

08-0923

John White - Fw: Medical Marijuana

From: "Heather" <Heather@HeatherBroussard.com>
To: "John White- Legislative Assistant" <John.White@lacity.org>
Date: 11/20/2009 2:03 PM
Subject: Fw: Medical Marijuana
Attachments: Red Line Explanations.docx; Draft 5-Red Line.doc; Motions - 11-24.doc; Attorney General Overview.pdf; Attorney General Concentrated Cannabis.pdf

John,
Please post to the website. You don't need to repost the Attorney General Opinions, I sent those yesterday.
Thanks,
Heather

Sent via BlackBerry by AT&T

From: Heather Broussard <heatherbroussard@yahoo.com>
Date: Fri, 20 Nov 2009 12:29:40 -0800 (PST)
To: Heather Broussard <heather@heatherbroussard.com>
Subject: Medical Marijuana

Heather Broussard
4750 Lincoln Blvd. Apt. 178
Marina Del Rey, CA 90292
916-425-1372

Monday, November 23, 2009

City Council
200 North Spring Street
Room 395
Los Angeles, CA 90012

RE: CF 09-0923 – City’s Proposed Medical Marijuana Ordinance

Here are the red-line modifications that have been taken into consideration after the Monday November 16th, 2009 PLUM and Public Safety Meeting, the Wednesday November 18th, 2009 and the Wednesday November 18th, 2009 Care Givers Alliance Meeting.

Important Modification Includes:

1. Sec. 45.19.6.1 B

Added the language,

"Medical Marijuana." Marijuana, concentrated cannabis or hashish used for medical purposes in accordance with the California Health and Safety Code Section 11362.5

The reason for the clarification of this definition, is that some District Attorney and City Attorney Offices originally believed, and still do, that concentrated cannabis or hashish is not included in the definition of medical marijuana within the CUA. However, it is, and in 2003 the Attorney General came out with an opinion on the matter that we have attached. The reason for this additional clarification, is to protect collective in the future that may carry these products, including edibles.

2. Sec 45.19.6.1 C

3. Added the language,

"Medical marijuana collective ("collective"). An incorporated or unincorporated association, composed solely of four or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as "members") who associate to collectively or cooperatively cultivate marijuana for medical purposes in strict accordance with California Health & Safety Code Sections 11362.5, *et seq.*

4. Sec. 45.19.6.2 B

Deleted the language, "...and compliance with Chapters I and IX of the Code for the new agricultural occupancy." "...or Chapters I and IX of this Code."

Deleted the need for an agricultural permit.

5. Sec. 45.19.6.2 E

Deleted the language “In addition, the registration form shall confirm the consent by the collective, without requirement for a search warrant, subpoena or court order, for the inspection and copying by the Police Department of the recordings and records required to be maintained under Sections 45.19.6.3 B.1 and 45.19.6.4 of this article.

This deletion makes the clause consistent with the due process clause.

6. Sec. 45.19.6.3. H.

Modified the language to read, “A registration accepted as complete under this article shall become null and void upon the cessation of marijuana cultivation distribution at the location for 90 days or longer, upon the relocation of the collective to a different location, or upon a violation by the collective or any of its members of a provision of this article.”

The reason for this change is that cultivation is not year round, so therefore cessation of distribution it what should trigger the permit to expire.

7. Sec. 45.19.6.3. A1

Modified the language to read, “Permits for a change of use, any alterations to the building, and a Certificate of Occupancy shall be obtained from the Department of Building and Safety.”

8. Sec. 45.19.6.3.A2

Modified the language “2.No collective shall abut or be located across the street or alley from or have a common comer with a property improved with an exclusively residential building.”

9. Sec. 45.19.6.3 A3

Modified the language “No collective shall be located within a 500-foot radius of a school, public park, public library, religious institution, licensed child care facility, licensed youth center, substance abuse rehabilitation center, or within 1000-foot radius of any other medical marijuana collective(s). The distance specified in this subdivision shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s), to the closest property line of the lot on which the collective is located without regard to intervening structures;

With the changes above the number of dispensaries that have to move will be limited but still significant, however these are good requirements for NEW collectives that open in the future.

Please refer to the section regarding Existing Medical Marijuana Operations for further explanation has to this concession. Leaving this section alone, and dealing with a variance to it at the end of the section protects both the public, collectives and patients rights.

10. Sec. 45.19.6.3 B5

Modified the language to read, “Any exterior signs and any interior signs visible from the exterior shall be unlighted; comply with the Department of Building and Safety Code signage ordinance.

We have an existing Building and Safety signage code section, rather to ensue confusion, which will lead to a violation, let’s follow that code already in place rather than enforce a restriction that has been supported with an explanation.

11. Sec. 45.19.6.3 B1

Modified the language, “ 30 days”

This is consistent with how long other establishments keep their video, if you have it stored for 90 days the quality of the video won’t be a good capture and the frame by frame pictures will be slow.

Added the language, “pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law.”

This deletion makes the clause consistent with the due process clause.

12. Sec. 45.19.6.3 B4

Deleted this section, “No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed.”

The reason for this deletion is the same reason for the clarification as to the definition of medical marijuana including concentrated cannabis and hashish. Collectives are worried the District Attorney and City Attorney are going to determine that the making of these products is a violation of this Health and Safety Code Section, which is not the case, and prosecute these collectives. We want this ordinance to be very clear that it agrees with the Attorney General’s interpretation on this matter.

13. Sec. 45.19.6.3.B5

“No collective shall be open to or provide medical marijuana to its members between the hours of 10:00 p.m. and 8:00 a.m. This prohibition shall not apply to a qualified patient whose permanent legal residence is the location.

14. Sec. 45.19.6.3 B6

Delete this section, “No sale of marijuana or of products containing marijuana shall be allowed, nor shall the manufacture of marijuana products for sale be permitted.”

This allows sales, as long as the Collective is operating not for profit.

15. Sec. 45.19.6.3 B8

Modify the language to read, “As defined in Health and Safety Code Section 11362.77, no medical marijuana collective or primary caregiver shall possess more than 8 ounces of

dried marijuana and no more than six mature and twelve immature marijuana plants per qualified patient who is a member of the collective.

The health and Safety Code Section says you CANNOT make smaller the amount of medicine per qualified patient you CAN ONLY increase the limitations, this is very consistent with case law on this subject as well. It is not realistic to grow at one location, for some of these collectives, as their dispensing locations are small. Allowing a dispensing location and then another location for cultivation will help to eliminate the illegal cultivation and sales that are alleged to be occurring. Council members must also take into consideration that some collectives are operating as corporations and may have cultivation location outside this jurisdiction, which is legal under the state law, for which they are governed. As long as the locations are run by members in charge of management of the collective, then you will have a pure from collective. This will eliminate grows occurring at individual member's location for the collective, who are NOT members engaged in management.

