November 23, 2009

Honorable City Council Members of Los Angeles,

On Friday, November 20, 2009, Heather Broussard, Attorney-at-Law, submitted to your office via email an "Advocates Version of a Draft Ordinance" dated November 23, 2009, along with a Summary of Modifications, Motions, the Attorney General's Opinion on Concentrated Cannabis, and the Attorney General's Guidelines. This submission should be distinguished from other versions of an ordinance that Heather Broussard has submitted in the past.

This packet was developed through a coordinated effort by Americans for Safe Access (ASA), Greater Los Angeles Collectives Alliance (GLACA), and the Union of Medical Marijuana Patients (UMMP). This collaboration on the part of the medical cannabis community has produced an ordinance with our City Attorney Carmen Trutanich's format.

It has just enough changes to make it workable without triggering lawsuits from the activist community represented above, as well as the right kind of strategy for the City to keep post-ICO organizations from miring the ordinance in litigation. Now is the time for Los Angeles to finally have a solid ordinance that is less likely to be challenged in court.

It is with a great deal of pride in the larger family of patient advocates that the UMMP endorses this version of an ordinance. No one group was completely satisfied, but in the spirit of consensus, and the desire to get sensible guidelines that can truly serve the greater Los Angeles community, all are in agreement with this advocate's version. I have attached a hard copy for your review. We would like you to seriously consider the possibility of passing this ordinance so that unnecessary future litigation can be avoided.

This version of the ordinance will help regulate the medical cannabis community and help to benefit Los Angeles as a whole. Our goal has always been to make sure that patients who require this medicine have safe access to it. These proposed guidelines are a step in the right direction.

Sincerely,

James Shaw
Director
Union of Medical Marijuana Patients

Union of Medical Marijuana Patients is a not-for-profit civil rights organization based in Los Angeles, California. The Union is devoted to defending and asserting the rights of medical marijuana patients. Through aggressive legal and political action, education and counseling on compliance with state law, and a philosophy of personal growth and responsibility, the Union supports patients, their member organizations, and the cause of freedom across our country.

The Union's membership comprises medical marijuana patients and their legally compliant organizations throughout the State of California. UMMP was founded in 2007 by patients and their organizations to address the shared concerns of all patients and organizations.

Union of Medical Marijuana Patients
321 1/2 E. 1st Street, Suite 200, Los Angeles, CA 90012
213-626-2730 213.613-1443 (Fax)
www.UnionMMP.org

November 23, 2009

Honorable City Council Members of Los Angeles,

Included in this packet you will find the following:

1. Advocate's Version of a Draft Ordinance
2. Summary Of Modifications
3. Summary of Motions
4. Opinion of the Attorney General on Concentrated Cannabis
5. The Union of Medical Marijuana Patients Critique of City Attorney Carmen Trutanich's Case Law Review of Collective Cultivations of Medical Marijuana

Thank you for taking the time to carefully review and consider these documents. If you have any questions, please feel free to contact me at 213-626-2730.

Sincerely,

James Shaw
Director
Union of Medical Marijuana Patients

Union of Medical Marijuana Patients is a not-for-profit civil rights organization based in Los Angeles, California. The Union is devoted to defending and asserting the rights of medical marijuana patients. Through aggressive legal and political action, education and counseling on compliance with state law, and a philosophy of personal growth and responsibility, the Union supports patients, their member organizations, and the cause of freedom across our country.

The Union's membership comprises medical marijuana patients and their legally compliant organizations throughout the State of California. UMMP was founded in 2007 by patients and their organizations to address the shared concerns of all patients and organizations.

Union of Medical Marijuana Patients
321 1/2 E. 1st Street, Suite 200, Los Angeles, CA 90012
213-626-2730 213.613-1443 (Fax)
www.UnionMMP.org

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 strengthen. 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 loosing battles for the city in a court of law. I believe it would muster constitutionality scrutiny.

I believe is 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

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 comer with a property improved with an exclusively residential building;

3. No collective shall be located within a ~~1,000~~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.~~;~~

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 ~~180~~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 ~~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.

Formatted: Superscript

Presented By:_____

Seconded By:_____

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 competed 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 ~~1,000~~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 Angels. 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.

Formatted: List Paragraph, No bullets or numbering

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.)

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~~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.

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 ~~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.

Formatted: Superscript

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.

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_____

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 Code[1] 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.)

November 20, 2009

Honorable Members of the City Council
c/o Office of the City Clerk
Room 395, City Hall
Los Angeles, CA 90012

SUBJECT: Union of Medical Marijuana Patients (UMMP) is in the process seeking legal action against District Attorney Steven Cooley and City Attorney Carmen Trutanich. UMMP has an analysis of Trutanich's case law review of medical cannabis and offers solutions to problems addressed.

Honorable Members:

Good day to you all. At the point you are receiving this letter; the Union of Medical Marijuana Patients (UMMP) is in the process of determining what legal action may be taken against District Attorney Steven Cooley and City Attorney Carmen Trutanich for their plan to eradicate all medical cannabis patient associations in Los Angeles.

The attached critique of City Attorney Trutanich's case law review of medical cannabis is the basis for the TRO being sought, and will also be the basis for a lawsuit against the City of Los Angeles if the City decides to pass the City Attorney's ordinance that effectively shuts down safe access to medicine for qualified medical cannabis patients.

It is important to note that the UMMP recognizes the serious weight and responsibility upon the City Council at this time to make an informed decision about how to proceed forward with medical cannabis in Los Angeles. It is with complete sensitivity to the concerns of City officials, medical cannabis patients, and the larger Los Angeles community that we forward our concerns to you.

It may appear that by giving you our legal strategy in advance it might seem that we are compromising the potential success of our case against the City Attorney and/or against City Council. This couldn't be further from the truth. We don't feel that our success in this case is being compromised because one of our main goals is transparency for medical cannabis patient organizations and their patients to insure safety, non-diversion, and legal compliance.

321 1/2 E. 1st Street, Suite 200, Los Angeles, CA 90012
213-626-2730 (Phone) 213-613-1443 (Fax)
UnionMMP.org

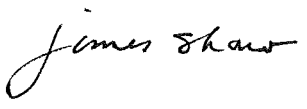
There are two points that we would like to make perfectly clear. The first is that our desired outcome is to avoid further litigation. We would like to help City Council understand that adopting the City Attorney's draft ordinance would create more problems than it would solve and it could inadvertently lead to more crime, diversion of medicine, and other negative social repercussions.

Secondly, we are completely confident that the ordinance we are submitting to the City Council next week contains sensible regulations that collectives and dispensaries can follow as well as respect. We are also convinced that law enforcement and City Council will see the legitimacy, practicality and fairness we have established in our ordinance.

It was our original desire to present you with a critique of City Attorney Trutanich's draft ordinance. However, rather than simply citing what's wrong with it, our main goal is not conflict but solutions. We are in the final process of finalizing a Union of Medical Marijuana Patients draft ordinance for medical cannabis patient associations that should be to you by the end of next week.

Please feel free to contact me anytime regarding our critique of City Attorney Trutanich's ordinance or any other medical cannabis questions at 213-626-2730 or by email at jshaw@unionmmp.org.

Sincerely,



James Shaw
Director
Union of Medical Marijuana Patients

Union of Medical Marijuana Patients is a not-for-profit civil rights organization based in Los Angeles, CA. Through aggressive legal and political action in association with education and counseling on compliance with state law, the Union is devoted to defending and asserting the rights of medical cannabis patients. With a philosophy of personal growth and responsibility, the Union supports patients, their member organizations, and the cause of freedom across our country. Go to www.UnionMMP.org for more information.

321 1/2 E. 1st Street, Suite 200, Los Angeles, CA 90012
213-626-2730 (Phone) 213-613-1443 (Fax)
UnionMMP.org

UNION OF MEDICAL MARIJUANA PATIENTS
CRITIQUE OF LOS ANGELES CITY ATTORNEY CARMEN A. TRUTANICH'S CASE LAW REVIEW OF COLLECTIVE CULTIVATION OF MEDICAL MARIJUANA

NOVEMBER 2009

The Union of Medical Marijuana Patients is a not-for-profit civil rights organization based in Los Angeles, California. The Union is devoted to defending and asserting the rights of medical marijuana patients. Through aggressive legal and political action, education and counseling on compliance with state law, and a philosophy of personal growth and responsibility, the Union supports patients, their member organizations, and the cause of freedom across our country.

The Union's membership comprises medical marijuana patients and their legally compliant organizations throughout the State of California. UMMP was founded in 2007 by patients and their organizations to address the shared concerns of all patients and organizations.
www.unionmmp.org

TABLE OF CONTENTS

I. THE CA'S INDICTMENT OF TRANSPORTATION, DISTRIBUTION AND SALES WITHIN A PROPERLY FORMED AND OPERATING PATIENT ASSOCIATION FAILS ON EVERY COUNT.

We begin with the CA's assertion that only cultivation and possession of medical marijuana is permitted by collectives and cooperatives, and hence all sales, transportation and distribution of medical marijuana to qualified patients are illegal. In order to take these positions, the CA must stand against the California Attorney General, misinterpret the *Mentch* decision, engage in hairsplitting, selectively citing case law – not only between decisions but between portions of decisions – and ignore the plain meaning of words, common sense and the obvious intent of the legislators. The reality, based on the law, the California Attorney General's Guidelines, rulings of the Board of Equalization, case law, legislative history and legislative intent, and even the analysis of the City's own Chief Legislative Analyst, is that the transportation, distribution and sale of medical marijuana are as immunized from prosecution as its possession and cultivation by and for qualified patients and their primary caregivers operating within the closed circuit of a collective or cooperative.

A. The MMP clearly authorizes the sale of medical marijuana by properly operating collectives and cooperatives.

The right of collectives and cooperatives to engage in cultivation, distribution and sale of medical marijuana to their qualified patient members is not explicitly authorized in Proposition 215, the Compassionate Use Act ("CUA"), which deals only with patients and primary caregivers. Any discussion by the CA of the CUA or case law concerning the CUA is therefore irrelevant. Collectives and cooperatives are empowered exclusively through Senate Bill 420, the Medical Marijuana Program Act, California Health and Safety Code §§ 11362.7-11362.83 ("MMP").

Though the MMP does not "legalize" medical marijuana, what it does do is to offer legal protections to certain qualified patients and primary caregivers. Specifically, California Health and Safety Code Section 11362.775 states that a specific protected group, qualified patients and their primary caregivers "who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570." Section 11359, one of the sections so modified, states simply that "Every person who possesses for sale any marijuana, except as otherwise provided by law, shall be punished by imprisonment in the state prison." As modified by 11362.775, then, such possession for sale by the protected group shall not give rise to criminal sanctions. One has only to read the two provisions in conjunction to understand that such sales are as fully protected as are cultivation and possession. Likewise, Section 11360 is modified to permit the protected group to engage in transportation, importation, sale, administration and distribution, and Section 11366 is modified to permit the protected group to maintain a place from which to sell or distribute. As we shall see, this protected group is identical to a well-run collective or cooperative operating within a closed circuit of cultivation and distribution.

B. The CA's Reliance on *Mentch* to limit the MMP is misplaced.

The CA attempts mightily to break the direct and obvious link between the MMP and the provisions of the Health and Safety Code it immunizes against, relying heavily on a highly selective reading of *People v. Mentch*, 45 Cal.4th 274 (2008), to do so – yet tellingly, he does not lay out his rationale all at once, but rather sprinkles it throughout the CA Review. We believe this is purposeful, for if the CA attempted to state his full position clearly at once, it would be seen as self-evidently incoherent. Also telling is the fact that, though the CA devotes separate sections of his review to six other cases, describing in detail the facts that gave rise to the cases and the decisions rendered, he does not offer the same treatment for *Mentch*. The reader will search in vain for a description of *Mentch* or its decision, despite the fact that the CA claims to rest his entire interpretation of the laws affecting collectives and cooperatives, and his ruling-

out of contrary case law and legal opinion, on his analysis of *Mentch*. Again we believe this was not on oversight but a strategic choice, for if the CA fully described *Mentch*, he would have to admit that it was a decision that concerned an individual, not a collective or cooperative, and that it simply held that the individual did not meet the qualifications for and therefore was not afforded protection by the CUA or the MMP:

> We hold that a defendant whose caregiving consisted principally of supplying marijuana and instructing on its use, and who otherwise only sporadically took some patients to medical appointments, cannot qualify as a primary caregiver under the Act and was not entitled to an instruction on the primary caregiver affirmative defense. We further conclude that nothing in the Legislature's subsequent 2003 Medical Marijuana Program (Health & Saf. Code, § 11362.7 *et seq.*) alters this conclusion or offers any additional defense on this record.

