White Paper on Medical Marijuana Dispensaries

Prepared for FixLosAngeles.com

July 26th, 2009

by Scott McNeely & James O'Sullivan

Table of Contents

Addendum

The following addenda reflect materials not available, known or decided upon in a court of law at the time of the previously published July 10, 2009 paper. For the purposes of this paper, the terms "Proposition 215" and the "Compassionate Use Act" ("CUA") are interchangeable, and the terms "SB420", "MMP" and "MMPA" are interchangeable.

VI. Legal Questions

Below are brief summaries of cases that have been decided upon by the courts or are in the appeals process under the Compassionate Use Act. These cases are relevant to how a city attempts to regulate medical marijuana through zoning standards. The points addressed in these cases include:

- The right of a municipality to ban dispensaries
- The legality of SB 420 (Medical Marijuana Program) to amend Prop 215 without voter approval, as stipulated by the California State Constitution (unless authority is granted in the proposition)
- Federal law superseding State law
- Right of possession and transportation of medical marijuana (as outlined in SB 420)

The court challenges, in effect, will further define the legality of Prop 215 and the subsequent Medical Marijuana Program created by SB 420. These and future challenges will more than likely question the legal nature of establishing a business entity whose purpose is to grow and distribute marijuana, which is in direct conflict with federal law as written, regardless of its intended use or the political climate of federal enforcement agencies. Neither Proposition 215 or SB 420 adequately address this question.

Although some court decisions *at a state level* may be found to be favorably argued and addressed in Proposition 215 and SB 420, the underlying legal foundation as applied to federal law may invalidate the lower courts findings on appeal.

Of particular interest is *Qualified Patients v City of Anaheim*. Case No. G040077, 4th District Court of Appeals, Division 3. The case results from the adoption of an ordinance by the City of Anaheim banning the operation of medical marijuana dispensaries. Qualified Patients Association who sought to operate a medical marijuana dispensary, sued in court to challenge the ordinance. The court found that such a ban did not violate the CUA because the CUA was not intended to occupy all areas of law concerning medical marijuana. Rather, the CUA merely exempted certain medical marijuana users from criminal liability under two specific California statutes. The Qualified Patients Association has appealed this decision. Several cities with similar ordinances have joined the City of Anaheim on appeal.

It will also be interesting to see if the Appeals Court decides, as in *People v Kelly*, that the legislature overstepped their bounds with the MMP. The lower court stated Section 11362.77 amends the CUA, and therefore it is unconstitutional. Legislative acts, such as the MMP, are entitled to a strong presumption of constitutionality. The Legislature nonetheless cannot amend an initiative, such as the CUA, unless the initiative grants the Legislature authority to do so. (Cal. Const., art. II, § 10, subd. (c);8 *People v. Cooper* (2002) 27 Cal.4th 38, 44; *Amwest Surety Ins. Co. v. Wilson* (1995) 11 Cal.4th 1243, 1251-1253, 1256.) The CUA does not grant the Legislature the authority to amend it without voter approval. Therefore, if section 11362.77, which was enacted without voter approval, amends the CUA, then it is unconstitutional. The legislature's effort to clarify what is a "*reasonable*" personal medical supply of marijuana is unconstitutional because the Proposition 215 initiative did not authorize the legislature to tamper with its statutes. California. Attorney General Brown has appealed this case.

Since Prop 215, the CUA never addressed dispensaries one wonders if people would have voted for prop 215 had there been language detailing dispensaries as a commercial enterprise?

U.S. Supreme Court

Gonzales v. Raich, (2005) 125 S. Ct. 2195. The United States Supreme Court held in this decision that the possession, growing, sales and use of marijuana continues to be illegal since it is classified as a Schedule I drug under Federal law. Further, under the supremacy and commerce clauses of the Constitution, federal regulation of marijuana supersedes the Compassionate Use Act. As a Schedule I drug, the manufacture, distribution, or possession of marijuana is a criminal offense, with the sole exception being use of the drug as part of a FDA pre-approved research study.

U.S. v. Oakland Cannabis Buyers' Cooperative, (2001) 532 US 483, 121 S. Ct. 1711. The United States Supreme Court held in this case that there is no medical necessity exception to the Federal Controlled Substances Act's prohibitions on manufacturing and distributing marijuana.

California Supreme Court

Ross v. Raging Wire Telecommunications, Inc., (2008) 42 Cal 4th 920; In this case; the California Supreme Court ruled-that an employer may require pre-employment drug "tests and may make employment decisions based on the use of medical marijuana even if such use is not at the workplace., The California Fair Employment Housing' Act (FEHA) does not require employers to accommodate the use of illegal drugs, which marijuana remains under federal law.

People v. Wright, (2004) 40 Cal. 4th 81. The California Supreme Court ruled in this case that under the MMP, the CUA medical marijuana cultivation and possession defense may include transportation.

People v. Mower, (2002) 28 Cal. 4th 457. The California Supreme Court in this case concluded that the use of the medical marijuana defense provided by the Compassionate Use Act requires that the defendant raise a reasonable doubt as to the facts underlying the defense, as opposed to requiring that the defendant prove the medical need by a preponderance of evidence. In order to use the defense of primary caregiver status, the defendant has to present that he or she consistently has assumed responsibility for either one's housing, health or safety before asserting a defense.

California Courts of Appeal

People v. Kelly, (2008) Cal. 4th App. _____ May 22, 2008, Slip Op B195624. The Court of Appeals ruled in this case that the portion of the Medical Marijuana Program, which imposes limits on the amount of marijuana a qualified patient can possess (8 dry ounces, 6 mature plants or 12 immature plants, See Health and Safety Code 11362.77); impermissibly amended the Compassionate Use Act. Because the Compassionate Use Act was adopted by initiative, it may be amended only by voter approval and not the legislature. The Court of Appeals was careful to state that only Section 11362.77 of the Medical Marijuana Program was adopted improperly. It is not known at this point whether all of SB 420 is unconstitutional, and what the impact on the Compassionate Use Act will be. The State through the Attorney General's Office has asked the California Supreme Court to review this decision.

City of Garden Grove v. Superior Court of Orange County. (2007) ____ Cal. App. 4th ____ (Slip Op G036250, November 28, 2007. This Court of Appeals case held that medical marijuana seized as evidence must be

returned to the defendant who establishes that he/she legally possessed medical marijuana. Federal law does not preempt the due process right to return of property lawfully held, even if it is held lawfully only in accordance with state law.

People v. Urziceanu (2005) 132 Cal. App. 4th 747, 881. The Court of Appeals acknowledges in this case that the Compassionate Use Act did not authorize the collective cultivation and distribution of medical marijuana. This activity was authorized instead by the Medical Marijuana Program later enacted, which represents a dramatic change in the prohibitions on the use, distribution and cultivation of marijuana for qualified patients and primary caregivers.

People v. Tilehkooh (2003) 13 Cal. App. 4th 1433. The Court of Appeals held in this case that the Compassionate Use Act provides a defense to probation revocation. Additionally, the Court stated that California courts do not enforce federal criminal statutes, particularly the federal marijuana possession laws.

California Trial Courts

Qualified Patients Association v. Anaheim (2008) Orange County Superior Court. Case #07CC09524. The trial court in this case upheld the City of Anaheim's ordinance banning all medical marijuana dispensaries from operating in the City. This decision has been appealed.

I. Introduction

"Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act ("MMPA") (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 et seq.

The legislature also required the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Safety Code, § 11362.81(d).1) Among other requirements, it purports to direct all California counties to set up and administer a *voluntary* identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have unsuccessfully challenged provisions of the Act. In May 2009, the United States Supreme court refused to hear a case brought by San Diego and Riverside Counties involving compliance with MMPA. Both are now moving to comply with SB420.

With respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have permitted such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community.

This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. Potential recommendations, scenarios and community suggestions will also be included. Lastly, it also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences."[1]

[1] California Police Chiefs Association. (http://www.californiapolicechiefs.org/)

II. Federal Law

"Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana — even with a physician's recommendation for medical use."[2]

The Federal Controlled Substances Act.

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

On March 18, 2009, U.S. Attorney General Eric Holder stated the position of the Obama administration and the more relaxed enforcement policy of the DEA as follows: "The policy is to go after those people who violate both federal and state law, to the extent that people do that and try to use medical marijuana laws as a shield for activity that is not designed to comport with what the intention was of the state law. Those are the organizations, the people, that we will target."[3]

III. California Law

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation *or* their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California state law. Additionally, a primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—*for profit*.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana.

a. Proposition 215

The proposition ensures that seriously ill patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal

[2] California Police Chiefs Association. (http://www.californiapolicechiefs.org/)
[3] *Los Angeles Times*, "U.S. won't prosecute medical pot sales; Atty. Gen. Holder's statement is hailed as a landmark change in policy and echoes a pledge by Obama", Josh Meyer; Scott Glover, March 19, 2009.

prosecution or sanction. "Primary caregiver" is defined as the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

b. SB420

i. MMPA registry

California's Medical Marijuana Program (MMP), established to provide a voluntary medical marijuana identification card, issuance and registry program for qualified patients and their caregivers has, to date, issued 31,205 cards, in the entire state. A Medical Marijuana Identification Card is usually valid for one year, and helps "…law enforcement identify the cardholder as being able to legally possess certain amounts of medical marijuana under specific conditions."

Cards Issued – Fiscal Years	Total	Patient	Caregiver	*Medi-Cal**
2008/09	8,304	7,302	1,002	*2,681*
2007/08	8,393	7,359	1,034	*3,076*
2006/07	10,273	8,980	1,293	*3,260*
2005/06	4,150	3,593	557	*1,346*
2004/05	85	70	15	*No Data*
Total Issued To Date	**31,205**	**27,304**	**3,901**	***10,363***

**Medi-Cal Numbers are a subset of and included in the Patient Totals.*
http://www.cdph.ca.gov/programs/mmp/Pages/Medical%20Marijuana%20Program.aspx
Note: *It is unknown if the yearly figures above represent cumulative or new application submissions.*

c. Attorney General's Guidelines

Guidelines Regarding Collectives and Cooperatives

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order to collectively or cooperatively cultivate marijuana for medical purposes."

Statutory Cooperatives: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.)

No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons."

Collectives: California law does not define collectives, but the dictionary defines them as "a business, farm, etc., jointly owned and operated by the members of a group."

A collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues.

d. Primary Caregivers

A primary caregiver is a person who is designated by a qualified patient and "has consistently assumed responsibility for the housing, health, or safety" of the patient. (§ 11362.5(e).) "Consistency" is the key to meeting this definition.

California courts have emphasized the consistency element of the patient-caregiver relationship. Although a "primary caregiver who consistently grows and supplies medicinal marijuana for a section 11362.5 patient is serving a health need of the patient," someone who merely maintains a source of marijuana does not automatically become the party "who has consistently assumed responsibility for the housing, health, or safety" of that purchaser. (People ex rel. Lungren v. Peron (1997) 59 Cal.App.4th 1383, 1390, 1400.)

A person may serve as primary caregiver to "more than one" patient, provided that the patients and caregiver all reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age. (§ 11362.7(d)(2).)

Nothing in the law authorizes any individual or group to cultivate or distribute marijuana for *profit*. (Cal. H&S Code sec. 11362.765(a).) The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).)(§ 11362.765(c) "A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . shall not, on the sole basis of that fact, be subject to prosecution" for possessing or transporting marijuana.)

It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves "cooperatives," but function like storefront dispensaries, suffer this same fate. In People v. Mower, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana. He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he "consistently had assumed responsibility for either one's housing, health, or safety" before he could assert the defense.

The key to being a primary caregiver is not simply that marijuana is provided for a patient's health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (People v. Mentch (2008) 45 Cal.4th 274, 283. Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient's health needs beyond just supplying him or her with marijuana.

IV. Laws in Other Municipalities

The following table provides a comparison of the types of restrictions and/or guidelines adopted by a sampling of other cities in regards to regulating medical marijuana dispensaries.