Remember also, members of the collective engaged in the management of the collective must adhere to Sec. 45.19.6.3 B11 A person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and, further, shall not manage or handle receipts and expenses of the collective.

16. Sec. 45.19.6.3 B10

Modified the language to read, "No collective may provide medical marijuana to any persons other than its members. No medical marijuana provided to a primary caregiver may be supplied to any person(s) other than the primary caregiver's qualified patient(s) or person(s) with an identification card.

This takes out the language that a member must take part in the cultivation process in order to receive medicine; this is the very reason why a collective forms, to provide medicine to members that cannot provide it for themselves.

17. Sec. 45.19.6.3.B15

Modified the language to read, "No for profit sale of marijuana or of products containing marijuana shall be allowed.

The proceeds from the cash contributions, reimbursements, compensations of any items legally allowed within the Medical Marijuana establishment to registered patients, may only be used for the following: reasonable employee compensation, reimbursement for the actual expenses of the growth and cultivation of the medicine or derivative products, or for the payment of operational expenses incurred in providing this service (such as, but not limited to, rent, utility bills, water bills, insurance, etc.)"

This verbiage was made by motion and we accept.

18. SEC.45.19.6.4. MAINTENANCE OF RECORDS.

Modify the language to read, “A medical marijuana collective, operating incorporated, shall maintain all records in compliance with the California Corporations Code. A medical marijuana collective shall maintain records at the location accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the property; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; ~~(3) the full name, address, and telephone number(s) of all members who participate in the collective cultivation, the date they joined the collective and the exact nature of each member's participation;~~ (4) the full name, address, and telephone number(s) of members to whom the collective provides medical marijuana; (5) each member's status as a qualified patient, person with an identification card, or designated primary caregiver; (6) all contributions, whether in cash or in kind, by the members to the collective and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates and amounts of marijuana cultivated at the location, including the amounts of marijuana stored at the location at any given time; and (8) proof of registration with the Department of Building and Safety in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and shall be made available by the collective to the Police Department upon request pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage, or destruction of the records shall be reported to the Department of Building and Safety within 24 hours of the loss, destruction or damage.

The true names of the member’s engaged in cultivation does not need to be maintained however the records of cultivation should be maintained as in #7. This protects regular members from prosecution, doesn’t violate patients confidentiality, leaving the members of management the ones responsible for the organization and maintenance of the collectives. PATIENTS rights need to be protected here.

19. SEC.45.19.6.5. INSPECTION AND ENFORCEMENT RESPONSABILITIES.

The Department of Building and Safety may enter and inspect the location of any collective between the hours of 8:00 a.m. and 10:00 p.m., or at any reasonable time, during normal operating hours, to ensure compliance with Section 45.19.6.3 A & B of this article. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection,

review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

This is the last due process violation, the Police Department may not enter the premises FOR ANY REASON without a valid search warrant, court order or subpoena. The Department of Building and Safety can come into the building to check for compliance with Section 45.19.6.3 A & B.

20. Sec 45.19.6.6 **EXISTING MEDICAL MARIJUANA DISPENSARIES.**

Modified the language to read, “Any existing medical marijuana collective, dispensary, operator, establishment, or provider that (1) was established and operating prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, thereafter have 365 days from the effective date of this article during which to fully comply with the requirements of this article, except Section 45.19.63A2 and Section 45.19.63A3 of this Article, as long as there hasn't been any nuisance citations or other public safety concerns at that particular location or to cease operation. No other medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status and must immediately cease operation.

This modification protects the 186 original dispensaries that have detrimentally relied on the city of Los Angeles for 2 years now at their current locations as well as their 250,000 patient based. If these dispensaries are forced to move, the patients won't have safe access near their homes and they will be forced to drive somewhere else now to get their medicine. The new zoning restrictions force too many of the existing dispensaries to move, which doesn't protect the patient's rights, which is imperative as a part of this ordinance.

The cost of moving one of these dispensaries is anywhere in the range of \$80,000 to \$100,000, this is a significant amount of money, that not all collectives will be able to afford, and their patients will suffer.

If there has been public outcry against these establishments, which council members have heard about through nuisance citations or public safety report violations then those establishments will be required to move. By lifting the heavy zoning restrictions on these 186 dispensaries you are balancing the need of the public and the need of the patients fairly. Otherwise these 186 will have grounds for grandfathering their permits in anyway, by way of variance or through the courts, which as a group the 186 plan to seek injunctive relief. None of us want this ordinance that we have been working on for some many years, to wind up in a

court battle, it is a waste of resources and again leaves the collectives exposed to the district attorney and the city attorney, which is bad for the public and patients.

The city is going to have to face litigation in some nature for the dispensaries that have to shut down. In order for their argument to be strong they must stand firm on the fact that they issued permits to those dispensaries that registered prior to the moratorium. This created a promise to those dispensaries ONLY, to hold on and wait for law on how to operate. It never gave room for more dispensaries to open, as the city legally could have placed a ban, and only gave out one permit. The second you give priority to any dispensary who is not a part of that protected class, the city's position is weakened and the 187+ dispensaries argument is strengthened. We do not want the city to lose a court battle regarding this ordinance.

As an alternative, if the city wishes to place a 500 foot restriction on these existing dispensaries relative to a sensitive use, the 186 collectives would be satisfied with a restriction on them alone of 500 feet from a school or public park. These measurements are already calculated on every parcel profile report in the City of Los Angeles. It takes care of the need for protection of the special use area, as well as protects the needs of the collectives and members. By using parcel profile reports, which are already in existence, you are eliminating the need for any further research and cost in this area.

This modification takes into consideration the need for certain feet restrictions to special use areas, such as public parks and school, where children congregate. It would place harder restriction on NEW collectives that may be permitted in the future. Public outcry against these dispensaries didn't occur until they sprouted all over the city, well beyond the 186 number. The public is going to be thrilled to hear there will only be 186 and the District Attorney can make a name with those that do not shut down.

21. Sec. 3 OPERATIVE DATE

Modification of the language to read, "No preinspection pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code shall be conducted by the Department of Building and Safety, nor shall a registration form pursuant to Section 45.19.6.2 A of the Los Angeles Municipal Code be accepted by the Department of Building and Safety for a period of 180 365 days from the effective date of this ordinance; except that any medical marijuana collective, dispensary, operator, establishment, or provider that was (1) established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, may have a preinspection done by the Department of Building and Safety and may file a registration form with the Department of Building and Safety during this 180 365 day period.

- A. The Department of Building and Safety shall only cause to be in circulation 186 collective permits, which were permits given to registered collectives pursuant to

Interim Control Ordinance No, 179,027 with the City Clerk's Office before November 12th, 2007.