Mentch at 277-278. This hardly seems the proper decision upon which to base an entire theory of the operation of collectives and cooperatives under the MMP. Indeed, of the decision's 22 pages, only slightly over 3 discuss the MMP, and they do so only in the context of the protections it affords individual primary caregivers, not the protections afforded those who associate collectively or cooperatively to cultivate cannabis.

Further, any fair explication by the CA of *Mentch* would require him to reveal that it refers approvingly in a footnote to the AG's Guidelines, which support the operation of collectives and cooperatives, and which the CA rejects: ". . . the [Attorney General's] guidelines are wholly consistent with case law and the statutory text." *Mentch* at 285, fn 6.

What does the CA make of *Mentch*? The first clue to his interpretation occurs in his discussion of the MMP, where he refers approvingly to what he later calls the Supreme Court's "three-pronged analytical approach" in *Mentch*:

> In rejecting a broad interpretation of the MMP, the Supreme Court [in *Mentch]* explained how the immunities afforded under section 11362.765 are to be applied: "... the immunities conveyed by section 11362.765 have three defining characteristics: (1) they each apply only to a specific group of people; (2) they each apply only to a specific range of conduct; and (3) they each apply only against a specific set of laws.["] *People v. Mentch,* 45 Cal.4th 274 (2008) at 290-291.

CA Review, page 2. The CA makes much of this three-part analysis, referring to it as a strict reading of the law that limits the reach of the MMP, but there is less here than meets the eye. The first thing to point out is that the *Mentch* court used its three-part analysis specifically on section 11362.765, which concerns primary caregivers, and not on 11362.775, which concerns patients who associate collectively or cooperatively to cultivate. The two sections have very different grammatical structure and we would have to read the minds of the *Mentch* judges to know whether or not they meant their analysis to apply to 11362.775. In any case, properly formed and operating collectives have nothing to fear from this three-part analysis, as we shall see.

More importantly, the *Mentch* court did not use its three-part analysis in "rejecting a broad interpretation of the MMP" (*id.),* as the CA attests, but rather to reject Mentch's assertion that he was covered in his illegal activities as a purported primary caregiver by the MMP's defenses to primary caregivers. The point the *Mentch* court makes here is quite simple: the MMP is very specific, must be applied specifically as to persons and activities, and does not grant immunity against any illegality, but only against the specific acts enumerated, so that those who overreach its provisions must suffer the consequences. In the case of Mentch, who claimed to be a caregiver, the provision of the MMP upon which he sought to rely was

subdivision (b)(3) of section 11362.765, but because he went beyond what the MMP protects, he was subject to prosecution:

> Here, this means Mentch, to the extent he assisted in administering, or advised or counseled in the administration or cultivation of, medical marijuana, could not be charged with cultivation or possession for sale "on that sole basis." (§ 11362.765, subd. (a).) It does not mean Mentch could not be charged with cultivation or possession for sale on *any* basis; to the extent he went beyond the immunized range of conduct, i.e., administration, advice, and counseling, he would, once again, subject himself to the full force of the criminal law. As it is undisputed Mentch did much more than administer, advise, and counsel, the Program provides him no defense . . . .

Mentch at 292. This discussion of the primary caregiver provisions of the MMP is thin gruel upon which to base a limitation of the MMP as regards collectives and cooperatives. The *Mentch* court's three-part analysis in fact supports the UMMP's entire contention as to the legality of collectives and cooperatives, to wit: as long as (1) the correct group of people apply – namely, qualified patients and their caregivers who associate; and (2) the correct specific range of conduct applies – namely, collectively and cooperatively cultivating medical cannabis (when that conduct is not exceeded by engaging in non-immunized activity; then (3) exemption from the specific set of laws applies, namely, from the provisions of the Health and Safety Code that prohibit possession (Section 11357), cultivation (Section 11358), cultivation for sale (Section 11359), transportation, importation, sale, administration and distribution (Section 11360), maintaining a place from which to sell or distribute (Section 11366), leasing or making available a space to cultivate, store or distribute (Section 11366.5), or using a building to sell, serve, store, keep, manufacture, or it give away (Section 11570).

Mentch does provide an important *caveat* that the phrase "solely on that basis" means that step 2 may not be exceeded. For example, in the case of Mentch, not only did he engage in immunized conduct, he also engaged in illegal conduct, selling to others with whom he could claim no primary caregiver relationship, and so exceeded his immunity and was subject to prosecution. (Mentch also failed to meet the standards for step 1 in that he did not fully qualify as a primary caregiver.) In the case of collectives, they must, among other things, be careful to stay within the bounds of the collective and not traffic in any way outside the collective, or else they will exceed their immunity and be subject to prosecution. This restriction is important but it by no means vitiates the immunities provided to properly run collectives operating within the bounds of immunized behavior.

Not only does *Mentch* fail to provide a sword to cut away at the MMP's protections beyond cultivation, as the CA desires, it actually provides a shield by affirmatively and specifically upholding the MMP's power to protect more than just cultivation. Most devastating to the CA's argument are the words that follow immediately after his quotation of *Mentch's* three-part analysis of 11362.765, words which the CA fails to bring to our attention:

> Thus, subdivision (b) identifies both the groups of people who are to receive immunity and the "sole basis," the range of their conduct, to which the immunity applies, while subdivision (a) identifies the statutory provisions against which the specified people and conduct are granted immunity.

Mentch at 291. Recognizing that *Mentch* is referring here to the primary caregiver section of the MMP and not the section authorizing patients to associate collectively or cooperatively to cultivate, and that 11362.765 is grammatically structured very differently from 11362.776, it is nonetheless clear that the Supreme Court in *Mentch* recognizes a distinction between the authorizing and triggering conduct, specified in part (b) of 11362.765, and the immunities granted, specified in part (a), while the CA seeks to conflate triggering and immunized conduct, claiming they are one and the same. *Mentch* thus undercuts the CA's entire argument that only collective cultivation is immunized.

Further, *Mentch* refers approvingly to a decision that mitigates against an excessively narrow reading of the MMP – such as the CA wishes to engage in – that results in an interpretation that betrays common sense:

> (See *People v. Trippet, supra*, 56 Cal.App.4th at p. 1550 [acknowledging that the plain language of the Act, if literally applied, might fail to protect primary caregivers transporting marijuana down a hallway to their patients].)

Mentch at 291. Thus, the CA's reliance on *Mentch* can be seen to require the same kind of distortion and cherry-picking that he brings to his reading of the MMP itself.

Lastly, as we shall see below, the appellate court in the CA's last cited case, *City of Claremont v. Kruse,* characterizes *Mentch* as supporting immunity from all seven Health and Safety codes, including immunity from prosecution for cultivation for sale, for properly formed patient associations in direct contradiction to the CA's interpretation of *Mentch*, though the CA's cherry-picking of *Kruse* does not reveal that fact to us.

C. The CA's indictment of the AG Guidelines is misleading.

Several paragraphs later in his Review, the CA reveals another part of his rationale against transportation, distribution and sales by collectives. He attempts to impeach the AG's Guidelines – as he must, if he is to make any headway – and drive an artificial distinction between the associating persons and the associations they form, granting protections to the former but not the latter, by engaging in a highly refined act of hairsplitting and cherry-picking:

> Unfortunately, neither section of the MMP cited to in this passage [§§ 11362.765. 11362.775, cited in the Attorney General's Guidelines] relates to or authorizes transportation by, or distribution to, "members of a collective or cooperative." Section 11362.765 authorizes transportation of marijuana by a qualified patient only for his or her own personal medical use and by a primary caregiver only for delivery (a very limited form of "distribution") to his or her own qualified patient(s), within the allowable quantity limits.

CA Review, page 3. While it is true that 11362.765 refers only to the actions of qualified patients and their primary caregivers, and that neither section uses the phrase "members of a collective or cooperative," the CA neglects to mention here that 11362.775, quoted elsewhere by the CA himself, authorizes behavior by "Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, **who associate within the State of California in order to collectively or cooperatively to cultivate marijuana for medical purposes** . . ." Cal. Health & Saf. Code Section 11362.775 (emphasis added). Thus, though the CA implies that "collectives or cooperatives" per se are not entitled to protection from prosecution for closed circuit transportation, distribution or sale of medical marijuana, **each and every member of the collective or cooperative** who is associating to collectively or cooperatively cultivate, is so protected. Clearly, if the individuals who have collectively or cooperatively associated receive protection, then the collective or cooperative they form, made up exclusively by them and for their benefit, and personified in each of them individually and collectively, receives the same protection – and so the AG and the courts have held.

If the City Attorney's argument here is to be taken seriously and not treated just as a linguistic smoke screen to obscure the Attorney General's analysis, then the CA would have to contend that absolutely no collective or cooperative is protected, even if each and every member in it is. He would have trouble making this case, but it would at least be consistent. Yet the CA does not do so, for he admits the legality of some "true" collectives in his own Review. The CA cites *County of Butte v. Superior Court* (2009) 175

Cal.App.4th 729, in which he approvingly describes a group of qualified patients who follow his narrow definition:

> In fact, it is noteworthy that the collective which plaintiff was a member of appears to have been a true collective within the meaning of section 11362.775:. . .

CA Review, page 4.

D. The CA attempts to create an artificial and misleading distinction between cultivation and other protected activities.

Before delving into the CA's analysis of *Butte*, we must go back one paragraph in the CA Review, for it is only here, four pages into his Review, that the CA makes a complete and clear statement of his position on the MMP as regards collectives and cooperatives:

> The actual language of section 11362.775 provides that the specifically authorized conduct is collective or cooperative cultivation, not distribution or sale.

Id. This statement is salted away in the section devoted to ***People v. Hochanadel* (2009)** 176 Cal.App.4th 997, which stands simply for the proposition that collectives and cooperatives are not primary caregivers. Admittedly there was a time, after passage of the CUA but before the enactment of the MMP, when some collectives did attempt to style themselves as caregivers, but no properly formed collective or cooperative has done so since or relied upon caregiver immunities, and therefore *Hochanadel* is irrelevant to our present analysis of collectives and cooperatives. But it is here that the CA takes his stand, one far more extreme than that taken y the California Attorney General, for he states that, though the MMP cites to seven sections of the Health and Safety Code to grant immunity to prosecution under specific circumstances, it might as well not have done so. According to the CA, immunity to those seven sections, for sales, transportation, sale, distribution, maintaining a space, etc. is illusory, for only cultivation is "authorized conduct."

Though he does not justify his stance here – we must wait another two pages for that – he attempts to lay groundwork for further linguistic hairsplitting with the phrase "authorized conduct." Just what does he mean by that? He appears to mean that, because the first part of section 11362.775 only refers to those who cultivate, then cultivation is the only protected activity. This completely ignores the fact that the plain meaning of 11362.775 holds that this activity, cultivation, **leads to other protected activity**, as enumerated in the citations to seven Health and Safety sections. Admittedly collective or cooperative cultivation is the *sine qua non* here: unless qualified patients and their primary caregivers **first** collectively or cooperatively cultivate, they cannot receive the enumerated immunities. That does not mean, however, that cultivation is the only "authorized conduct." We might say that cultivation is the **first** authorized conduct, after which other conducts are authorized. Even that would not be correct, however, for cultivation itself is not authorized until we have resort to the enumerated protection from section 11358. It would be most correct to say that cultivation is the **triggering** conduct, and when it is correctly triggered, it leads to a series of authorized conducts, including cultivation itself, possession, sales, distribution, etc.