	West Hollywood	San Francisco	Oakland	Laguna Beach
Caps on Number of Dispensaries	Yes / 4	No	Yes/4	No
Location Restrictions by Zoning	Yes	Yes	Yes	Yes
Application Review Panel	No	No	Yes	Yes
Security Requirements (Store / Area / Both)	Both	Yes	Yes	Yes
Onsite Consumption	No	Yes	Yes	No
Onsite Sale of other products	No	Yes	No	No
Physician documentation of recommendation	Yes	Yes	Yes	Yes
Limit on amount of product per transaction	Yes	Yes	Yes	Yes
Limit on in-store cash amount	Yes	No	No	No cash
Background checks of dispensary operators and staff	Yes	Yes	Yes	Yes
Regular periodic training of dispensary staff by police or regulatory body	Yes	No	No	No
Unrestricted access for law enforcement	Yes	Yes	City Mgr.	Yes
Advertising allowed	No	Yes	Yes	No
Allows on-site recommendation of marijuana	No	No	No	No
Restrictions on locations to sensitive use	Yes	Yes	Yes	Yes
Broadening of "sensitive uses" as it applies to MMDs	Yes	Yes	Yes	Yes
Only cooperatives and/or collectives can apply to open an MMD	NA	Yes	No	Yes

V. Situation Overview

a. History

The approach that Los Angeles has taken regarding marijuana dispensaries has allowed their number to balloon from 4 in 2005 to approximately 880 at the time of this writing. As early as 2005, it was apparent that there was a need to deal with dispensaries.

On May 3, 2005 Council Member Dennis Zine's motion asked that the LAPD, with the assistance of the City Attorney's office, report to the Public Safety Committee within 60-days regarding facilities that distribute medical marijuana located within the City of Los Angeles, complaints received regarding such faculties, criminal activity concerns, and recommended actions necessary to ensure that facilities are operated in a legal manner and that City zoning appropriately addresses the unique citing considerations for such faculties.

On July 27, 2005 the Los Angeles Police commission approved a LAPD report with recommendations on Medical Marijuana dispensaries.

On October 19, 2006 the City Attorney's office presented a report to the City Council Public Safety Committee giving their opinion on the options open to the City. It stated that (A) the City could move to ban dispensaries but might possibly be sued by proponent groups of Medical Marijuana. It also stated that 30 cities and counties in the State had banned dispensaries including Monterey Park, Pasadena, Torrance and Riverside.

(B) They could move to regulate dispensaries by imposing a moratorium as other cities had done by issuing an Interim ordinance prohibiting land uses that may be in conflict with a contemplated zoning proposal when necessary to protect the public safety, health and welfare. The report went on to state that if dispensaries were to be allowed in Los Angeles they must be Collectives allowed under State law, profits are prohibited and only qualified patients and primary caregivers may cultivate marijuana within specified limits-is critical.

On January 18, 2007, the Police Commission approved yet another report by the LAPD on Medical Marijuana dispensaries recommending that it be sent to the City Council Public Safety and Planning and Land Use Management Committee. The report recommended that the City Council enact a moratorium on any further medical marijuana dispensaries and immediately restrict current and future dispensaries from being located within 1,000 feet of any school, day care facility, church or house of worship, nursery, public park, or any location utilized for the exclusive care of children between the ages of 0-18 years old, and the hours of operation be restricted to the hours of 10:00 A.M. until 6:00 P.M. No facility shall be grandfathered in and all must comply with these conditions within six months of the adoption of the moratorium. Also that the City Council approve and impose the list of restrictions defined in this report on all existing and future medical marijuana dispensaries.

On August 1, 2007 an Interim Control Ordinance (ICO) was passed by City Council to halt further applications of Medical Marijuana dispensaries. Unfortunately it contained a Hardship Exemption stating that the City Council, acting in its legislative capacity and by resolution, may grant an exemption from this Ordinance in cases of hardship duly established to the satisfaction of the City Council. An application for a hardship exemption shall be obtained from and filed with the City Clerk.

This Exemption opened the flood gates and hundreds of applications were submitted to the City Clerk's office. What the City Council did not do was establish any guidelines as to what constituted a hardship. The Planning and Land Use Management Committee, which has jurisdiction over these applications, did not hold hearings on any applications for a hardship exemption until June 2009. During that period of time over 750 applications piled up as dispensary after dispensary filed their hardship exemption papers and opened their doors.

b. L.A.'s Response to Proliferation

The City of Los Angeles on June 19, 2009 adopted Ordinance number 108749 amending Ordinance No. 179027, commonly referred to as the Medical Marijuana Dispensaries Interim Control Ordinance.

Sec. 4. **URGENCY CLAUSE**. The City Council finds and declares that this ordinance is required for the immediate preservation of the public peace, health and safety for the following reasons. Ordinance No. 179027 prohibited the establishment of new Medical Marijuana Dispensaries unless a hardship exemption was adopted by the City Council. During the pendency of Ordinance No. 179027 several hundred Medical Marijuana Dispensaries filed requests for hardship exemptions with the City Clerk's Office. The effect of all of these requests for hardship exemption is to encourage the unregulated proliferation of Medical Marijuana Dispensaries. The recommendations of a permanent ordinance reflecting the spirit and intent of the Compassionate Use Act could be undermined if new dispensaries are allowed. The number of dispensaries operating within the City is escalating. The Los Angeles Police Department has received complaints from neighbors, business owners, and concerned citizens regarding the negative impacts of dispensaries, including flyers, leaflets and stickers advertising dispensaries being placed on school grounds; smoking marijuana outdoors within 1,000 feet from schools; operating near sensitive uses; and constant activity around dispensaries at all hours. Citizens have raised concerns that children will have access to marijuana for recreational use, and that there will be an increase in crime particularly in areas in close proximity to residences, schools, places of worship and other sensitive uses, as well as concerns regarding a lack of regulations for the hours of operation. Without regulations for the location of a dispensary and hours of operation, the result has been the establishment of dispensaries in close proximity to sensitive uses operating at all hours. This ordinance will delete the hardship exemption provision of Ordinance No.

179027 in order to prevent unregulated proliferation of new dispensaries and provide the City time to develop regulations relative to distances from sensitive uses, hours of operation, compatibility to surrounding uses, and other related land use issues.

Now the City of Los Angeles is proposing to add, Article 6.6 to Chapter IV of the Los Angeles Municipal Code in order to regulate medical marijuana dispensaries operating within the City of Los Angeles, and to establish regulatory fees. We believe that in order for stakeholders to fully understand, appreciate and give input on this issue soon to be before the City Council it is necessary to understand the laws and policies currently regulating Medical Marijuana.

c. Do We Need Them?

Are medical marijuana storefronts necessary?

The California Police Chiefs Association does not think so. They state in their White Paper that "Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court:"[4] "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra, 125 S.Ct. at p. 2214*.)

How many people actually need medical marijuana?

While the actual number is unknown it would be instructive to examine the growth of Medical Marijuana Dispensaries and the number of people that have sought the protection SB 420 offers and availed themselves of Medical Marijuana Identification Cards ("MMIC").

That information has been difficult to come by as has information on marinol use, legal marijuana in pill form. Conflicting stories abound. There is a war of words between the DEA and recreational marijuana users that is really interesting but at the end of the day, not helpful. USA Today in a 4/08/07 story (Employers grapple with medical marijuana use), stated that 300,000 people in the USA use medical marijuana. This was based on estimates from data on registered medical users from Americans for Safe Access (ASA), a non-profit based in Oakland, that has pushed for greater acceptance of medical marijuana. We will go with that number for this paper. In 2007 the population of the United States was 306,000,000. Using that number 300,000 users of medical marijuana are less that .001% of the population.

The population of Los Angeles is currently around 4,100,000. Based on the above assumption, there could be approximately 4,100 patients requiring medical marijuana in Los Angeles. It is unknown how many of those patients or their caregivers are growing their own marijuana, individually or as a part of a cooperative. What is known is that 31,205 applications, including renewals, have been submitted under SB 420 to obtain a Medical Marijuana Identification Card throughout California.

d. Storefront Dispensaries & Cooperatives / Collectives

"On November 10, 2005, there were 4 known medical marijuana dispensaries operating (legal or illegal) in the City of Los Angeles. On November 30, 2006, there were 98 known dispensaries. This is an increase of

[4] California Police Chiefs Association. (http://www.californiapolicechiefs.org/)
http://www.californiapolicechiefs.org/nav_files/marijuana_files/MarijuanaDispensariesWhitePaper_042209.pdf

2,350%."[5] Today the current number of hardship applications filed for MMDs is estimated to be over 880. This does not include MMDs that have not filed or are operating illegally. It's clear due to the lack of supporting documentation from medical marijuana dispensary applicants seeking protection under the hardship exemption that the primary caregiver/patient relationship is not being observed as set forth by the State.

e. Harvest/Consumption

The California Attorney General has suggested limits in the guidelines on the amount of marijuana allowed to be on-hand at any given time *per patient*. The limit is stated as 8oz of dried marijuana, or 6 mature plants, or 12 immature plants. Although there is a stated limit, the guidelines also state that there is nothing to prohibit possessing a larger amount if there is a patient need, as recommended by a physician.

The Table below extrapolates the potential yield and value of 'on-hand' marijuana crop using the guidelines suggested by the California Attorney General. It's conceivable to estimate the number of cooperatives necessary to service an existing population that requires medical marijuana by applying these figures to the number of registered medical marijuana cardholders, if the program was made mandatory.

			6 mature plants(2)	
	1 oz	8 oz	Indoor (3.5oz / plant)	Outdoor (7oz / plant)
Marijuana Cigarettes (.02 oz = 1 cigarette)	56	448	1,176	2,352
$ / oz(1)	$ 173.93	$ 1,391.5	$ 3,652.53	$ 7,305.06

(1) http://www.drugscience.org/Archive/bcr2/estproc.html
(2) The yields for *immature* plants cannot be accurately estimated without knowing number of plants per planting time. It's assumed that with 12 immature plants with a growing period of 6-8 weeks, the on-hand amount of marijuana would be greater than estimated above. However, the lower yield will be used here for discussion purposes.

Based on court cases, one being People v. Mentch, as well as averages compiled from a sampling of cannabis user groups, medical organizations and state studies, the average patient would consume between 1 to 4 marijuana cigarettes per day. The Attorney General guidelines (as reflected in the table above) appear to be more than adequate to fulfill the needs of an average patient while still accommodating potential increased usage to treat pain, as recommended by a physician. The monetary value of the crop would also indicate the immense potential of inviting criminal activity if strong regulations are not crafted and good practices are not put into place.

f. Liability Issues

Marijuana is still classified as a Schedule 1 drug. City officials will probably not be held liable should they pass an ordinance supporting Medical Marijuana Cooperative Dispensaries. If the Ordinance has a Zoning element the exchange between Councilmember Parks and the City Attorney should be explored.

On October 5, 2007, Councilmember Parks asked for clarification on several issues concerning Medical Marijuana Dispensaries. On May 5, 2008, the City Attorney answered those questions in a letter to the City Council Public Safety Committee.

Question 3 from Council Member Parks:

"The legality of the City through land use regulations to enable businesses to engage in illegal activities as defined by Federal Law."

[5] L.A. Police Chief Intradepartmental Correspondence, "*Report on Facilities that Distribute Medical Marijuana within the City of Los Angeles*", December 2006. *This document can also be on FixLosAngeles.com.

Answer to Question 3 from the City Attorney:

"Land use regulations do not exempt someone from complying with federal or state law. To the extent that federal law prohibits the possession, cultivation, distribution, and sale of marijuana, land use regulations cannot permit these activities, nor can they "legalize" business activities that are illegal under state law, including the sale of marijuana in violation of Health and Safety Code section 11360."

Given their answer, it is unclear how the City Council can amend the Municipal Code to include these Cooperative Dispensaries.

g. Adverse secondary impacts

i. Ancillary crimes

Armed robberies and murders

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home invasion robbery targeting medical marijuana. And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because "medical marijuana is such a controversial issue."

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man's throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison. And, on August 19, 2005, 18-year-old Demarco Lowrey was "shot in the stomach" and "bled to death" during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowery was hit by gunfire and "dumped outside the emergency entrance of Children's Hospital Oakland" after the shootout. He did not survive.

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over $250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane's home in Laytonville, California while yelling, "This is a raid." Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen. Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana. More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.

On October 1, 2008, Security guard Noe Campos Gonzalez, 25, a Latino man from Los Angeles, died after he was shot while working at a medical marijuana clinic in the 800 block of South La Brea Avenue in the Miracle Mile, about 3:45 p.m. Two men were arrested the next day in connection with the apparent robbery attempt at the La Brea Collective, a medical marijuana dispensary, said Officer April Harding of the Los Angeles Police Department.

Gonzalez was working when "several armed" men walked into the business "with the intent to rob the dispensary," Lopez said. A struggle started, and one of the men pulled out a handgun and shot Gonzalez multiple times. The men ran off, Lopez said. Gonzalez was taken to a hospital, where he died at 4:20 p.m., according to the Los Angeles County coroner's office.