- B. Yearly, upon adoption of this ordinance, the city council may review the current economy and may increase the number of collective permits in place as it sees fit.

We would love for all collectives to remain open, but a cap is reasonable and necessary due to public outcry, which the city must take into consideration. The reason for the 186 permit cap is due to the fact the original 186 dispensaries have detrimentally relied on the fact that they submitted applications and were given permits and have been operating for 2 years. The hardship exemption process that was supposed to be in place for these dispensaries that needed to move during the moratorium, didn't go into place for TWO years. At this point these dispensaries already relied and were grandfathered in and have standing for a law suit. However, by giving them priority and allowing them to come into compliance, you eliminate any of them from seeking to be grandfathered in.

Also, these dispensaries followed your direction once, so they are already on the right tract to following your directive twice.

Even though the interim ordinance may have expired, no dispensary that opened while it was in place knew this, until the court made it's ruling. They also opened without submitting an application or getting a permit. They opened with a bad faith belief that they had a right to open. The court only made this ruling because there was no other law in place. Had this ordinance or one similar been in place that said you could not operate without a permit, the injunction wouldn't have been granted. I don't feel that these dispensaries have any legal grounds to ask for their permits to be grandfathered in, because they never even submitted applications for them.

However, if you start treating any one dispensary in that class differently, the city is going to have a problem and this argument has been weakened.

The number 186 is consistent with other jurisdictions. In one year, once the application process is in place, and all 186 original collectives have come into compliance, the city council can then decide whether or not they wish to issue more permits. If they wish to issue 300 more permits, they can do so at that time.

Since the city will be reviewing the number of permits in circulation each year, allowing the existing dispensaries one year to come into compliance makes since. Finding a location, making the modifications to the locations, setting up the indoor grow operations is costly and takes time. 180 days just doesn't give each location enough time to comply.

Regarding Motions #18A - #18N

1. #18A, Support
2. #18B, Support
3. #18C, Support
4. #18D, Opposed for the following reason although not a deal breaker for us...Cash on hand is not as big a concern as all the marijuana. Also, liquor stores, bars and grocery stores all have lots of cash on hand and are not held to the same restrictions. With the additional safety precautions, this would just be another loop hole for the City Attorney and District Attorney to argue the collective is not operating in accordance with the ordinance and would go in with a search warrant, subpoena or court order

and interfere with business, unnecessarily. We see the need, BUT feel the additional security is enough.

5. #18E, Support

6. #18F, Support

7. #18G, Support

8. #18H, Support

9. #18I,

10. #18J, Support

11. #18K, Support all except Amendment 4, same reason as above, and Amendment 5.

Council needs to take into consideration that cooperation will be operating within the city and may have other cultivation locations. If the city is going to place a limit, it should be directed at a limit on one location that dispenses the marijuana to the patients within the City of Los Angeles, so as to allow corporations to still exist within the jurisdiction.

12. #18L, Support, but please leave this to be an amendment added later, once the county has a health card ID Program, or they have designated an organization to handle the program, and it is in place. OTHERWISE the City Attorney and the District Attorney will have another reason to interfere with the operation of these collectives in the meantime. But the ID program is supported.

13. #18N, Opposed

I believe that this drafted ordinance eliminates any losing battles for the city in a court of law. I believe it would muster constitutionality scrutiny.

I believe it protects the one protected class of collectives, the original 186, that did what you asked the first time around, so they will surely be able to comply once this ordinance goes into place.

It also takes care of the patients in need, who are most important during this process.

Sincerely,

Heather Broussard
Attorney At Law, CABAR#230421
Concerned Member of the Public
Voice for the Collectives
Leader for the Patients

ORDINANCE NO. _____

An ordinance adding Article 5.1 to Chapter IV of the Los Angeles Municipal Code and amending Section 91.107.3.2 of the Los Angeles Municipal Code to implement the Compassionate Use Act and the Medical Marijuana Program Act consistent with the provisions of the Acts, but without violating state or federal law.

WHEREAS, although the possession and sale of marijuana remain illegal under federal law, California voters approved the Compassionate Use Act ("CUA") of 1996 to exempt seriously ill patients and their primary caregivers from criminal liability for possession and cultivation of marijuana for medical purposes; and

WHEREAS, the Medical Marijuana Program Act (MMPA) provides for the association of primary caregivers and qualified patients to cultivate marijuana for specified medical purposes and also authorizes local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, the City of Los Angeles enacted an Interim Control Ordinance in 2007 for the temporary regulation of medical marijuana facilities through a registration program, which resulted in the unintended proliferation of storefront medical marijuana dispensaries to a number currently estimated to exceed 500 such locations, presenting a substantial risk of unlawful cultivation, sale, and the illegal diversion of marijuana for non-medical uses; and

WHEREAS, there have been recent reports from the Los Angeles Police Department and the media of an increase in and escalation of violent crime at the location of medical marijuana dispensaries due to lack of regulation in the City of Los Angeles, and the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries; and

WHEREAS, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because, unlike all other ingestibles, marijuana is not regulated, inspected, or analyzed for contamination by state or federal government and may, as with samples recently tested by a U.S. Food and Drug Administration laboratory, contain harmful chemicals that could further endanger the health of persons who are already seriously ill and have impaired or reduced immunities; and

WHEREAS, the City of Los Angeles has a compelling interest in ensuring that marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its

seriously ill residents.

NOW THEREFORE,

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. A new Article 5.1 is added to Chapter IV of the Los Angeles Municipal Code to read:

Article 5.1

MEDICAL MARIJUANA COLLECTIVE

SEC. 45.19.6. PURPOSE AND INTENT.

It is the purpose and intent of this article to regulate the *collective cultivation* of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. The regulations in this article, in compliance with the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code Sections 11362.5, *et sec.*, ("State Law") do not interfere with a patient's right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or *cultivation* of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may *cultivate* medical marijuana *collectively*. Medical marijuana *collectives* shall comply with all provisions of the Los Angeles Municipal Code ("Code"), State Law, and all other applicable local and state laws. Nothing in this article purports to permit *activities* that are otherwise illegal under federal, state, or local law.

SEC. 45. 19.6.1. DEFINITIONS.

A. The following phrases, when used in this article, shall be construed as defined in California Health and Safety Code Sections 11006.5, 11018, 11362.5 and 11362.7:

"Attending physician;"
"Concentrated Cannabis;"
"Identification card;"
"Marijuana;"
"Person with an identification card;"
"Primary caregiver;" and
"Qualified patient."

B. The following phrases, when used in this article, shall be construed as defined below. Words and phrases not defined here shall be construed as defined in Sections 11.01, 12.03, 45.19.5, 45.21, and 56.45 of this Code.