E. Even the CA cannot apply his interpretation consistently and without arbitrariness.

1. The CA contradicts himself and admits that monetary contributions can be equivalent to labor contributions.

We move on to *Butte,* cited above, where the CA approvingly describes a group of qualified patients who follow his narrow definition:

> In fact, it is noteworthy that the collective which plaintiff was a member of appears to have been a true collective within the meaning of section 11362.775: It was comprised of a group of qualified patients who came together and directly contributed in some manner – through provision of labor, **money**, and/or property – to collective cultivation of medical marijuana for their own medical purposes. A monetary contribution in this context is clearly correlated to the costs associated with that particular cultivation project, which would logically be borne by the collective members themselves. This is far different from the sale of marijuana from a storefront dispensary . . . .

CA Review, page 4-5 (emphasis added). Here, The CA suddenly and inconsistently with his own position includes monetary support as sanctioned activity – which indeed, it ought to and must be, if any cultivation is to occur at all. Through his use of "and/or," the CA further concedes that monetary contribution may be the **only** contribution a given member makes to the collective. He seeks to downplay this monetary contribution by arbitrarily, and without any support in statute, limiting its acceptability to costs "associated with that particular cultivation project" as opposed to the costs of running the collective effort in its entirety, including the cost of crops lost to disease, mold, theft, or confiscation, as well as legal research, public advocacy and legal defense – the costs that truly ratchet up the price of cannabis. Despite his efforts to minimize it, a monetary contribution is not digging in the ground, and even the CA cannot maintain the purity of his limited interpretation.

2. <u>The CA arbitrarily applies either a distance requirement or a participation requirement.</u>

The CA continues:

> This is far different from the sale of marijuana from a storefront dispensary, a commercial activity which is not immunized under state law and involves distribution to "members"/customers far removed from the cultivation process.

Beyond noting the straw man use of the words "storefront," implying sales to one and all, and the prejudicial and inaccurate linkage of members with customers spiced with the ironic use of "scare quotes," we point out that the CA here invents one of two arbitrary and artificial distinction unsupported by statute: either he means that members must reside close to the place of cultivation for a collective to be legitimate, or he means that members must participate in the cultivation to validly receive immunity. If the CA means physical distance, we have to ask how far is too far. Ten feet? A hundred? A mile? Where is the statute and the case law that will support such a distance requirement?

In fact, the MMP is quite clear that collectives may transport medical marijuana from collective cultivation sites quite far away. Section 11359(a) of the Health and Safety Code, one of the sections immunized against by Section 11362.775, states:

> (a) Except as otherwise provided by this section or as authorized by law, every person who transports, **imports into this state**, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any marijuana shall be punished by imprisonment in the state prison for a period of two, three or four years.

Health & Safety Code Section 11359(a) (emphasis added). Again, Section 11362.775 provides immunity from this provision, so the activities it proscribes are precisely the activities that the properly constituted protected group can engage in. One of those activities is importation into this state, that is to say, cultivating in another state and crossing state lines to provide the product of cultivation to members in California. We know of no collective or cooperative that engages in such activity, but if the law allows transportation across states, then surely it allows transportation across the length or breadth of California,

such that collective cultivation sites in northern California are perfectly legal to supply members of the same collective in southern California.

If the CA is instead claiming that all members must cultivate to receive immunity, wherever the cultivation may be, it is enough to point out that nowhere in the MMP or any dictionary is "collectively or cooperatively" defined as "unanimously" or "nearly unanimously." For instance, it would be correct to say that employees of NASA associated collectively to put a man on the moon even though very few of them set foot there. Similarly, by the plain meaning of the words, not all, or even most, must cultivate to participate in a collective effort to do so – and so it has been held in one of the decisions cited by the CA, *People v. Newcomb*, 209 Cal.App.Unpub. LEXIS 4508: "Other than merely purchasing marijuana, not every member must contribute to some aspect of the collective or cooperative."

3. The CA's own analysis leads to the conclusion that collectives or cooperatives may transport and may accept money.

Having himself opened the door to accepting a monetary contribution to a collective as valid, the CA must walk through it and admit that there is no limit in statute to the number of members who so contribute as their form of collective or cooperative cultivation, and further admit that there is no distance limitation in the law that would require cultivation by some collective members to be proximate to the location of other, or even most other, collective members, as well as no explicit requirement in law that all members physically cultivate, as long as all cultivation, transportation, storage, distribution and consumption was done by qualified patient collective members.

F. The CA relies on an impossibly strained and narrow interpretation of ten words in the *Mentch* decision and the word "solely" in section 11362.775 to rest his entire case against transportation, distribution and sales.

We come now to the CA's repudiation of ***People v. Urziceanu* (2005) 132 Cal.App.4th 747,** the case that clearly affirms the status of medical marijuana collectives and cooperatives per the MMP. Here, on pages 5 and 6 of the CA Review where he discounts *Urziceanu* as superseded by *Mentch*, the CA's rationale finally stands revealed for our inspection. It turns out that his entire case rests on his impossibly strained interpretation of the statute. The CA holds that "section 11362.775 clearly authorizes the conduct of collective cultivation only – not collective distribution, collective sales, collective transportation" and that "*Mentch*'s three-pronged analytical approach ... compels that conclusion." But does it? Let's walk through the argument the CA attempts to make here, reminding ourselves what *Mentch*'s three-pronged analysis is.

> ... the immunities conveyed by section 11362.765 have three defining characteristics: (1) they each apply only to a specific group of people; (2) they each apply only to a specific range of conduct; and (3) they each apply only against a specific set of laws.

Mentch at 290-291. What the Supreme Court is telling us, by the plain meaning of the words and by the way they are applied in the *Mentch* decision, is that the immunities only follow if the proper persons are engaging in the proper activities. If the persons are not proper or their qualifying activities are not proper, they don't receive the benefit of the immunities.

As we have outlined above, as applied to Section 11362.775, step 1, the specific group, is clearly qualified patients and their primary caregivers. The CA tracks with us so far:

> The "itemization of the marijuana sales law" in section 11362.775 is part of the listing of other criminal laws related to marijuana for which the "specific group of people" (qualified patients, caregivers, and those with identification cards) have immunity...

CA Review, page 5. But now the CA diverges from the law and the plain meaning of the statute on step 2. Step 2 qualifies the acceptable conduct that triggers the granting of immunity: qualified patients and their primary caregivers, the Step 1 group, must "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." If they do so, they will be granted the immunities of Step 3. But the CA holds, unconvincingly, that the meaning of the phrase "they each apply only to a specific range of conduct" is that only the immunity to cultivation applies:

> The "itemization of the marijuana sales law" in section 11362.775 is part of the listing of other criminal laws related to marijuana for which the "specific group of people" (qualified patients, caregivers, and those with identification cards) have immunity based solely on a "specific range of conduct" (collectively or cooperatively cultivating marijuana for medical purposes).

Id., pages 5-6. Whatever he may intend, the CA has only repeated here that there is a triggering condition in step 2: patients must associate to collectively or cooperatively cultivate. He seems to be attempting to construe ten words in the *Mentch* decision – "(2) they each apply only to a specific range of conduct" – to mean that only these Step 2 activities are protected, but *Mentch* betrays him here, because *Mentch* contains a third prong, the one in which the immunities are granted against specific laws, not in the second prong: "(3) they each apply only against a specific set of laws."

Recognizing that he has perhaps fallen short of the mark in twisting *Mentch* to make his ultrafine distinction, the CA immediately tries again by leaning heavily on the word "solely" in section 11362.775:

> Put another way: The criminal activity encompassed by the marijuana sales law and other marijuana laws is not the "immunized range of conduct" in section 11362.775. Rather, <u>solely on the basis of associating to collectively or cooperatively cultivate</u>, the specified individuals shall not be subject to enforcement of those laws.

Id., page 6 (emphasis in original). If the CA's rephrasing fails to illuminate, it is because his point is impossible to make. If anything, his rephrasing tracks closely with the correct interpretation: that if qualified patients associate collectively or cooperatively to cultivate, they shall not be subject to the enforcement of seven Health and Safety codes – codes which permit not just cultivation but also transportation, distribution and sales. It is true that they are immunized solely on the basis of their associating to cultivate, as the CA here points out, but that "solely" does not mean that they are solely immunized **for** cultivation, it means that they are immunized solely **by** associating to collectively or cooperatively cultivate. It is on such word-splitting that the CA hangs his entire case.

G. The CA's interpretation makes the legislation unintelligible.

The 105 words in the two quotes above represent the CA's only buttress for his interpretation, beyond some conclusory remarks in his next paragraph. These 105 words, which he waits nearly six pages to deliver, suffice the CA to reject the weight of all other authority and militate for the closure of almost every collective in Los Angeles. Despite the thinness of his support, dependent as it is on a strained interpretation of a very few words, let's attempt to accept the CA's position and see where it leads us.

1. <u>Under the CA's interpretation, the lawmakers have cited to five irrelevant codes.</u>

The CA maintains that only cultivation is immunized against in section 11362.775. He implies, without saying so, that the seven Health and Safety codes cited to in this section are therefore immunized against only to the degree that they refer to cultivation. If they all concerned cultivation, this interpretation might conceivably hold water – but only two of the seven refer to cultivation at all. If the lawmakers had intended to protect only cultivation, whatever could they have had in mind by mentioning five irrelevant codes here, with the danger that they might be misunderstood and be construed as extending protection

to the activities enumerated in those codes? Why didn't they write a much simpler law, and simply say that patients and caregivers who associate to collectively or cooperatively cultivate are immunized from prosecution if they do so?

2. Under the CA's interpretation, the lawmaker's citation to section 11359 defeats the purpose of outlawing sales.

If the lawmakers per the CA meant us to ignore five of their seven cited codes, we must also ask ourselves why they cited to one code – section 11359 – the mentions "cultivation for sale"? Would there not be a danger that a mistaken public would immunize sales, mentioned in the same breath with cultivation?

3. Under the CA's interpretation, the lawmakers failed to protect possession and so made the law impossible to follow.

Assuming the lawmakers meant to immunize only cultivation, as the CA contends, we have to also ask ourselves why they didn't explicitly immunize possession as well, for surely it is impossible to cultivate without possessing. Even if possession is subsumed in cultivation, cultivation comes to an end, and unless patients are expected to pluck medical cannabis off the plant and consume it on the spot, there will be a lag time after the medical cannabis is cultivated and before it is consumed, during which time it must be possessed without cultivation. Possession is mentioned in section 11357, one of the codes enumerated in section 11362.775, but it is enumerated with other codes which the CA holds are meaningless references, and it receives no more prominence than the others. If the other references are of no weight, then so is the reference to possession and the lawmakers have crafted a law that is impossible to follow.

4. If assumptions are required to fill out the law under the CA's interpretation, the law is too vague to limit them.

If, on the other hand, the CA feels possession is meant to be assumed – being logically necessary – then cannot at least limited transportation also be assumed, just as remarked in *Mentch* in their approving citation of *People v. Trippet (Mentch* at 291)? And if transportation, why not storage? And if even the CA in his own Review agrees there must logically be some limited compensation for expenses, and that some patients might only compensate and not grow, cannot this compensation be called sales and also be assumed? Where are we to begin and end the assumed activities? Why didn't the lawmakers the CA envisions, intending to immunize only cultivation, allow these matters to be left so unclear?

5. Under the CA's interpretation, section 11362.765(a) is unnecessary and irrelevant.

If the CA is correct and the legislators meant to continue to forbid sales, they would have had no reason or need to write section 11362.765(a), which states "... nothing in this section shall authorize ... any individual or group to cultivate or distribute marijuana for profit." If no sales are immunized – including sales for a loss or sales that only cover expenses – then why is it necessary to take up the legislative pen and write that sales for profit are not permitted by the MMP? Once again, according to the CA, the lawmakers have simply added unnecessary provisions to the MMP.

