) is not required to conduct all cultivation or manufacturing within the bounds of a local jurisdiction, but all cultivation and manufacturing shall have commenced prior to July 1, 2015, and have been in full compliance with applicable local ordinances.

(d) This section shall remain in effect only until January 1, 2026, and as of that date is repealed.

19329. A licensee shall not also be licensed as a retailer of alcoholic beverages pursuant to Division 9 (commencing with Section 23000).

19330. This chapter and Article 2 (commencing with Section 11357) and Article 2.5 (commencing with Section 11362.7) of Chapter 6 of Division 10 of the Health and Safety Code shall not interfere with an employer's rights and obligations to maintain a drug and alcohol free workplace or require an employer to permit or accommodate the use, consumption, possession, transfer, display, transportation, sale, or growth of cannabis in the workplace or affect the ability of employers to have policies prohibiting the use of cannabis by employees and prospective employees, or prevent employers from complying with state or federal law.

Article 7. Licensed Distributors, Dispensaries, and Transporters

19334. (a) State licenses to be issued by the Department of Consumer Affairs are as follows:

(1) "Dispensary," as defined in this chapter. This license shall allow for delivery pursuant to Section 19340.

(2) "Distributor," for the distribution of medical cannabis and medical cannabis products from manufacturer to dispensary. A Type 11 licensee

shall hold a Type 12, or transporter, license and register each location where product is stored for the purposes of distribution. A Type 11 licensee shall not hold a license in a cultivation, manufacturing, dispensing, or testing license category and shall not own, or have an ownership interest in, a facility licensed in those categories other than a security interest, lien, or encumbrance on property that is used by a licensee. A Type 11 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(3) "Transport," for transporters of medical cannabis or medical cannabis products between licensees. A Type 12 licensee shall be bonded and insured at a minimum level established by the licensing authority.

(4) "Special dispensary status" for dispensers who have no more than three licensed dispensary facilities. This license shall allow for delivery where expressly authorized by local ordinance.

(b) The bureau shall establish minimum security requirements for the commercial transportation and delivery of medical cannabis and products.

(c) A licensed dispensary shall implement sufficient security measures to both deter and prevent unauthorized entrance into areas containing medical cannabis or medical cannabis products and theft of medical cannabis or medical cannabis products at the dispensary. These security measures shall include, but not be limited to, all of the following:

(1) Preventing individuals from remaining on the premises of the dispensary if they are not engaging in activity expressly related to the operations of the dispensary.

(2) Establishing limited access areas accessible only to authorized dispensary personnel.

(3) Storing all finished medical cannabis and medical cannabis products in a secured and locked room, safe, or vault, and in a manner as to prevent diversion, theft, and loss, except for limited amounts of cannabis used for display purposes, samples, or immediate sale.

(d) A dispensary shall notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering any of the following:

(1) Significant discrepancies identified during inventory. The level of significance shall be determined by the bureau.

(2) Diversion, theft, loss, or any criminal activity involving the dispensary or any agent or employee of the dispensary.

(3) The loss or unauthorized alteration of records related to cannabis, registered qualifying patients, primary caregivers, or dispensary employees or agents.

(4) Any other breach of security.

Article 9. Delivery

19340. (a) Deliveries, as defined in this chapter, can only be made by a dispensary and in a city, county, or city and county that does not explicitly prohibit it by local ordinance.

(b) Upon approval of the licensing authority, a licensed dispensary that delivers medical cannabis or medical cannabis products shall comply with both of the following:

(1) The city, county, or city and county in which the licensed dispensary is located, and in which each delivery is made, do not explicitly by ordinance prohibit delivery, as defined in Section 19300.5.

(2) All employees of a dispensary delivering medical cannabis or medical cannabis products shall carry a copy of the dispensary's current license authorizing those services with them during deliveries and the employee's government-issued identification, and shall present that license and identification upon request to state and local law enforcement, employees of regulatory authorities, and other state and local agencies enforcing this chapter.

(c) A county shall have the authority to impose a tax, pursuant to Article 11 (commencing with Section 19348), on each delivery transaction completed by a licensee.

(d) During delivery, the licensee shall maintain a physical copy of the delivery request and shall make it available upon request of the licensing authority and law enforcement officers. The delivery request documentation shall comply with state and federal law regarding the protection of confidential medical information.

(e) The qualified patient or primary caregiver requesting the delivery shall maintain a copy of the delivery request and shall make it available, upon request, to the licensing authority and law enforcement officers.

(f) A local jurisdiction shall not prevent carriage of medical cannabis or medical cannabis products on public roads by a licensee acting in compliance with this chapter.

Article 10. Licensed Manufacturers and Licensed Laboratories

19341. The State Department of Public Health shall promulgate regulations governing the licensing of cannabis manufacturers and testing laboratories. Licenses to be issued are as follows:

(a) "Manufacturing level 1," for manufacturing sites that produce medical cannabis products using nonvolatile solvents.

(b) "Manufacturing level 2," for manufacturing sites that produce medical cannabis products using volatile solvents. The State Department of Public Health shall limit the number of licenses of this type.

(c) "Testing," for testing of medical cannabis and medical cannabis products. Testing licensees shall have their facilities licensed according to regulations set forth by the division. A testing licensee shall not hold a

license in another license category of this chapter and shall not own or have ownership interest in a facility licensed pursuant to this chapter.

19342. (a) For the purposes of testing medical cannabis or medical cannabis products, licensees shall use a licensed testing laboratory that has adopted a standard operating procedure using methods consistent with general requirements for the competence of testing and calibration activities, including sampling, using standard methods established by the International Organization for Standardization, specifically ISO/IEC 17020 and ISO/IEC 17025 to test medical cannabis and medical cannabis products that are approved by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement.

(b) An agent of a licensed testing laboratory shall obtain samples according to a statistically valid sampling method for each lot.

(c) A licensed testing laboratory shall analyze samples according to either of the following:

(1) The most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.

(2) Scientifically valid methodology that is demonstrably equal or superior to paragraph (1), in the opinion of the accrediting body.

(d) If a test result falls outside the specifications authorized by law or regulation, the licensed testing laboratory shall follow a standard operating procedure to confirm or refute the original result.

(e) A licensed testing laboratory shall destroy the remains of the sample of medical cannabis or medical cannabis product upon completion of the analysis.

19343. A licensed testing laboratory shall not handle, test, or analyze medical cannabis or medical cannabis products unless the licensed testing laboratory meets all of the following:

(a) Is registered by the State Department of Public Health.

(b) Is independent from all other persons and entities involved in the medical cannabis industry.

(c) Follows the methodologies, ranges, and parameters that are contained in the scope of the accreditation for testing medical cannabis or medical cannabis products. The testing lab shall also comply with any other requirements specified by the State Department of Public Health.

(d) Notifies the State Department of Public Health within one business day after the receipt of notice of any kind that its accreditation has been denied, suspended, or revoked.

(e) Has established standard operating procedures that provide for adequate chain of custody controls for samples transferred to the licensed testing laboratory for testing.

19344. (a) A licensed testing laboratory shall issue a certificate of analysis for each lot, with supporting data, to report both of the following:

(1) Whether the chemical profile of the lot conforms to the specifications of the lot for compounds, including, but not limited to, all of the following:

(A) Tetrahydrocannabinol (THC).

(B) Tetrahydrocannabinolic Acid (THCA).

(C) Cannabidiol (CBD).
(D) Cannabidiolic Acid (CBDA).
(E) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopoeia.
(F) Cannabigerol (CBG).
(G) Cannabinol (CBN).
(H) Any other compounds required by the State Department of Public Health.

(2) That the presence of contaminants does not exceed the levels that are the lesser of either the most current version of the American Herbal Pharmacopoeia monograph or the State Department of Public Health. For purposes of this paragraph, contaminants includes, but is not limited to, all of the following:

(A) Residual solvent or processing chemicals.
(B) Foreign material, including, but not limited to, hair, insects, or similar or related adulterant.
(C) Microbiological impurity, including total aerobic microbial count, total yeast mold count, P. aeruginosa, aspergillus spp., s. aureus, aflatoxin B1, B2, G1, or G2, or ochratoxin A.
(D) Whether the batch is within specification for odor and appearance.

(b) Residual levels of volatile organic compounds shall be below the lesser of either the specifications set by the United States Pharmacopeia (U.S.P. Chapter 467) or those set by the State Department of Public Health.

19345. (a) Except as provided in this chapter, a licensed testing laboratory shall not acquire or receive medical cannabis or medical cannabis products except from a licensed facility in accordance with this chapter, and shall not distribute, sell, deliver, transfer, transport, or dispense medical cannabis or medical cannabis products, from which the medical cannabis or medical cannabis products were acquired or received. All transfer or transportation shall be performed pursuant to a specified chain of custody protocol.

(b) A licensed testing laboratory may receive and test samples of medical cannabis or medical cannabis products from a qualified patient or primary caregiver only if he or she presents his or her valid recommendation for cannabis for medical purposes from a physician. A licensed testing laboratory shall not certify samples from a qualified patient or caregiver for resale or transfer to another party or licensee. All tests performed by a licensed testing laboratory for a qualified patient or caregiver shall be recorded with the name of the qualified patient or caregiver and the amount of medical cannabis or medical cannabis product received.

(c) The State Department of Public Health shall develop procedures to ensure that testing of cannabis occurs prior to delivery to dispensaries or any other business, specify how often licensees shall test cannabis and that the cost of testing shall be borne by the licensed cultivators, and require destruction of harvested batches whose testing samples indicate noncompliance with health and safety standards promulgated by the State Department of Public Health, unless remedial measures can bring the

cannabis into compliance with quality assurance standards as promulgated by the State Department of Public Health.

(d) The State Department of Public Health shall establish a licensing fee, and laboratories shall pay a fee to be licensed. Licensing fees shall not exceed the reasonable regulatory cost of the licensing activities.

19347. (a) Prior to delivery or sale at a dispensary, medical cannabis products shall be labeled and in a tamper-evident package. Labels and packages of medical cannabis products shall meet the following requirements:

(1) Medical cannabis packages and labels shall not be made to be attractive to children.

(2) All medical cannabis product labels shall include the following information, prominently displayed and in a clear and legible font:

(A) Manufacture date and source.

(B) The statement "SCHEDULE I CONTROLLED SUBSTANCE."

(C) The statement "KEEP OUT OF REACH OF CHILDREN AND ANIMALS" in bold print.

(D) The statement "FOR MEDICAL USE ONLY."

(E) The statement "THE INTOXICATING EFFECTS OF THIS PRODUCT MAY BE DELAYED BY UP TO TWO HOURS."

(F) The statement "THIS PRODUCT MAY IMPAIR THE ABILITY TO DRIVE OR OPERATE MACHINERY. PLEASE USE EXTREME CAUTION."

(G) For packages containing only dried flower, the net weight of medical cannabis in the package.

(H) A warning if nuts or other known allergens are used.

(I) List of pharmacologically active ingredients, including, but not limited to, tetrahydrocannabinol (THC), cannabidiol (CBD), and other cannabinoid content, the THC and other cannabinoid amount in milligrams per serving, servings per package, and the THC and other cannabinoid amount in milligrams for the package total.

(J) Clear indication, in bold type, that the product contains medical cannabis.

(K) Identification of the source and date of cultivation and manufacture.

(L) Any other requirement set by the bureau.

(M) Information associated with the unique identifier issued by the Department of Food and Agriculture pursuant to Section 11362.777 of the Health and Safety Code.

(b) Only generic food names may be used to describe edible medical cannabis products.

Article 14. Reporting

19353. Beginning on March 1, 2023, and on or before March 1 of each following year, each licensing authority shall prepare and submit to the Legislature an annual report on the authority's activities and post the report

on the authority's Internet Web site. The report shall include, but not be limited to, the following information for the previous fiscal year:

(a) The amount of funds allocated and spent by the licensing authority for medical cannabis licensing, enforcement, and administration.

(b) The number of state licenses issued, renewed, denied, suspended, and revoked, by state license category.

(c) The average time for processing state license applications, by state license category.

(d) The number and type of enforcement activities conducted by the licensing authorities and by local law enforcement agencies in conjunction with the licensing authorities or the bureau.

(e) The number, type, and amount of penalties, fines, and other disciplinary actions taken by the licensing authorities.

19354. The bureau shall contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, authorized pursuant to Section 11362.9 of the Health and Safety Code, to develop a study that identifies the impact that cannabis has on motor skills.