"Location." The lot or portion of a lot that is used by a medical marijuana collective.

"Medical Marijuana." Marijuana, concentrated cannabis or hashish used for medical purposes in accordance with the California Health and Safety Code Section 11362.5

"Medical marijuana collective ("collective")." An incorporated or unincorporated association, composed solely of four or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards collectively referred to as "members") who associate to collectively or cooperatively at a particular location cultivate marijuana for medical purposes in strict accordance with California Health & Safety Code Sections 11362.5, *et seq.*

"Member engaged in the management." A member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the collective.

SEC. 45.19.6.2. Registration

A. Registration Required. No collective shall operate until after it has filed a registration form in accordance with the provisions of this article, has paid any adopted registration fee, and its registration has been accepted as complete by the Department of Building and Safety.

B. Preinspection and Certificate of Occupancy Required. Prior to filing a registration form with the Department of Building and Safety, a collective shall provide plans of the collective location including details of any proposed alterations and a radius map signed by an architect or civil engineer licensed in the State of California to show compliance with the standards set forth in Section 45.19.6.3 A of this article, ~~and compliance with Chapters I and IX of the Code, for the new agricultural occupancy.~~ A collective shall obtain a written preinspection report from the Department of Building and Safety after the Department verifies the accuracy of the plans and radius map submitted and performs all required research (planning/zoning records). A preinspection fee pursuant to Section 91.107.3.2 of this Code, plus a research fee for a minimum of three hours of time pursuant to Section 98.0415 (f) of this Code, shall be paid to the Department of Building and Safety at the time of a request for preinspection. The Department of Building and Safety shall submit its written preinspection report to the collective

stating any conditions that must be met or permits that must be obtained in order to accomplish the required building alterations and to change the occupancy of the building. If the preinspection report finds noncompliance of the location or of the proposed alterations with the standards set forth in Section 45.19.6.3 A of this article, or Chapters I and IX of this Code, a subsequent preinspection may be required, for which an additional preinspection fee shall be paid.

C. Location Priority Status. Upon issuance of: (1) a written preinspection report by the Department of Building and Safety verifying that the proposed location complies with Sections 45.19.6.3 A.2 and A.3 of this article, and (2) all required building permits if the preinspection report specifies alterations, the collective shall obtain priority status for that location. This priority shall become invalid if building permits are revoked or expire. During the time that the location priority status is valid, no preinspection for another collective shall be conducted or approved if its location conflicts under the provisions of this article with the location that has priority status.

D. Notice of Preinspection. Prior to accepting a request for preinspection, the Department of Building and Safety shall require proof that the collective has provided written notice to the City Council member and the Certified Neighborhood Council representing the area in which the collective is located, of: the preinspection request, the location of the collective, a telephone number at the location, the name, telephone number, and address of a person authorized to accept service of process for the collective, and the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective. This notification shall be sent by certified mail, postage prepaid, and return receipt requested.

E. Registration Form. Upon receipt of a Department of Building and Safety preinspection report and a Certificate of Occupancy verifying compliance with the standards set forth in Section 45.19.6.3 A of this article, the collective shall file a registration form with the Department of Building and Safety. The registration form shall require the following accurate and truthful information: the address and physical description (e.g., one-story commercial building, etc.) of the location at and upon which the collective is located; a telephone number at the location; the name, telephone number, and address of a person authorized to accept service of process for the collective; the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective; and any other information reasonably required to show that the collective complies with this article. In addition, the registration form shall confirm the consent by the collective, without requirement for a search warrant, subpoena or court order, for the inspection and copying by the Police Department of the recordings and records required to be maintained under Sections 45.19.6.3 B.1 and 45.19.6.4 of this article.

The collective shall file an updated registration form quarterly, but only if

there were changed during the previous quarter to any of the information provided in the initial registration form or any change in status of compliance with the regulations set forth in Section 45.19.6.3. A change of location cannot be accomplished by an updated registration form, but shall instead require a new preinspection and registration. Each and every member who is engaged in the management of the collective shall print his or her name and sign the initial registration form and any subsequent updated registration form, under penalty of perjury certifying that all information contained in the registration form is true and correct. It shall be the sole responsibility of the members engaged in the management of the collective to ensure that all forms and documents are submitted as required by this article and that the information provided is accurate, complete, and timely submitted.

F. Additional Registration Documents. As attachments to the original and any subsequently updated registration form, the collective shall provide the Department of Building and Safety: (1) proof that the property owner of the location, and landlord if applicable, was given written notice sent by certified mail, postage prepaid, and return receipt requested that the collective intends to file the registration form and that the owner of the location, and landlord if applicable, has received a copy of the information contained in the registration form; (2) for each member engaged in the management of the collective, a fully legible copy of one government-issued form of identification, such as social security card, a state driver's license or identification card, or a passport; and (3) the collective's Certificate of Occupancy for the cultivation use.

G. Completed Registration. The Department of Building and Safety shall mail proof of a completed registration and any subsequent updated registration to the person authorized to accept service of process on behalf of the collective and to the owner of the location.

H. Registration Null and Void. A registration accepted as complete under this article shall become null and void upon the cessation of marijuana cultivation distribution at the location for 90 days or longer, upon the relocation of the collective to a different location, or upon a violation by the collective or any of its members of a provision of this article.

SEC. 45.19.6.3. REGULATIONS

The location at or upon which a collective cultivates and or provides medical marijuana to its members must meet the following requirements:

A. Preinspection Requirements.

1. The location shall comply with the provisions of Chapters I and IX of the Code, including as they pertain to the agricultural marijuana

cultivation use. Permits for a change of use, any alterations to the building, and a Certificate of Occupancy shall be obtained from the Department of Building and Safety;

2. No collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building;

3. No collective shall be located within a ~~4,000~~500-foot radius of a school, public park, public library, religious institution, licensed child care facility, licensed youth center, hospital, medical facility licensed substance abuse care facility located within the City of Los Angeles or within 1000-foot radius of any other medical marijuana collective(s). ~~The distance specified in this subdivision shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s), to the closest property line of the lot on which the collective is located without regard to intervening structures. The distance specified in this subdivision shall be the horizontal distance measured from the property line of the sensitive use to the closest exterior wall of the collective. Priority of location shall be give to the location that was first in operation upon proof through documentation for location's address.~~;

4. Exterior building lighting and parking area lighting for the property must be in compliance with Sections 93.0104, 93.0107 and 93.0117 of the Code. In addition, the property shall be equipped with lighting fixtures of sufficient intensity to illuminate all interior areas of the lot with an illumination of not less than 1.5 foot-candles evenly distributed as measured at floor level;

5. Any exterior signs and any interior signs visible from the exterior shall be unlighted; comply with the Department of Building and Safety Code signage ordinance.