6. Under the CA's interpretation, the gravely ill would be forbidden medical cannabis.

Lastly, the CA's interpretation would mean that the people most in need of medical cannabis – the gravely ill – would be completely denied its benefits because they are unable to physically cultivate, while only

cultivation and cultivators are protected. Could the framers of the MMP have been so cruel?

7. Based on legislative analysis, the CA's interpretation must be incorrect.

If the CA is correct, clearly the lawmakers in section 11362.775 have produced the most poorly-crafted law on California's books. Happily, however, there is another interpretation: it is not the lawmakers who have done ill, but rather the CA, whose interpretation willfully and knowingly goes against the law, case law – including the California Supreme Court's ruling in *Mentch* – common sense, the plain meaning of words and the obvious intent of the legislators.

H. The CA misreads *Newcomb*.

The CA then complains that the judge in *People v. Newcomb*, 209 Cal.App.Unpub. LEXIS 4508, an unpublished decision rendered after *Mentch*, misapplied the *Mentch* three-pronged analysis in finding that that "[section 11362.775] provides a defense for the following activities: the possession, cultivation, sale, transportation, furnishing, giving away, preparing, and administering of marijuana and the maintaining and managing of a location for marijuana related purposes." The CA charges that "[t]he *Newcomb* court apparently conflated the second and third elements [of the *Mentch* standard], leading to the over-broad conclusion that the conduct of collectively/cooperatively cultivating cannabis and the activities proscribed by the specific set of laws to which the immunity applies are protected activity." CA Review, pp. 6-7. As we have seen, however, it is the CA who conflates prongs 2 and 3, mixing up the prong 2 activities to which the immunities apply –the triggering condition of collectively/cooperatively cultivating – and the prong 3 immunities which are granted, the full range of which are enumerated in *Newcomb.*

The CA also complains that the *Newcomb* court did not discuss the conclusion in *People v. Galambos* that the CUA does not apply to cannabis suppliers who are not primary caregivers, apparently seeking to identify cannabis suppliers with collectives and cooperatives. *Newcomb* does not discuss the issue for the very good reason that collectives are not empowered by the CUA but by the MMP. Each and every time, as here, that the CA attempts to use the CUA as a cudgel against collectives it is nothing but a straw man argument.

While it is true that the *Newcomb* court found that three cultivators who distributed medical cannabis to thousands of members of several collectives stretched the nature of collective cultivation and closed circuit beyond the bounds covered by the MMP, the CA fails to inform us that *Newcomb* also stated that "other than merely purchasing marijuana, not every member must contribute to some aspect of the collective or cooperative," affirming, first, that sales are permitted, and second, that collective cultivation does not mean unanimous cultivation.

I. The CA misconstrues *Northcutt.*

Next, the CA approvingly cites the unpublished appellate decision in *People v. Northcutt* (2009) B20388 as one that prescribes only a primitive communistic model for collective cultivation under section 11362.775. *Northcutt* does no such thing. CA Review, page 8. The thrust of *Northcutt* was to allow patients to collectively cultivate without requiring a formal collective corporate structure. *Northcutt*, as the CA states, "does not believe the collective cultivation defense should be predicated on a business model which is not statutorily required." The appellant did in fact run a primitive communistic form of small collective in which all contributed work and donations were accepted but not required. Clearly such an operation falls within the MMP, but it is not the only form of collective cultivation that falls within the MMP, and *Northcutt* approves defendant's collective without ruling out other forms. Specifically, larger organizations, properly run, without profit and within a closed circuit, may also operate even if there are fewer who cultivate and more who only contribute money to pay expenses.

The CA attempts to construe *Northcutt* as more limiting to collectives than it is by again placing undue emphasis on a few words. He points out that the *Northcutt* court reads 11362.775 as requiring patients to collectively or cooperatively cultivate "for their own medical purposes." Yet even in large closed circuit organizations with only a few patient cultivators, all medicine being grown is being grown for the medical purposes of the members, including the cultivator members, so the condition limits nothing for a properly formed and operating collective.

The CA also resorts to another straw man tactic here; claiming the defendant's primitive communistic model "necessarily excludes a "collective" purchasing/acquiring marijuana from outside suppliers (possibly the black market) and re-selling it to members at storefront locations." CA Review, page 8. No one, least of all the Union of Medical Marijuana Patients, supports buying from the black market or acquiring medicine from cultivators who are "outside suppliers." All cultivators must be members of the collective to maintain the necessary closed circuit status. While defendant's model may exclude sales, *Northcutt* did not hold that only defendant's model was contemplated by the MMP.

As the CA ought well to know, courts are not in the habit of ruling beyond the question before them. The appellate court in *Northcutt* was asked to rule whether collectives must be formally corporately formed to earn protection under the MMP. They were not asked to rule on whether a primitive collective is the only acceptable form under the MMP, and they did not do so.

J. The CA mischaracterizes *City of Claremont v. Kruse*.

Lastly, the CA heralds *City of Claremont v. Kruse* (2009) B210084 Cal.App. 8-27-2009), which simply held that a city may uphold its temporary moratorium and apply zoning laws to collectives. Though the CA seeks to imply without saying so that *Kruse* goes farther than this, which is all the ruling does:

> ... the MMP expressly allows local regulation. Section 11362.83 of the MMP states: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws **consistent with** this article." Nothing in the text or history of the MMP precludes the City's adoption of a **temporary** moratorium on issuing permits and licenses to medical marijuana dispensaries, or the City's enforcement of licensing and zoning requirements applicable to such dispensaries.

Kruse at 23 (emphasis added). Whether a city may outlaw all collectives under all conditions **permanently** is another matter that the court did not rule on, though the court does hold that the city may limit collectives through zoning and that the MMP does not create an affirmative duty for localities to support medical marijuana collectives. Even if *Kruse* is construed such that cities may outlaw all collectives on the basis of zoning – an action that we believe would create disastrous Prohibition-like conditions in Los Angeles – if the City wishes instead to enforce local regulation, it is clear that the appellate court and the MMP at 11362.83 require such local regulation to be "consistent with" the MMP. Regulation that contravenes the plain meaning of the MMP, such as the CA wishes to impose on Los Angeles, can hardly be termed "consistent with" the MMP, and the CA will find no support from the appellate court in *Kruse* to hold otherwise.

Like *Mentch*, *Kruse* is a sword that turns in the CA's hands, for it characterizes *Mentch* in a way that is directly opposed to the meaning the CA intends for *Mentch,* and even links *Mentch* to *Urziceanu*, with which the CA vehemently disagrees. The CA fails to mention that *Kruse* describes *Mentch* and *Urziceanu* as both affirming that the MMP immunizes properly formed patient groups against the seven Health and Safety codes enumerated in 11362.775, not just immunizing against distribution:

> The MMP also provides a new affirmative defense to criminal liability for qualified patients, caregivers, and holders of valid identification cards who collectively or

> cooperatively cultivate marijuana. (*Urziceanu, supra,* 132 Cal.App.4th at pp. 785-786.) Section 11362.775 provides: ...

Id. at 18. *Kruse* recites Section 11362.775 and finishes with a footnote which reads:

> The penal statutes referenced in section 11362.775 include possession of marijuana for sale (§ 11359); maintaining a place for the sale, giving away, or use of marijuana (§ 11366); making available premises for the manufacture, storage, or distribution of controlled substances (§ 11366.5); and abatement of nuisance created by premises used for manufacture, storage, or distribution of controlled substances (§ 11570).

Id. *Kruse* would not list these codes if, like the CA, it found them irrelevant and of no force in 11362.775. *Kruse* would not equate *Mentch* and *Urziceanu* if it thought them to be in conflict.

Kruse goes further and uses its own language to describe section 11362.775 as providing more immunities than just cultivation, specifically mentioning sales:

> The MMP provides criminal immunities against cultivation and **possession for sale** charges to specific groups of people and only for specific actions. (§ 11362.765; *Mentch, supra*, 45 Cal.4th at pp. 290-291.) It accords **additional immunities** to qualified patients, holders of valid identification cards, and primary caregivers who "collectively or cooperatively cultivate marijuana for medical purposes." (§ 11362.775.)

Kruse, pp. 22-23 (emphasis added). Thus, *Kruse* points out that **in addition to** immunity from prosecution for sales, 11362.775 allows **still further** immunities to patients who associate collectively or cooperatively to cultivate. The *Kruse* court isn't seeking to make new law here; it is just offering a background description of the MMP before reaching its conclusions in a discussion about preemption. The *Kruse* court then considers it unremarkable and well-settled that a series of immunities are offered by 11362.775.

The CA fails to notify us of these findings in what he describes as a "critical case," findings that contradict the CA's depiction of *Mentch* as protecting only cultivation and the CA's contention that *Mentch* contradicts and nullifies *Urziceanu,* as well as contradicting the CA's main contention that only cultivation receives immunity for patients who associate collectively or cooperatively to cultivate.

All in all, *Kruse* is not what the CA claims it is, but is rather another support for the proposition that properly formed and operating patient collectives are immune from prosecution for transportation, distribution and sales as well as cultivation.

Ending as he begins, the CA concludes his case review and his discussion of *Kruse* with a last swipe at the straw man of the CUA, making much of the fact once again that the CUA does not empower collectives when it is perfectly clear that the MMP, not the CUA, is the operative statute.

K. The Sherman Law is unclear as to its application to medical cannabis.

For the sake of completeness we will briefly take up the CA's reference to the California Sherman Food, Drug and Cosmetic Law (Sherman Law). It is not part of the CA's main indictment and the CA refers to it but builds no castles on its foundation, no doubt recognizing it may not support him.

The Sherman Law defines "drug" so broadly that homeopathic remedies and many herbs would fall under its purview, such that the law begs further refinement. Further, since cannabis can be ingested as a food, it may be considered a food and not a drug. Whether marijuana is truly a drug or an herb, and whether herbs should be limited under the Sherman Law, are questions that are far from settled. The Union of

Medical Marijuana Patients supports the labeling of medical cannabis to emphasize its medical purpose and discourages recreational use. The UMMP also supports efforts to keep medical cannabis unadulterated, accurately labeled and free from mold and disease.

In sum, the CA's glancing mention of the Sherman Law demonstrates only that the CA has cast about for every possible weapon to use against medical cannabis collectives, but that even the CA distrusts the value of the Sherman Law in his endeavor.

L. The CA Review is argumentative and not descriptive.

From beginning to end, the CA Review distorts, omits and misrepresents the facts. The pillars on which he relies – *Mentch* and *Kruse* – stand for the opposite of what the CA claims. His other supporting citations do not hold the weight he puts on them and contains material that rebuts his stance, and contrary opinions are dismissed on pretexts. All of this would be quite appropriate if the CA were arguing a criminal or civil case in the courts. It would be up to the other side to prove him wrong and he would be under no obligation to bring up facts that harm his case. The CA, however, is not in court now. He is a public servant advising the City Council as to the law, not as he wishes it to be, but as it is. As such, his argumentative analysis does not serve the City Council well, and it should request a more dispassionate analysis from him or turn to a more impartial arbiter, such as the California Attorney General, for its legal analysis.

II. FAR FROM SUPPORTING THE CA, THE OVERWHELMING WEIGHT OF OPINION AND CASE LAW SUPPORT TRANSPORTATION, DISTRIBUTION AND SALES WITHIN PROPERLY FORMED AND OPERATING PATIENT COLLECTIVES.

A. The California Attorney General's Guidelines on medical marijuana sales

It is clear then that the plain meaning of the law, despite the CA's assertions, allows collectives and cooperatives to engage in sales of medical marijuana to qualified patients if, as the AG Guidelines make clear, the process of cultivation, transportation, storage and distribution or sale happens within a closed circuit of membership within the collective. The AG's language on this point is quite telling:

> . . . the cycle should be a closed circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members."

AG Guidelines, Section IV.B.4.

> 5. **Distribution and Sales to Non-Members are Prohibited**: . . . nothing allows individuals or groups to sell or distribute marijuana to non-members.