Article 15. Privacy

19355. (a) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the office or licensing authorities for the purposes of administering this chapter are confidential and shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), except as necessary for authorized employees of the State of California or any city, county, or city and county to perform official duties pursuant to this chapter, or a local ordinance.

(b) Information identifying the names of patients, their medical conditions, or the names of their primary caregivers received and contained in records kept by the bureau for the purposes of administering this chapter shall be maintained in accordance with Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code, Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code, and other state and federal laws relating to confidential patient information.

(c) Nothing in this section precludes the following:

(1) Employees of the bureau or any licensing authorities notifying state or local agencies about information submitted to the agency that the employee suspects is falsified or fraudulent.

(2) Notifications from the bureau or any licensing authorities to state or local agencies about apparent violations of this chapter or applicable local ordinance.

(3) Verification of requests by state or local agencies to confirm licenses and certificates issued by the regulatory authorities or other state agency.

(4) Provision of information requested pursuant to a court order or subpoena issued by a court or an administrative agency or local governing body authorized by law to issue subpoenas.

(d) Information shall not be disclosed by any state or local agency beyond what is necessary to achieve the goals of a specific investigation, notification, or the parameters of a specific court order or subpoena.

SEC. 5. Section 9147.7 of the Government Code is amended to read:

9147.7. (a) For the purpose of this section, "eligible agency" means any agency, authority, board, bureau, commission, conservancy, council, department, division, or office of state government, however denominated, excluding an agency that is constitutionally created or an agency related to postsecondary education, for which a date for repeal has been established by statute on or after January 1, 2011.

(b) The Joint Sunset Review Committee is hereby created to identify and eliminate waste, duplication, and inefficiency in government agencies. The purpose of the committee is to conduct a comprehensive analysis over 15 years, and on a periodic basis thereafter, of every eligible agency to determine if the agency is still necessary and cost effective.

(c) Each eligible agency scheduled for repeal shall submit to the committee, on or before December 1 prior to the year it is set to be repealed, a complete agency report covering the entire period since last reviewed, including, but not limited to, the following:

(1) The purpose and necessity of the agency.

(2) A description of the agency budget, priorities, and job descriptions of employees of the agency.

(3) Any programs and projects under the direction of the agency.

(4) Measures of the success or failures of the agency and justifications for the metrics used to evaluate successes and failures.

(5) Any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.

(d) The committee shall take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency shall be eliminated unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency. No eligible agency shall be extended in perpetuity unless specifically exempted from the provisions of this section. The committee may recommend that the Legislature extend the statutory sunset date for no more than one year to allow the committee more time to evaluate the eligible agency.

(e) The committee shall be comprised of 10 members of the Legislature. The Senate Committee on Rules shall appoint five members of the Senate to the committee, not more than three of whom shall be members of the same political party. The Speaker of the Assembly shall appoint five members of the Assembly to the committee, not more than three of whom shall be members of the same political party. Members shall be appointed within 15 days after the commencement of the regular session. Each member of the committee who is appointed by the Senate Committee on Rules or the Speaker of the Assembly shall serve during that committee member's

term of office or until that committee member no longer is a Member of the Senate or the Assembly, whichever is applicable. A vacancy on the committee shall be filled in the same manner as the original appointment. Three Assembly Members and three Senators who are members of the committee shall constitute a quorum for the conduct of committee business. Members of the committee shall receive no compensation for their work with the committee.

(f) The committee shall meet not later than 30 days after the first day of the regular session to choose a chairperson and to establish the schedule for eligible agency review provided for in the statutes governing the eligible agencies. The chairperson of the committee shall alternate every two years between a Member of the Senate and a Member of the Assembly, and the vice chairperson of the committee shall be a member of the opposite house as the chairperson.

(g) This section shall not be construed to change the existing jurisdiction of the budget or policy committees of the Legislature.

(h) This section shall not apply to the Bureau of Medical Marijuana Regulation.

SEC. 6. Section 11362.775 of the Health and Safety Code is amended to read:

11362.775. (a) Subject to subdivision (b), 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 cannabis 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.

(b) This section shall remain in effect only until one year after the Bureau of Medical Marijuana Regulation posts a notice on its Internet Web site that the licensing authorities have commenced issuing licenses pursuant to the Medical Marijuana Regulation and Safety Act (Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code), and is repealed upon issuance of licenses.

SEC. 7. Section 147.5 is added to the Labor Code, to read:

147.5. (a) By January 1, 2017, the Division of Occupational Safety and Health shall convene an advisory committee to evaluate whether there is a need to develop industry-specific regulations related to the activities of facilities issued a license pursuant to Chapter 3.5 (commencing with Section 19300) of Division 8 of the Business and Professions Code.

(b) By July 1, 2017, the advisory committee shall present to the board its findings and recommendations for consideration by the board. By July 1, 2017, the board shall render a decision regarding the adoption of industry-specific regulations pursuant to this section.

SEC. 8. Section 31020 is added to the Revenue and Taxation Code, to read:

31020. The board, in consultation with the Department of Food and Agriculture, shall adopt a system for reporting the movement of commercial

cannabis and cannabis products throughout the distribution chain. The system shall not be duplicative of the electronic database administered by the Department of Food and Agriculture specified in Section 19335 of the Business and Professions Code. The system shall also employ secure packaging and be capable of providing information to the board. This system shall capture, at a minimum, all of the following:

(a) The amount of tax due by the designated entity.

(b) The name, address, and license number of the designated entity that remitted the tax.

(c) The name, address, and license number of the succeeding entity receiving the product.

(d) The transaction date.

(e) Any other information deemed necessary by the board for the taxation and regulation of marijuana and marijuana products.

SEC. 9. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 10. The Legislature finds and declares that Section 4 of this act, which adds Section 19355 to the Business and Professions Code, thereby imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

The limitation imposed under this act is necessary for purposes of compliance with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 12. This act shall become operative only if Senate Bill 643 and Assembly Bill 243 of the 2015–16 Regular Session are also enacted and become operative.

O

Assembly Bill No. 243

CHAPTER 688

An act to add Article 6 (commencing with Section 19331), Article 13 (commencing with Section 19350), and Article 17 (commencing with Section 19360) to Chapter 3.5 of Division 8 of the Business and Professions Code, to add Section 12029 to the Fish and Game Code, to add Sections 11362.769 and 11362.777 to the Health and Safety Code, and to add Section 13276 to the Water Code, relating to medical marijuana, and making an appropriation therefor.

[Approved by Governor October 9, 2015. Filed with Secretary of State October 9, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 243, Wood. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, an initiative measure enacted by the approval of Proposition 215 at the November 5, 1996, statewide general election, authorizes the use of marijuana for medical purposes. Existing law enacted by the Legislature requires the establishment of a program for the issuance of identification cards to qualified patients so that they may lawfully use marijuana for medical purposes, and requires the establishment of guidelines for the lawful cultivation of marijuana grown for medical use. Existing law provides for the licensure of various professions by boards or bureaus within the Department of Consumer Affairs. Existing law, the Sherman Food, Drug, and Cosmetic Law, provides for the regulation of food, drugs, devices, and cosmetics, as specified. A violation of that law is a crime.

This bill would require the Department of Food and Agriculture, the Department of Pesticide Regulation, the State Department of Public Health, the Department of Fish and Wildlife, and the State Water Resources Control Board to promulgate regulations or standards relating to medical marijuana and its cultivation, as specified. The bill would also require various state agencies to take specified actions to mitigate the impact that marijuana cultivation has on the environment. By requiring cities, counties, and their local law enforcement agencies to coordinate with state agencies to enforce laws addressing the environmental impacts of medical marijuana cultivation, and by including medical marijuana within the Sherman Act, the bill would impose a state-mandated local program.

This bill would require a state licensing authority to charge each licensee under the act a licensure and renewal fee, as applicable, and would further require the deposit of those collected fees into an account specific to that licensing authority in the Medical Marijuana Regulation and Safety Act Fund, which this bill would establish. This bill would impose certain fines

and civil penalties for specified violations of the Medical Marijuana Regulation and Safety Act, and would require moneys collected as a result of these fines and civil penalties to be deposited into the Medical Cannabis Fines and Penalties Account, which this bill would establish within the fund. Moneys in the fund and each account of the fund would be available upon appropriation of the Legislature.

This bill would authorize the Director of Finance to provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund of up to $10,000,000, and would appropriate $10,000,000 from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the bureau.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would become operative only if AB 266 and SB 643 of the 2015–16 Regular Session are enacted and take effect on or before January 1, 2016.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 6 (commencing with Section 19331) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 6. Licensed Cultivation Sites

19331. The Legislature finds and declares all of the following:

(a) The United States Environmental Protection Agency has not established appropriate pesticide tolerances for, or permitted the registration and lawful use of, pesticides on cannabis crops intended for human consumption pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.).

(b) The use of pesticides is not adequately regulated due to the omissions in federal law, and cannabis cultivated in California for California patients can and often does contain pesticide residues.

(c) Lawful California medical cannabis growers and caregivers urge the Department of Pesticide Regulation to provide guidance, in absence of federal guidance, on whether the pesticides currently used at most cannabis

cultivation sites are actually safe for use on cannabis intended for human consumption.

19332. (a) The Department of Food and Agriculture shall promulgate regulations governing the licensing of indoor and outdoor cultivation sites.

(b) The Department of Pesticide Regulation, in consultation with the Department of Food and Agriculture, shall develop standards for the use of pesticides in cultivation, and maximum tolerances for pesticides and other foreign object residue in harvested cannabis.

(c) The State Department of Public Health shall develop standards for the production and labeling of all edible medical cannabis products.

(d) The Department of Food and Agriculture, in consultation with the Department of Fish and Wildlife and the State Water Resources Control Board, shall ensure that individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(e) The Department of Food and Agriculture shall have the authority necessary for the implementation of the regulations it adopts pursuant to this chapter. The regulations shall do all of the following:

(1) Provide that weighing or measuring devices used in connection with the sale or distribution of medical cannabis are required to meet standards equivalent to Division 5 (commencing with Section 12001).

(2) Require that cannabis cultivation by licensees is conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, agricultural discharges, and similar matters. Nothing in this chapter, and no regulation adopted by the department, shall be construed to supersede or limit the authority of the State Water Resources Control Board, regional water quality control boards, or the Department of Fish and Wildlife to implement and enforce their statutory obligations or to adopt regulations to protect water quality, water supply, and natural resources.

(3) Establish procedures for the issuance and revocation of unique identifiers for activities associated with a cannabis cultivation license, pursuant to Article 8 (commencing with Section 19337). All cannabis shall be labeled with the unique identifier issued by the Department of Food and Agriculture.

(4) Prescribe standards, in consultation with the bureau, for the reporting of information as necessary related to unique identifiers, pursuant to Article 8 (commencing with Section 19337).

(f) The Department of Pesticide Regulation, in consultation with the State Water Resources Control Board, shall promulgate regulations that require that the application of pesticides or other pest control in connection with the indoor or outdoor cultivation of medical cannabis meets standards equivalent to Division 6 (commencing with Section 11401) of the Food and Agricultural Code and its implementing regulations.

(g) State cultivator license types issued by the Department of Food and Agriculture include:

(1) Type 1, or "specialty outdoor," for outdoor cultivation using no artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises, or up to 50 mature plants on noncontiguous plots.

(2) Type 1A, or "specialty indoor," for indoor cultivation using exclusively artificial lighting of less than or equal to 5,000 square feet of total canopy size on one premises.

(3) Type 1B, or "specialty mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, of less than or equal to 5,000 square feet of total canopy size on one premises.

(4) Type 2, or "small outdoor," for outdoor cultivation using no artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(5) Type 2A, or "small indoor," for indoor cultivation using exclusively artificial lighting between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(6) Type 2B, or "small mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 5,001 and 10,000 square feet, inclusive, of total canopy size on one premises.

(7) Type 3, or "outdoor," for outdoor cultivation using no artificial lighting from 10,001 square feet to one acre, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(8) Type 3A, or "indoor," for indoor cultivation using exclusively artificial lighting between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(9) Type 3B, or "mixed-light," for cultivation using a combination of natural and supplemental artificial lighting at a maximum threshold to be determined by the licensing authority, between 10,001 and 22,000 square feet, inclusive, of total canopy size on one premises. The Department of Food and Agriculture shall limit the number of licenses allowed of this type.

(10) Type 4, or "nursery," for cultivation of medical cannabis solely as a nursery. Type 4 licensees may transport live plants.

19333. An employee engaged in commercial cannabis cultivation activity shall be subject to Wage Order 4-2001 of the Industrial Welfare Commission.