Burglaries

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.42 And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries "crime magnets" after a burglary occurred in one in Claremont, California. On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders. Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006. After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was "prompted by incidents of armed burglary at some of the city's eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise . . . ."

June 19, 2009. The Los Angeles Police Department is looking for four people who robbed at gunpoint a West Los Angeles medical marijuana dispensary, the second such incident in L.A. this week. The suspects robbed the dispensary on Cotner Avenue around 11 p.m. Thursday, getting away with pot and $15,000 cash, according to a LAPD spokesman. They fled in a Cadillac. It's unclear whether the case is related to a robbery of a dispensary Wednesday in Reseda. But police are looking for links in both cases.

ii. Other adverse secondary impacts in the immediate vicinity of dispensaries

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.

iii. Secondary adverse impacts in the community at large

Unjustified and Fictitious Physician Recommendations

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about $150 a pop." Other individuals just make up their own phony doctor recommendations, which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake

medical marijuana recommendations were readily able to purchase marijuana from a clinic. Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.

Proliferation of Grow Houses in Residential Areas

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . . ." Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas. In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire. Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels. Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year. With a street value of $3,000 to $5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between $4.5 million and $10 million a year . . . ." The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.

Life Safety Hazards Created by Grow Houses

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500- square-foot tract house used for growing marijuana can generate monthly electrical bills from $1,000 to $3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

Increased Organized Gang Activities

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington. In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.

Exposure of Minors to Marijuana

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations. Dispensaries also sell marijuana to minors.

Impaired Public Health

Indoor marijuana grow operations emit a skunk-like odor, and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold, all of which are dangerous to any children or adults who may be living in the residence, although many grow houses are uninhabited.

Loss of Business Tax Revenue

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

Decreased Quality of Life in Deteriorating Neighborhoods

Both business and residential Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans, and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.

iv. Ultimate conclusions regarding adverse secondary effects

On balance, any utility to medical marijuana patients in care-giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

VI. Legal Questions

From the Attorney Gerneal's Guidelines

The Federal Controlled Substances Act.

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

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.)

Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court* (*Kha*) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

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

VII. Conclusion & Recommendations

About 4 weeks prior to the passage of Proposition 215, the initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician, Senator Diane Feinstein said that it was so poorly written that "you'll be able to drive a truckload of marijuana through the holes in it. While it seems simple, the devil is in the details or, in this particular bill, the lack of details." Senator Feinstein's words proved to be extremely prophetic.

What was and is still missing is a program that will safely deliver medical marijuana to patients who need it. The State could not "legalize" marijuana because it would be in conflict with the Controlled Substance Act. SB 420 helped somewhat but still did not go far enough. The State should have followed up with a *mandatory* ID Card system, not a voluntary one, and taken control of distribution to qualified patients. Instead what we have is an ill-conceived plan that depends on the Drug Enforcement Agency not interfering with patients while those same patients are left scrambling to acquire marijuana through friends and relatives, who themselves risk prosecution to help loved ones. Not only is this an example of inhumane law, it is not good law.

It now appears from the Attorney General's report that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront "may be" lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in Sections IV(A) and (B) of his letter are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. It also appears that the DEA will now not interfere with Cooperatives that are properly organized.

The City of Los Angeles stands ready to draft an ordinance creating such Cooperatives and will enshrine them into the municipal code between article 6.5 (*Regulation of over the counter drugs.*) and article 6.8 (*Alcoholic beverages – Warning signs*). A question Councilmembers should address before voting for any ordinance is why the Attorney General thinks these Cooperatives "may be" lawful under California law. Is "may be" enough of a clarification to change our municipal code? The City Attorney should also be asked to explain why issuing permits to Cooperatives does not violate Federal law? Sticking in a disclaimer that the operators of cooperatives can not violate State and Federal law may legally get the City off the hook but it also may not. At the very least, there exists the strong possibility that the City will be exposed to further lawsuits.

The City Council, if voting on an ordinance, should take steps to empower the LAPD, and thereby the law abiding citizenry. One way that can be done is to *require* that medical marijuana patients or their caregivers file for a State ID card within 30 days of being issued a letter from a doctor. Although SB 420 states the MMPA is a voluntary program, it does not speak to the implementation of this program as applied to dispensaries. State ID cards provide police officers with a better tool for determining that a person with marijuana in their possession or under their control is a person falling under the protection of Proposition 215 and SB 420. Requiring mandatory ID cards would also allow the State to better chart the number of patients who need and use Medical Marijuana. This would make it easier to make changes to current Ordinances to benefit patients.

What Prop 215 and SB 420 lack most of all is the means for patients to legally acquire medical marijuana. It holds out a false hope that has yet to be fulfilled. What the State did was create a system that encouraged illegal activity. The criminal element did what it always does; it provided what Government couldn't or wouldn't provide. Patients with true life-threatening and debilitating illnesses were forced to find a connection who would make good on the promise of Proposition 215.

It appears from the Attorney General report that Medical Marijuana cooperatives, properly organized may be lawful in the State of California. Should the City Council signal their intent to approve an Ordinance regulating Medical Marijuana Cooperative Dispensaries, our task is to make sure that all applications for a Medical Marijuana Collective or Cooperative are properly organized and regulated.

The goal here is to maintain accessibility of medical marijuana for those seriously ill patients who require it. However, with unchecked potential for profit and illegal activity it's imperative that the physician, caregiver and patient relationship be made clear, simple and ongoing.

State law is clear in its intent in providing marijuana to those who are considered seriously ill. The language is also clearly favoring a virtually unenforceable environment due to the weak connection of the primary physician, primary caregiver and patient to the actual procurement of medical marijuana. We point to the following dilutive language that weakens enforcement possibilities:

1. The ID card program is voluntary.
2. The recommendation of the physician can be undocumented.
3. The ability to grow or obtain varying amounts of marijuana is determined by the patient in determining their own needs.
4. Lack of direct accountability for the physician in recommending medical marijuana.

Prop 215 and SB420 remain silent on the following and could provide an opportunity to strengthen accountability, maintain and make evident the physician-caregiver- patient relationship, and maximize enforcement with the least amount of encumbrances:

1. Mandate that only cooperatives, a legally recognized state entity, operating as a non-profit, be the only entity that is allowed to open a dispensary.
2. Mandate that primary physicians giving direct care to patients be an administrative member of the cooperative.
3. Members of cooperatives must have a MMIC card.
4. Limit the number of cooperatives that any individual can join (this includes physicians as well as patients).
5. Maintain a county database of cooperative membership and meet the fulfillment requirements of SB420.
6. Require a police panel review of potential applicants seeking to open a cooperative.
7. Maintain a financial review board to review financial records on a quarterly basis.
8. Require that dispensaries be cashless.
9. Require community input before permitting the opening of a dispensary.
10. Use zoning restrictions to maintain distances from sensitive uses as well as control density.
11. Make stronger penalties for violations and shorter review periods.
12. Regularly review updated medical research from the AMA, NIH and local and state studies that address the use of medical marijuana. This includes statistical analysis of the population that would benefit from medical marijuana use.

Scenario I – Prohibition

One option is to ban MMDs altogether. Nothing in the law mandates storefront dispensaries. Their very nature speaks to a business model which was never the intent of Prop 215 or SB 420.

According to the Attorney General's guidelines, Non Profit Cooperatives or Collectives could be employed. However, the guidelines distributed by the Attorney General in August 2008 do not specifically guarantee protection from prosecution under current federal law.

The city council, if deciding to proceed in adopting changes to the city code should seek indemnification from the city attorney and the California Attorney General, that organized dispensaries, per the Attorney General's guidelines, are legal under California law. Currently, no such indemnification exists. Including protection language within city code that, in essence, sanctions potentially illegal activity is not enough to protect the city from future litigation.

If this is the direction in which the city wants to proceed, the City Council should move immediately to revoke any permits already issued to dispensaries if they have violated State or Federal law.

Scenario II - Zoning Regulations

Should the Council proceed to adopt an ordinance that allows for the formation of MMDs the following are concerns raised by members of the community in several meetings of stakeholders in the Central Planning Area:

1. Cooperatives should only be allowed to operate in manufacturing, industrial and possibly in some commercial zones. However any commercial property that has a residential component should not be allowed. Ground floor commercial in a mixed use building should be prohibited.

2. There should be a cap on the number of cooperatives in Los Angeles. Oakland and West Hollywood currently have caps. Although Los Angeles has a larger population than these cities, there exists no compelling rationale for having 800 or more Cooperatives, especially when it is clear to observers that much of the marijuana dispensed is being re-sold for recreational use. *(Author's note: as mentioned in Section V(d) Harvest/Consumption.)*

3. There should be no grandfathering of dispensaries. All existing dispensaries should have to reapply as non-profit cooperatives adhering to the guidelines stated by the Attorney General.

4. Marijuana MMDs should be required to go through a Conditional Use Permit (CUP) process. Approval should be conditional for one (1) year with a review at that time. Permits can then be issued for a longer period of 2 to 5 years.

5. Failure to shut down an illegal or unregulated marijuana dispensary should be prosecuted to the full extent of the law. The City Attorney's office should coordinate with the County District Attorney's office in these prosecutions in order to be able to pursue felony prosecutions where appropriate.

6. If the LAPD has a "hands off" policy in regards to enforcement of regulating MMDs, it should be removed.

7. Neighborhood Councils must be included in the CUP process for applicants of MMDs. Each applicant should make a presentation to its Neighborhood Council of residency, which would provide a recommendation to their council district.

8. MMDs should be required to have strict security protocols, including security guards and security cameras. Security cameras should be in use 24 hours a day. MMDs should provide a neighborhood security guard patrol for a two-block radius surrounding the dispensary during all hours of operation.

9. MMDs should have limited hours of 9:00 am to 8:00 pm.

10. No dispensary should be allowed to operate within 1,000 feet of a public school, private school, library, educational facility, youth center, day care center, youth club, youth camp, church, synagogue, temple, mosque, or religious facility of any kind. The 1,000 feet should be measured from lot line-to-lot line.

11. No dispensary should be allowed to operate within 1,000 feet of another dispensary. The 1,000 feet should be measured from lot line-to-lot line. This regulation will prevent the type of over-concentration that threatens the health of Los Angeles neighborhoods.

12. No dispensary should be allowed to operate within 1,000 feet of any store that sells instruments or paraphernalia necessary for inhaling cannabis, including, but not limited to, rolling papers and related tools, pipes, water pipes, and vaporizers. The 1,000 feet should be measured from lot line-to-lot line.

13. No dispensary should be allowed to operate within 1,000 feet of a bar, nightclub, or liquor store. The 1,000 feet should be measured from lot line-to-lot line.

14. No dispensary should be allowed to have an entrance within 300 feet of the lot line of a residential property.

15. No marijuana should be grown at any dispensary. Allowing a dispensary to be a "grow house" creates serious crime and environmental health risks, according to the California Police Chiefs Association. (*Author's note: it's unclear where the community expects the cultivation of marijuana to take place if not onsite.*)

16. No marijuana, alcohol, or other intoxicating substances should be allowed to be consumed inside any dispensary. Cooperatives should be barred from selling alcohol and intoxicating substances other than marijuana.

17. Each dispensary should be required to have two indoor signs posted saying, "It is illegal to use marijuana on the street, in public places, and in vehicles. It is illegal to drive while under the influence. It is illegal to re-sell medical marijuana. Such activities can lead to arrest." Each dispensary should also be required to have two indoor signs posted saying, "Loitering on and around this dispensary site is prohibited by California Penal Code section 674(e)."

18. MMDs should be required to remove litter in front of their locations, and on the sidewalk and curb within 100 feet of their location. MMDs should be required to remove any graffiti from their premises within 24 hours of its occurrence.

19. MMDs should not be allowed to dispense more than 1 oz. of marijuana per patient per day.

20. MMDs should not be allowed to provide recommendations for medical marijuana on-site, or to allow physicians to write such recommendations on-site. MMDs also should not be allowed to

provide lists of physicians who will write recommendations for medical marijuana, or referrals to such physicians.

21. MMDs should not be allowed to accept cash at any time, for any item, or for any reason. All purchases should be made by credit card or debit card or check. This regulation will greatly reduce the risk of armed robberies and violent crime in and near Collectives. It will also create a clear paper trail of who uses each dispensary, so that illegal transactions can be investigated and prosecuted.

22. Each dispensary should be required to have at least one transparent window on its front door or front wall, so that police and community members can see if illegal activities are taking place inside the dispensary.