AG Guidelines, Section IV.B.5.

The City Council should ask itself why the California Attorney General would twice take the trouble to single out and prohibit sales by a collective or cooperative to non-members, if sales to members were also illegal. Further, the AG is not shy about describing permissible transactions that sound very much like sales in a non-profit context:

> 6. **Permissible Reimbursements and Allocations:** Marijuana grown at a collective or cooperative for medical purposes may be:
> . . .
> c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses . . . .

AG Guidelines, Section IV.B.6.

B. The case law on medical cannabis sales

Case law also supports the contention that collectives may engage in sales of medical cannabis to qualified patient members, rather than prohibiting sales and requiring all members to share in its cultivation as the CA envisions. Other medical cannabis advocates have already cited to the relevant case law, and the CA has also done so through a distorted lens, but we summarize it here: *County of Butte v. Superior Court of Butte County*, 96 Cal.Rptr.3d 421 (filed 7/1/2009) ("the [State] legislature intended collective cultivation of medical marijuana would not require physical participation in the gardening process by all members of the collective, but rather would permit that some patients would be able to contribute financially"); *People v. Newcomb et al.*, 2009 WL 1589574 (filed 6/9/2009) (Not Officially Published) ("other than merely purchasing marijuana not every member must contribute to some aspect of the collective or cooperative"); *People v. Urziceanu*, 132 Cal.App.4th 747 (filed 9/12/2005) ("specific itemization of the marijuana sales law indicates it contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana."

C. The legislative history on sales

Further, those familiar with the legislative history and intent of the framers of the laws concerning medical cannabis know that the prohibition of profit specified in the law was a late addition in the legislative process based on strong lobbying by the law enforcement community. The City Council must ask itself, why there was a desire by law enforcement to prohibit profit if the law already prohibited sales? Clearly, if there could be no sales then there could be no profit, and if it was desirable to prohibit profit, then it could only be necessary to do so if sales were in fact authorized.

D. Los Angeles Chief Legislative Analyst's position on sales

Finally, we must point out that the alternative draft ordinance of Councilmember Ed P. Reyes and Hanh D. Dao, Chief Legislative Analyst, envisions and permits sales by and within medical cannabis collectives. Surely such experienced public servants would not authorize such transactions if they had the slightest concern that they were illegal.

III. THE PUBLIC POLICY FALLOUT OF PROHIBITING SALES

On every level of analysis, then, it is clear that the CA is mistaken in insisting that collectives may not by law engage in the sale of medical cannabis to and by its qualified patient members. It remains only to examine what the real-world effects would be if the City nevertheless adopted his false premise and legislated restrictions against sales in favor of the primitive communes the CA envisions in which all qualified patients participate in the cultivation and distribution of their medical cannabis without monetary compensation.

A. The proposed ordinance is extremely vulnerable to legal challenge.

An ordinance prohibiting medical cannabis sales within a closed circuit collective would not survive a court challenge. It is one thing to limit the prerogatives of medical cannabis collectives based on local concerns such as zoning and quite another for a city to seek to declare unprotected and illegal what is explicitly and affirmatively immunized by state law. Section 11362.83 of the MMP states: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws **consistent with** this article." (Emphasis added.) An ordinance based on misinterpretations of the MMP that are contrary to its meaning and intent, do not empower the City to prosecute where the MMP has granted

immunity from prosecution. The plain meaning of the law and the preponderance of existing legal precedent guarantee that the ordinance would fall to the first legal challenge, after which the City would find itself having to begin the present legislative process all over again.

B. The proposed ordinance will have multiple unintended consequences.

While the City waited for the axe to fall in the courts, it would find that the ordinance was setting loose a number of negative unintended consequences. By specifying that "No sale of marijuana ... shall be allowed" (City Attorney's Fourth Revised Draft Ordinance § 45.19.6.3.B.6) and "No collective may provide medical marijuana to any persons other than its members who participate in the collective cultivation of marijuana at that collective" (City Attorney's Fourth Revised Draft Ordinance § 45.19.6.3.B.10), the CA seems to envision a primitive communistic model for medical cannabis collectives in which all members engage in the labor of medical cannabis production according to their abilities and all members receive medical cannabis according to their needs. While this model may seem attractive in the abstract, in reality it would fail just as utterly as primitive Communism has failed everywhere it has been tried. And even if the model did work, the result would be nothing like what the City Council intended.

1. Most patients cannot or will not grow marijuana and many will turn to the black market to acquire it.

Most qualified patients do not have the time or skills to cultivate cannabis and do not want the distinctive strong smell of cultivation overpowering their living spaces. Those who have a place to grow and are willing to spend the time to learn how to grow it and to make the time to share in its cultivation will likely have trouble finding co-cultivators that they trust who are willing to grow the exact strains they prefer for their condition. Those who need it most – the ones suffering from grave illness – will be physically incapable of cultivating it, and by insisting they cultivate or do without, the City will have turned its back on its citizens most in need.

The biggest hurdle, one that most qualified patients will refuse to undertake, is that cultivating medical cannabis places growers in personal danger from criminals, state police and federal agents. If The CA's primitive communistic cultivators don't do things exactly right – if they fail to fully understand and follow the law, or if just one of their members fails to observe proper security precautions, or if one of them is vulnerable to temptation – they face theft, injury and even death from criminals, or conviction by law enforcement. Even if they do everything correctly, they can find themselves in Federal court with no legal defense. One thing that the City Council has not taken into account in all its deliberations, the thing that every qualified patient knows, is that cannabis is still illegal on the Federal level, and no agency of the state can guarantee them protection from Federal prosecution. No one lacking the skill, experience and resources of a large collective will expose themselves to even the remote possibility of Federal jail time if they have any other way of acquiring cannabis.

Of course, they do have another way. Faced with a requirement to cultivate at risk or do without, these qualified patients, knowing that all medical cannabis, no matter how acquired, is legal once it is in their possession, will turn to the black market. With a stroke of the pen, the City Council will turn tens of thousands of law-abiding qualified patients into criminals or accessories to crime and hugely multiply the power and profits of the black market in Los Angeles.

2. Experienced cultivators will not work without compensation and many will turn to the black market to receive it.

Those patients that have the ability, time, inclination and risk tolerance to grow – experienced patient cultivators – would have little incentive to cultivate for others if they were to receive no compensation whatsoever for their efforts. There are significant costs involved in cannabis cultivation: renting the indoor space or land; buying the hydroponic or outdoor planting equipment; paying for electricity and water;

testing the cannabis for mold and potency; paying for security measures; and, most significantly, the need to factor in the cost of disease, crime or law enforcement action, both state and Federal, wiping out a crop, as well as the need to factor in the cost of legal defense and the risks of an adverse legal decision. Some of those costs will be greatly reduced if a true partnership is forged between the medical cannabis community and law enforcement, but in the meantime, they are a fact of life. Lastly, there is the lost opportunity cost to an individual who spends large amounts of time tending to a cannabis crop, time that could be spent working at a paying job or developing a valuable skill or product. For those collective members who presently grow medical cannabis for their collective in rural California counties, to grow means to live in an area where there is simply no other work to be had. No cultivator is going to grow for others if he is not compensated for his expenses and provided a reasonable reimbursement for his time. This does not mean undue and illegal profit, merely a reasonable fee for service and expenses. The security guard required by the alternate draft ordinance would be paid for his time; why should not a cultivator receive a paycheck as well?

Faced with an option to grow without reimbursement of expenses and without compensation for time, skill and risk, some growers will quit growing, which is no doubt what the CA would prefer. Others, however, will simply stop growing medical cannabis for closed collectives under controlled and verifiable conditions and will instead offer illegal cannabis, at higher prices, to the black market. What could have been controlled and policed by careful city planning, with prices brought down through the normalization of risk, will instead mushroom into more illegality, higher prices, a more powerful black market and increased criminality in the streets of Los Angeles.

3. Smaller cultivation sites mean more danger of diversion and crime.

If patients do successfully transition to the smaller and completely localized mutual grow societies that the CA envisions, the result will be an explosion of grow sites within Los Angeles. There may easily be 1,000 collectives in Los Angeles now, whatever their legal status, and if we assume a very conservative average of 100 members each, that makes a community of 100,000 medical cannabis users, not at all an unreasonable figure. The CA's proposed ordinance permits no more than 92 plants, enough for 16 patients. That would require our 100,000 patients to create **6,250** collective cultivation sites in Los Angeles's houses, apartments, offices and warehouses, places where children and non-patients live and work. Each site would represent a security risk and a risk of diversion, especially in inexperienced hands – and if everyone must cultivate, then most cultivators will be inexperienced. Without the tight and expensive security large collectives can bring to bear, each of those 6,250 cultivation sites would be a pushover for criminals and a magnet for crime and diversion that bad actors quite literally only have to follow their noses to find, creating the kind of chaos California hasn't seen since the days of the West. Is that really what the City Council wants for Los Angeles?

4. The security concerns of collectives are stymied by the proposed ordinance.

Los Angeles collectives do not engage in cultivation with member cultivators in northern California because they enjoy travel; they do it for all the security concerns outlined above. It is due to these concerns that often only a few members are privy to the location of each cultivation site, and sites are kept far away from trafficked areas, sometimes in other counties – though in all cases well-run collectives use only collective members to cultivate. The financial contributions of a large number of members permit expensive security measures for cultivation, transportation, storage and distribution sites and legal consultation to assure that all state and local laws are being observed. All of these measures to fight crime and diversion are undercut by the CA's proposed ordinance. By insisting on local grow sites, the CA creates a problem that didn't exist before: rampant theft of cannabis in our own backyard. By insisting on small grow sites participated in by all members, the CA guarantees that the proliferation of small collectives will lack the resources to secure their medical cannabis from thieves and from each other.

5. The City will lose a valuable source of tax and fee income.

By driving collectives out of business or underground, the City will lose a revenue generator through fees and taxes it might impose. Collectives would be quite willing to pay for the benefit of consistent and sensible regulation that allows them to normalize their standing with the City.

6. The CA's registration requirements in his draft ordinance will drive additional patients to the black market and violate their Fifth Amendment right against self-incrimination.

We have not discussed the CA's registration requirements before because they receive no mention in his case law review. His draft ordinance, however, makes clear that he intends to force every collective member and cultivator to register and provide their name and address.

Once again, the proposal will only drive members into the arms of the black market because the proposed ordinance refuses to take into account that cannabis possession, sale and cultivation is still a Federal crime and no state statute can protect a qualified patient from Federal prosecution. Patients have largely refused to join the state ID card program, with its guaranteed safeguards, because of the perceived danger, and they will refuse to register with the City, which offers no safeguards, for the same reason. Cultivators have particular reason to fear registration, and will remember incidents in which voluntary registration was used against them and turned over to Federal authorities for raids and prosecution. Even those patients willing to grow will refuse to register and will instead operate without registration or will resort to the black market. At a stroke, the CA will turn almost every qualified patient in Los Angeles into a criminal.

Further, a strong case can be made that enforced registration is tantamount to violation of every patient's Fifth Amendment right against self-incrimination, because each registration is an admission of violation of Federal law. On that basis alone, the registration provision would be challenged in the courts and struck down.

Fortunately, there is a way for the City to achieve the purposes of registration – confirmation that collectives are operating within a closed circuit without recourse to the black market and without diversion – without an impossibly onerous registration requirement. We will discuss that alternative below when we offer the Union of Medical Marijuana Patient's proposed ordinance and the ways in which the UMMP can support its implementation.

C. The CA's proposed ordinance seems designed to fail.

We have listed just some of the real world negative consequences of putting the CA's proposed ordinance into effect. The results are so obvious and inevitable that we believe anyone who gives the matter a few minute's thought would come to the same conclusions. It's hard to believe the CA hasn't thought through these consequences himself, just as it's difficult to believe the CA could study all existing authority and case law and manage to come up with a position so strained, one-sided and unsupported. It is difficult to avoid the conclusion that the CA simply wants medical cannabis to fail in Los Angeles.