6. Windows and roof hatches of the building or portion of the building where the collective is located shall be secured from the inside with bars so as to prevent unauthorized entry, and shall be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency in compliance with all applicable building code provisions.

7. Exterior doors to the collective shall remain locked from the outside to prevent unauthorized ingress to the premises of the collective. Ingress shall be allowed by means of a remote release operated from within the premises of the collective. In all cases, doors shall remain openable from the inside to allow egress without the use of a key or special knowledge. If

installed, access-controlled doors shall comply with Section 1008.1.3.4 of the California Building Code; and

8. A sign shall be posted in a conspicuous location inside the structure of the location advising: "This collective is registered in accordance with the laws of the City of Los Angeles. The sale of marijuana and the diversion of marijuana for non-medical purposes are violations of State law. The use of marijuana may impair a person's ability to drive a motor vehicle, or operate heavy machinery. Loitering at the location of a medical marijuana collective for an illegal purpose is prohibited by California Penal Code Section 647(h)."

B. Conditions of Operation.

1. The location shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than ninety ~~(90)~~(30)-days and shall be made available by the collective to the Police Department pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law.

2. The location shall have a centrally-monitored fire and burglar alarm system and the building or portion of the building where the collective is located shall contain a fire-proof safe;

3. No cultivation of medical marijuana on the location shall be visible with the naked eye from any public or other private property, nor shall cultivated marijuana or dried marijuana be visible from the building exterior. No cultivation shall occur at the location unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;

4. ~~No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed;~~

5. No collective shall be open to or provide medical marijuana to its members between the hours of 10:00 p.m. and 8:00 a.m. This prohibition shall not apply to a qualified patient whose permanent legal residence is the location;

6. ~~No sale of marijuana or of products containing marijuana shall be allowed, nor shall the manufacture of marijuana products for sale be permitted;~~

7. No persons under the age of eighteen shall be allowed at the location, unless that minor is a qualified patient or person with an identification card and accompanied by his or her licensed attending physician, parent or documented legal guardian;

~~8. No medical marijuana collective shall possess more than 5 pounds of dried marijuana or more than 100 plants of any size at the location. No collective shall possess or provide marijuana other than marijuana that was cultivated by the collective: (a) at the location; or (b) at the collective's previous location if that previous location was registered and operated in strict accordance with this article; As defined in Health and Safety Code Section 11362.77, no medical marijuana collective or primary caregiver shall possess more than 8 ounces of dried marijuana and no more than six mature and twelve immature marijuana plants per qualified patient who is a member of the collective.~~

9. The light fixtures required in Section 45.19.6.3 A.4, above, shall be turned on from dusk to dawn;

10. ~~No collective may provide medical marijuana to any persons other than its members who participate in the collective cultivation of marijuana at or upon the location of that collective. No medical marijuana provided to a primary caregiver may be supplied to any person(s) other than the primary caregiver's qualified patient(s) or person(s) with an identification card;~~

11. No collective shall cause or permit the sale, dispensing, or consumption of alcoholic beverages at the location or in the parking area of the location;

12. No dried marijuana shall be stored in buildings that are not completely enclosed, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical marijuana be stored in a safe or vault that is not bolted to the floor or structure of the facility;

13. Medical marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed at the location, in the parking areas of the location, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79. This prohibition shall not apply to a qualified patient's use of marijuana for his or her own medical needs if the qualified patient's permanent legal residence is the location; and

14. Only members of the collective may be engaged in the management of the collective. A person who has been convicted within the previous 10 years of a felony or crime of moral turpitude, or who is

currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and, further, shall not manage or handle the receipts and expenses of the collective

~~15. Nothing in this article shall prevent members engaged in the collective cultivation of medical marijuana in strict accordance with this article from sharing the actual, out-of-pocket costs of their collective cultivation. Actual, out-of-pocket costs shall not be recovered through the sale of marijuana. Nothing in this article shall pertain to or affect the reimbursements from qualified patients to their primary caregivers pursuant to California Health and Safety Code Section 11362.765. No for-profit sale of marijuana or of products containing marijuana shall be allowed.~~

The proceeds from the cash contributions, reimbursements, compensations of any items legally allowed within the Medical Marijuana establishment to registered patients, may only be used for the following: reasonable employee compensation, reimbursement for the actual expenses of the growth and cultivation of the medicine or derivative products, or for the payment of operational expenses incurred in providing this service (such as, but not limited to, rent, utility bills, water bills, insurance, etc.)

Formatted: List Paragraph, No bullets or numbering

SEC.45.19.6.4. MAINTENANCE OF RECORDS.

A medical marijuana collective shall maintain records at the location accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the property; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; ~~(3) the full name, address, and telephone number(s) of all members who participate in the collective cultivation, the date they joined the collective and the exact nature of each member's participation;~~ (4) the full name, address, and telephone number(s) of members to whom the collective provides medical marijuana; (5) each member's status as a qualified patient, person with an identification card, or designated primary caregiver; (6) all contributions, whether in cash or in kind, by the members to the collective and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates and amounts of marijuana cultivated at the location, including the amounts of marijuana stored at the location at any given time; and (8) proof of registration with the Department of Building and Safety in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and shall be made available

by the collective to the Police Department upon request pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage, or destruction of the records shall be reported to the Department of Building and Safety within 24 hours of the loss, destruction or damage.

SEC.45.19.6.5. INSPECTION AND ENFORCEMENT RESPONSABILITIES.

The Department of Building and Safety may enter and inspect the location of any collective between the hours of 8:00 a.m. and 10:00 p.m., or at any reasonable time, during normal operating hours, to ensure compliance with Section 45.19.6.3 A & B of this article. In addition, the Police Department may enter and inspect the location of any collective and the recordings and records maintained pursuant to Sections 45.19.6.3 and 45.19.6.4 of this article between the hours of 8:00 a.m. and 10:00 p.m., or at any reasonable time to ensure compliance with Sections 45.19.6.2, 45.19.6.3 B, 45.19.6.4, 45.19.6.6, 45.19.6.7 and 45.19.6.8 of this article. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.

SEC.45.19.6.6. EXISTING MEDICAL MARIJUANA OPERATIONS.

Any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this article must immediately cease operation until such time, if any, when it complies fully with the requirements of this article; except that any medical marijuana collective, dispensary, operator, establishment, or provider not in compliance with the requirements of this article that (1) was established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, shall immediately cease any sales of marijuana or product containing marijuana and shall thereafter hereafter have 180 days from the effective date of this article during which to fully comply with the requirements of this article, except Section 45.19.63A2 and Section 45.19.63A3 of this Article, as long as there hasn't been any nuisance citations or other public safety concerns at that particular location or to cease operation. No other medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective,

dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status and must immediately cease operation.