23. No person under the age of 18 years should be allowed on the premises of a dispensary at any time, for any reason unless they are a patient and accompanied by a caregiver.

24. Each dispensary should be required to post its name, address, and telephone number on the front door or front exterior wall of its business, in letters at least two inches in height. Each dispensary should also be required to post an exterior sign saying "For complaints about this establishment, contact the L.A. Department of Building and Safety" along with a DBS phone number, in letters at least two inches in height. No other signage of any kind should be allowed on the exterior of the dispensary. *(Author's note: due to the variation of signage requirements in different zones, it's probably more likely that this requirement will relegated to interior signage requirements.)*

25. MMDs should not be allowed to place paid advertising in publications or on web sites, or to distribute or post flyers and advertising materials by hand. They should also not be allowed to engage in marketing tactics including the offer of coupons, "free samples," "two-for-one deals," "bring a friend deals," and rewards for finding new customers. Because marijuana is still illegal under federal law, and because even under California law medical marijuana is only supposed to be provided by non-profit "caregivers," advertising the sale of marijuana is not covered under First Amendment free speech grounds, and it should not be permitted.

26. Dispensary owners and staff should submit to and pass background investigation by the Los Angeles Police Department. No person with a felony record should be allowed to be an owner of staff member of any dispensary.

27. Each dispensary must be a registered 501(c)3 nonprofit organization. Annual 501(c)3 documents should be submitted to the City of Los Angeles in a timely manner, and posted on the City Clerk's web site.

28. MMDs should not be allowed to move any of their operations to any other location, or to be sold to any other individual or organization. If a dispensary remains closed to its members/customers for more than one week, it should lose its registration, and not be allowed to re-open in any format.

VIII. Exhibits

a. Ordinances in other municipalities

i. San Francisco

CITY & COUNTY OF SAN FRANCISCO HEALTH CODE

ARTICLE 33: MEDICAL CANNABIS ACT

Table of Contents

SEC. 3301. DEFINITIONS.

For the purposes of this Article:

(a) "Cannabis" means marijuana and all parts of the plant Cannabis, 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 includes marijuana infused in foodstuff. 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 seeds of the plant are incapable of germination.

(b) "City" means the City and County of San Francisco.

(c) "Convicted" means having pled guilty or having received a verdict of guilty, including a verdict following a plea of nolo contendere, to a crime.

(d) "Director" means the Director of Public Health or any individual designated by the Director to act on his or her behalf, including but not limited to inspectors.

(e) [*Reserved.*]

(f) "Medical cannabis dispensary" means a cooperative or collective of ten or more qualified patients or primary caregivers that facilitates the lawful cultivation and distribution of cannabis for medical purposes and operates not for profit, consistent with California Health & Safety Code Sections 11362.5 et seq., with the Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use issued by the California Attorney General in August 2008, and with this ordinance. A cooperative must be organized and registered as a Consumer Cooperative Corporation under the Corporations Code, Sections 12300, et seq., or a Nonprofit Cooperative Association under the Food and Agricultural Code, Sections 54002, et seq. A collective may be organized as a corporation, partnership or other legal entity under state law but must be jointly owned and operated by its members. As set forth in Section 3308(q), a medical cannabis dispensary may purchase or obtain cannabis only from members of the cooperative or collective and may sell or distribute cannabis only to members of the cooperative or collective. As set forth in Section 3308(c), a medical cannabis dispensary may operate only on a not for profit basis and pay only reasonable compensation to itself and its members and pay only reasonable out-of-pocket expenses.

(g) "Medical Cannabis Identification Card" or "Identification Card" means a document issued by the State Department of Health Services pursuant to California Health and Safety Code Sections 11362.7 et seq. or the City pursuant to Health Code Article 28 that identifies a person authorized to engage in the medical use of cannabis and the person's designated primary caregiver, if any, or identifies a person as a primary caregiver for a medical cannabis patient.

(h) "Permittee" means the owner, proprietor, manager, or operator of a medical cannabis dispensary or other individual, corporation, or partnership who obtains a permit pursuant to this Article.

(i) "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which defines "primary caregiver" as an individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include a licensed clinic, a licensed health care facility, a residential care facility, a hospice, or a home health agency as allowed by California Health and Safety Code Section 11362.7(d)(1-3).

(j) "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 et seq., and as may be amended, and which states that a "qualified patient" means a person who is entitled to the protections of California Health and Safety Code Section 11362.5, but who does not have a valid medical cannabis identification card. For the purposes of this Article, a "qualified patient who has a valid identification card" shall mean a person who fulfills all of the requirements to be a "qualified patient" under California Health and Safety Code Section 11362.7 et seq. and also has a valid medical cannabis identification card

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3302. MEDICAL CANNABIS GUIDELINES.

Pursuant to the authority granted under Health and Safety Code section 11362.77, the City and County of San Francisco enacts the following medical cannabis guidelines:

(a) A qualified patient, person with a valid identification card, or primary caregiver may possess no more than eight ounces of dried cannabis per qualified patient. In addition, a qualified patient, person with a valid identification card, or primary caregiver may also maintain no more than twenty-four (24) cannabis plants par qualified patient or up to 25 square feet of total garden canopy measured by the combined vegetative growth area.

(b) If a qualified patient, person with an identification card, or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient, person with an identification card, or primary caregiver may possess an amount of cannabis consistent with the patient's needs.

(c) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this section.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3303. PERMIT REQUIRED FOR MEDICAL CANNABIS DISPENSARY.

Except for research facilities, it is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary without first obtaining a final permit pursuant to this Article. It is unlawful to operate or maintain, or to participate therein, or to cause or to permit to be operated or maintained, any medical cannabis dispensary with a provisional permit issued pursuant to this Article.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3304. APPLICATION FOR MEDICAL CANNABIS DISPENSARY PERMIT.

(a) Every applicant for a medical cannabis dispensary permit shall file an application with the Director upon a form provided by the Director and pay a non-refundable permit application fee of $8,459 to cover the costs to all City departments of investigating and processing the application and any applicable surcharges, exclusive of filing fees for appeals before the Board of Appeals. Beginning with fiscal year 2008-2009, fees set forth in this Section may be adjusted each year, without further action by the Board of Supervisors, as set forth in this Section.

Not later than April 1, the Director shall report to the Controller the revenues generated by the fees for the prior fiscal year and the prior fiscal year's costs of operation, as well as any other

information that the Controller determines appropriate to the performance of the duties set forth in this Section.

Not later than May 15, the Controller shall determine whether the current fees have produced or are projected to produce revenues sufficient to support the costs of providing the services for which the fees are assessed and that the fees will not produce revenue which is significantly more than the costs of providing the services for which the fees are assessed.

The Controller shall if necessary, adjust the fees upward or downward for the upcoming fiscal year as appropriate to ensure that the program recovers the costs of operation without producing revenue which is significantly more than such costs. The adjusted rates shall become operative on July 1.

(b) The permit application form shall provide clear notice to applicants that the California Fire Code includes a requirement, among others that may apply, that an establishment obtain a place of assembly permit if it will accommodate 50 or more persons based on its square footage.

(c) The applicant for a medical cannabis dispensary permit shall set forth, under penalty of perjury, following on the permit application:

1. The proposed location of the medical cannabis dispensary;

2. The name and residence address of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

3. A unique identifying number from at least one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport for of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

4. Written evidence that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary is at least 18 years of age;

5. All felony convictions of each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary;

6. Whether cultivation of medical cannabis shall occur on the premises of the medical cannabis dispensary;

7. Whether smoking of medical cannabis shall occur on the premises of the medical cannabis dispensary;

8. Whether food will be prepared, dispensed or sold on the premises of the medical cannabis dispensary; and

9. Proposed security measures for the medical cannabis dispensary, including lighting and alarms, to ensure the safety of persons and to protect the premises from theft.

(d) (*NA*).

(e) Applicants must be a cooperative or a collective. If the applicant is a cooperative organized under the Corporations Code, Sections 12300, et seq., or the Food and Agricultural Code, Sections 54002, et seq., the applicant shall set forth the name of the cooperative exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a

collective organized as a corporation, the applicant shall set forth the name of the corporation exactly as shown in its articles of incorporation, and the names and residence addresses of each of the officers, directors and each stockholder owning more than 10 percent of the stock of the corporation. If the applicant is a collective organized as a partnership, the application shall set forth the name and residence address of each of the partners, including the general partner and any limited partners. If a corporation or a partnership is a stockholder owning more than 10 percent of the stock of a corporation or is one or more of the partners in a partnership, the provisions of this Section pertaining to the disclosure required for a corporation or partnership, as applicable, shall also apply to that entity.

(f) The Director is hereby authorized to require in the permit application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

(g) The Department of Public Health shall make reasonable efforts to arrange with the Department of Justice and with DOJ-certified fingerprinting agencies for fingerprinting services and criminal background checks for the purposes of verifying the information provided under Section 3304(c)(5) and certifying the listed individuals as required by Section 3307(c)(4). The applicant or each person listed in Section 3304(c)(5) shall assume the cost of fingerprinting and background checks, and shall execute all forms and releases required by the DOJ and the DOJ-certified fingerprinting agency.

(Added by Ord. 271-05, File No. 051747, App. 11/30/2005; amended by Ord. 273-05, File No. 051748, App. 11/30/2005; Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 149-08, File No. 080744, App. 7/30/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3305. REFERRAL TO OTHER DEPARTMENTS.

(a) Upon receiving a completed medical cannabis dispensary permit application and permit application fee, the Director shall immediately refer the permit application to the City's Planning Department, Department of Building Inspection, Mayor's Office on Disability, and Fire Department.

(b) Said departments shall inspect the premises proposed to be operated as a medical cannabis dispensary and confirm the information provided in the application and shall make separate written recommendations to the Director concerning compliance with the codes that they administer.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3306. NOTICE OF HEARING ON PERMIT APPLICATION.

(a) After receiving written approval of the permit application from other City Departments as set out in Section 3305, and notice from the Department of Building Inspection that it has approved a building permit, the Director shall fix a time and place for a public hearing on the application, which date shall not be more than 45 days after the Director's receipt of the written approval of the permit application from other City Departments.

(b) No fewer than 10 days before the date of the hearing, the permit applicant shall cause to be posted a notice of such hearing in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated. The applicant shall comply with any requirements regarding the size and type of notice specified by the Director. The applicant shall maintain the notice as posted the required number of days.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3307. ISSUANCE OF MEDICAL CANNABIS DISPENSARY PERMIT.

(a) Within 14 days following a hearing, the Director shall either issue a provisional permit or mail a written statement of his or her reasons for denial thereof to the applicant.

(b) In recommending the granting or denying of a provisional permit and in granting or denying the same, the Director shall give particular consideration to the capacity, capitalization, complaint history of the applicant and any other factors that in their discretion he or she deems necessary to the peace and order and welfare of the public. In addition, prior to granting a provisional permit, the Director shall review criminal history information provided by the Department of Justice for the purpose of certifying that each person applying for the permit and any other person who will be engaged in the management of the medical cannabis dispensary has not been convicted of a violent felony within the State of California, as defined in Penal Code section 667.5(c), or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may certify and issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit

(c) No medical cannabis dispensary provisional permit shall be issued if the Director finds:

1. That the applicant has provided materially false documents or testimony; or

2. That the applicant has not complied fully with the provisions of this Article; or

3. That the operation as proposed by the applicant, if permitted, would not have complied will all applicable laws, including, but not limited to, the Building, Planning, Housing, Police, Fire, and Health Codes of the City, including the provisions of this Article and regulations issued by the Director pursuant to this Article; or

4. That the permit applicant or any other person who will be engaged in the management of the medical cannabis dispensary has been convicted of a violent felony as defined in Penal Code section 667.5(c) within the State of California or a crime that would have constituted a violent felony as defined in Penal Code section 667.5(c) if committed within the State of California. However, the Director may issue a medical cannabis dispensary provisional permit to any individual convicted of such a crime if the Director finds that the conviction occurred at least five years prior to the date of the permit application or more than three years have passed from the date of the termination of a penalty for such conviction to the date of the permit application and, that no subsequent felony convictions of any nature have occurred; or

5. That a permit for the operation of a medical cannabis dispensary, which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary, has been revoked, unless more than five years have passed from the date of the revocation to the date of the application; or

6. That the City has revoked a permit for the operation of a business in the City which permit had been issued to the applicant or to any other person who will be engaged in the management of the medical cannabis dispensary unless more than five years have passed from the date of the application to the date of the revocation.