IV. CRITIQUE CONCLUSION

We have offered our analysis of the CA's case law review with an eye towards protecting the rights of all citizens. We trust we have demonstrated our good faith and seriousness of intent in the preceding pages. Now comes the time to implement sensible regulations for the benefit of the patients and the community at large.

Our team of lawyers has worked long and hard to produce a model of compliance to California law that is complete and workable and that honors the needs of patients, counties and municipalities, law enforcement, and neighborhoods while protecting patients from the dangers inherent in a state law at variance with Federal statutes.

We invite City Council to review our compliance model and set of workable regulations that we will offer next week. It is our sincere hope that the City will recognize they have a partner in the Union of Medical Marijuana Patients and all its member organizations.

The Union of Medical Marijuana Patients is a not-for-profit civil rights organization based in Los Angeles, California. The Union is devoted to defending and asserting the rights of medical marijuana patients. Through aggressive legal and political action, education and counseling on compliance with state law, and a philosophy of personal growth and responsibility, the Union supports patients, their member organizations, and the cause of freedom across our country.

The Union's membership comprises medical marijuana patients and their legally compliant organizations throughout the State of California. UMMP was founded in 2007 by patients and their organizations to address the shared concerns of all patients and organizations.
www.unionmmp.org

PAGE 1

Item 10

Council File Number: 08-0923

November 21, 2009

To the City of Los Angeles:

Where is the accountability?

The issue before the City is regulating Marijuana dispensaries. The proliferation of these so called "businesses" (*ha*) has become an embarrassment to the people of Los Angeles. Are there that many people in our City that have a legitimate need for medicinal marijuana? If not who's buying it?

I am the sister of one of the non-legitimate, unregulated, non-store owning marijuana dispenser of medical marijuana; i.e. my brother is a drug dealer. It has become taboo in my family to mention this conflict of morals because our society is coming to embrace this vice. He informs us that he is legitimate because of the recommendations of the physicians tacked to the wall behind his numerous Marijuana plants. Supposedly, he is a care giver. He has been carrying on this business for five years without any consequence.

Does my brother have any regulation? No. Does he pay income tax? No. Does the State of California impose a sales tax on his product? No. They do not know he exists.

This is a utopian situation for my brother and others in the city like him. They are able to bring in *large* sums of cash because most of his clientele are not legitimate users of medical marijuana. Most of his clientele are druggies, period. He cannot possibly make the kind of money he does off of his legitimate medical marijuana users. He is a ***DRUG DEALER***.

Up until very recently his operation was run out of his private home. My brother is a married man with minor children in the home. This concerns us due to the clientele he deals with on a daily basis. The health and welfare of his children have always been a concern to the rest of the family. This could not be a healthy environment for these kids.

One of our family members commented upon discovering my brother's profession, "If he's legitimate, why doesn't he have a sign in the window?"

Medicinal Marijuana has become the happy face mask for an ever growing criminal enterprise. We need defined regulations on where and who can dispense medical marijuana. The decision cannot be left up to whomever to decide who is a "legitimate" care giver or medical marijuana user. There must be strict regulation and guide lines as to where and who medicinal marijuana can be dispensed.

Thank you for listening to the anonymous sister of a drug dealer.

Page 1

Item 10

Los Angeles City Council
200 N Spring Street.
Los Angeles, CA 90012
Rooms – Various

November 23, 2009

Re: Council File 08-0923 Medical Marijuana Collectives

Council Members.

During the recent Committee and Council meetings on the Medical Marijuana Ordinance, members have brought up and discussed the topic of legislative intent. While I found the opinions expressed by various Council members interesting, legislative intent is not hard to determine if "**espressio unius est exclusio alterius**" is adhered to. The statutory construction doctrine of *expressio unius est exclusio alterius* means the expression of certain things in a statute necessarily involves exclusion of other things not expressed.

It is also possible to consult the history of the MMPA to examine what the legislature attempted to do before passing SB 420 and what they left out of the final Bill.

You might want to consult with your colleagues Alarcon, Wesson, Cardenas, and Koretz on their participation on the various bills during their terms in the Legislature. Also Mayor Antonio Villaraigosa on his participation while in the Legislature. For your convenience I have included a summary of the bills and attached the exact language of each bill as introduced and amended.

Some of the ideas in the previous bills which are not part of the MMPA include:

- A Task Force or any entity charged with making recommendations about the safe and affordable distribution of Marijuana to patients in medical need of Marijuana.
- Authorizing a City Council or board of Supervisors to adopt an Ordinance creating a medical marijuana program or adopting Zoning provisions ensuring the program is sited in the appropriate neighborhood.
- Authorizing a City, County, or City and County to distribute medical marijuana, or to contract with a single nonprofit to provide Medical Marijuana distribution.
- Authorizing any entity to establish regulations specifying operation and supervision of; or methods, procedures, and criteria for cultivation projects.

Sales of any kind were never a part of these bills.

The California State Legislature attempted on 4 different occasions (SB 535, SB 1887, SB 848, SB187) prior to passing SB 420 to enact the Compassionate Use Act (CUA) and it is instructive to see the ideas discussed and excluded. By excluding I mean those ideas which eventually did not make it into SB 420 which when passed into law became the MMPA.

Page 7

I have noticed that much of the discussion during Council meetings has dealt with the meaning of "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" and around the meaning of "associate within the State of California in order to collectively or cooperatively to cultivate marijuana for Medical purposes".

The MMPA added section 11362.775 to the Health and Safety Code. That section states that Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357,11358, 11359, 11360, 11366, 11366.5, or 11570.

So how did the Legislature arrive at that exact language? What was proposed and left out along the way? I hope you will find the following insightful and help you separate fact from fiction, wishful thinking from reality.

Senate Bill 535 (Vasconcellos 1987)
From the Assembly Summary. This bill establishes a Medical Marijuana Research Center at the University of California to study the safety and efficacy of marijuana usage for medical purposes. If studies confirm the value of marijuana for medicinal purposes, the Research Center would establish medical guidelines for appropriate administration and use. It did not pass but portions of it were reintroduced into SB 1887

SB 1887, SB 848 and SB 187 did attempt to deal with associate in order to collectively or cooperatively cultivate marijuana. The question is what did the Legislature consider in these previous bills and reject putting in SB 420?

Senate Bill 1887 introduced by Senator Vasconcellos on February 19, 1998 stated that "This bill would, pursuant to legislative findings and declarations, authorize a city, county, or city and county to distribute medical marijuana, in accordance with existing law, pursuant to a local program that is established and conducted in compliance with specified conditions. It added the following section.
SEC. 2. Section 11362.7 is added to the Health and Safety Code, to read:11362.7. (a) Notwithstanding any other provision of law, a city, county, or city and county may distribute marijuana to persons in medical need of marijuana in accordance with Section 11362.5, provided that all of the following conditions are met:
(1) The city council or board of supervisors adopts an ordinance creating a medicinal marijuana distribution program, and adopts zoning provisions that ensure the program is sited in an appropriate neighborhood.
(2) The program is developed in consultation with the local health department and local law enforcement.

And "it is the further intent of the Legislature to respond fully to the wishes of the voters in approving Proposition 215 by allowing local governments to distribute medicinal

marijuana under strictly controlled circumstances and to protect against the illegal spread of marijuana under the pretense of medical use."

The Bill Analysis of August 4, 1998 further stated that:
The bill authorizes the city, county, or city and county to contract with a single nonprofit corporation to distribute medical marijuana.

The Attorney General's Office opposed this bill arguing that it is contrary to the intention of the electorate. The Attorney General further asserted that the voters did not envision a "crazy quilt" of local ordinances, and they did not encourage separate state action.

This bill did not become law and there is nothing in the MMPA allowing the City or County to distribute Medical Marijuana or contract with a nonprofit corporation to do the same. There is also nothing in SB 420 that mentions local ordinances or zoning provisions. The only mention of local government is in connection to the identification card program.

SENATE BILL 848. This bill introduced by Senator Vasconcellos on February 25, 1999 stated it wanted to enhance the access of patients and care givers to medical marijuana through collective, cooperative cultivation projects and **introduced** section 11362.775. Qualified patients, persons with valid registry identification cards, and the designated primary care givers of qualified patients and persons with registry identification cards, may associate or incorporate within the state of California, or both, in order collectively or cooperatively to cultivate marijuana for medical purposes and these individuals participating in cooperative cultivation projects shall not solely on the basis of that fact be subject to criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.
The department shall adopt regulations, after public comment and consultation with interested organizations, governing the operation and supervision of these cooperatives, no later than December 31, *2001*. The regulations shall specify only the methods, procedures, and criteria that the cultivation projects shall employ to ensure the consistency of composition, non contamination and non diversion of medical marijuana. The ~~county health department or its designee~~ *department* shall have the right to inspect the cultivation projects to ensure compliance with the methods, procedures, and criteria.

STAFF ANALYSIS stated that Proposition 215 directs the state to implement a plan to provide for the safe and affordable distribution of medical marijuana. The author has made several attempts to realize this intent that were defeated. Additionally, resistance by both state and federal authorities has prevented any public distribution of medical marijuana. Numerous private, local distribution organizations have attempted to obtain and deliver marijuana for medical purposes, but were forced to close due to police and judicial action. A number of California cities either encouraged or openly tolerated marijuana distribution, but no broad distribution has been realized. Attorney General Bill Lockyer has created a special task force to design a public distribution system and has

appointed the author as chair of the effort. This bill implements the recommendations of the task force.

SB 848 was defeated in the Assembly.

SB 187. This bill introduced by Senator Vasconcellos on February 7, 2001. It appears to be almost identical to SB 848. SB 187 passed both houses of the legislature but was held in the Senate and not sent to the Governor.

SB 420. This bill was introduced by Senator Vasconcellos on April 9, 2003

Included in the Bill Analysis:
Prior Legislation

SB 535 (Vasconcellos) of 1997 established a study to confirm the value of medical marijuana, and established medical guidelines for appropriate administration and use, including treatments. SB 1887 (Vasconcellos) of 1998 authorized local governments to establish medical marijuana distribution programs. Both bills were defeated in the Assembly. SB 847 (Vasconcellos), Chapter 750, Statutes of 1999 authorized the University of California to establish a California Marijuana Research Program. SB 848 (Vasconcellos) of 1999 proposed a registry system similar to this bill. The bill was defeated in the Assembly. In 2001, the final version of SB 187 (Vasconcellos) was identical to this bill; it passed both houses of the Legislature but was held by the Senate and not sent to the Governor.

SB 420 starts out like the ones before it requiring DHS to adopt regulations concerning the operation of Medical Marijuana Collectives or Collective projects.
However by the time the bill was passed no reference remained about DHS or any other entity regulating or proposing rules for Collectives or Collective projects. A major portion of Section 11362.775 was removed from the Chaptered Version of 10.12.03.

From the Bill History

This from Senate committee. 4.07.2003

18. Permits cooperative cultivation of marijuana for medical purposes, with specified supervision of DHS. Requires DHS to adopt regulations governing the operation of these cooperatives by December 31, 2004.

Assembly Committee 6.30.2003
19) States that qualified patients, persons with identification cards, and their primary caregivers may associate, within California, in order to collectively or cooperatively

cultivate marijuana for medical purposes, and that such persons shall not be subject to state criminal sanctions under the specified laws listed above.
20) Requires DHS to adopt regulations no later than December 31, 2004 governing the operation of the above cooperatives.
21) Provides that the regulations relative to the cooperatives shall specify only the methods, procedures and criteria that the cultivation projects will employ to ensure the consistency of composition, non-contamination and non-diversion, of medical marijuana.

Senate Floor 9.11.2003
22. Permits cooperative cultivation of marijuana for medical purposes, with specified supervision of DHS.

Assembly Floor 9.10.2003
Nothing was in the Assembly bill when it reached the floor requiring or designating DHS or any other entity to adopt regulations or supervise collective cultivation.