SEC.45.19.6.7. COMPLIANCE WITH THIS ARTICLE AND STATE LAW.

A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana for medical purposes except as provided in this article, and pursuant to any and all other applicable local and state law.

B. It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana ~~except as provided in Health and Safety Code Sections 11362.5 et seq.~~, and pursuant to any and all other applicable local and state law.

C. It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this article, or to any other local, state or federal government agency having jurisdiction over any of the activities of collectives.

SEC.45.19.6.8. VIOLATION AND ENFORCEMENT.

Each and every violation of this article shall constitute a separate violation and be subject to all remedies and enforcement measures authorized by Section 11.00 of this Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the certificate of occupancy for the location, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state law for any violations committed by the collective and persons related or associated with the collective.

Notwithstanding an initial verification of compliance by the collective with the preinspection requirements set forth in Section 45.19.6.3 A of this article prior to the filing of the registration form, any collective later found to be in violation of any of the preinspection requirements at any time is subject to the enforcement provisions provided in this section.

Sec. 2. Section 91.107.3.2 of the Los Angeles Municipal Code is amended by adding a new item 5 to read:

5. Medical Marijuana Collective Preinspection. A preinspection fee pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code

shall be collected by the Department to verify compliance with Section 49.19.6.3 A of the Los Angeles Municipal Code. The preinspection fee shall be in addition to any other fee that the Department determines is necessary due to the nature of the work involved.

Sec. 3. Operative Date. No preinspection pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code shall be conducted by the Department of Building and Safety, nor shall a registration form pursuant to Section 45.19.6.2 A of the Los Angeles Municipal Code be accepted by the Department of Building and Safety for a period of ~~480~~ ³⁶⁵ days from the effective date of this ordinance; except that any medical marijuana collective, dispensary, operator, establishment, or provider that was (1) established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, may have a preinspection done by the Department of Building and Safety and may file a registration form with the Department of Building and Safety during this ~~480~~ ³⁶⁵ day period.

A. The Department of Building and Safety shall only cause to be in circulation 186 collective permits, which were permits given to registered collectives pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's Office before November 12th, 2007.

B. Yearly, upon adoption of this ordinance, the city council may review the current economy and may increase the number of collective permits in place as it sees fit.

Formatted: Superscript

Sec. 4. Severability. Pursuant to the provisions of Los Angeles Municipal Code Section 11.00 (k), if any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By _____
SHARON SIEDORF CARDENAS
Assistance City Attorney

Date: _____

File No. CF 08-092

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in Section 45.19.6.1.B, Definitions, and REPLACE it with the following language:

"Medical Marijuana." Marijuana, concentrated cannabis or hashish used for medical purposes in accordance with the California Health and Safety Code Section 11362.5

"Medical marijuana collective ("collective"). An incorporated or unincorporated association, composed solely of four or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as "members") who associate to collectively or cooperatively cultivate marijuana for medical purposes in strict accordance with California Health & Safety Code Sections 11362.5, *et seq.*

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in Section 45.19.6.2.BH, Registration Null and Void, and REPLACE it with the following language:

Registration Null and Void: ~~A registration accepted as complete under this article shall become null and void upon the cessation of marijuana distribution at the location for 90 days or longer, upon the relocation of the collective to a different location, or upon a violation by the collective or any of its members of a provision of this article.~~

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC. 45.19.6.3. REGULATIONS**, and REPLACE it with the following language:

~~The location at or upon which a collective cultivates and or provides~~ medical marijuana to its members must meet the following requirements:

A. Preinspection Requirements.

~~1. The location shall comply with the provisions of Chapters I and IX of the Code, including as they pertain to the agricultural marijuana cultivation use. Permits for a change of use, any alterations to the building, and a Certificate of Occupancy shall be obtained from the Department of Building and Safety;~~

~~2. No collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building;~~

~~3. No collective shall be located within a 4,000500-foot radius of a school, public park, public library, religious institution, licensed child care facility, licensed youth center, hospital, medical facility licensed substance abuse care facility located within the City of Los Angeles or within 1000-foot radius of any other medical marijuana collective(s). The distance specified in this subdivision shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s), to the closest property line of the lot on which the collective is located without regard to intervening structures. The distance specified in this subdivision shall be the horizontal distance measured from the property line of the sensitive use to the closest exterior wall of the collective. Priority of location shall be give to the location that was first in operation upon proof through documentation for location's address.;~~

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in Section 45.19.6.3.B5, Regulations, Preinspection and REPLACE it with the following language:

Any exterior signs and any interior signs visible from the exterior shall be unlighted; comply with the Department of Building and Safety Code signage ordinance.

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC. 45.19.6.3 B1, Regulations, Conditions of Operation**, and REPLACE it with the following language:

The location shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the location. The recordings shall be maintained for a period of not less than ninety ~~(90)~~(30)-days and shall be made available by the collective to the Police Department pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law.-

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC. 45.19.6.3 B4, Regulations, Conditions of Operation**, and REPLACE it with the following language:

~~No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed;~~

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC. 45.19.6.3 B8, Regulations, Conditions of Operation**, and REPLACE it with the following language:

No medical marijuana collective shall possess more than 5 pounds of dried marijuana or more than 100 plants of any size at the location. No collective shall possess or provide marijuana other than marijuana that was cultivated by the collective: (a) at the location; or (b) at the collective's previous location if that previous location was registered and operated in strict accordance with this article; As defined in Health and Safety Code Section 11362.77, no medical marijuana collective or primary caregiver shall possess more than 8 ounces of dried marijuana and no more than six mature and twelve immature marijuana plants per qualified patient who is a member of the collective.

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC. 45.19.6.3 B10, Regulations, Conditions of Operation**, and REPLACE it with the following language:

~~No collective may provide medical marijuana to any persons other than its members who participate in the collective cultivation of marijuana at or upon the location of that collective. No medical marijuana provided to a primary caregiver may be supplied to any person(s) other than the primary caregiver's qualified patient(s) or person(s) with an identification card;~~

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC.45.19.6.4. MAINTENANCE OF RECORDS**, and REPLACE it with the following language:

Modify the section to read, "A medical marijuana collective, operating incorporated, shall maintain all records in compliance with the California Corporations Code. A medical marijuana collective shall maintain records at the location accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the property; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; (3) the full name, address, and telephone number(s) of all members who participate in the collective cultivation, the date they joined the collective and the exact nature of each member's participation; (4) the full name, address, and telephone number(s) of members to whom the collective provides medical marijuana; (5) each member's status as a qualified patient, person with an identification card, or designated primary caregiver; (6) all contributions, whether in cash or in kind, by the members to the collective and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates and amounts of marijuana cultivated at the location, including the amounts of marijuana stored at the location at any given time; and (8) proof of registration with the Department of Building and Safety in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and shall be made available by the collective to the Police Department upon request pursuant to a properly executed search warrant, subpoena or court order or other means conforming with Due Process under the law. In addition to all other formats that the collective may maintain, these records shall be stored by the collective at the location in a printed format in its fire-proof safe. Any loss, damage, or destruction of the records shall be reported to the Department of Building and Safety within 24 hours of the loss, destruction or damage.