(d) Applicants with provisional permits shall secure a Certificate of Final Completion and Occupancy as defined in San Francisco Building Code Section 307 and present it to the Director, and the Director shall issue the applicant a final permit.

(e) The Director shall notify the Police Department of all approved permit applications.

(f) The final permit shall contain the following language: "Issuance of this permit by the City and County of San Francisco is not intended to and does not authorize the violation of State or Federal law."

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor; Ord. 225-07, File No. 070667, App. 10/2/2007)

SEC. 3308. OPERATING REQUIREMENTS FOR MEDICAL CANNABIS DISPENSARY.

(a) Medical cannabis dispensaries shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.7 et seq., by this Article, by the Director's administrative regulations for the permitting and operation of medical cannabis dispensaries and by the AG's Guidelines.

(b) Medical cannabis dispensaries shall be operated only as collectives or cooperatives in accordance this ordinance. All patients or caregivers served by a medical cannabis dispensary shall be members of that medical cannabis dispensary's collective or cooperative. Medical cannabis dispensaries shall maintain membership records on-site or have them reasonably available.

(c) The medical cannabis dispensary shall operate on a not for profit basis. It shall receive only compensation for the reasonable costs of operating the dispensary, including reasonable compensation incurred for services provided to qualified patients or primary caregivers to enable that person to use or transport cannabis pursuant to California Health and Safety Code Section 11362.7 et seq., or for payment for reasonable out-of-pocket expenses incurred in providing those services, or both. Reasonable out-of-pocket expenses may include reasonable expenses for patient services, rent or mortgage, utilities, employee costs, furniture, maintenance and reserves. Sale of medical cannabis to cover anything other than reasonable compensation and reasonable out-of-pocket expenses is explicitly prohibited. Once a year, commencing in March 2008, each medical cannabis dispensary shall provide to the Department a written statement by the dispensary's permittee made under penalty of perjury attesting to the dispensary's compliance with this paragraph. Upon request by the Department, based on reasonable suspicion of noncompliance, the medical cannabis dispensary shall provide the Department copies of, or access to, such financial records as the Department determines are necessary to show compliance with this paragraph. Reasonable suspicion is defined as possession of specific and articulate facts warranting a reasonable belief that the dispensary is not complying with the requirement that it be not for profit. Financial records are records of revenues and expenses for the organization, including but not limited to Board of Equalization returns, payroll records, business expense records and income tax returns. The Director only shall disclose these financial records to those City and County departments necessary to support the Director's review of the records. Upon completion of the Director's review, and provided that the Director no longer has any need for the records, the Director shall return any financial records, and copies thereof, to the medical cannabis dispensary.

(d) Medical cannabis dispensaries shall sell or distribute only cannabis manufactured and processed in the State of California that has not left the State before arriving at the medical cannabis dispensary.

(e) It is unlawful for any person or association operating a medical cannabis dispensary under the provisions of this Article to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct, or otherwise, or to permit such

dispensary to remain open, or patrons to remain upon the premises, between the hours of 10 p.m. and 8 a.m. the next day. However, the Department shall issue permits to two medical cannabis dispensaries permitting them to remain open 24 hours per day. These medical cannabis dispensaries shall be located in order to provide services to the population most in need of 24 hour access to medical cannabis. These medical cannabis dispensaries shall be located at least one mile from each other and shall be accessible by late night public transportation services. However, in no event shall a medical cannabis dispensary located in a Small-Scale Neighborhood Commercial District, a Moderate Scale Neighborhood Commercial District, or a Neighborhood Commercial Shopping Center District as defined in Sections 711, 712 and 713 of the Planning Code, be one of the two medical cannabis dispensaries permitted to remain open 24 hours per day.

(f) Medical cannabis dispensaries may not dispense more than one ounce of dried cannabis per qualified patient to a qualified patient or primary caregiver per visit to the medical cannabis dispensary. Medical cannabis dispensaries may not maintain more than ninety-nine (99) cannabis plants in up to 100 square feet of total garden canopy measured by the combined vegetative growth area. Medical cannabis dispensaries shall use medical cannabis identification card numbers to ensure compliance with this provision. If a qualified patient or a primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or the primary caregiver may possess and the medical cannabis dispensary may dispense an amount of dried cannabis and maintain a number cannabis plants consistent with those needs. Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of cannabis under this Section.

(g) No medical cannabis shall be smoked, ingested or otherwise consumed in the public right-of-way within fifty (50) feet of a medical cannabis dispensary. Any person violating this provision shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of $100. Medical cannabis dispensaries shall post a sign near their entrances and exits providing notice of this policy.

(h) Any cultivation of medical cannabis on the premises of a medical cannabis dispensary must be conducted indoors.

(i) All sales and dispensing of medical cannabis shall be conducted on the premises of the medical cannabis dispensary. However, delivery of cannabis to qualified patients with valid identification cards or a verifiable, written recommendation from a physician for medical cannabis and primary caregivers with a valid identification card outside the premises of the medical cannabis dispensary is permitted if the person delivering the cannabis is a qualified patient with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis or a primary caregiver with a valid identification card who is a member of the medical cannabis dispensary.

(j) The medical cannabis dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Nor shall alcoholic beverages be consumed on the premises or on in the public right-of-way within fifty feet of a medical cannabis dispensary.

(k) In order to protect confidentiality, the medical cannabis dispensary shall maintain records of all qualified patients with a valid identification card and primary caregivers with a valid identification card using only the identification card number issued by the State or City pursuant to California Health and Safety Code Section 11362.7 et seq. and City Health Code Article 28.

(l) The medical cannabis dispensary shall provide litter removal services twice each day of operation on and in front of the premises and, if necessary, on public sidewalks within hundred (100) feet of the premises.

(m) The medical cannabis dispensary shall provide and maintain adequate security on the premises, including lighting and alarms reasonably designed to ensure the safety of persons and to protect the premises from theft.

(n) Signage for the medical cannabis dispensary shall be limited to one wall sign not to exceed ten square feet in area, and one identifying sign not to exceed two square feet in area; such signs shall not be directly illuminated. Any wall sign, or the identifying sign if the medical cannabis dispensary has no exterior wall sign, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.

(o) All print and electronic advertisements for medical cannabis dispensaries, including but not limited to flyers, general advertising signs, and newspaper and magazine advertisements, shall include the following language: "Only individuals with legally recognized Medical Cannabis Identification Cards or a verifiable, written recommendation from a physician for medical cannabis may obtain cannabis from medical cannabis dispensaries." The required text shall be a minimum of two inches in height except in the case of general advertising signs where it shall be a minimum of six inches in height. Oral advertisements for medical cannabis dispensaries, including but not limited to radio and television advertisements shall include the same language. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary carver.

(p) The medical cannabis dispensary shall provide the Director and all neighbors located within 50 feet of the establishment with the name phone number and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the establishment. The medical cannabis dispensary shall make every good faith effort to encourage neighbors to call this person to try to solve operating problems, if any, before any calls or complaints are made to the Police Department or other City officials.

(q) Medical cannabis dispensaries may purchase or obtain cannabis only from members of the medical cannabis dispensary's cooperative or collective and may sell or distribute cannabis only to members of the medical cannabis dispensary's cooperative or collective.

(r) Medical cannabis dispensaries may sell or distribute cannabis only to those members with a medical cannabis identification card or a verifiable, written recommendation from a physician for medical cannabis. This requirement shall remain in effect so long as the system for distributing or assigning medical cannabis identification cards preserves the anonymity of the qualified patient or primary caregiver.

(s) It shall be unlawful for any medical cannabis dispensary to employ any person who is not at least 18 years of age.

(t) It shall be unlawful for any medical cannabis dispensary to allow any person who is not at least 18 years of age on the premises during hours of operation unless that person is a qualified patient with a valid identification card or primary caregiver with a valid identification card or a verifiable, written recommendation from a physician for medical cannabis.

(u) Medical cannabis dispensaries that display or sell drug paraphernalia must do so in compliance with California Health and Safety Code §§ 11364.5 and 11364.7.

(v) Medical cannabis dispensaries shall maintain all scales and weighing mechanisms on the premises in good working order. Scales and weighing mechanisms used by medical cannabis dispensaries are subject to inspection and certification by the Director.

(w) Medical cannabis dispensaries that prepare, dispense or sell food must comply with and are subject to the provisions of all relevant State and local laws regarding the preparation, distribution and sale of food.

(x) The medical cannabis dispensary shall meet any specific, additional operating procedures and measures as may be imposed as conditions of approval by the Director in order to insure that the operation of the medical cannabis dispensary is consistent with the protection of the health, safety and welfare of the community, qualified patients and primary caregivers, and will not adversely affect surrounding uses.

(y) Medical cannabis dispensaries shall be accessible as required under the California Building Code. Notwithstanding the foregoing, if a medical cannabis dispensary cannot show that it will be able to meet the disabled access standard for new construction, it shall meet the following minimum standards:

1. An accessible entrance;

2. Any ground floor service area must be accessible, including an accessible reception counter and access aisle to the employee workspace behind; and,

3. An accessible bathroom, with a toilet and sink, if a bathroom is provided, except where an unreasonable hardship exemption is granted.

4. A "limited use/limited access" (LULA) elevator that complies with ASME A17.1 Part XXV, an Article 15 elevator may be used on any accessible path of travel. A vertical or inclined platform lift may be used if an elevator is not feasible and the ramp would require more than thirty percent (30%) of the available floor space.

5. Any medical cannabis dispensary that distributes medical cannabis solely through delivery to qualified patients or primary caregivers and does not engage in on-site distribution or sales of medical cannabis shall be exempt from the requirements of this subsection 3308(y).

(z) Any medical cannabis dispensary in a building that began the Landmark Initiation process (as codified by Article 10 of the San Francisco Planning Code) by August 13, 2007 is exempt from the requirements set forth in section 3308(y) of this legislation until September 1, 2008.

(aa) Prior to submission of a building permit application, the applicant shall submit its application to the Mayor's Office on Disability. The Mayor's Office on Disability shall review the application for access compliance and forward recommendations to the Department of Building Inspection.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-07, File No. 070667, App. 10/2/2007; Ord. 318-08, File No. 081230, 12/19/2008; Ord. 25-09, File No. 081199, App. 2/13/2009)

SEC. 3309. PROHIBITED OPERATIONS.

All medical cannabis dispensaries operating in violation of California Health and Safety Code Sections 11362.5 and 11326.7 et seq., or this Article are expressly prohibited. No entity that distributed medical cannabis prior to the enactment of this Article shall be deemed to have been a legally established use under the provisions of this Article, and such use shall not be entitled to claim legal nonconforming status for the purposes of permitting,

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3310. DISPLAY OF PERMIT.

Every permit to operate a medical cannabis dispensary shall be displayed in a conspicuous place within the establishment so that the permit may be readily seen by individuals entering the premises.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3311. SALE OR TRANSFER OF PERMITS.

(a) Upon sale, transfer or relocation of a medical cannabis dispensary, the permit and license for the establishment shall be null and void unless another permit has been issued pursuant to this Article; provided, however, that upon the death or incapacity of the permittee, the medical cannabis dispensary may continue in business for six months to allow for an orderly transfer of the permit.

(b) If the permittee is a corporation, a transfer of 25 percent of the stock ownership of the permittee will be deemed to be a sale or transfer and the permit and license for the establishment shall be null and void unless a permit has been issued pursuant to this Article; provided, however that this subsection shall not apply to a permittee corporation, the stock of which is listed on a stock exchange in this State or in the City of New York, State of New York, or which is required by law, to file periodic reports with the Securities and Exchange Commission.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3312. RULES AND REGULATIONS.

(a) The Director shall issue rules and regulations regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries.

(b) The Director may issue regulations governing the operation of medical cannabis dispensaries. These regulations shall include, but need not be limited to:

1. A requirement that the operator provide patients and customers with information regarding those activities that are prohibited on the premises;

2. A requirement that the operator prohibit patrons from entering or remaining on the premises if they are in possession of or are consuming alcoholic beverages or are under the influence of alcohol;

3. A requirement that the operator require employees to wash hands and use sanitary utensils when handling cannabis;

4. A description of the size and type of notice of hearing to be posted in a conspicuous place on the property at which the proposed medical cannabis dispensary is to be operated and the number of days said notice shall remain posted; and

5. A description of the size and type of sign posted near the entrances and exits of medical cannabis dispensaries providing notice that no medical cannabis shall be smoked, ingested or otherwise consumed in the public right of way within fifty (50) feet of a medical cannabis dispensary and that any person violating this policy shall be deemed guilty of an infraction and upon the conviction thereof shall be punished by a fine of $100.