SEC. 2. Article 13 (commencing with Section 19350) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 13. Funding

19350. Each licensing authority shall establish a scale of application, licensing, and renewal fees, based upon the cost of enforcing this chapter, as follows:

(a) Each licensing authority shall charge each licensee a licensure and renewal fee, as applicable. The licensure and renewal fee shall be calculated to cover the costs of administering this chapter. The licensure fee may vary depending upon the varying costs associated with administering the various regulatory requirements of this chapter as they relate to the nature and scope of the different licensure activities, including, but not limited to, the track and trace program required pursuant to Section 19335, but shall not exceed the reasonable regulatory costs to the licensing authority.

(b) The total fees assessed pursuant to this chapter shall be set at an amount that will fairly and proportionately generate sufficient total revenue to fully cover the total costs of administering this chapter.

(c) All license fees shall be set on a scaled basis by the licensing authority, dependent on the size of the business.

(d) The licensing authority shall deposit all fees collected in a fee account specific to that licensing authority, to be established in the Medical Marijuana Regulation and Safety Act Fund. Moneys in the licensing authority fee accounts shall be used, upon appropriation of the Legislature, by the designated licensing authority for the administration of this chapter.

19351. (a) The Medical Marijuana Regulation and Safety Act Fund is hereby established within the State Treasury. Moneys in the fund shall be available upon appropriation by the Legislature. Notwithstanding Section 16305.7 of the Government Code, the fund shall include any interest and dividends earned on the moneys in the fund.

(b) (1) Funds for the establishment and support of the regulatory activities pursuant to this chapter shall be advanced as a General Fund or special fund loan, and shall be repaid by the initial proceeds from fees collected pursuant to this chapter or any rule or regulation adopted pursuant to this chapter, by January 1, 2022. Should the initial proceeds from fees not be sufficient to repay the loan, moneys from the Medical Cannabis Fines and Penalties Account shall be made available to the bureau, by appropriation of the Legislature, to repay the loan.

(2) Funds advanced pursuant to this subdivision shall be appropriated to the bureau, which shall distribute the moneys to the appropriate licensing authorities, as necessary to implement the provisions of this chapter.

(3) The Director of Finance may provide an initial operating loan from the General Fund to the Medical Marijuana Regulation and Safety Act Fund that does not exceed ten million dollars ($10,000,000).

(c) Except as otherwise provided, all moneys collected pursuant to this chapter as a result of fines or penalties imposed under this chapter shall be deposited directly into the Medical Marijuana Fines and Penalties Account, which is hereby established within the fund, and shall be available, upon appropriation by the Legislature to the bureau, for the purposes of funding the enforcement grant program pursuant to subdivision (d).

(d) (1) The bureau shall establish a grant program to allocate moneys from the Medical Cannabis Fines and Penalties Account to state and local entities for the following purposes:

(A) To assist with medical cannabis regulation and the enforcement of this chapter and other state and local laws applicable to cannabis activities.

(B) For allocation to state and local agencies and law enforcement to remedy the environmental impacts of cannabis cultivation.

(2) The costs of the grant program under this subdivision shall, upon appropriation by the Legislature, be paid for with moneys in the Medical Cannabis Fines and Penalties Account.

(3) The grant program established by this subdivision shall only be implemented after the loan specified in this section is repaid.

19352. The sum of ten million dollars ($10,000,000) is hereby appropriated from the Medical Marijuana Regulation and Safety Act Fund to the Department of Consumer Affairs to begin the activities of the Bureau of Medical Marijuana Regulation. Funds appropriated pursuant to this section shall not include moneys received from fines or penalties.

SEC. 3. Article 17 (commencing with Section 19360) is added to Chapter 3.5 of Division 8 of the Business and Professions Code, to read:

Article 17. Penalties and Violations

19360. (a) A person engaging in cannabis activity without a license and associated unique identifiers required by this chapter shall be subject to civil penalties of up to twice the amount of the license fee for each violation, and the department, state or local authority, or court may order the destruction of medical cannabis associated with that violation. Each day of operation shall constitute a separate violation of this section. All civil penalties imposed and collected pursuant to this section shall be deposited into the Marijuana Production and Environment Mitigation Fund established pursuant to Section 31013 of the Revenue and Taxation Code.

(b) If an action for civil penalties is brought against a licensee pursuant to this chapter by the Attorney General, the penalty collected shall be deposited into the General Fund. If the action is brought by a district attorney or county counsel, the penalty collected shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney or city prosecutor, the penalty collected shall be paid to the treasurer of the city or city and county in which the judgment was entered. If the action is brought by a city attorney and is adjudicated in a superior court located in the unincorporated area or another city in the same county, the penalty shall be paid one-half to the treasurer of the city in which the complaining attorney has jurisdiction and one-half to the treasurer of the county in which the judgment is entered.

(c) Notwithstanding subdivision (a), criminal penalties shall continue to apply to an unlicensed person or entity engaging in cannabis activity in violation of this chapter, including, but not limited to, those individuals covered under Section 11362.7 of the Health and Safety Code.

SEC. 4. Section 12029 is added to the Fish and Game Code, to read:

12029. (a) The Legislature finds and declares all of the following:

(1) The environmental impacts associated with marijuana cultivation have increased, and unlawful water diversions for marijuana irrigation have a detrimental effect on fish and wildlife and their habitat, which are held in trust by the state for the benefit of the people of the state.

(2) The remediation of existing marijuana cultivation sites is often complex and the permitting of these sites requires greater department staff time and personnel expenditures. The potential for marijuana cultivation sites to significantly impact the state's fish and wildlife resources requires immediate action on the part of the department's lake and streambed alteration permitting staff.

(b) In order to address unlawful water diversions and other violations of the Fish and Game Code associated with marijuana cultivation, the department shall establish the watershed enforcement program to facilitate the investigation, enforcement, and prosecution of these offenses.

(c) The department, in coordination with the State Water Resources Control Board, shall establish a permanent multiagency task force to address the environmental impacts of marijuana cultivation. The multiagency task force, to the extent feasible and subject to available Resources, shall expand its enforcement efforts on a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on fish and wildlife and their habitats throughout the state.

(d) In order to facilitate the remediation and permitting of marijuana cultivation sites, the department shall adopt regulations to enhance the fees on any entity subject to Section 1602 for marijuana cultivation sites that require remediation. The fee schedule established pursuant to this subdivision shall not exceed the fee limits in Section 1609.

SEC. 5. Section 11362.769 is added to the Health and Safety Code, to read:

11362.769. Indoor and outdoor medical marijuana cultivation shall be conducted in accordance with state and local laws related to land conversion, grading, electricity usage, water usage, water quality, woodland and riparian habitat protection, agricultural discharges, and similar matters. State agencies, including, but not limited to, the State Board of Forestry and Fire Protection, the Department of Fish and Wildlife, the State Water Resources Control Board, the California regional water quality control boards, and traditional state law enforcement agencies shall address environmental impacts of medical marijuana cultivation and shall coordinate, when appropriate, with cities and counties and their law enforcement agencies in enforcement efforts.

SEC. 6. Section 11362.777 is added to the Health and Safety Code, to read:

11362.777. (a) The Department of Food and Agriculture shall establish a Medical Cannabis Cultivation Program to be administered by the secretary, except as specified in subdivision (c), shall administer this section as it pertains to the cultivation of medical marijuana. For purposes of this section and Chapter 3.5 (commencing with Section 19300) of the Business and Professions Code, medical cannabis is an agricultural product.

(b) (1) A person or entity shall not cultivate medical marijuana without first obtaining both of the following:

(A) A license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(B) A state license issued by the department pursuant to this section.

(2) A person or entity shall not submit an application for a state license issued by the department pursuant to this section unless that person or entity has received a license, permit, or other entitlement, specifically permitting cultivation pursuant to these provisions, from the city, county, or city and county in which the cultivation will occur.

(3) A person or entity shall not submit an application for a state license issued by the department pursuant to this section if the proposed cultivation of marijuana will violate the provisions of any local ordinance or regulation, or if medical marijuana is prohibited by the city, county, or city and county in which the cultivation is proposed to occur, either expressly or otherwise under principles of permissive zoning.

(c) (1) Except as otherwise specified in this subdivision, and without limiting any other local regulation, a city, county, or city and county, through its current or future land use regulations or ordinance, may issue or deny a permit to cultivate medical marijuana pursuant to this section. A city, county, or city and county may inspect the intended cultivation site for suitability prior to issuing a permit. After the city, county, or city and county has approved a permit, the applicant shall apply for a state medical marijuana cultivation license from the department. A locally issued cultivation permit shall only become active upon licensing by the department and receiving final local approval. A person shall not cultivate medical marijuana prior to obtaining both a permit from the city, county, or city and county and a state medical marijuana cultivation license from the department.

(2) A city, county, or city and county that issues or denies conditional licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(3) A city, county, or city and county's locally issued conditional permit requirements must be at least as stringent as the department's state licensing requirements.

(4) If a city, county, or city and county does not have land use regulations or ordinances regulating or prohibiting the cultivation of marijuana, either expressly or otherwise under principles of permissive zoning, or chooses not to administer a conditional permit program pursuant to this section, then commencing March 1, 2016, the division shall be the sole licensing authority for medical marijuana cultivation applicants in that city, county, or city and county.

(d) (1) The secretary may prescribe, adopt, and enforce regulations relating to the implementation, administration, and enforcement of this part, including, but not limited to, applicant requirements, collections, reporting, refunds, and appeals.

(2) The secretary may prescribe, adopt, and enforce any emergency regulations as necessary to implement this part. Any emergency regulation prescribed, adopted, or enforced pursuant to this section shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and, for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulation is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(3) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, licensing and assistance pertaining to the cultivation of medical marijuana. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs.

(e) (1) The department, in consultation with, but not limited to, the Bureau of Medical Marijuana Regulation, the State Water Resources Control Board, and the Department of Fish and Wildlife, shall implement a unique identification program for medical marijuana. In implementing the program, the department shall consider issues, including, but not limited to, water use and environmental impacts. In implementing the program, the department shall ensure that:

(A) Individual and cumulative effects of water diversion and discharge associated with cultivation do not affect the instream flows needed for fish spawning, migration, and rearing, and the flows needed to maintain natural flow variability.

(B) Cultivation will not negatively impact springs, riparian wetlands, and aquatic habitats.

(2) The department shall establish a program for the identification of permitted medical marijuana plants at a cultivation site during the cultivation period. The unique identifier shall be attached at the base of each plant. A unique identifier, such as, but not limited to, a zip tie, shall be issued for each medical marijuana plant.

(A) Unique identifiers will only be issued to those persons appropriately licensed by this section.

(B) Information associated with the assigned unique identifier and licensee shall be included in the trace and track program specified in Section 19335 of the Business and Professions Code.

(C) The department may charge a fee to cover the reasonable costs of issuing the unique identifier and monitoring, tracking, and inspecting each medical marijuana plant.

(D) The department may promulgate regulations to implement this section.

(3) The department shall take adequate steps to establish protections against fraudulent unique identifiers and limit illegal diversion of unique identifiers to unlicensed persons.

(f) (1) A city, county, or city and county that issues or denies licenses to cultivate medical marijuana pursuant to this section shall notify the department in a manner prescribed by the secretary.

(2) Unique identifiers and associated identifying information administered by a city or county shall adhere to the requirements set by the department and be the equivalent to those administered by the department.

(g) This section does not apply to a qualified patient cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 100 square feet and he or she cultivates marijuana for his or her personal medical use and does not sell, distribute, donate, or provide marijuana to any other person or entity. This section does not apply to a primary caregiver cultivating marijuana pursuant to Section 11362.5 if the area he or she uses to cultivate marijuana does not exceed 500 square feet and he or she cultivates marijuana exclusively for the personal medical use of no more than five specified qualified patients for whom he or she is the primary caregiver within the meaning of Section 11362.7 and does not receive remuneration for these activities, except for compensation provided in full compliance with subdivision (c) of Section 11362.765. For purposes of this section, the area used to cultivate marijuana shall be measured by the aggregate area of vegetative growth of live marijuana plants on the premises. Exemption from the requirements of this section does not limit or prevent a city, county, or city and county from regulating or banning the cultivation, storage, manufacture, transport, provision, or other activity by the exempt person, or impair the enforcement of that regulation or ban.