Section 11362.775 from the bill introduction on 2.20.2003

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.
The department shall adopt regulations, after public comment and consultation with interested organizations, governing the operation and supervision of these cooperatives, no later than December 31, 2004. The regulations shall specify only the methods, procedures, and criteria that the cultivation projects will employ to ensure the consistency of composition, noncontamination and nondiversion of medical marijuana. The department shall have the right to inspect the cultivation projects to ensure compliance with the methods, procedures, and criteria.

Section 11362.775 from the Chartered Version.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

On page 2 or SB 420, the following is stated:

(b) It is the intent of the Legislature, therefore, to do all of the following:
(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid

unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.
(2) Promote uniform and consistent application of the act among the counties within the state.
(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.
(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.

There is absolutely nothing in Proposition 215 that mentions Cultivation Projects. The only reference to cultivation in the Act is the following.

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.

It is possible that members of the Assembly knew that Cultivation projects were never a part of the Act and removed the State or any other entity from organizing or proposing rules to regulate them.

While the Legislature left in the language of its intent concerning Collective projects they never established them into law. Also it is troubling that the Legislature would seek to address additional issues not included within the Act. The Act itself is a Citizens initiative and can not be amended by the Legislature.

Certainly patients and their Caregivers can possess or cultivate marijuana for the personal medical purposes of the patient but nothing in the CUA or MMPA even remotely proposes the dispensaries we are dealing with today. The Act was clear in its language of personal use and personal cultivation.
The amending language being proposed by Council members for the Medical Marijuana Ordinance **can not be found** in the Compassionate Use Act or the MMPA.

The City Attorney has opined what language should be in the Ordinance based on the CUA and various court cases including opinions of the California Supreme Court and the Los Angeles City Council should follow his advice. Personal wishes and personalities should take a back seat to the law. To do otherwise endangers the public safety and general welfare of the Citizens of Los Angeles.

I hope you will find this of assistance.

Sincerely

James O'Sullivan
President, Miracle Mile Residential Association

#10

Good Evening Mayor, and Members of the City Council

My Name is Osvaldo Leonard Diaz and I come from the I.E (Inland Empire) and I've been a patient since 05. and 7 years ago My sister got a false R.O. against me to try to get my house out from under me.

This is not the venue for my story !! ,... hopefully that will come when I can overcome the possible ADD that I suspect I developed from my sisters attempt to use the family court laws for her own financial gain. And from Rancho Cucamonga Police Dept, (more appropriatly 'Certain officers mind set) attempt to help my Sister and subsequently diminish a Disabled persons Call for justice in the face of Discrimination based on Mental Health or Choice of Medications to Aleviate the Stressors that Influence certain Individuals suseptibility to these and other Emotions based problems not Derived from birthborn disabilitys. i.e:Down's, Autism, Pollution... etc.

I come here to re-iterate everything these and indeed... most of the world feels about Americas Hypocrisy regarding Cannabis/Hemp.

And to remind D.A. Steve Cooley that America thinks in 5 to 10 year Increments, whereas China thinks In 50 year Increments.....In this case I see that as a positive, that someone will fill the position that your currently holding in due time. I dont mean to be *confrontational* or *combative*, to use some of the keywords officers use, to Intimidate in police reports to explain *first amendment assertiveness* and *Justice driven*.
It's just that you're right it's time to get the federal government's attention on reschedualing Cannabis Hemp back from 1 to 3 or whatever. As for me and mine we want to grow hemp for Toilet paper, republicans would love it..... they'd be wiping thier Ass with Pot first thing in the morning.

So,...Someone has to Kick this Movement in the Butt..... Again, and I'm not waiting 40 years for that to happen as with the civil rights movement, or the Feminist's movement that started then stopped.... leaving Me and a whole generation of young men and adults to deal with Another form of hypocracy. More on that later,.....Jimmy Kimmel- Adam Carolla,.... can you feel me ?

I'm not sick as other people see it, but I'm not well either, and smoking marijuana... for me is not a cure. It helps temporarily until I can deal with the issues that caused this current onset. But when I went to the what I thought then was the right people....well they prescribed pills that ruined my liver and kidneys all the while placating me while Cannabis/Hemp Worked..... for the Stress and Anxiety that Insomnia feeds upon. Then convieniently kicked me to the curb when I recieved my recomendation that was prescribed by a doctor without an agenda from the Pharmecuetical companies.
There was a time when the pharmecuetical companies were there to help and

serve the doctors,
now... the doctors are there to serve the pharmecuetical companies.
Doesn't that sound oddly familiar ?; (I.E). the Washington Lobbyist's were there to serve the law makers in thier job to set policy. Whereas now the Lawmakers are there to serve the Lobbyist's with the Most Money and thereby the power to keep them in that Job.

This has to be one of my biggest concerning Hypocrisy presently in todays Society.

So.....I Hereby give my Home that my Sister, Sheyla Saldana with help from Rancho P.D., are trying to take from us, to Governer Shwartzenager and the people of the state of California to help with the Budget or whatever.

I only Ask that I get help in the form of at least telling my story right so that I could solicit Legal Help that wont take advantage of disabled people.

In lieu of that I would like to start a Group home for People with Special needs if it is found that my sister has no legal claim to the home that my Father's half should have gone to the "Third party recovery Act of the State of California"

Hardship, It's a word I've heard tossed about. I can endure Hardship but i'm also smart enough to know that I can't do this Alone. and the people I trusted turned out to be shysters.

I'm Disabled not Stupid,

Governer and Mrs. Shriver.....And for Eunice and Ted.....Please, can you Feel me on this ?

Thank you,
Osvaldo Leonard Diaz

Law Offices of
ROBERT A. KAHN
5550 TOPANGA CANYON BOULEVARD, SUITE 200
WOODLAND HILLS, CALIFORNIA 91367
Telephone: (818) 888-9171
Fax: (818) 888-7611

#10

November 20, 2009

The Honorable City Council
of the City of Los Angeles
c/o City Clerk's Office
Councilmember, 1st District
200 North Spring Street, Room 360
Los Angeles, CA 90012

Re: Council File No. 08-0923
Los Angeles Collective Association v. City of Los Angeles, LASC Case No. BC422215

Honorable Members:

I am the attorney for the Los Angeles Collective Association. As I am sure you are aware, in the above referenced case the court granted a preliminary injunction on the basis that the ICO has expired. It is without question that the ICO expired 45 days after it was enacted pursuant to Government Code Section 65858.

What this means is that the medical marijuana collectives that opened up after the ICO expired did not open up in violation of the ICO. Since these collectives were not in violation of the ICO when they opened, they should have the same status, and treated exactly the same as the collectives that opened up before the ICO was enacted.

Therefore there is no basis for treating the pre and post ICO collectives differently, and proposed Section 45.19.6.6 should be amended to reflect this. If the permanent ordinance does treat pre and post ICO collectives differently, there will be lawsuits filed to invalidate that provision, on the bases that it is discriminatory, a violation of the right to equal protection under the law, and other legal bases.

I strongly urge that the permanent ordinance not treat the pre and post ICO collectives differently.

Very truly yours,

ROBERT A. KAHN

kearns to LA city council: observations on the medical cannabis discussion in my absence (xxxx)

[november 24, 2009] good morning president garcetti, distinguished council members. i have given the clerk copies of my prepared remarks.

my name is richard kearns. i am a 58-year-old gay man living with AIDS in los angeles for more than 20 years --- a long-term survivor & AIDS activist, a medical cannabis patient & advocate, a poet & journalist. an angelino.

my intent in addressing you this morning is to comment on the character of the meetings i missed last week: monday's joint PLUM & public safety committee meeting & the city council meeting that followed it wednesday.

i was too sick to make it downtown last week --- i wish medical cannabis cured everything, but it doesn't. however, i did listen & watch on the internet (thank you for making that possibility available).

first, i must note how proud i am about the character & conduct & thoughtfulness & overall growth of my community over the last couple of years in its advocacy. that change, that growth was clearly reflected over the course of those two meetings as i listened by my laptop.

second, i had begun to despair that when city council members talked about working with the "city family," it didn't include me. it left me on the outskirts of a kind of a dysfunctional city family, unconcerned about the quality of my demise. today i must tell you i feel reconciled with you & a part of my family again. i think this is the way we should be.

third, i regret the city attorney isn't willing to be a part of our family too, to join us in mounting an "extraordinary response" to save angelino lives. i offer him this advice:

in the light of your wisdom, the declaration of independence was an illegal document, which unravels everything that's happened in our nation since then, to the point where you need to apply to the queen to keep your job. i rather like that idea myself

i suggest that you have to break the law to change the law, to do the right thing. ghandi & nelson mandela were lawyers who broke the law to change it. the team of lawyers who successfully argued the case for same-sex marriage before the california supreme court --- mintner, stewart, maroko & allred --- advocated breaking the old law to make new, more just law. i call on you today to re-join our city family's intent to enact that kind of larger renewal of the spirit of the law.

just law is good medicine.

namasté

---richard kearns
4836 w. washington #122
los angeles, ca 90016
310-488-1328
rk@aids-write.org
http://aids-write.org
http://havvacc.wordpress.com

Public Comments

kearns to la city council: medical cannabis patients are a resource (xxxx)

[november 24, 2009] good morning president garcetti, distinguished city council members. i have given the clerk copies of my prepared remarks.

my name is richard kearns. i am a 58-year-old gay man living with AIDS for more than 20 years, a long-term survivor & activist, a medical cannabis patient & advocate, a poet & journalist, a member of our city family. your uncle & brother. an angelino.

i stand here this morning to remind you,
as we struggle to enact sane public health policy for medical cannabis,
that **patients** are a **resource** in this **process**.
not dead weight. not a liability or a drain. we can help.

i look forward to the establishment of a **medical cannabis community advisory board** in this process. we would be able to help with things like site inspections, volunteer administrative support, community education, to act as liaisons between our community, the community at large, we can help create process visibility & function as watchdogs.

additionally, self-government is the firm foundation on which we must build this ordinance. this requires metaphoric thinking. i look forward to establishing **the equivalent of neighborhood councils for the medical cannabis community.**

in many ways, we are not just writing an ordinance, we are planting a garden that will require tending and nurturing over time. this is my "cultivation" model.

i have included excerpts from my earlier public comments in march on the topics of medical cannabis advisory boards and medical cannabis community councils.

thank you for your work and your consideration

namaste

richard kearns
4836 w. washington blvd. #122
Los Angeles, CA 90016
310-488-1328
rk@aids-wrote.org
http://aids-write.org
http://havvacc.wordpress.com

volunteer medical cannabis patients & caregivers & advocates can serve on an advisory/oversight board & can assist the city to

- collect information
- hold hearings
- inspect sites
- process claims
- educate patients
- create process visibility
- function as watchdog
- offer "fine tuning" suggestions

over specified time intervals
for long-term crafting of
the ordinance

http://aids-write.org/?p=1584
[march 10, 2009]
i believe we are heading toward the establishment of what i would call **McNCs** (pronounced *mac en-sees*) —
i have talked about them here before —
medical cannabis (the ***mac*** part)
neighborhood councils (the ***NC*** part)
metaphoric **McNCs — medical cannabis neighborhood councils**

as with the "literal" neighborhood councils, it is a part of the stakeholder self-government movement. instead of components of live, work & play, metaphoric stakeholders represented on McNCs could include

- patients
- caregivers
- dispensary staffers
- growers
- transporters
- advocates

& interface with

- law enforcement
- local government agencies & commissions
- the community at large & within
- a forum to hear & resolve disputes
- to set community-centered standards for patient-directed medical care
- to educate ourselves in our various nested communities
- to educate our fellow non-cannabis-using citizens
- to foster research at the neighborhood level into the benefits of medical cannabis therapy
- to provide infrastructure where dispensaries become community centers
- to support & empower patient directed community-centered care as a way of practicing medicine

http://aids-write.org/?p=1589#more-1589
[march 20, 1009]

item 10

Greater Los Angeles Collectives Alliance
Protecting Safe Access to Medicinal Cannabis

November 23, 2009

RECEIVED
NOV 24 2009

Los Angeles City Council
200 North Spring Street
Los Angeles, California 90012

RE: Council File Number 08-0923 – MEDICAL MARIJUANA ORDINANCE

Councilmember,

The Greater Los Angeles Collectives Alliance (GLACA) would like to extend a note of gratitude to you for continuing the efforts in preparing sensible regulations for medicinal cannabis collectives here in Los Angeles. We recognize that the council and council staff have spent many exhausting hours on this issue. We would like to thank you for the time and efforts spent thus far.