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC.45.19.6.5. INSPECTION AND ENFORCEMENT RESPONSABILITIES**, and REPLACE it with the following language:

~~The Department of Building and Safety may enter and inspect the location of any collective between the hours of 8:00 a.m. and 10:00 p.m., or at any reasonable time, during normal operating hours, to ensure compliance with Section 45.19.6.3 A and B of this article. In addition, the Police Department may enter and inspect the location of any collective and the recordings and records maintained pursuant to Sections 45.19.6.3 and 45.19.6.4 of this article between the hours of 8:00 a.m. and 10:00 p.m., or at any reasonable time to ensure compliance with Sections 45.19.6.2, 45.19.6.3 B, 45.19.6.4, 45.19.6.6, 45.19.6.7 and 45.19.6.8 of this article. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any recordings, records, or monitoring.~~

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in **SEC.45.19.6.6. EXISTING MEDICAL MARIJUANA OPERATIONS**, and REPLACE it with the following language:

Any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this article must immediately cease operation until such time, if any, when it complies fully with the requirements of this article; except that any medical marijuana collective, dispensary, operator, establishment, or provider not in compliance with the requirements of this article that (1) was established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, shall immediately cease any sales of marijuana or product containing marijuana and shall thereafter hereafter have ~~480~~365 days from the effective date of this article during which to fully comply with the requirements of this article, except Section 45.19.63A2 and Section 45.19.63A3 of this Article, as long as there hasn't been any nuisance citations or other public safety concerns at that particular location or to cease operation. No other medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status and must immediately cease operation.

Presented By: _____

Seconded By: _____

MOTION

I Move that the matter of the "DISCUSSION AND CONSIDERATION OF ORDINANCE FIRST CONSIDERATION, Reports, and Motions relative to amending the Los Angeles Municipal Code to establish regulation regarding medical marijuana collectives, item _____ on today's City Council Agenda (CF#08-0923)

Be Amended to modify the language in Sec. 3. **Operative Date**, and REPLACE it with the following language:

No preinspection pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code shall be conducted by the Department of Building and Safety, nor shall a registration form pursuant to Section 45.19.6.2 A of the Los Angeles Municipal Code be accepted by the Department of Building and Safety for a period of ~~480~~ 365 days from the effective date of this ordinance; except that any medical marijuana collective, dispensary, operator, establishment, or provider that was (1) established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, may have a preinspection done by the Department of Building and Safety and may file a registration form with the Department of Building and Safety during this ~~480~~ 365 day period.

A. ~~The Department of Building and Safety shall only cause to be in circulation 186 collective permits, which were permits given to registered collectives pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's Office before November 12th, 2007.~~

B. ~~Yearly, upon adoption of this ordinance, the city council may review the current economy and may increase the number of collective permits in place as it sees fit.~~

Formatted: Superscript

Presented By: _____

Seconded By: _____



GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana. One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).¹) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

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

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

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

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

The Act further states that “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or verbal recommendation or approval of a physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

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

F. The Federal Controlled Substances Act.

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

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

that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

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

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

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

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

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

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

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

4. **Possession Guidelines:**

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

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

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

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

B. Enforcement Guidelines.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. **Non-Profit Operation:** Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) [“nothing in this section shall authorize . . . any individual or group to cultivate or distribute marijuana for profit”]).

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

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

- a) Verify the individual’s status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician’s identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient’s recommendation. Copies should be made of the physician’s recommendation or identification card, if any;
- b) Have the individual agree not to distribute marijuana to non-members;
- c) Have the individual agree not to use the marijuana for other than medical purposes;
- d) Maintain membership records on-site or have them reasonably available;
- e) Track when members’ medical marijuana recommendation and/or identification cards expire; and
- f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

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

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

6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

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

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

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

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

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

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

BILL LOCKYER
Attorney General

| | | |
|-------------------------|---|------------------|
| OPINION | : | No. 03-411 |
| | : | |
| of | : | October 21, 2003 |
| | : | |
| BILL LOCKYER | : | |
| Attorney General | : | |
| | : | |
| GREGORY L. GONOT | : | |
| Deputy Attorney General | : | |
| | : | |

THE HONORABLE ANTHONY J. CRAVER, SHERIFF-CORONER,
COUNTY OF MENDOCINO, has requested an opinion on the following question:

Is concentrated cannabis or hashish included within the meaning of
"marijuana" as that term is used in the Compassionate Use Act of 1996?

CONCLUSION

Concentrated cannabis or hashish is included within the meaning of
"marijuana" as that term is used in the Compassionate Use Act of 1996.

ANALYSIS

On November 5, 1996, the voters of California adopted Proposition 215, an initiative statute authorizing the medical use of marijuana. (*People v. Mower* (2002) 28 Cal.4th 457, 463; *People v. Bianco* (2001) 93 Cal.App.4th 748, 751; *People v. Rigo* (1999) 69 Cal.App.4th 409, 412.) The measure added section 11362.5 to the Health and Safety Code¹ and entitled the statute the "Compassionate Use Act of 1996." (§ 11362.5, subd. (a).) Section 11362.5 "creates an exception to California laws prohibiting the possession and cultivation of marijuana." (*United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483, 486.) "These prohibitions no longer apply to a patient or his primary caregiver who possesses or cultivates marijuana for the patient's medical purposes upon the recommendation or approval of a physician." (*Ibid.*; see *People v. Mower, supra*, 28 Cal.4th at pp. 471-474; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1160-1162; *People v. Young* (2001) 92 Cal.App.4th 229, 235.)² We are asked to determine whether section 11362.5's reference to "marijuana" includes concentrated cannabis or hashish. We conclude that it does.

Section 11362.5 provides:

"(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

"(b)(1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

"(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

¹ All references hereafter to the Health and Safety Code are by section number only.

² The possession and distribution of marijuana remain unlawful under the federal Controlled Substances Act (21 U.S.C. § 801 *et seq.*). (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1387, fn. 2.) The federal law contains no medical necessity exception. (*United States v. Oakland Cannabis Buyers' Cooperative, supra*, 532 U.S. at p. 486; *People v. Mower, supra*, 28 Cal.4th at p. 465, fn. 2; *People v. Bianco, supra*, 93 Cal.App.4th at p. 753.)