SEC. 7. Section 13276 is added to the Water Code, to read:

13276. (a) The multiagency task force, the Department of Fish and Wildlife and State Water Resources Control Board pilot project to address the Environmental Impacts of Cannabis Cultivation, assigned to respond to the damages caused by marijuana cultivation on public and private lands in California, shall continue its enforcement efforts on a permanent basis and expand them to a statewide level to ensure the reduction of adverse impacts of marijuana cultivation on water quality and on fish and wildlife throughout the state.

(b) Each regional board shall, and the State Water Resources Control Board may, address discharges of waste resulting from medical marijuana cultivation and associated activities, including by adopting a general permit, establishing waste discharge requirements, or taking action pursuant to Section 13269. In addressing these discharges, each regional board shall include conditions to address items that include, but are not limited to, all of the following:

(1) Site development and maintenance, erosion control, and drainage features.

(2) Stream crossing installation and maintenance.

(3) Riparian and wetland protection and management.

(4) Soil disposal.
(5) Water storage and use.
(6) Irrigation runoff.
(7) Fertilizers and soil.
(8) Pesticides and herbicides.
(9) Petroleum products and other chemicals.
(10) Cultivation-related waste.
(11) Refuse and human waste.
(12) Cleanup, restoration, and mitigation.

SEC. 8. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 10. This measure shall become operative only if both Assembly Bill 266 and Senate Bill 643 of the 2015–16 Regular Session are enacted and become operative.

O

ORDINANCE NO. 2734

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 Section11362.7.

"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.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the 14th day of October 2008.

ATTEST:

/s/ KATHLEEN BAILOR
CITY CLERK

/s/ WILLIAM J. DALTON
MAYOR

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, KATHLEEN BAILOR, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced and presented on September 23, 2008, with vote as follows:

AYES:	COUNCIL MEMBERS:	(4)	BROADWATER, JONES, NGUYEN, DALTON
NOES:	COUNCIL MEMBERS:	(1)	ROSEN
ABSENT:	COUNCIL MEMBERS:	(0)	NONE

and was passed on October 14, 2008, by the following vote:

AYES:	COUNCIL MEMBERS:	(4)	BROADWATER, JONES, NGUYEN, DALTON
NOES:	COUNCIL MEMBERS:	(1)	ROSEN
ABSENT:	COUNCIL MEMBERS:	(0)	NONE

/s/ KATHLEEN BAILOR
CITY CLERK

AGENDA ITEM NO. 5.e.

City of Garden Grove

Attachment 5

INTER-DEPARTMENT MEMORANDUM

To:	Matthew Fertal	From:	Thomas F. Nixon
Dept.:	City Manager	Dept.:	City Attorney
Subject:	CONSIDERATION OF ORDINANCE PROHIBITING THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA DISPENSARIES	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	From:	Joseph M. Polisar
Dept.:	City Manager	Dept.:	Police Department
Subject:	PROPOSED ORDINANCE BANNING MEDICAL MARIJUANA DISPENSARIES	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

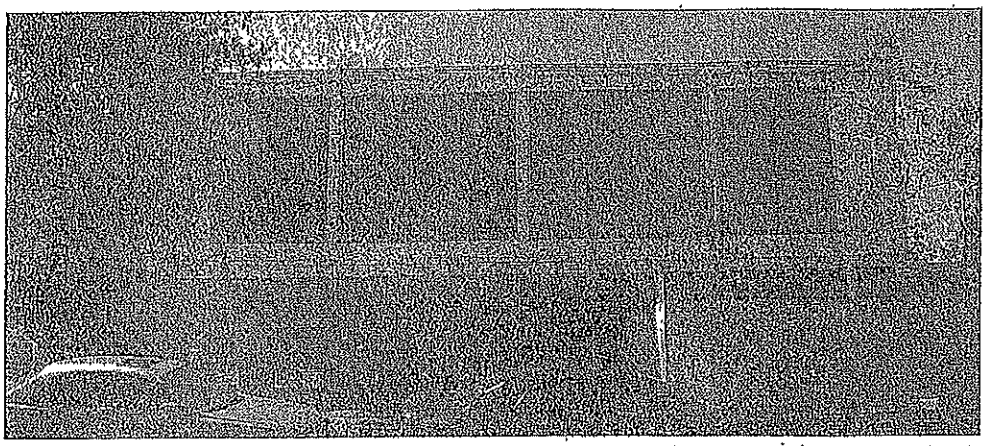
Attachments: Orange County Register Article dated September 6, 2008
Memorandum of Anaheim Police Chief John Welter dated April 30, 2007
Orange County Register Article dated August 26, 2008

Local 14 | Saturday, Sept. 6, 2008 ORANGE COUNTY Register

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

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

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.

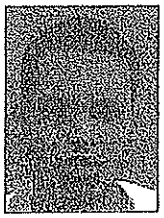
Investigators have launched a parallel investigation into the legitimacy of the medical marijuana dispensary that was operating quietly at an industrial cul-de-sac in an unmarked suite, said Sgt. Andy Ferguson of the Sheriff's Department.

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



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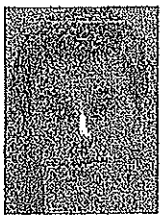
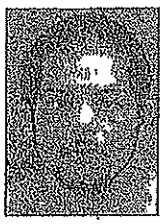


Munroe



York

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.

CONTACT THE WRITER:
shernandez@ocregister.com
or 949-454-7361

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).

Anaheim Police Dept.
425 S. Harbor Blvd.
Anaheim, CA 92805
TEL: 714.765.1401
FAX: 714.765.1665

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.

ATTACHMENT 3

August 26, 2008

The Orange County Register

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

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

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.

AGENDA ITEM NO. 5.e.1.

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 Section11362.7.

"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 Section11362.5, 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.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

ACKNOWLEDGMENTS

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

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

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

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April 22, 2009

Dennis Tilton, Editor

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INTRODUCTION

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

FEDERAL LAW

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

CALIFORNIA LAW

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

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

PROBLEMS POSED BY MARIJUANA DISPENSARIES

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

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

LOCAL GOVERNMENTAL RESPONSES

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

LIABILITY

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

ENFORCEMENT OF MARIJUANA LAWS

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

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

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

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

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

FEDERAL LAW

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

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

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

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

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

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

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.[7] The initiative added California Health and Safety code section 11362.5, which allows "seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . . ."[8] The codified section is known as the Compassionate Use Act of 1996.[9] Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.[10] This act expanded the definitions of "patient" and "primary caregiver"[11] and created guidelines for identification cards.[12] It defined the amount of marijuana that "patients," and "primary caregivers" can possess.[13] It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,[14] as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a "dispensary" or other storefront marijuana distribution operation.

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

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

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

1. Conduct

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

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

2. Patients and Cardholders

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

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

3. Primary Caregivers

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

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

A "primary caregiver" is an individual or facility that has "consistently assumed responsibility for the housing, health, or safety of a patient" over time. (Cal. H&S Code sec. 11362.5(e).) "Consistency" is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra,* to qualify as a primary caregiver, more aid to a person's health must occur beyond merely dispensing marijuana to a given customer.

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

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

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

4. Cooperatives and Collectives

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

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

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

LAWS IN OTHER STATES

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

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

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

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

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

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

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

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

HOW EXISTING DISPENSARIES OPERATE

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

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

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

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

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

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

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES

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

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

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

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

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over $250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.[37]

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

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

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

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

B. BURGLARIES

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

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.[44] Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.[45] After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was "prompted by incidents of armed burglary at some of the city's eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . ."[46]

C. TRAFFIC, NOISE, AND DRUG DEALING

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

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

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

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

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

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

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

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

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

E. POISONINGS

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

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

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

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

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

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

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

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

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

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

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

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

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

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

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

D. INCREASED ORGANIZED GANG ACTIVITIES

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

E. EXPOSURE OF MINORS TO MARIJUANA

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

F. IMPAIRED PUBLIC HEALTH

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

G. LOSS OF BUSINESS TAX REVENUE

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

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

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

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

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

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

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

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

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

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

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

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.[97] And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.[98] It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.[99] To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.[100]

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

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

"Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
    a. Cultivation lighting shall not exceed 1200 watts;
    b. Gas products (CO_2, butane, etc.) for medical marijuana cultivation or processing is prohibited.
    c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
    d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
    e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
    f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
    g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
    h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator my approve up to 100 square foot:
    a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
    b. Include written permission from the property owner.
    c. City Building Official must inspect for California Building Code and Fire Code.
    d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
    e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
    a. A 300 foot radius from any existing residential zoning district,
    b. Within 500 feet of any other medical marijuana cooperative or collective.

c. Within 500 feet from any existing public park, playground, day care, or school.

7. Source of medical marijuana.
   a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
   b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
   c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
   a. Staff screening process including appropriate background checks.
   b. Operating hours.
   c. Site, floor plan of the facility.
   d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
   e. Screening, registration and validation process for qualified patients.
   f. Qualified patient records acquisition and retention procedures.
   g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
   h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
   i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
   a. No dispensing medical marijuana more than twice a day.
   b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
   c. Display the client rules and/or regulations at each building entrance.
   d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
   e. Persons under the age of eighteen (18) are precluded from entering the premises.
   f. No on-site display of marijuana plants.
   g. No distribution of live plants, starts and clones on through Use Permit.
   h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
   i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
   j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
   k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over $58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and $2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over $190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

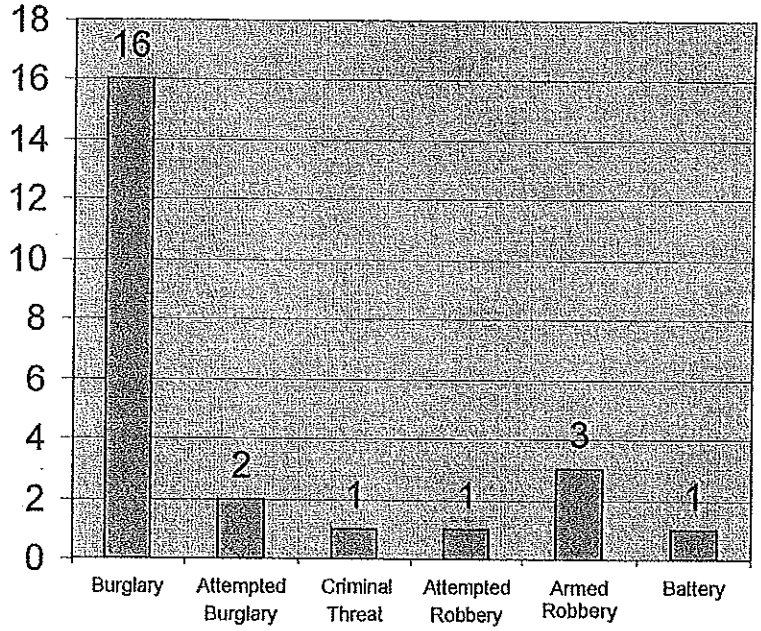
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law **and** California law.

Press Materials:

Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over $300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

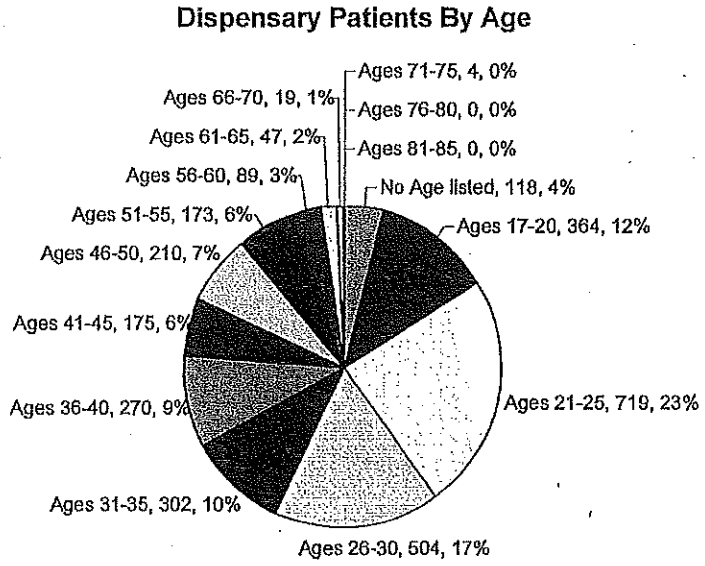
Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

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

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. $4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be $16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than $200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a $250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

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

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.

- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.

- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation ***exploded*** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.

- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.

- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and $12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About $3,000 to $4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.[101] A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.[1] Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

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[1] As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added).)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."[2] If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.[3]

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

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[2] A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

[3] Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See http://www.boe.ca.gov/news/pdf/medseller2007.pdf (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.[4]

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

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[4] Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act—that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)[5] Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

[5] Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.").) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.").) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.[6] [102]

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

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[6] Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006];"Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.[103] Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

[1] U.S. Const.. art. VI, cl. 2.
[2] U.S. Const., art. I, sec. 8, cl. 3.
[3] *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
[4] *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
[5] *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
[6] Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story
[7] See *People v. Mower* (2002) 28 Cal.4th 457, 463.
[8] Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
[9] H&S Code sec. 11362.5(a).
[10] H&S Code sec. 11362.7 *et. seq.*
[11] H&S Code sec. 11362.7.
[12] H&S Code secs. 11362.71–11362.76.
[13] H&S Code sec. 11362.77.
[14] H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
[15] H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
[16] H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
[17] H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
[18] *People v.* Mower (2002) 28 Cal.4th 457 at p. 476.
[19] *Id.* Emphasis added.
[20] Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
[21] Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
[22] For a statewide list, see http://canorml.org/prop/cbclist.html.
[23] Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
[24] H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.
[25] *Gonzales v. Raich, supra,* 125 S.Ct. at page 2195.
[26] *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
[27] Israel Packel, 4-5. Italics added.
[28] H&S Code sec. 11362.7(d)(1).
[29] See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
[30] H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
[31] *People v. Mower,* 28 Cal.4th at 476. Emphasis added.
[32] Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/
[33] "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/
[34] Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at http://www.theava.com/04/0616-cerelli.html

[35] Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257
[36] Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at http://www.highbeam.com/doc/1P2-7021933.html
[37] Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print
[38] Laura Clark, "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2007, available at http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html
[39] Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," Santa Rosa *Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at http://www.equalrights4all.us/content/view/192/50/
[40] Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at http://www.theava.com/04/0616-cerelli.html
[41] Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070
[42] Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf
[43] Will Bigham, "Claremont Marijuana Dispensary Burglarized," *Inland Valley Daily Bulletin*, 27 January 2007, available at http://www.dailybulletin.com/ci_5104514
[44] Planning Commission Agenda, available at http://www.el-cerrito.org; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm
[45] Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb
[46] Ortega.
[47] Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at http://www.reason.com/news/show/118314.html; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
[48] Jeff McDonald, "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006, available at http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html
[49] McDonald; Beato.
[50] Cal. H&S Code sec. 11362.5.
[51] Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
[52] McDonald.
[53] Stewart.
[54] Stewart.
[55] Stewart.
[56] National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at http://www.usdoj.gov/ndic/pubs21/22486/; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL; LAPD report information, 2007.

[57] Van Derbeken, *et al.*
[58] Kate Heneroty, "Medical marijuana indictment unsealed," *Jurist*, 24 June 2005, available at http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php; Stacy Finz, "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids," *San Francisco Chronicle*, 24 June 2005, available at http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL
[59] Organized Crime Behind 'Medical'Marijuana Dispensary in California," *Pushingback*. 29 September 2006, available at http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx; "Ashton.
[60] City of San Diego, *Crime Statistics*, 2007, available at http://www.sandiego.gov
[61] National Drug Intelligence Center, *Marijuana*, January 2001, available at http://www.usdoj.gov
[62] George Anastasia, "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade," *Chronicle of Boredom*, 18 April 2007.
[63] Will Bigham, "Houses Linked to Asian Gangs," *Inland Valley Daily Bulletin*, 23 September 2007, available at http://www.dailybulletin.com/newsci_6980682
[64] Bigham, 23 September 2007.
[65] Feds Came and Went—Now What? *Humboldt County News*, 30 June 2008, available at http://news.humcounty.com/archives/2008/6
[66] LAPD Report Number DR#060625000, 16 August 2006.
[67] LAPD Report Number DR#060625001, 16 August 2006.
[68] Tim Miller, City of Anaheim Police Department: Special Operations Division Memorandum re Marijuana Dispensary (MMD) Ban Ordinance, 25 October 2006; Johnson; Craig T. Steckler, City of Fremont Police Department; Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts, 20 June 2006..
[69] Stewart.
[70] Johnson.
[71] Ashton.
[72] "What has the U.S. DEA said about medical marijuana? " Medical Marijuana ProCon.org, 2005; "What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org., 2009, available at http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630
[73] Jim Avila, "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana," ABC News, 14 June 2007, available at http://abcnews.go.com/print?id=3242760
[74] Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at http://cbs5.com/national/dea.raid.miami.2.712958.html
[75] Anastasia.
[76] Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC), 22 May 2005*, available at http://www.mapinc.org/newstcl/v05/n823/a02.html
[77] Bigham, 23 September 2007.
[78] Bigham, 23 September 2007.
[79] Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," HeraldTribune.com, 24 July 2007, available at http://www.heraldtribune.com/article/20070724/NEWS/707240498
[80]Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at http://articles.latimes.com/2008/may/31/local/me-pot31
[81] Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at http://news.humcounty.com/; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.
[82] Jesse McKinley, "Marijuana Hotbed Retreats on Medicinal Use," *New York Times*, 9 June 2009, available at http://www.nytimes.com/2008/06/09/us/pot.html?_r=1&em&ex=1213329
[83] Deputies: Fire Damages Holiday Marijuana Grow Home, tampabay.com, 15 February 2008, available at http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html
[84] Don Ruane, "Grow Houses Can Impact Utility Bills, Public Safety," News-press.com, 12 April 2008, available at http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394
[85]"DEA Raids Miami Grow House."
[86] Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at http://www.sacbee.com/elkgrove/v-print/story/1152310.html
[87]Avila.

[88] Scott Glover, "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges," *Los Angeles Times*, 6 August 2008, available at http://articles.latimes.com/2008/aug/06/local/me-pot6
[89] Bailey and Reiterman.
[90] Janis Ramsay, "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says," *The Barrie Advance*, 25 August 2008, available at http://www.mapinc.org/drugnews/v08/n818/a06.html
[91] Avila.
[92] Bailey and Reiterman.
[93] Steve Davis, "Grow Security," *Cannabis Culture Magazine*, 6 August 2004, available at http://www.cannabisculture.com//articles/3441.html
[94] Bailey and Reiterman.
[95] See *People v. Urziceanu*, 132 Cal.App.4th 747.
[96] City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.
[97] Office Consolidation: By-law 361-2004 of the City of Brampton, Ontario, Canada.
[98] Bill McCollum, "Landmark Bill Targeting Marijuana Grow Houses Becomes Law," Attorney General Bill McCollum News Release, 17 June 2008, available at http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B
[99] "Asian Gangs Move Grow-ops," *The Asian Pacific Post*, 27 September 2007, available at http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html
[100] See Asian Gangs Move Grow-ops.
[101] See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.
[102] See, e.g., http://www.californiapolicechiefs.org/nav_files/research/ordinances.html
[103] National Drug Intelligence Center.

NON-LEGAL REFERENCES

Abdollah, Tami, and Richard Winton. "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times,* 23 January 2007. Retrieved January 8, 2009, from http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf

Allen, Heather. "Marijuana Grow Houses Flourish as Southwest Florida Market Drops." HeraldTribune.com, 24 July 2007. Retrieved January 9, 2009, from http://www.heraldtribune.com/article/20070724/NEWS/707240498

Anastasia, George. "Viet Gangs on the Rise Again—The Emerging American Underworld— Gangs' Plant-filled Houses a Growing Part of Drug Trade." *Chronicle of Boredom*, 18 April 2007. Retrieved January 8, 2009, from http://www.xanga.com/tihailua/584859568/viet-gangs-on-the-rise-again.html

Anderson, Glenda. "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home." *Santa Rosa Press Democrat*, 19 November 2005. Retrieved January 8, 2009, from http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/

Anderson, Glenda. "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home." *Santa Rosa Press Democrat*, 20 November 2005. Retrieved January 8, 2009, from http://www.equalrights4all.us/content/view/192/50/

Ashton, Adam. "DEA Busts Pot Store Day After Council Talk." *Modesto Bee*, 28 September 2006.

"Asian Gangs Move Grow-ops." *The Asian Pacific Post*, 27 September 2007. Retrieved January 8, 2009, from http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html

Avila, Jim. "Marijuana McMansions: Cops Say Organized Crime Is Sending Families Into the Suburbs to Grow Marijuana." ABC News, 14 June 2007. Retrieved January 8, 2009, from http://abcnews.go.com/print?id=3242760

Bailey, Eric, and Tim Reiterman. "Where Mary Jane Is the Girl Next Door." *Los Angeles Times*, 31 May 2008. Retrieved January 8, 2009, from http://articles.latimes.com/2008/may/31/local/me-pot31

Baron, Ethan. "Angel Linked to Grow-op." *The Province (CNBC)*, 22 May 2005. Retrieved January 8, 2009, from http://www.mapinc.org/newstcl/v05/n823/a02.html

Beato, Greg. "Pot clubs in peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA? *Reason Magazine*, February 2007. Retrieved January 8, 2009, from http://www.reason.com/news/show/118314.html

Bigham, Will. "Claremont Marijuana Dispensary Burglarized." *Inland Valley Daily Bulletin*, 27 January 2007. Retrieved January 9, 2009, from http://www.dailybulletin.com/ci_5104514

Bigham, Will. "Houses Linked to Asian Gangs." *Inland Valley Daily Bulletin*, 23 September 2007. Retrieved January 8, 2009, from http://www.dailybulletin.com/newsci_6980682

Brown, Edmund G., Jr. *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, August 2008.

City of Pleasant Hill. Presentation to Its Planning Commission by Planning Staff, April 24, 2007.

City of San Diego. *Crime Statistics*, 2007. Retrieved January 9, 2009, from http://www.sandiego.gov

Clark, Laura. "Breaking News: Medical Marijuana Supplier Les Crane Killed." *Ukiah Daily Journal*. 19 November 2005.

Clark, Laura. "Les Crane Murder Investigation Continues." *Ukiah Daily Journal*. 27 November 2005.

Clark, Laura. "Pot Dispensary Owner Slain at Home." *Ukaih Daily Journal*, 19 November 2005. Retrieved January 9, 2009, from http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html

Davis, Steve. "Grow Security." *Cannabis Culture Magazine*, 6 August 2004. Retrieved January 8, 2009, from http://www.cannabisculture.com//articles/3441.html

"DEA Raids Miami Grow House." CBS News, 30 April 2008. Retrieved January 8, 2009, from http://cbs5.com/national/dea.raid.miami.2.712958.html

"Deputies: Fire Damages Holiday Marijuana Grow House." tampabay.com, 15 February 2008. Retrieved January 8, 2009, from http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html

"Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2) (February 2007).

"Eureka House Fire the Result of You-know-what." *Humboldt County News*, 7 September 2008. Retrieved January 8, 2009, from http://news.humcounty.com/

"Feds Came and Went — Now What?" *Humboldt County News*, 30 June 2008. Retrieved January 8, 2009, from http://news.humcounty.com/archives/2008/6

Finz, Stacy. "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids." *San Francisco Chronicle*, 24 June 2005. Retrieved January 8, 2009, from http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL

Glover, Scott. "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges." *Los Angeles Times*, 6 August 2008. Retrieved January 8, 2009, from http://www.latimes.com/news/local/la-me-pot6-2008aug06,0,516054.story

Graham, Ricci. "Man Faces Murder Charge in Pot Robbery." *Oakland Tribune*, 24 August 2005. Retrieved February 28, 2009 from http://www.highbeam.com/doc/1P2-7021933.html

Graham, Ricci. "Another Medical Marijuana Clinic Robbed." *Oakland Tribune*, 10 September 2005. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print

Graham, Ricci. "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery." *Oakland Tribune*, 8 August 2006. Retrieved February 24, 2009, from http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257

Heneroty, Kate. "Medical Marijuana Indictment Unsealed." *Jurist*, 24 June 2005. Retrieved January 8, 2009, from http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php

Johnson, Kirk. "Killing Highlights Risk of Selling Marijuana, Even Legally." *New York Times*, 13 March 2007. Retrieved January 8, 2009, from http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070

LAPD Report Information, 2007.

LAPD Report Number DR#060625000, 16 August 2006.

LAPD Report Number DR#060625001, 16 August 2006.

Lopez, Alan. "El Cerrito Moves to Ban Cannabis Clubs." *Contra Costa Times*, 6 January 2008. Retrieved January 8, 2009, from http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm

Louey, Sandy. "Arrests Take Toll on Local Gang." *The Sacramento Bee*, 14 August 2008. Rerieved January 8, 2009, from http://www.sacbee.com//elkgrove/v-print/story/1152310.html

McClure, Laura. "Fuming Over the Pot Clubs." *California Lawyer Magazine*, June 2006.