We ask that today you stay steadfast to protecting patients' rights to safe access to their medicine. Please do not act so swiftly that patients' rights, or the rights of a collective are forfeited. It is important for us to prudently review each of the amendments to be sure that they address community concerns, that they do not cause further burden on city staff ; that they do not violate the right to privacy and the right for due diligence; and that they are clear to the agencies participating in the enforcement process.

GLACA has continually supported the council in their efforts to fairly regulate medical cannabis collectives. In the past several years we have worked closely with council and council staff to support and assist in the regulatory process. Today, we are writing to express support for a majority of the amendments introduced in Council sessions and to seek clarification on other proposed amendments for regarding Council File 08-0923– MEDICAL MARIJUANA ORDINANCE.

We support the following proposed amendments :

- 18A (HAHN- ZINE) requesting study of city taxes on medical marijuana collectives

- 18B (KORETZ-REYES) – requiring attendance by a collective representative at monthly meetings with City officials

1649 S. La Cienega Blvd., Los Angeles, California 90035
Phone: (310) 384-3668, Fax: (310) 246-9358

- 18D (KORETZ, REYES – ROSENDAHL) – requiring daily bank drops and prohibiting collectives from keeping more than $200 overnight

- 18E (KORETZ – REYES) – restricting the use of revenue to reasonable employee compensation, reimbursements for actual expenses of marijuana cultivation, and operational expenses incurred while providing medical marijuana

- 18F (KORETZ – REYES) requiring collectives to patrol a 2 block radius and prohibiting firearms and tazers on-site

- 18G (KORETZ, REYES – ROSENDAHL) requiring collectives to provide law enforcement and all neighbors within 200 feet with a name and phone number to contact regarding operational problems

- 18H (PERRY – REYES) – requesting a clear opinion from the Attorney General on cities allowing the sale of marijuana for medical purposes

- 18J (HAHN – GARCETTI) restricting the 180 day registration grace period only to collectives registered pre-ICO AND only to collectives which have not been cited with nuisance violations

- 18K (KORETZ-ROSENDAHL) placing priority registration status to collectives registered pre-ICO

  We believe that the council should recognize those collectives that followed the provisions set forth within the Interim Council order of 2007. One hundred and eighty-seven (187) collectives came forward and agreed to follow the rules set forth by their elected representatives. Those collectives that registered agreed to put forward their name, addresses and phone numbers only to later deal with threatening letters or personal visits from the DEA. These collectives attempted to set an example to the city council that they were willing to work within fair guidelines presented. To not recognize their efforts in moving regulations forward is unreasonable.

Other proposed amendments are either 1) unclear and ambiguous - making compliance with or enforcement of the provisions difficult – or- 2) would unnecessarily restrict access to medical cannabis for patients without providing any actual protection for communities.

GLACA would like to request clarity on the following amendments:

- **18I (REYES) – Section 1E – including "substance abuse rehabilitation center" as a sensitive use.**

  We do not necessarily oppose an in-patient substance abuse rehabilitation center or live-in halfway houses being included as a sensitive use. However, a clear

definition of "substance abuse rehabilitation center" needs to be provided. NAICS codes include 4 separate codes relating to substance abuse rehabilitation centers.
621420 – Outpatient Mental Health and Substance Abuse Centers
This code includes "Psychiatric centers and clinics (except hospitals), outpatient" "Drug addiction treatment centers and clinics (except hospitals), outpatient", and "Substance abuse treatment centers and clinics (except hospitals), outpatient."
622210, 622310, & 623220 –

These codes relate to substance abuse hospitals, residential or inpatient drug treatment centers, and halfway houses.
GLACA is concerned that, without further clarity, a psychiatrist practicing outpatient drug abuse counseling or therapy codified under NAICS 621420 could be considered a sensitive use requiring a buffer. Not only would this create a number of otherwise accessible areas to be zoned out of availability for collectives, but this would also cause enforcement issues where entire office buildings would have to be scanned to find out what type of treatment a practicing therapist might be providing.
We would urge the council to specify the only inpatient substance abuse centers and hospitals or residential halfway houses (specifically codified as NAICS codes 622210, 622310, and 623220) are referred to in this section.

- **Section 1E – deleting numerical plant and weight counts and replacing with "No medical marijuana collective shall possess more dried marijuana plants of any size on the property than that permitted pursuant to state law."**

  While we support the removal of the burdensome and unnecessarily low limit of 100 plants and 5 pounds as well as tying plant and weight counts to the per-patient allowance already established under state law, we would like to, however, point out that this language only references "dried marijuana plants" and makes no reference to actually living marijuana plants.
  We would urge the council to amend the language to specify that "*no collective shall possess more dried marijuana or cultivate more marijuana plants than is permitted pursuant to state law.*"

- **18L (ZINE-REYES) – restricting patients to membership at only one collective**

  We are concerned with both implementation and enforcement of this regulation. Collectives do not have access to the records of other collectives. Therefore, aside from taking the patient at their word that the patient is not a member at any other collective, the collective would have no way of actually implementing this regulation. Dishonest patients might join more than one collective, and all the collectives may be found in violation of this regulation should the City cross-reference membership records despite the collectives having no way to self-enforce this regulation.

Short of the City maintaining a database of patients including very specific and personally identifying information (such as a driver's license number) accessible at all times to registered collectives, compliant collectives are not sure how to abide by this regulation.

We would ask that you take these concerns into consideration to allow compliant collectives to have clarity on what is being required of them in the ordinance, as well as make enforcement of the ordinance clear for the agencies participating in the enforcement process.

Again we would like to remind you that the Greater Los Angeles Collectives Alliance remains committed to work with the City Council to develop sensible regulations that address community concerns and protect safe access to medicine. We thank the Council for their time.

Respectfully,

The GLACA Steering Committee:

Yamileth Bolanos

Don Duncan

Jennifer Ferrell

Barry Kramer

1649 S. La Cienega Blvd., Los Angeles, California 90035
Phone: (310) 384-3668, Fax: (310) 246-9358

Item 10

Regarding - C.F. 08-0923

To my local representatives,

As a long-time Eagle Rock resident, with multiple family members who own 3 homes here and who are raising small children, I feel extremely concerned about the number of dispensaries that Eagle Rock has been subjected to. With the number of elementary schools, daycare centers and after school programs, I feel that we do not need multiple resources for marijuana. This draws many people to Eagle Rock, who may or may not be truly ill with those needs. Can you place the dispensaries next door to police stations or fire stations so there is some nearby patrol should there arise the need? Can you place a fraction of these 20+ dispensaries in Beverly Hills? Can you reassure parents of children that they will not encounter unnecessary circumstances on their way to and from school? Please consider this as you continue to monitor the MMD situation here in Eagle Rock. Please also keep this issue in mind when the time for re-election comes. My family, having lived here for decades and being involved with the Eagle Rock LAPL Branch, the Eagle Rock Elementary & High School and many other local organizations, and being a close friend of Antonio Villaraigosa, has a lot of influence here and we will be happy to use it. We just want the best for Eagle Rock, which is a lovely small and family-friendly community.

Best,
Tania Verafield
5224 N. Maywood Ave.
Los Angeles, CA 90041

Item 10

City Council

In regard to MMD's in the city of Los Angeles: C.F. 08-0923

It is imperative that they are no closer than 1000 feet to sensitive areas like schools, day cares, churches etc....

There needs to be a cap on the number of them in a community.

Prop 215 passed a not for profit collective model where members of the collective cutivate and share their harvest. It did not pass store fronts.

You need to do criminal and background check on all those involved in the collective.

You need to do due diligence on the doctor's who are handing out recommendations. It should not be accessible because of a 10 minute on site visit. A patient should have to provide detailed medical documents outlining their condition.

thank you,

Darryl Hunter

From: Trish Neal

Item 10

Subject: MMD

C.F. 08-0923

Please discontinue the MMD's in Eagle Rock. We have worked so hard to build a clean and orderly little community. Now-it is being ruined by them. I live on College View in Eagle Rock. An MMD opened on the corner of College View and Colorado several months ago. Now, there is always gangsters racing up and down the street at high speeds, pot heads hanging around for long periods of time and more litter building up day by day around it. It brings low life people into our community. These are people who clearly live off the system, jobless and milking our state for every last dollar.

I work and own a home on College View as well as a business in Eagle Rock. I am raising three children who cannot walk to the end of their own street. They must now take a detour just to get home to avoid the riff-raff which are clearly not from this community.

These MMD's must be stopped before someone is hurt or killed. These people have no concerns for the community or it's safety. And the funny thing is-people say they are used for the sick elderly-yet I have never seen an elderly sick person come out or go into an MMD. Again, they are all gangster looking or drug addicted junkies that frequent them.

Thank You,

Patricia Vuagniaux
Concerned Citizen

Item 10

Sunland-Tujunga Neighborhood Council

IMPROVING THE QUALITY OF LIFE IN SUNLAND TUJUNGA
7747 Foothill Blvd., Tujunga, CA 91042 • www.stnc.org • 818-951-7411 • FAX 818-951-7412

RECEIVED
NOV 24 2009

November 9, 2009

Sunland-Tujunga Neighborhood Council
Community Impact Statement
Council File Number 09-0360

Mayor
City Council
City Clerk

The Sunland-Tujunga Neighborhood Council supports draft ordinance 09-0360. We request that the City Council pass the draft ordinance now without further delays; that the final ordinance not authorize any activity beyond the limited scope of the State of California's medical marijuana laws; and that this ordinance include the following urgency clause "The City Council finds and declares that this Ordinance is required for the immediate protection of the public peace, health and safety."

Medical marijuana dispensaries are proliferating in Sunland-Tujunga. At the present time there are 14 known medical marijuana dispensaries in a three square mile area. To the best of our knowledge none of them have been properly licensed or permitted. We do not believe that there can be a need for this number of dispensaries for truly medical purposes in an area as small as Sunland-Tujunga.

The final ordinance must be completely in line with State of California law and it should not include a permitting scheme. When the PLUM committee asked the City Attorney for clarification on certain court cases they were given legal advice on those and several others they had not asked for but were recently published. One case, the City of Claremont v Kruse clearly drew the distinction that the CUA and MMP did not mention or require dispensaries and that Cities had the right to ban them as a nuisance as the City of Claremont did. This is from the City Attorney report *"The court upheld the trial court's determination that defendants' dispensary constituted a nuisance per se based on violations of the City's municipal code. The court also addressed the applicability of both the CUA and the MMP and found that neither preempted the City's actions. In fact, both the CUA and MMP expressly allow local regulation. Significantly, in discussing the CUA, the court noted the narrow nature of the initiative, and the abundant case law supporting this view. For example, courts have determined that the CUA did not create a 'constitutional right to obtain marijuana: and they have refused to expand the scope of the CUA to allow the sale or nonprofit distribution of marijuana by medical marijuana cooperatives. (Ibid.; Peron, supra, at pp.1389-1390.) Kruse at p. 17. The California Supreme Court has explicitly endorsed, in Mentch and numerous other cases involving medical marijuana, strict construction of the CUA and cautioned against a broad interpretive approach. As proposed in the Office's draft ordinance, we can adhere to this approach and also provide compassionate access to medical marijuana through the recognition and regulation of collective cultivation projects."*

Approved by the Land Use Committee on 11-9-09 - 10 ayes, 0 noes, 2 abstain

Approved by the STNC Board – unanimous vote on 11-18-09

Cindy Cleghorn

Cindy Cleghorn, Secretary

Sunland-Tujunga Neighborhood Council