“(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

“(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

“(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

“(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

“(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient’s primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

“(e) For the purposes of this section, ‘primary caregiver’ means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.”

Section 11362.5 uses only the term “marijuana” and contains no direct reference to “concentrated cannabis” or “hashish.”

Although section 11362.5 does not define the term “marijuana,” the statute is part of the California Uniform Controlled Substances Act (§§ 11000-11651; “Act”), which contains the following definition of marijuana in section 11018:

“ ‘Marijuana’ means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It 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.”

Federal law has a similar definition of marijuana. (21 U.S.C. § 802(16); see *People v. Hamilton* (1980) 105 Cal.App.3d 113, 116-117; *People v. Van Alstyne* (1975) 46 Cal.App.3d 900, 916; *United States v. Kelly* (9th Cir. 1976) 527 F.2d 961, 963-964; *U.S. v. Schultz* (S.D. Ohio 1992) 810 F.Supp. 230, 233; cf. *Haynes v. State* (1975) 54 Ala.App. 714, 717-718 [312 So.2d 406].) “Unless the context otherwise requires” (§ 11001), the definition of marijuana found in section 11018 controls our interpretation of section 11362.5.

“Concentrated cannabis” is defined for purposes of the Act, “[u]nless the context otherwise requires” (§ 11001), in section 11006.5: “‘Concentrated cannabis’ means the separated resin, whether crude or purified, obtained from marijuana.” Concentrated cannabis “includes hashish” (*Hooks v. State Personnel Board* (1980) 111 Cal.App.3d 572, 579), which is commonly defined as “[a] form of cannabis that consists largely of resin from the flowering tops and sprouts of cultivated female plants” (Stedman’s Medical Dict. (5th ed. 1982), p. 621).³

Tetrahydrocannabinol (“THC”) is marijuana’s most active pharmacological ingredient. (*People v. Rigo, supra*, 69 Cal.App.4th at p. 413; *People v. Hamilton, supra*, 105 Cal.App.3d at p. 116; *People v. Van Alstyne, supra*, 46 Cal.App.3d at pp. 910, 917.) We are informed that the THC level of ordinary marijuana varies widely from 5 to 60 percent; for concentrated cannabis, as defined in section 11006.5, it may range up to 70 percent. The quality, purity, and strength of ordinary marijuana and concentrated cannabis, including hashish, depend upon a number of different factors. (See *People v. Hamilton, supra*, 105 Cal.App.3d at pp. 115-116; *People v. Van Alstyne, supra*, 46 Cal.App.3d at pp. 909-911; *U.S. v. Schultz, supra*, 810 F.Supp. at pp. 231-234; *Haynes v. State, supra*, 312 So.2d at pp. 717-719.)

Returning to the language of section 11362.5, we find that subdivision (d) provides the operative terms of the statute. If a patient or caregiver “possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician,” two statutes do not apply to the patient or caregiver: “Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana.” (See *People v. Fisher* (2002) 96 Cal.App.4th 1147, 1151-1152; *People v. Bianco, supra*, 93 Cal.App.4th at p. 751; *People v. Rigo, supra*, 69

³ Accordingly, we will treat concentrated cannabis and hashish as being equivalent for purposes of our analysis.

Cal.App.4th at p. 412; *People ex rel. Lungren v. Peron, supra*, 59 Cal.App.4th at pp. 1387-1394; *People v. Trippet* (1997) 56 Cal.App.4th 1532, 1550.) Section 11357 states:

“(a) Except as authorized by law, every person who possesses any concentrated cannabis shall be punished by imprisonment in the county jail for a period of not more than one year or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment, or shall be punished by imprisonment in the state prison.

“(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). . . .

“(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in the county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both such fine and imprisonment.

“(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), or by imprisonment in the county jail for a period of not more than 10 days, or both.

“(e) Except as authorized by law, every person under the age of 18 who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be subject to the following dispositions:

“(1) A fine of not more than two hundred fifty dollars (\$250), upon a finding that a first offense has been committed.

cannabis.” “Where reasonably possible, we avoid statutory constructions that render particular provisions superfluous or unnecessary. [Citations.]” (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 459.) The contrary construction with respect to section 11357 would mean that a person could not *possess* concentrated cannabis for medical purposes under section 11357 but could *process* it for such purposes pursuant to section 11358. “[W]e

“(2) A fine of not more than five hundred dollars (\$500), or commitment to a juvenile hall, ranch, camp, forestry camp, or secure juvenile home for a period of not more than 10 days, or both, upon a finding that a second or subsequent offense has been committed.”

Section 11358 provides:

“Every person who plants, cultivates, harvests, dries, or processes any marijuana or any part thereof, except as otherwise provided by law, shall be punished by imprisonment in the state prison.”

We believe that concentrated cannabis comes within the provisions of section 11362.5 for several reasons. First, the statutory definition of marijuana for purposes of the Act as set forth in section 11018 plainly includes concentrated cannabis. Concentrated cannabis is “the separated resin . . . obtained from marijuana” (§ 11006.5) and thus constitutes “the resin extracted from any part of the plant” (§ 11018). In the context of section 11362.5, we find neither intent nor need to construe the term “marijuana” any differently from the definition contained in section 11018. “Both the Legislature and the electorate by the initiative process are deemed to be aware of laws in effect at the time they enact new laws and are conclusively presumed to have enacted the new laws in light of existing laws having direct bearing upon them. [Citations.]” (*Williams v. County of San Joaquin* (1990) 225 Cal.App.3d 1326, 1332.)

Second, section 11357 uses the phrase “other than concentrated cannabis” when concentrated cannabis is intended to be distinguished from ordinary marijuana. The framers of Proposition 215 did not employ similar exclusionary language for concentrated cannabis when they proposed the Compassionate Use Act of 1996. “Where a statute on a particular subject omits a particular provision, the inclusion of such a provision in another statute concerning a related matter indicates an intent that the provision is not applicable to the statute from which it was omitted.” (*Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 891; see also *Traverso v. People ex rel. Dept. of Transportation* (1993) 6 Cal.4th 1152, 1166; *Holmes v. Jones* (2000) 83 Cal.App.4th 882, 890; *People ex rel. Lungren v. Peron, supra*, 59 Cal.App.4th at p. 1392; *People v. Trippet, supra*, 56 Cal.App.4th at p. 1550.)⁴

Of course, if concentrated cannabis were not “marijuana” in the first instance, there would be no need in section 11357 to employ the phrase “other than concentrated

⁴ “In interpreting a voter initiative . . . we apply the same principles that govern statutory construction. [Citation.]” (*People v. Rizo* (2000) 22 Cal.4th 681, 685.)