McCollum, Bill. "Landmark Bill Targeting Marijuana Grow Houses Becomes Law." Attorney General Bill McCollum News Release, 17 June 2008. Retrieved January 9, 2009, from http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B

McDonald, Jeff. "15 Held in Raids on Pot Stores," *San Diego Union-Tribune*, 7 July 2006. Retrieved February 24, 2009, from http://www.signonsandiego.com/uniontrib/20060707/news_7m7pot.html

McKinley, Jesse. "Marijuana Hotbed Retreats on Medicinal Use." *New York Times*, 9 June 2008. Retrieved March 19, 2009, from http://www.nytimes.com/2008/06/09/us/09pot.html?_r=1&em=&ex=1213329

"Medical Marijuana Shop Robbed." *Santa Barbara Independent*, 10 August 2006. Retrieved January 9, 2009, from http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/

Meyer, Josh, and Scott Glover. "U.S. Won't Prosecute Medical Pot Sales," 19 March 2009. Retrieved March 21, 2009, from http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story

Miller, Tim. *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 25 October 2006.

National Drug Intelligence Center. *Domestic cannabis cultivation assessment 2007*, 26 February 2007. Retrieved January 9, 2009, from http://www.usdoj.gov/ndic/pubs21/22486/

Office Consolidation: By-law 361-2004 of the Corporation of the City of Brampton, 22 November 2004.

"Organized Crime Behind 'Medical' Marijuana Dispensary in California." *Pushingback*, 29 September 2006. Retrieved January 9, 2009, from http://pushingback.com/blogs/pushing_back/archive/2006/09/29/791.aspx

Ortega, Fred. "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 28 August 2006. Retrieved January 9, 2009, from http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&staart=0&sid=15b6da115a0da43facb44195cbb

Packel, Israel. *The Organization and Operation of Cooperatives*, 4th ed. Philadelphia: American Law Institute, 1970.

Ramsay, Janis. "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says." *The Barrie Advance*, 25 August 2008. Retrieved January 9, 2009, from http://www.mapinc.org/drugnews/v08/n818/a06.html

Ruane, Don. "Grow Houses Can Impact Utility Bills, Public Safety." News-press.com, 12 April 2008. Retrieved January 9, 2009, from http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394

Scaramella, Mark. "The Mendo Pot Chronicles." *Anderson Valley Advertiser*, 3 October 2007. Retrieved January 9, 2009, from http://www.theava.com/07/1003-mendopot.html

Scaramella, Mark. "No Good Deed Goes Unpunished." *Anderson Valley Advertiser*, 16 June 2004. Retrieved January 9, 2009, from http://www.theava.com/04/0616-cerelli.html

Stanton, Sam. "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy." *Sacramento Bee*, 7 December 2008, 19A.

Steckler, Craig T. *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006.

Stewart, Ethan. (2007, May 3). "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities." *Santa Barbara Independent*," 3 May 2007. Retrieved January 9, 2009, from http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/

Van Derbeken, Jaxon, Charlie Goodyear, and Rachel Gordon. "3 S.F. pot clubs raided in probe of organized crime." *San Francisco Chronicle*, 23 June 2005. Retrieved January 9, 2009, from http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL

"What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org, 2009. Retrieved February 24, 2009, from http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630

"What has the U.S. DEA said about medical marijuana?" Medical Marijuana ProCon.org, 2005.

Attachment 7

PUBLIC SAFETY ISSUES RELATED TO MEDICAL MARIJUANA IN ORANGE COUNTY

Orange County Chiefs of Police and Sheriff's Association

June 2, 2010

Acknowledgements

Orange County Chiefs of Police and Sheriff's Association working group on Medical Marijuana in Orange County.

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The Orange County Chiefs of Police and Sheriff's Association (OCCSA) recognizes that medical marijuana dispensaries and its related issues can have an impact on public safety in Orange County. Agencies are receiving reports of significant crimes, (robberies, burglaries, assaults), occurring at or in the immediate area of dispensaries. These businesses have been known to associate with organized criminal gangs, receive their product (marijuana) from large sophisticated grow operations and are receiving a significant financial profit. Orange County communities and citizens are asking law enforcement to address these and other related issues.

As such, the OCCSA has implemented a working group to analyze the issue and give potential tools to remedy identified public safety concerns. The mission of the working group is to:

> *Identify potential public safety issues of medical marijuana and possible solutions to those issues. The primary focus will be on the applicable criminal and civil laws, dispensaries and delivery businesses. The purpose of the committee is not to consider the medicinal values of marijuana.*

Medical Marijuana Laws

To understand the public safety issues of medical marijuana dispensaries and delivery services it is important to understand the history and current status of the related laws.

In 1996, "The Compassionate Use Act" (CUA), was passed by the voters of California. The CUA decriminalized marijuana possession and cultivation for specific patients or their primary caregiver. Basically, the CUA provides an affirmative defense against cultivation and possession of cannabis for a patient's personal medical treatment, with the oral or written recommendation of a physician. In addition, the patient's primary caregiver is provided the same protections.

The Act was codified in Health and Safety Code 11362.5, which specifically states, to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction."

Under federal law, marijuana is classified as a Schedule I drug, which means it has no recognized medical use. In 2005, the United States Supreme Court ruled in *Gonzales v. Raich* that the federal Controlled Substances Act is valid even as applied to the use of marijuana for personal medical use on the advice of a physician. While the ruling states marijuana remains illegal under federal law, the ruling has no direct impact on California law relating to medical marijuana.

In 2003, the California State Legislature passed Senate Bill 420, which became the Medical Marijuana Program (MMP) and took effect on January 1, 2004. The MMP further defined the definition of "patient" and "primary caregiver". It required the California Department of Public Health to establish and manage 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 medical marijuana without being subject to arrest.

The California Department of Health Services (CDHS) manages the State's MMP. Each county is responsible for implementing their own Medical Marijuana Program. Orange County has named their program the Medical Marijuana Identification Card Program (MMIC). Orange County residents may access the MMIC through the Public Health Services – Heath Care Agency website, http://ochealthinfo.com/mmic. Each card has a unique identification number, which can be verified by law enforcement through a database (www.calmmp.ca.gov).

The MMP also established limits on the amount of marijuana and plants a single qualified person could possess (Health and Safety Code 11362.77). The MMP states qualified patients and primary caregivers may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. In addition, a doctor may recommend additional amounts of marijuana to treat a specific patient's condition. Additionally, counties and cities could adopt local regulations that allowed qualified persons to possess medical marijuana in amounts exceeding the above possession guidelines. This section of the MMP was found to be an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess (People v. Kelly [2008]). Thus, for the purposes of a criminal prosecution, the Section 11362.77 limitations are inapplicable. The prosecutor must prove that the amount possessed was not reasonably related to the defendant's current medical needs. And, because the CUA provides an affirmative defense, the defendant bears the burden of providing evidence on that issue.

However, the CUA does not provide a *protection against arrest* -- which was one of the stated purposes of the MMP. As such, to the extent that the MMP limits the quantity of marijuana (8 ounces, 6 mature plants or 12 immature plants) a person may have to prevent an arrest for possession or cultivation, those limits are viable. Accordingly, the limits may still be used by law enforcement to determine whether they have legal authority to arrest a person -- protection from arrest is provided only for those MMP card holders who comply with the quantity limitations of Health and Safety code 11362.77 (See Section 11362.71(e)). After arrest, it will be up to the prosecutor to determine whether the defendant has a potential affirmative defense to a criminal prosecution under the "reasonableness" standard - and then up to the defendant to provide evidence supporting the difference.

As it relates to dispensary or storefront marijuana distribution, the MMP created a limited affirmative defense to criminal prosecution for qualifying individuals (patients and caregivers) that collectively gather to cultivate medical marijuana and from criminal sanctions for conduct such as possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use or distribution of marijuana for a person who qualifies as a "patient," a "primary caregiver," or as a member of a legally recognized "cooperative," as defined within the statutory scheme. However, there is no law or provision that expressly authorizes or protects the establishment of a storefront marijuana distribution business.

The CUA authorized a patient or a patient's "designated primary caregiver" to cultivate and possess cannabis for the patients' medical use. As such, marijuana "dispensaries" started to take root in communities. Operators were designated as a "primary caregiver" by "patients" – often by the hundreds and even thousands. As the "caregiver", the dispensary operator would provide medical marijuana to the "patients" for a fee. However, the CUA did not authorize any individual or entity (pharmacy, cannabis buyers' clubs or dispensaries) to sell, or even give, cannabis to a patient or caregiver. In fact, the California Supreme Court ruled that a person whose "care giving" consists principally of supplying marijuana and instructing on its use, and who otherwise only sporadically takes some patients to medical appointments, cannot qualify as a "primary caregiver" under the CUA. (People v. Mentch (2008). Specifically, a "primary caregiver" must prove that they:

- Consistently provide care giving.
- Independent of any assistance in taking medical marijuana.
- At or before the time he/she assumed responsibility for assisting with medical marijuana.
- A primary caregiver must be the principal, lead, or central person responsible for rendering assistance in the provision of daily life necessities.

The MMP also addressed "primary caregivers" and provided a specific definition. Under Health and Safety Code 11362.7(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."**

Law enforcement agencies should also be aware of the court decision from City of Garden Grove v. Superior Court. The Court ruled a defendant has a due process right under the 14th Amendment to the return of property where the marijuana was found to be lawfully possessed with the meaning of the CUA and/or the MMP. Defendants requesting that marijuana be returned to them should be directed to obtain a court order for the return. If obtained, the court order should be followed by the law enforcement agency. A number of Orange County law enforcement agencies have returned marijuana to defendants of various criminal marijuana cases.

Collectives and Collaborative

Since the Mentch decision, medical marijuana storefronts have essentially stopped the practice of identifying themselves as "primary caregivers." However, the MMP recognizes that patients and caregivers may associate in order to collectively or cooperatively cultivate medical marijuana. Specifically, the MMP added Health and Safety code 11362.775, which provides that "patients and caregivers who associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. Typically medical marijuana storefronts in Orange County operate under the model or title of a "Collective" or "Cooperative."

In August 2008, the California Attorney General's office issued "Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use." http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf. The AG's Guidelines stated that a "cooperative" is a legal entity. As such, they must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. It must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year.

The AG Guidelines also addressed a "collective," which is not defined under California law. The AG's Guidelines states a "collective" should be an organization that merely facilitates the collaborative efforts of patient and caregiver members. According to the guidelines neither collectives nor cooperatives should purchase cannabis from, or sell to, non-members. The guidelines also suggested practices for operating **"collective growing operations"** including:

- Non-Profit
    - Nothing allows collectives, cooperatives or individuals to profit from the sale or distribution of marijuana.

- Business Licenses, Sales Tax, and Seller's Permits
    - The State Board of Equalization determined medical marijuana transactions are subject to sales tax.

- Membership Application and Verification
    - Suggests a written application.
    - Verification of the individual's status as a qualified patient or primary caregiver.
    - Have the individual agree not to distribute marijuana to non-members.
    - Have the individual agree not to use the marijuana for other than medical purposes.

- Maintain membership records on-site or reasonably available.
- Track member's medical marijuana recommendation.
- Enforce conditions of membership.

- Permissible Reimbursements and Allocations: Marijuana grown at a collective/corporative for medical purposes may be:
  - Provided free to members.
  - Provided in exchange for services rendered.
  - Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses.

As noted above, nothing in the CUA or MMP expressly allows for the storefront sales of marijuana. In Orange County these storefronts have used the titles of "dispensaries", "collectives" , "cooperatives" and "alternative health care" to name a few. Typically, these businesses distribute/sell marijuana outside of California law.

As noted previously, California State law, specifically the CUA under Health and Safety code 11362.5 and the MMP under Health and Safety Code sections 11362.7 through 11362.83, provides an affirmative defense to charges of possession or cultivation of marijuana for individuals who have a physician's recommendation for the use of marijuana to treat specified illnesses, or their primary caregivers. However, this affirmative defense does not apply to any storefront operation in which there is the distribution or sale of marijuana, except in limited circumstances where persons with a valid physician's recommendation or their primary caregivers associate to ***collectively or cooperatively cultivate marijuana*** for medical purposes. Outside of these parameters, a storefront is most likely an illegal operation.