(c) Failure by an operator to do either of the following shall be grounds for suspension or revocation of a medical cannabis dispensary permit: (1) comply with any regulation adopted by the Director under this Article, or (2) give free access to areas of the establishment to which patrons have access during the hours the establishment is open to the public, and at all other reasonable times, at the direction of the Director, or at the direction of any City fire, planning, or building official or inspector for inspection with respect to the laws that they are responsible for enforcing.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005; Ord. 225-06, File No. 060032, Effective without the signature of the Mayor)

SEC. 3313. INSPECTION AND NOTICES OF VIOLATION.

(a) The Director may inspect each medical cannabis dispensary regularly and based on complaints, but in no event fewer than two times annually, for the purpose of determining compliance with the provisions of this Article and/or the rules and regulations adopted pursuant to this Article. If informal attempts by the Director to obtain compliance with the provisions of this Article fail, the Director may take the following steps:

1. The Director may send written notice of noncompliance with the provisions of this Article to the operator of the medical cannabis dispensary. The notice shall specify the steps that must be taken to bring the establishment into compliance. The notice shall specify that the operator has 10 days in which to bring the establishment into compliance.

2. If the Director inspector determines that the operator has corrected the problem and is in compliance with the provisions of this Article, the Director may so inform the operator.

3. If the Director determines that the operator failed to make the necessary changes in order to come into compliance with the provisions of this Article, the Director may issue a notice of violation.

(b) The Director may not suspend or revoke a permit issued pursuant to this Article, impose an administrative penalty, or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) If the Director concludes that announced inspections are inadequate to ascertain compliance with this Article (based on public complaints or other relevant circumstances), the Director may use other appropriate means to inspect the areas of the establishment to which patrons have access. If such additional inspection shows noncompliance, the Director may issue either a notice of noncompliance or a notice of violation, as the Director deems appropriate.

(d) Every person to whom a permit shall have been granted pursuant to this Article shall post a sign in a conspicuous place in the medical cannabis dispensary. The sign shall state that it is unlawful to refuse to permit an inspection by the Department of Public Health, or any City peace, fire, planning, or building official or inspector, conducted during the hours the establishment is open to the public and at all other reasonable times, of the areas of the establishment to which patrons have access.

(e) Nothing in this Section shall limit or restrict the authority of a Police Officer to enter premises licensed or permitted under this Article (i) pursuant to a search warrant signed by a magistrate and issued upon a showing of probable cause to believe that a crime has been committed or attempted, (ii) without a warrant in the case of an emergency or other exigent circumstances, or (iii) as part of any other lawful entry in connection with a criminal investigation or enforcement action.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3314. VIOLATIONS AND PENALTIES.

(a) Any dispensary, dispensary operator or dispensary manager who violates any provision of this Article or any rule or regulation adopted pursuant to this Article may, after being provided notice and an opportunity to be heard, be subject to an administrative penalty not to exceed $1,000 for the first violation of a provision or regulation in a 12-month period, $2,500 for the second violation of the same provision or regulation in a 12-month period; and $5, 000 for the third and subsequent violations of the same provision or regulation in a 12-month period.

(b) The Director may not impose an administrative penalty or take other enforcement action under this Article against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) Nothing herein shall prohibit the District Attorney from exercising the sole discretion vested in that officer by law to charge an operator, employee, or any other person associated with a medical cannabis dispensary with violating this or any other local or State law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3315. REVOCATION AND SUSPENSION OF PERMIT.

(a) Any permit issued for a medical cannabis dispensary may be revoked, or suspended for up to 30 days, by the Director if the Director determines that:

1. the manager, operator or any employee has violated any provision of this Article or any regulation issued pursuant to this Article;

2. the permittee has engaged in any conduct in connection with the operation of the medical cannabis dispensary that violates any State or local laws, or any employee of the permittee has engaged in any conduct that violates any State or local laws at permittee's medical cannabis dispensary, and the permittee had or should have had actual or constructive knowledge by due diligence that the illegal conduct was occurring;

3. the permittee has engaged in any material misrepresentation when applying for a permit;

4. the medical cannabis dispensary is being managed, conducted, or maintained without regard for the public health or the health of patrons;

5. the manager, operator or any employee has refused to allow any duly authorized City official to inspect the premises or the operations of the medical cannabis dispensary;

6. based on a determination by another City department, including the Department of Building Inspections, the Fire Department, the Police Department, and the Planning Department, that the medical cannabis dispensary is not in compliance with the laws under the jurisdiction of the Department.

(b) The Director may not suspend or revoke a permit issued pursuant to this Article or take other enforcement action against a medical cannabis dispensary until the Director has issued a notice of violation and provided the operator an opportunity to be heard and respond as provided in Section 3316.

(c) Notwithstanding paragraph (b), the Director may suspend summarily any medical cannabis dispensary permit issued under this Article pending a noticed hearing on revocation or suspension

when in the opinion of the Director the public health or safety requires such summary suspension. Any affected permittee shall be given notice of such summary suspension in writing delivered to said permittee in person or by registered letter.

(d) If a permit is revoked no application for a medical cannabis dispensary may be submitted by the same person for three years.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3316. NOTICE AND HEARING FOR ADMINISTRATIVE PENALTY AND/OR REVOCATION OR SUSPENSION.

(a) If the Director determines that a medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article, he or she shall issue a notice of violation to the operator of the medical cannabis dispensary.

(b) The notice of violation shall include a copy of this Section and the rules and regulations adopted pursuant to this Article regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries. The notice of violation shall include a statement of any informal attempts by the Director to obtain compliance with the provisions of this Article pursuant to Section 3313(a). The notice of violation shall inform the operator that:

1. The Director has made an initial determination that the medical cannabis dispensary is operating in violation of this Article and/or the rules and regulations adopted pursuant to this Article; and

2. The alleged acts or failures to act that constitute the basis for the Directors initial determination; and

3. That the Director intends to take enforcement action against the operator, and the nature of that action including the administrative penalty to be imposed, if any, and/or the suspension or revocation of the operator's permit; and

4. That the operator has the right to request a hearing before the Director within fifteen (15) days of receipt of the notice of violation in order to allow the operator an opportunity to show that the medical cannabis dispensary is operating in compliance with this Article and/or the rules and regulations adopted pursuant to this Article.

(c) If no request for a hearing is. filed with the Director within the appropriate period, the initial determination shall be deemed final and shall be effective fifteen (15) days after the notice of initial determination was served on the alleged violator. The Director shall issue an Order imposing the enforcement action and serve it upon the party served with the notice of initial determination. Payment of any administrative penalty is due within 30 days of service of the Director's Order. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City and County of San Francisco. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

(d) If the alleged violator files a timely request for a hearing, within fifteen (15) days of receipt of the request, the Director shall notify the requestor of the date, time, and place of the hearing. The Director shall make available all documentary evidence against the medical cannabis dispensary no later than fifteen (15) days prior to the hearing. Such hearing shall be held no later than forty-five

(45) days after the Director receives the request, unless time is extended by mutual agreement of the affected parties.

(e) At the hearing, the medical cannabis dispensary shall be provided an opportunity to refute all evidence against it. The Director shall conduct the hearing. The hearing shall be conducted pursuant to rules and regulations adopted by the Director.

(f) Within twenty (20) days of the conclusion of the hearing, the Director shall serve written notice of the Director's decision on the alleged violation. If the Director's decision is that the alleged violator must pay an administrative penalty, the notice of decision shall state that the recipient has ten (10) days in which to pay the penalty. Any administrative penalty assessed and received in an action brought under this Article shall be paid to the Treasurer of the City. The alleged violator against whom an administrative penalty is imposed also shall be liable for the costs and attorney's fees incurred by the City in bringing any civil action to enforce the provisions of this Section, including obtaining a court order requiring payment of the administrative penalty.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3317. APPEALS TO BOARD OF APPEALS.

(a) Right of Appeal. The final decision of the Director to grant, deny, suspend, or revoke a permit, or to impose administrative sanctions, as provided in this Article, may be appealed to the Board of Appeals in the manner prescribed in Article 1 of the San Francisco Business and Tax Relations Code. An appeal shall stay the action of the Director.

(b) Hearing. The procedure and requirements governing an appeal to the Board of Appeals shall be as specified in Article 1 of the San Francisco Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

San Francisco Ordinance / Article 33 / Medical Cannabis Act Page 19 of 20

SEC. 3318. BUSINESS LICENSE AND BUSINESS REGISTRATION CERTIFICATE.

(a) Every medical cannabis dispensary shall be required to obtain a business license from the City in compliance with Article 2 of the Business and Tax Regulations Code.

(b) Every medical cannabis dispensary shall be required to obtain a business registration certificate from the City in compliance with Article 12 of the Business and Tax Regulations Code.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3319. DISCLAIMERS AND LIABILITY.

By regulating medical cannabis dispensaries, the City and County of San Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it imposing on its officers and employees, an obligation for breach of which it is liable in money damages to any person who claims that such breach proximately caused injury. To the fullest extent permitted by law, the City shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the permitting and licensing provisions of this Article, or for the activities of any medical cannabis dispensary. To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Article shall not become a personal liability of any public officer or employee of the City. This Article (the "Medical Cannabis Act") does not authorize the violation of state or federal law.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3320. SEVERABILITY.

If any provision of this Article or the application of any such provision to any person or circumstance, shall be held invalid, the remainder of this Article, to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this Article are severable.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

SEC. 3321. ANNUAL REPORT BY DIRECTOR.

(a) Once a year, commencing in January 2007, the Director shall make a report to the Board of Supervisors that:

1. sets forth the number and location of medical cannabis dispensaries currently permitted and operating in the City;

2. sets forth an estimate of the number of medical cannabis patients currently active in the City;

3. provides an analysis of the adequacy of the currently permitted and operating medical cannabis dispensaries in the City in meeting the medical needs of patients;

4. provides a summary of the past year's violations of this Article and penalties assessed.

(b) Upon receipt of this Report, the Board of Supervisors shall hold a hearing to consider whether any changes to City law, including but not limited to amendments to the Health Code or Planning Code, are warranted.

(Added by Ord. 275-05, File No. 051250, App. 11/30/2005)

ii. Oakland

OAKLAND CANNABIS REGULATION AND REVENUE ORDINANCE

(Text of Oakland Measure Z Tax and Regulate Lowest Enforcement Priority ballot initiative submitted to City Clerk Feb 19, 2004; approved by 65% of Oakland Voters Nov.2, 2004)

Section 1: TITLE

Oakland Cannabis Regulation and Revenue Ordinance

Section 2: FINDINGS

The people of Oakland, California find as follows:

WHEREAS* it is a goal of the people of Oakland to keep drugs off the streets and away from children, and to eliminate street dealing and violent crime; and

WHEREAS* each year California spends over $150 million enforcing cannabis (marijuana) laws, expending valuable law enforcement resources that would be better spent on fighting violent and serious crimes; and

WHEREAS* medical and governmental studies have consistently found cannabis to be less dangerous than alcohol, tobacco and other drugs; and

WHEREAS* otherwise law-abiding adults are being arrested or imprisoned for nonviolent cannabis offenses, clogging our courts and jails; and

WHEREAS* controlling and regulating cannabis so that it is only sold by licensed businesses would undermine the hold of street dealers on our neighborhoods; and

WHEREAS* in the face of the severe state and local budget crises, the revenues from taxing and licensing cannabis would help fund vital Oakland city services; and

WHEREAS* the current laws against cannabis have needlessly harmed patients who need it for medical purposes, and impeded the development of hemp for fiber, oil, and other industrial purposes; and

WHEREAS* it is the hope of the people of Oakland that there will be state and federal law reform that will eliminate the problems and costs caused by cannabis prohibition;

THEREFORE* the people of the City of Oakland do hereby enact the following ordinance establishing the cannabis policy of the city.

Section 3: DEFINITION

"Cannabis" - Means "marijuana" as currently defined in California Health & Safety Code Section 11018.

Section 4: PURPOSE

The purpose of this ordinance is:

a) To direct the City of Oakland to tax and regulate the sale of cannabis for adult use, so as to keep it off the streets and away from children and to raise revenue for the city, as soon as possible under state law.

b) To direct the Oakland Police Department to make investigation, citation, and arrest for private adult cannabis offenses the lowest law enforcement priority, effective immediately upon passage of this ordinance. c) To advocate for changes in state law (and at other levels as necessary) to authorize the taxation and regulation of cannabis and eliminate criminal penalties for private, adult cannabis use.