The simple act of having a customer sign a membership form (collective or otherwise), and selling marijuana without any other relationship to cultivate marijuana is likely illegal. Investigations have revealed these storefronts are involved in the illegal distribution and sale of marijuana for money and not the simple possession of marijuana by qualified patients and their primary caregivers for the personal medical purposes of the patient.

Medical Marijuana Dispensaries and Delivery Services

Medical marijuana dispensaries and delivery services in Orange County consistently advertise their services on internet sites such as http://legalmarijuanadispensary.com/, http://www.canorml.org/, www.weedmaps.com and in the OCWeekly publication. There is even a mobile telephone application, iPot, to locate marijuana dispensaries. Many are operating out of locations that do not specifically advertise their business as a medical marijuana business, such as natural herbs or health food stores. There are even dispensary colleges to educate business owners on operating dispensaries. Two are located in Los Angeles - Dispensary University and Oaksterdam University and two in Orange County - Cannabis State in Sunset Beach and Otherside Farms in Costa Mesa. Frequently, these dispensaries have close business relationships with physicians who specialize in providing examinations of people seeking a medical marijuana recommendation. Dispensaries have distributed advertising flyers and discount coupons for physicians.

Delivery services appear to be increasing in numbers as more law enforcement agencies are taking enforcement action against dispensaries. The associated public safety concerns can be just as significant as with a dispensary. Anecdotal evidence suggests that many crimes associated with delivery services go unreported to law enforcement. Local licensing and other legal business requirements are rarely followed. Identifying and locating these delivery businesses can be difficult for agencies.

Law enforcement officials estimated at the end of 2009 that there were between 600-800 dispensaries in the City of Los Angeles alone (Los Angeles Times estimated 966). There are approximately 60-80 in Long Beach. The Los Angeles Police Department and the Los Angeles District Attorney's Office have taken an aggressive enforcement position with regards to these dispensaries.

The following page lists the number of known Medical Marijuana Dispensaries (85) and delivery services (14) in Orange County as of January 1, 2010. It is important to understand that the number and locations of dispensaries and delivery services in Orange County changes frequently.

Orange County Medical Marijuana Dispensaries and Delivery Services

Jurisdiction	Number of Known Medical Marijuana Dispensaries	Number of Known Medical Marijuana Delivery Services
Aliso Viejo	0	0
Anaheim	5	5
Brea	0	0
Buena Park	0	0
Costa Mesa	11	4
Cypress	0	0
Dana Point	5	0
Fountain Valley	1	0
Fullerton	0	0
Garden Grove	3	0
Huntington Beach	0	0
Irvine	3	0
La Habra	0	0
La Palma	0	0
Laguna Beach	0	0
Laguna Hills	2	0
Laguna Niguel	3	0
Laguna Woods	0	0
Lake Forest	11	0
Los Alamitos	0	0
Mission Viejo	0	0
Newport Beach	2	0
Orange	2	0
Placentia	0	0
Rancho Santa Margarita	0	0
San Clemente	0	0
San Juan Capistrano	0	0
Santa Ana	31	5
Seal Beach		
Stanton	0	0
Tustin	0	0
Unincorporated County Area	6	0
Villa Park	0	0
Westminster	0	0
Yorba Linda	0	0
Orange County totals	**85**	**14**

Public Safety Incidents in Orange County

To understand the impact on public safety, it is valuable to know about specific experiences law enforcement agencies have had with dispensaries and delivery services. The incidents help to put a perspective on the seriousness of the issue. The following are descriptions of actual incidents:

Costa Mesa

- An individual who owned a legitimate massage establishment rented a suite directly across from a business alleged to be dispensing marijuana. The massage business reported they could smell the burning marijuana permeating their business and wanted to relocate their massage business. However, Costa Mesa currently has a moratorium on massage establishments and therefore the business is unable to relocate.

- A business owner rented a suite in a business complex that is surrounded by several businesses allegedly involved in dispensing marijuana. The business owner reported a high volume of foot traffic and the numerous "clientele" on the premises were negatively impacting their business. Therefore, the business owner plans to relocate the business.

Huntington Beach

- An undercover police detective attempted to buy medical marijuana from a medical marijuana dispensary. He was told he would first need to obtain a recommendation from a physician. The dispensary employee gave the detective a single-page flyer advertising a physician who could provide the required recommendation. The flyer included a discount coupon for the physician's services. The detective visited the physician's office expecting an examination. Instead, the detective completed a short medical questionnaire, spoke with the physician for less than five minutes and then was given a recommendation card. There was no physical examination. There were no standard medical equipment (blood pressure monitor/cuff, stethoscope) devices and no medical certificates displayed. The detective had just told the physician of previous headaches and that when he, detective, smoked marijuana the headaches went away. The physician agreed that marijuana was good for headaches. However, the physician told the detective he would need to return to the doctor in three months for another examination. The detective paid the physician $125.00 which included a 25% discount since the detective had the flyer. The detective was then able to return to the dispensary and purchase marijuana.

- Police detectives received information there was going to be a "420 party" at a local tobacco products, or "smoke shop", business. "420" is a slang term referring to marijuana. The party was to include live entertainment and an illegal raffle. The business was not licensed or permitted for any of these activities. Detectives

advised the business that the planned party would be illegal. The business agreed to not host the event. However, the business did hold a marijuana party at a vacant storefront adjacent to the smoke shop. This party included a physician who would provide an examination, for a fee, and then issue a medical marijuana recommendation card. The doctor described himself as a "caregiver." After receiving the card the detectives would be able to purchase marijuana from a printed price list inside the business. The business was having a "Valentines day" special.

Several weeks later, detectives made contact with a person working at the business and arranged for a delivery of medical marijuana to a local hotel.

Brea

- An individual contacted the city about a business permit for a medical marijuana dispensary. He was told the city had an ordinance prohibiting such establishments. He opened up a dispensary anyway under the guise of a food shop selling brownies, popcorn, etc. The paperwork he provided was falsified and the products were laced with marijuana. One of the Brea Police Department narcotics detectives saw the business's advertisement on the internet. The detective obtained a marijuana recommendation card from a physician in Lake Forest. With that recommendation card, the detective purchased marijuana at the shop at current street level prices. The individual was charged with municipal code violations and felony sales.

Yorba Linda

- Detectives received numerous complaints of a business that had excessive foot traffic and the smell of burning marijuana. The location was not licensed for any type of business through the City. Detectives entered the business under the guise of being prospective customers. The entrance was monitored by cameras and a manned cage. Once inside, the detectives locked down the business and obtained a search warrant. While waiting for the search warrant, numerous males, 18-25 years old, with no obvious physical ailments were turned away. One individual arrived with a back-pack full of marijuana with the purpose of selling to the business. He and two people working the counter were arrested for sales. Property records turned up fictitious names for the actual lessee and the true business owner was never located. The case on the two counter workers trailed for over a year in criminal court. The defendants had free legal council from NORML (The National Organization for the Reform of Marijuana Laws) who brought people on crutches and in wheel chairs into court.

- Brea Police located a subject from Lake Elsinore making deliveries of marijuana to Orange County with his first stop being Yorba Linda. He was located on the internet. He was arrested after a controlled buy in the east end of the city.

Orange

- The East Hills Patient Association applied for a business license tax application. However, the business did not fully disclose its intentions of providing medicinal marijuana. The license clearly stipulated "No retail sales." The applicant indicated on the application the business was providing consultation and general services to outpatient and elderly patients. The applicant clearly stated he would not be a marijuana dispensary.

  At a later time, detectives observed an advertisement in the OC Weekly publication reference the same location distributing marijuana. The advertisement also indicated a discounted price for first time customers.

  Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. Detectives entered the business, in an undercover capacity, provided the recommendation card to the business owner and were instructed to wait in the lobby while the legitimacy was confirmed. The business operator called the phone number provided on the fraudulent recommendation, which was another detective's phone number, and inquired if the patient/detective was provided with the recommendation card. The other detective, who was waiting in a vehicle outside of the business, confirmed on his cell phone, the patient/detective's recommendation was legitimate.

  The patient/detective was escorted to a secured room. The detective did not see any uniformed security present during the entire transaction. The room possessed a display case, which contained several different types of cannabis. There was an exchange of U.S. currency for marijuana, which was in violation of the Orange Municipal Code. A criminal complaint was ultimately filed through the Superior Court.

- Detectives received a "We-Tip" report about the Orange County Healing Patients Association. Detectives learned there was no existing license for that location and the business owner attempted to circumvent the system by not applying for a City of Orange business tax license. Detectives entered the business, in an undercover capacity, to determine whether or not they were operating a medicinal cannabis dispensary. Detectives created a fraudulent physician recommendation card, which listed a fictitious doctor's name. The fictitious recommendation card was provided and the patient/detective was able to purchase marijuana. The seller was cited for Business Tax Certificate code violation.

  Although it was difficult to determine whether or not customers had a legitimate physical disability or illness, the average patients entering the businesses while detectives were present was in their early twenties. During the hours of surveillance, detectives did not see anyone enter the business with the assistance of a walking cane, crutch, wheelchair, or caregiver.

Fullerton

- On February 13, 2008 at about 1100 hours, police detectives inspected several Cannabis Dispensaries operating in the City of Venice, California. These locations were published on the "NORML" web site. In an undercover capacity, detectives entered a two-story building with a sign reading "Medical Kush." Detectives did not see any wheelchair access to the second floor. Detectives were told by a receptionist that a doctor was on site and the detective could be examined that day. The detective was told that if "qualified", the detective would receive a medical marijuana card, which would enable the detective to purchase medical marijuana at their location in Venice or any location in the State of California. The detective filled out the medical questionnaire and was told to produce a valid photo identification card. The detective provided a photo ID card which had been issued by the North Orange County School of Continuing Education. The detective was escorted to a room to be interviewed by a male who identified himself as a physician. Later the detective was able to confirm the doctor was, in fact, a licensed physician and surgeon in good standing. The interview/examination lasted 3-5 minutes. The detective told the doctor he wanted a medical marijuana card so he could legally possess marijuana. He told the doctor he smoked marijuana when he woke up in the morning with a sore neck and also found marijuana helpful when having difficulty sleeping at night. The doctor told the detective he qualified under State law to use medical marijuana to treat his medical conditions and suggested eating marijuana as opposed to smoking it. The detective asked the doctor how much marijuana he would need to eat to feel relief from his medical conditions. The doctor told him he did not know and suggested that he experiment with marijuana to determine the correct dose. The detective returned to the reception area where he paid $75.00 for a laminated Medical Marijuana Card. The price of the cards ranged from $75.00 for 3-months to $140.00 for 12-months

  The detective was allowed access to the dispensary and smoking room. He saw five or six young people who appeared to be in their late teens or early twenties lying on sofas smoking cannabis. A female behind a Plexiglas window showed the detective various samples of marijuana and hashish. He purchased 1/8 ounce of marijuana for $60.00, which was marketed as "Orange Crush". He also selected a small amount of hashish which he was charged an additional $40.00. The sale was not rung up on a cash register or computer and he was not offered a receipt for the transaction.

- A detective called "OC Private Caregivers" 949-887-7246. He had obtained this phone number from the "NORML" web site as one of 19 services that delivers medical marijuana in Orange County. The detective spoke to a subject who identified himself as "Jeff". The detective told "Jeff" that he had a medical marijuana card issued to him by a physician and wanted to order marijuana. Jeff told him that he could usually deliver anywhere in Orange County within one hour, depending on the current traffic conditions. Jeff said his service is open

from 10am to12am, 7 days-a-week. He said that he was running a "Valentines Special" today and the detective could save $40.00 off the purchase of an ounce of marijuana. The detective ordered one ounce of marijuana for $300.00.

The detective obtained a room at a local motel and waited for the delivery of his order. A short time later, a male arrived at the motel carrying a clipboard. This subject identified himself as "Tim". The police surveillance team had observed the subject arrive in a 1994 Mercedes Benz. "Tim" entered the motel room and the detective presented him with the medical marijuana card. "Tim" verified the detective had $300.00 in cash and exited the room telling him that the marijuana was in his car. He returned a short time later carrying two white paper bags that contained two round plastic pill vials with marijuana.

- Patrol officers were dispatched to a location in regards to a shooting that just occurred. One subject, who had been shot multiple times, was down on the street and was holding a handgun. Officers arrived and found this subject still alive and still in possession of the handgun. There was also a plastic bag near him which contained approximately three ounces of marijuana. He was safely detained and transported for medical treatment. A second shooting victim had driven himself out of the neighborhood to a gas station at Harbor and Bastanchury. Officers located him and he was also transported for medical care due to a single gun shot wound to his chest.

  Investigators discovered that both shooting victims had arrived at the location together and were shot during an attempted drug deal. The two "victims" attempted to rob the dope dealer of his Medical Marijuana. Further investigation revealed that the two "victims" were La Habra gang members. The shooter/dope dealer in this case was later arrested and charged with two counts of attempted murder and drug charges. Both shooting victims survived and the initial shooting victim is paralyzed.

<u>Orange County Sheriff's Department</u>

- Deputies were dispatched to an alarm call at a medical marijuana dispensary business. Upon their arrival, deputies saw three suspects running away from the business. Within a few minutes, four suspects were taken into custody. The investigation revealed that the suspects tunneled into the business from an adjoining business while wearing gloves and ski masks. According to the dispensary owner, the business had been burglarized two weeks prior. The owner did not report the break-in, in which a safe containing $20,000 of marijuana was stolen. As a result of the first burglary, the owner installed the alarm system that resulted in the arrests during the second burglary.

- A home invasion robbery occurred at a residence in an unincorporated area of Santa Ana. The robbery stemmed from the victim cultivating marijuana at the residence. In addition, the victim was involved in supplying a collective and operating a marijuana delivery service. At 1:00 AM, the victim woke up when he heard the side door of his residence forced open. Moments later, two suspects attacked the victim inside the master bedroom area. The victim was struck numerous times around the head area with a tire iron. The assailants then tied up the victim with duct tape. The victim was asked repeatedly by the assailants about the marijuana and other items relating to marijuana sales. The suspects ransacked the house and fled with approximately three pounds of recently harvested marijuana, electronics, and misc. items.

  The victim had a fully operational indoor hydroponic marijuana grow located in the residence. The marijuana grow was found in two separate rooms. Marijuana plants and processed marijuana were found. The marijuana grow included sophisticated ventilation, hydrating, fertilizing and lighting systems. The victim claimed to be a member of a marijuana collective with a medical marijuana license. Items relating to the suspected illegal cultivation and sales of marijuana, including a large amount of US currency were collected by Sheriffs' Investigators.

- An investigation and search warrants tied to dispensaries in Laguna Niguel and Irvine led to the owner's residence in Nellie Gail (Laguna Hills). At the location, investigators found PVC containers with mud on the outside. Inside the containers, they found packaging consistent with bulk money laundering. A further search of the residence revealed over $100,000 in currency.

  During the search at the Irvine storefront, documents showing a storage unit rental in Ladera Ranch were identified. Investigators obtained a search warrant for the location the same evening. A search of the unit located additional PVC containers and over $200,000 in currency. Documentation and physical evidence demonstrated the owners were burying the PVC containers with bulk currency in their backyard.

- A number of undercover investigators have received medical marijuana recommendations from various doctors throughout Orange County. In some instances doctors who advertise their cannabis service on-line will not issue a recommendation without a diagnosis from another physician. The "cannabis doctor" conducts a cursory review of diagnoses and prescriptions records from the prior treating physician. The "cannabis doctor" concurs with the diagnoses, and then writes a recommendation for medical marijuana.

  Other doctors that specialize in marijuana recommendations will diagnose and recommend from their office or rented hotel rooms. In every case these doctor's provide 24/7 recommendation verification for dispensaries, which is a

significant selling point. With round-the-clock verification, customers believe they do not need to obtain a State Medical Marijuana Card.

- The Sheriff's Department investigative process has resulted in search warrant service for seven dispensaries in Lake Forest, Laguna Niguel, Dana Point, Irvine and Unincorporated La Habra. In addition, each storefront has a number of residences related to each location. While post seizure analysis is being conducted on many of these investigations, two locations have resulted in case filings. In addition, two suspects have pled guilty to various charges with one operator pleading to a four year prison term.

Westminster

- A police informant reported there had been an armed "takeover" robbery at a medical marijuana dispensary. The business had not reported the crime. The loss included marijuana, cash and personal records. When contacted by the police, the dispensary operators, after some time, confirmed the crime had occurred. However, the operators refused to provide any details of the crime or cooperate with the investigation.

Related Governmental Agencies and their Potential Impact on the Issue

The State Board of Equalization, Franchise Tax Board and the California Medical Board all have a unique role when dealing with medical marijuana. It is important to understand the requirements and restrictions each of these agencies must follow. The following are descriptions of areas of jurisdiction relating to the issue:

STATE BOARD OF EQUALIZATION

According to the Board of Equalization (BOE), the retail sale of medical marijuana does require a seller to obtain a permit and pay sales tax. The BOE has always considered medical marijuana taxable and began issuing permits in 2005. The BOE also indicated that medical marijuana dispensaries do not qualify for an exemption under Sales and Use Tax Regulation 1591, because the FDA has not approved medical marijuana as a medicine. The BOE does actively follow-up on businesses that have not obtained the required seller's permits and/or have not paid their sales tax, including medical marijuana dispensaries. The BOE is currently involved in a "door to door" program to ensure compliance.

FRANCHISE TAX BOARD

According to the Franchise Tax Board (FTB), any business, including a medical marijuana dispensary, must elect their business structure, e.g. sole proprietorship, partnership, LLC etc., and then file their income tax in accordance with the specifications established for the structure selected. If the FTB learns that a particular business is not filing their income tax returns, they will follow-up to ensure compliance and take potential legal action.

CALIFORNIA MEDICAL BOARD

The Medical Board of California has provided a written statement on www.medbd.ca.gov/med_cal_Marijuana.html regarding physicians who choose to participate in the implementation of the Compassionate Use Act. The Board's position is:

"On November 5, 1996, the people of California passed Proposition 215. Through this Initiative Measure, Section 11362.5 was added to the Health & Safety Code, and is also known as the Compassionate Use Act of 1996. The purposes of the Act include, in part:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the 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; and

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

> *Furthermore, Health & Safety Code section 11362.5(c) provides strong protection for physicians who choose to participate in the implementation of the Act. - "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."*

The Medical Board of California developed this statement since medical marijuana is an emerging treatment modality. The Medical Board wants to assure physicians who choose to recommend medical marijuana to their patients, as part of their regular practice of medicine, that they **WILL NOT** be subject to investigation or disciplinary action by the MBC if they arrive at the decision to make this recommendation in accordance with accepted standards of medical responsibility. The mere receipt of a complaint that the physician is recommending medical marijuana will not generate an investigation absent additional information indicating that the physician is not adhering to accepted medical standards. These accepted standards are the same as any reasonable and prudent physician would follow when recommending or approving any other medication, and include the following:

STANDARDS OF CARE

1. History and good faith examination of the patient.
2. Development of a treatment plan with objectives.
3. Provision of informed consent including discussion of side effects.
4. Periodic review of the treatment's efficacy.
5. Consultation, as necessary.
6. Proper record keeping that supports the decision to recommend the use of medical marijuana.

In other words, if physicians use the same care in recommending medical marijuana to patients as they would recommending or approving any other medication, they have nothing to fear from the Medical Board.

Here are some important points to consider when recommending medical marijuana:

1. Although it could trigger federal action, making a recommendation in writing to the patient will not trigger action by the Medical Board of California.

2. A patient need not have failed on all standard medications, in order for a physician to recommend or approve the use of medical marijuana.

3. The physician should determine that medical marijuana use is not masking an acute or treatable progressive condition, or that such use will lead to a worsening of the patient's condition.

4. The Act names certain medical conditions for which medical marijuana may be useful, although physicians are not limited in their recommendations to those specific conditions. In all cases, the physician should base his/her determination on the results of clinical trials, if available, medical literature and reports, or on experience of that physician or other physicians, or on credible patient reports. In all cases, the physician must determine that the risk/benefit ratio of medical marijuana is as good, or better, than other medications that could be used for that individual patient.

5. A physician who is not the primary treating physician may still recommend medical marijuana for a patient's symptoms. However, it is incumbent upon that physician to consult with the patient's primary treating physician or obtain the appropriate patient records to confirm the patient's underlying diagnosis and prior treatment history.

6. The initial examination for the condition for which medical marijuana is being recommended must be in-person.

7. Recommendations should be limited to the time necessary to appropriately monitor the patient. Periodic reviews should occur and be documented at least annually or more frequently as warranted.

8. If a physician recommends or approves the use of medical marijuana for a minor, the parents or legal guardians must be fully informed of the risks and benefits of such use and must consent to that use.

Physicians may wish to refer to CMA's ON-CALL Document #1315 titled "The Compassionate Use Act of 1996", updated annually for additional information and guidance:*(http://www.cmanet.org/bookstore/freeoncall2.cfm/CMAOnCall1315.pdf?call_number=1315&CFID=745764&CFTOKEN=27566287).*

Although the Compassionate Use Act allows the use of medical marijuana by a patient upon the recommendation or approval of a physician, California physicians should bear in mind that marijuana is listed in Schedule I of the federal Controlled Substances Act, which means that it has no accepted medical use under federal law. However, in Conant v. Walters (9th Cir.2002) F.3d 629 the United States Court of Appeals recognized that physicians have a constitutionally-protected right to discuss medical marijuana as a treatment option with their patients and make oral or written recommendation for medical marijuana. However, the court cautioned that physicians could exceed the scope of this constitutional protection if they conspire with, or aid and abet, their patients in obtaining medical marijuana.

Department of Health Care Services / California Department of Public Health - California Medical Marijuana Program"

If the Medical Board of California (MBC) Complaint Unit receives a complaint directed towards a physician, and believes the accusations pertaining to the physician's conduct has not met the applicable standards of care, they will initiate an investigation.

The investigative unit will determine whether or not the physician is adhering to the Standards of Care, which are listed and highlighted in red on Page 2. In addition, they will determine if the physician is making decisions based on what a reasonable physician would do based on the same training and experience.

Upon conclusion of the MBC complaint unit's investigation, they will forward their findings, if applicable, to the Attorney General's (AG) office for review. The AG's will present their case to the Administrative Law Judge, who will make a determination.

The Medical Board will then impose disciplinary actions against the physician. Those disciplinary actions include, but are not limited to the following: administrative penalties, fines, probation, suspension, and revocation of licenses.

Furthermore, in regards to physicians recommending the use of medicinal cannabis to their patients, they shall adhere to the previously listed eight items of "Consideration".

Local Orange County Law Enforcement officers should contact the a MBC office to address local complaints and initiate a parallel investigation, which will be conducted by the Medical Board Complaint Unit.

The MBC has the discretion to investigate and must believe there is substantial evidence of criminal conduct or conduct that fails to meet their appropriate standards of care.

Strategies to Address Associated Public Safety Issues

- Regulation of land use – this can be one of the most effective means of regulating dispensaries and delivery services. Recent case law has supported the efforts of cities and counties to regulate or prohibit these businesses. Cites and counties have a legal right to ban dispensaries and delivery services with the establishment of zoning ordinances. At least 80 California cities and 6 counties have enacted laws banning dispensaries. The courts have ruled that cities and counties may not create an ordinance that is in conflict with State or Federal law (California Government Code 37100).

- Investigate and prosecute illegal dispensaries and delivery services – these investigations are usually time and labor intensive, however, can be productive in eliminating a specific business within a jurisdiction. Past investigations have found these businesses possessing weapons, significant cash and links to organized crime. The target of these investigations should be to identify who is supplying the marijuana, who is operating the dispensary, who is profiting, is the dispensary engaging in over-the-counter marijuana sales and the dispensary is not associating to collectively or cooperatively cultivate marijuana for medical purposes.

  A critical component of the investigation is for the law enforcement agency to contact and collaborate with the district attorney's office at the start of the investigation. There may also be the need to contact the agency's city attorney if local ordinances and/or land use issues will be involved.

  Note: As of February of 2009, the Drug Enforcement Administration will not pursue criminal investigations involving marijuana dispensaries if the dispensaries are following State laws.

- Collaborate with other law enforcement agencies – operators of marijuana dispensaries and delivery services tend to move from jurisdiction to jurisdiction. Orange County law enforcement should capitalize on its long history of County-wide collaboration and community support to address all the related issues.

- Provide training to law enforcement personnel – L.A. Clear/HIDTA provides a training class "Illegal Medical Marijuana Dispensaries Investigations" (www.lahidtatraining.org) and the Los Angeles Sheriff's Department hosts training on "Medical Marijuana for Patrol Officers" (gdwalsh@lasd.org). Both classes can be highly beneficial.

- Resources – "White Paper on Marijuana Dispensaries" by the California police Chiefs Association's Task force on Marijuana Dispensaries (http://www.callforniapolicechiefs.org/)