Section 5: REGULATION

The City of Oakland shall establish a system to license, tax and regulate cannabis for adult use as soon as possible under California law. At that time, the City Council shall promulgate regulations that include, but are not limited to, the following provisions consistent with California law:

a) The sale and distribution to minors will be strictly prohibited;

b) The city shall establish a licensing system for cannabis businesses, with regulations to assure good business practices, compliance with health and safety standards, access for persons with disabilities, and nuisance abatement;

c) Minors shall not be permitted in areas where cannabis is sold, nor shall minors be employed by licensed cannabis businesses;

d) No business licensed to sell cannabis will be located within 600 feet of a school;

e) Cannabis businesses shall be required to pay taxes and licensing fees;

f) The public advertising of cannabis through television, radio, or billboards will be prohibited; and

g) Onsite consumption shall be licensed so as to keep cannabis off the streets and away from children, subject to reasonable air quality standards.

Section 6: LOWEST LAW ENFORCEMENT PRIORITY

a) The Oakland Police Department shall make investigation, citation, and arrest for private adult cannabis offenses Oakland's lowest law enforcement priority.

b) This "lowest law enforcement priority" policy shall/ not/ apply to distribution of cannabis to minors, distribution or consumption of cannabis on streets or other public places, or motor vehicle violations.

Section 7: COMMUNITY OVERSIGHT COMMITTEE

A Community Oversight Committee shall be appointed to oversee the implementation of the Oakland Cannabis Regulation and Revenue Ordinance. The Committee will be composed of:

1 community member appointed by each member of the Oakland City Council,

1 community member appointed by the Mayor of Oakland,

1 representative of the Oakland City Auditor,

1 representative of the Oakland City Manager.

Responsibilities of the Committee shall include:

a) Ensure timely implementation of this ordinance;

b) Oversee the implementation of the Lowest Law Enforcement Priority policy;

c) Make recommendations to the Oakland City Council regarding appropriate regulations, in accordance with Section 5 above;

d) Oversee the disbursement of revenues generated through the sale of cannabis by licensed cannabis businesses to ensure that funds go to vital city services such as schools, libraries and youth programs; and

e) Report annually to the Council on implementation of this ordinance.

Section 8: ADVOCACY FOR LEGISLATIVE REFORM

The City of Oakland shall advocate, through its lobbyist and other city officers, for changes to state law (and laws at other levels of government as necessary) to support the goals and implementation of this ordinance. Legislative changes to be advocated include:

a) Allow for the taxation and regulation of cannabis for adults;

b) Grant local control to cities and counties to license and regulate cannabis businesses, and collect appropriate fees and/or taxes; and

c) End the prosecution, arrest, investigation and imprisonment for adult, private cannabis offenses.

Section 9: SEVERABILITY

If any provision of this ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance and the application of such provisions to other persons or circumstances shall not be affected thereby.

iii. West Hollywood

Code 19.36.165 Medical Marijuana Dispensaries.

A. Applicability. The standards and criteria established in this section apply to any site, facility, location, use, cooperative or entity in the City of West Hollywood that distributes, dispenses, stores, sells, exchanges, processes, delivers, gives away, or cultivates marijuana for medical purposes to qualified patients, health care providers, patients' primary caregivers, or physicians, pursuant to Health & Safety Code Section 11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any state regulations adopted in furtherance thereof. Nothing in this section shall be interpreted to conflict with provisions of Health & Safety Code Section 11362.5 et seq.

B. Definitions. For purposes of the ordinance codified in this section, a "medical marijuana dispensary" means a facility where marijuana is made available for medical purposes in accordance with Health & Safety Code Section 11362.5. The word "marijuana" shall have the same meaning as the definition of that word in Health & Safety Code Section 11018.

C. Permit Required. A major conditional use permit shall be required to establish a medical marijuana dispensary.

D. Location Criteria. A proposed medical marijuana dispensary shall be located in compliance with the following requirements:

1. The use shall not be located within a 1,000-foot radius of any other medical marijuana dispensary located within or outside the city.

2. The use shall not be located within a 500-foot radius of a church, temple, or other places used exclusively for religious worship, or a playground, park, child day care facility, or school that is located within or outside the city. For the purposes of this requirement, "school" shall mean any property containing a structure which is used for education or instruction, whether public or private, at grade levels preschool and kindergarten through 12.

3. The dispensary shall have its primary frontage on one of the following commercial streets: Santa Monica Boulevard, Sunset Boulevard, La Cienega Boulevard, Melrose Avenue, Beverly Avenue, La Brea Avenue or Fairfax Avenue. The use shall not have its primary frontage on a local residential street providing local circulation.

E. Development and Performance Standards. All dispensaries in the City of West Hollywood shall operate in conformance with the following standards to assure that the operations of medical marijuana dispensaries are in compliance with California law and to mitigate the adverse secondary effects from operations of dispensaries.

1. Dispensaries shall provide adequate security and lighting on-site to ensure the safety of persons and protect the premises from theft at all times.

2. All security guards employed by dispensaries shall be licensed and possess a valid Department of Consumer Affairs "Security Guard Card" at all times. Security guards shall not possess firearms or tazers.

3. Dispensaries shall provide a neighborhood security guard patrol for a two block radius surrounding the dispensary during all hours of operation.

4. No recommendations for medical marijuana shall be issued on-site.

5. There shall be no on-site sales of alcohol or tobacco, and no on-site consumption of food, alcohol, tobacco or marijuana by patrons.

6. Hours of operation shall be limited to: Monday - Saturday, 10.00 a.m. - 8.00 p.m. and Sunday noon - 7.00 p.m.

7. Dispensaries shall only dispense medical marijuana to qualified patients and their caregivers as defined by California Health and Safety Code Section 11362.5 (Proposition 215). This shall include possession of a valid doctor's recommendation, not more than one-year old, for medical marijuana use by the patient.

8. Dispensaries shall notify patrons of the following verbally and through posting of a sign in a conspicuous location:

    i. Use of medical marijuana shall be limited to the patient identified on the doctor's recommendation. Secondary sale, barter or distribution of medical marijuana is a crime and can lead to arrest.

    ii. Patrons must immediately leave the site and not consume medical marijuana until at home or in an equivalent private location. Dispensary staff shall monitor the site and vicinity to ensure compliance.

    iii. Forgery of medical documents is a felony crime.

9. Dispensaries shall not provide marijuana to any individual in an amount not consistent with personal medical use.

10. Dispensaries shall not store more than two hundred dollars ($200.00) in cash reserves overnight on the premises and shall make at least one daily bank drop that includes all cash collected on that business day.

11. Any patient under 18 years of age shall be accompanied by a parent or legal guardian.

12. Dispensaries shall provide law enforcement and all neighbors within 100 feet of the dispensary with the name and phone number of an on-site community relations staff person to notify if there are operational problems with the establishment.

13. Each dispensary operator(s) shall complete a criminal background check.

14. Dispensary operator(s) must attend the bi-monthly coordination meetings with the Los Angeles County Sheriff's Department and City staff which are organized by the City's Public Safety Division.

15. The exterior appearance of the structure shall be compatible with commercial structures already constructed or under construction within the immediate neighborhood, to ensure against blight, deterioration, or substantial diminishment or impairment of property values in the vicinity.

16. West Hollywood City Code Enforcement Officers, West Hollywood Sheriff's Deputies or other agents or employees of the City requesting admission for the purpose of determining compliance with these standards shall be given unrestricted access.

17. The proposed use shall comply with all other applicable property development and design standards of the Municipal Code and with the provisions of Health & Safety Code Section

11362.5 (adopted as Proposition 215, the "Compassionate Use Act of 1996") or any State regulations adopted in furtherance thereof.

F. Numerical Limit. No more than four (4) medical marijuana dispensaries shall be permitted to operate in the City at any time. Notwithstanding the foregoing, a medical marijuana dispensary that was open and in operation on January 16, 2007 and does not meet the location requirements of this section shall be allowed to continue operation in accordance with the regulations for non-conforming land uses in Section 19.72.050 until December 31, 2009 at which time it shall cease all operations at the location; however, until that time such dispensaries shall comply with all other standards of Section 19.36.165. Any dispensary that does not meet the location requirements of this section and is discontinued or has ceased operations for 30 days or more shall not be re-established on the site and any further use of the site shall comply with all applicable provisions of the Municipal Code.

iv. Laguna Beach

Laguna Beach's proposed ordinance can be found here.

b. Proposition 215

SECTION 1. Section 11362.5 is added to the Health and Safety Code, to read:

11362.5.(a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

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

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

(B) To ensure that patients and their primary 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 act 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 act who has consistently assumed responsibility for the housing, health, or safety of that person.

SECTION 2. If any provision of this measure or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of the measure which can be given effect without the invalid provision or application, and to this end the provisions of this measure are severable.

c. SB 420

INTRODUCED FEBRUARY 20, 2003 BY Senator Vasconcellos

PASSED SENATE SEPTEMBER 11, 2003

PASSED ASSEMBLY SEPTEMBER 10, 2003

(Principal coauthor: Assembly Member Leno. Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying 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.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and nondiversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1.

(a) The Legislature finds and declares all of the following:

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written

approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(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.

(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SECTION. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care,

treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

(2) Anorexia.

(3) Arthritis.

(4) Cachexia.

(5) Cancer.

(6) Chronic pain.

(7) Glaucoma.

(8) Migraine.

(9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.

(10) Seizures, including, but not limited to, seizures associated with epilepsy.

(11) Severe nausea.

(12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

(1) Provide applications upon request to individuals seeking to join the identification card program.

(2) Receive and process completed applications in accordance with Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any. The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county.

(2) Written documentation by the attending physician in the person' s medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

(1) A conservator with authority to make medical decisions.

(2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.

(3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.

(c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.

(d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

(1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

(2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

(3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county' s designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

(4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

(5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

(b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

(1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed. (c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county' s designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient' s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

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

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

(2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole. A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars ($1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars ($1,000), or both.

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

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.

* Footnotes to the above:

11366. Every person who opens or maintains any place for the purpose of unlawfully selling, giving away, or using any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (13), (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b), (c), paragraph (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of Section 11055, or (2) which is a narcotic drug classified in Schedule III, IV, or V, shall be punished by imprisonment in the county jail for a period of not more than one year or the state prison.

11366.5. (a) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly rents, leases, or makes available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, storing, or distributing any controlled substance for sale or distribution shall be punished by imprisonment in the county jail for not more than one year, or in the state prison.

(b) Any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, who knowingly allows the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the sale of any amount of cocaine base as specified in paragraph (1) of subdivision (f) of Section 11054, cocaine as specified in paragraph (6) of subdivision (b) of Section 11055, heroin, phencyclidine, amphetamine, methamphetamine, or lysergic acid diethylamide and who obtains excessive profits from the use of the building, room, space, or enclosure shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Any person who violates subdivision (a) after previously being convicted of a violation of subdivision (a) shall be punished by imprisonment in the state prison for two, three, or four years.

(d) For the purposes of this section, "excessive profits" means the receipt of consideration of a value substantially higher than fair market value.

11570. Every building or place used for the purpose of unlawfully selling, serving, storing, keeping, manufacturing, or giving away any controlled substance, precursor, or analog specified in this division, and every building or place wherein or upon which those acts take place, is a nuisance which shall be enjoined, abated, and prevented, and for which damages may be recovered, whether it is a public or private nuisance.

Medical Marijuana Research program

11362.9. (a) (1) It is the intent of the Legislature that the state commission objective scientific research by the premier research institute of the world, the University of California, regarding the efficacy and safety of administering marijuana as part of medical treatment. If the Regents of the University of California, by appropriate resolution, accept this responsibility, the University of California shall create a program, to be known as the California Marijuana Research Program. (2) The program shall develop and conduct studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, shall develop medical guidelines for the appropriate administration and use of marijuana. (b) The program may immediately solicit proposals for research projects to be included in the marijuana studies. Program requirements to be used when evaluating responses to its solicitation for proposals, shall include, but not be limited to, all of the following:

> (1) Proposals shall demonstrate the use of key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research regarding marijuana's general medical efficacy and safety.
>
> (2) Proposals shall contain procedures for outreach to patients with various medical conditions who may be suitable participants in research on marijuana.
>
> (3) Proposals shall contain provisions for a patient registry. (4) Proposals shall contain provisions for an information system

that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

> (5) Proposals shall contain protocols suitable for research on marijuana, addressing patients diagnosed with the acquired immunodeficiency syndrome (AIDS) or the human immunodeficiency virus (HIV), cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The proposal may also include research on other serious illnesses, provided that resources are available and medical information justifies the research.
>
> (6) Proposals shall demonstrate the use of a specimen laboratory capable of housing plasma, urine, and other specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for studies of toxic effects of marijuana.

(7) Proposals shall demonstrate the use of a laboratory capable of analyzing marijuana, provided to the program under this section, for purity and cannabinoid content and the capacity to detect contaminants.

(c) In order to ensure objectivity in evaluating proposals, the program shall use a peer review process that is modeled on the process used by the National Institutes of Health, and that guards against funding research that is biased in favor of or against particular outcomes. Peer reviewers shall be selected for their expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the applicants or the topic of an approach taken in the proposed research. Peer reviewers shall judge research proposals on several criteria, foremost among which shall be both of the following:

(1) The scientific merit of the research plan, including whether the research design and experimental procedures are potentially biased for or against a particular outcome.

(2) Researchers' expertise in the scientific substance and methods of the proposed research, and their lack of bias or conflict of interest regarding the topic of, and the approach taken in, the proposed research.

(d) If the program is administered by the Regents of the University of California, any grant research proposals approved by the program shall also require review and approval by the research advisory panel.

(e) It is the intent of the Legislature that the program be established as follows:

(1) The program shall be located at one or more University of California campuses that have a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campuses at which research under the auspices of the program is to take place shall accommodate the administrative offices, including the director of the program, as well as a data management unit, and facilities for storage of specimens.

(2) When awarding grants under this section, the program shall utilize principles and parameters of the other well-tested statewide research programs administered by the University of California, modeled after programs administered by the National Institutes of Health, including peer review evaluation of the scientific merit of applications.

(3) The scientific and clinical operations of the program shall occur, partly at University of California campuses, and partly at other postsecondary institutions, that have clinicians or scientists with expertise to conduct the required studies. Criteria for selection of research locations shall include the elements listed in subdivision (b) and, additionally, shall give particular weight to the organizational plan, leadership qualities of the program director, and plans to involve investigators and patient populations from multiple sites.

(4) The funds received by the program shall be allocated to various research studies in accordance with a scientific plan developed by the Scientific Advisory Council. As the first wave of studies is completed, it is anticipated that the program will receive requests for funding of additional studies. These requests shall be reviewed by the Scientific Advisory Council.

(5) The size, scope, and number of studies funded shall be commensurate with the amount of appropriated and available program funding.

(f) All personnel involved in implementing approved proposals shall be authorized as required by Section 11604.

(g) Studies conducted pursuant to this section shall include the greatest amount of new scientific research possible on the medical uses of, and medical hazards associated with, marijuana. The program shall consult with the Research Advisory Panel analogous agencies in other states, and appropriate federal agencies in an attempt to avoid duplicative research and the wasting of research dollars.

(h) The program shall make every effort to recruit qualified patients and qualified physicians from throughout the state.

(i) The marijuana studies shall employ state-of-the-art research methodologies.

(j) The program shall ensure that all marijuana used in the studies is of the appropriate medical quality and shall be obtained from the National Institute on Drug Abuse or any other federal agency designated to supply marijuana for authorized research. If these federal agencies fail to provide a supply of adequate quality and quantity within six months of the effective date of this section, the Attorney General shall provide an adequate supply pursuant to Section 11478.

(k) The program may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research, regardless of whether the areas of study are being researched by the committee.

(l) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the program shall conduct focused controlled clinical trials on the usefulness of marijuana in patients diagnosed with AIDS or HIV, cancer, glaucoma, or seizures or muscle spasms associated with a chronic, debilitating condition. The program may add research on other serious illnesses, provided that resources are available and medical information justifies the research. The studies shall focus on comparisons of both the efficacy and safety of methods of administering the drug to patients, including inhalational, tinctural, and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in the effects of different cannabinoids and varieties of marijuana.

(2) The program shall examine the safety of marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(3) The program shall be limited to providing for objective scientific research to ascertain the efficacy and safety of marijuana as part of medical treatment, and should not be construed as encouraging or sanctioning the social or recreational use of marijuana.

(m) (1) Subject to paragraph (2), the program shall, prior to any approving proposals, seek to obtain research protocol guidelines from the National Institutes of Health and shall, if the National Institutes of Health issues research protocol guidelines, comply with those guidelines.

(2) If, after a reasonable period of time of not less than six months and not more than a year has elapsed from the date the program seeks to obtain guidelines pursuant to paragraph (1), no guidelines have been approved, the program may proceed using the research protocol guidelines it develops.

(n) In order to maximize the scope and size of the marijuana studies, the program may do any of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the marijuana studies that are authorized under this section. The program shall not expend more than 5 percent of its General Fund allocation in efforts to obtain money from outside sources.

(2) Include within the scope of the marijuana studies other marijuana research projects that are independently funded and that meet the requirements set forth in subdivisions (a) to (c), inclusive. In no case shall the program accept any funds that are offered with any conditions other than that the funds be used to study the efficacy and safety of marijuana as part of medical treatment. Any donor shall be advised that funds given for purposes of this section will be used to study both the possible benefits and detriments of marijuana and that he or she will have no control over the use of these funds.

(o) (1) Within six months of the effective date of this section, the program shall report to the Legislature, the Governor, and the Attorney General on the progress of the marijuana studies.

(2) Thereafter, the program shall issue a report to the Legislature every six months detailing the progress of the studies. The interim reports required under this paragraph shall include, but not be limited to, data on all of the following:

(A) The names and number of diseases or conditions under study.

(B) The number of patients enrolled in each study by disease.

(C) Any scientifically valid preliminary findings.

(p) If the Regents of the University of California implement this section, the President of the University of California shall appoint a multidisciplinary Scientific Advisory Council, not to exceed 15 members, to provide policy guidance in the creation and implementation of the program. Members shall be chosen on the basis of scientific expertise. Members of the council shall serve on a voluntary basis, with reimbursement for expenses incurred in the course of their participation. The members shall be reimbursed for travel and other necessary expenses incurred in their performance of the duties of the council.

(q) No more than 10 percent of the total funds appropriated may be used for all aspects of the administration of this section. (r) This section shall be implemented only to the extent that funding for its purposes is appropriated by the Legislature in the annual Budget Act..

d. Attorney General Guidelines

GUIDELINES FOR THE SECURITY AND NON-DIVERSION

OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

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

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

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

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

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b)(1)(A)-(B).)

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

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

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification

cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.)

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

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder's status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use. In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller's Permit. (http://www.boe.ca.gov/news/pdf/medseller2007.pdf.) According to the Notice, having a Seller's Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (http://www.boe.ca.gov/news/pdf/173.pdf.)

E. Medical Board of California.

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

1. Taking a history and conducting a good faith examination of the patient;

2. Developing a treatment plan with objectives;

3. Providing informed consent, including discussion of side effects;

4. Periodically reviewing the treatment's efficacy;

5. Consultations, as necessary; and

6. Keeping proper records supporting the decision to recommend the use of medical marijuana.

(http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.) Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

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

The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently. Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (County of San Diego v. San Diego NORML (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.)

Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See City of Garden Grove v. Superior Court (Kha) (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

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

II. DEFINITIONS

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

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

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

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

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

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

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

(§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

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

4. Possession Guidelines:

a) MMP:2 Qualified patients and primary caregivers who possess a state issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient.

(§ 11362.77(a).) But, if "a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs."

(§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) Local Possession Guidelines: Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess 2 On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient

may possess. (See People v. Kelly (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in People v. Phomphakdy (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in Kelly and the Attorney General intends to seek review in Phomphakdy. Medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

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

B. Enforcement Guidelines.

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

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

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

4. State of California Medical Marijuana Identification Cardholders:

When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

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

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized. Under the MMP, "no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana." (§ 11362.71(e).) Further, a "state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently." (§ 11362.78.)

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

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

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

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

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

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

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

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

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

1. Statutory Cooperatives: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Id. at § 12311(b).) Cooperative corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (Id. at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (Ibid.) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual

members each year. (See id. at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities "since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers." (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., id. at § 54002, et seq.) Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

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

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

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

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

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

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

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

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

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

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

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

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

4. Collectives Should Acquire, Possess, and Distribute Only Lawfully

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

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

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

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

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

c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or

d) Any combination of the above.

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

a) Operating a location for cultivation;

b) Transporting the group's medical marijuana; and

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

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

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

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

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

e. L.A. County Code

Medical Marijuana Dispensary Development Standards

Section 22.56.196 requires a medical marijuana dispensary to comply with the following development standards:

• **Location**. A dispensary may not be located within a 1,000 feet radius of sensitive uses such as schools or places of religious worship or within 1,000 feet radius of another dispensary.

The proposed dispensary is not located within a 1,000 feet radius of sensitive uses. The two schools in the neighborhood are both approximately 2,500 foot away from the proposed project site. Another dispensary does not exist within a 1,000 feet radius of the proposed project site.

• **Signs**. A sign for a dispensary is limited to one wall sign not to exceed 10 square feet and one building identification sign not to exceed 2 square feet. These signs may not be lit. Additionally, the dispensary would be required to post an indoor sign with the following warnings: diversion is illegal, the use of marijuana may impair a person's ability to drive a motor vehicle or operate machinery, loitering is prohibited.

The applicant has not submitted a sign proposal to date.

• **Hours of Operation**. The County Code limits operation from 7a.m. to 8 p.m.

The applicant's operations manual states that the hours of operation would be from 7 a.m. to 8 p.m. (See operations manual section 1.)

• **Lighting**. The County Code requires lighting of the premises to the director's satisfaction.

The applicant's operations manual states that lighting of the premises would be provided during business hours for visibility and safety, but deflected away from residential areas. Staff recommends that lighting be provided during non-business hours as well. (See operations manual 2.c and 4.c)

• **Graffiti**. The County Code requires the removal of graffiti from the premises within 24 hours of its occurrence.

This requirement would be a condition of approval.

• **Litter**. The County Code requires the removal of litter twice each day.

This requirement would be a condition of approval.

• **Prohibition of alcohol**. The County Code requires the prohibition of the sale or consumption of alcoholic beverages on the grounds of the dispensary.

This prohibition and its enforcement should be addressed in the applicant's operations manual.

• **Edibles**. The County Code allows a dispensary to dispense edible forms of medical marijuana.

The applicant does not intend to provide edibles at the project site. This intent should be included in the operations manual.

• **On-site consumption**. The County Code allows on-site consumption of medical marijuana if specific standards are met.

The applicant does not intend to provide facilities for onsite consumption. This intent should be included in the operations manual.

• **Devices for inhalation**. The County Code allows devices for taking medical marijuana to be dispensed to qualified patients in accordance with state law. State law requires that such devices be provided in a separate enclosure that is not accessible to persons under 18 years old.

The operations manual states that minors would not be allowed in the dispensary. This complies with state requirements for separate enclosure and age limitation. The applicant does not intend to provide devices for inhalation, but may provide rolling papers.

• **Security**. The County Code requires a security camera and a licensed security guard.

The applicant's operations manual states that a security system, including a security camera and licensed security guards would be provided during business hours.

• **Cultivation and cuttings**. State law allows qualified patients and primary caregivers to cultivate a limited number of marijuana plants for medical purposes. The County Code does not allow dispensaries to cultivate marijuana on-site; it does allow the provision of cuttings to patient who may want to cultivate marijuana in accordance with state law.

The applicant does not intend to provide cuttings. This intent should be included in the operations manual.

• **Loitering**. The County Code requires dispensaries to ensure that there is no loitering.

The operations manual states that the dispensary would not allow loitering in the parking lot or the surrounding neighborhood. This intent should be strengthened by adding that one of the security guard's duties would be to walk around the premises and ensure that no patrons loiter in the residential streets.

• **Distribution of emergency phone number**. The County Code requires the dispensary operator to distribute the name and emergency contact number to those who request it.

The operations manual provides for community outreach. The dispensary operator proposes to meet quarterly with the President of the Del Aire Homeowners Association. Staff recommends that this provision be strengthened by requiring the applicant to distribute the dispensary emergency contact number to residents and not just to those who request it. The emergency contact number should also be posted on the outside of the building.

• **Minors**. The County Code prohibits the provision of medical marijuana to persons under the age of 18.

The operations manual specifies that minors would not be admitted into the dispensary. The term "minor" should be clarified to refer to anyone under 18 years old.

• **Liability and indemnification**. The County Code states that the owners and permittees must indemnify the County and assume liability that may result from the establishment and operation of the dispensary.

Staff recommends that County Counsel draft an agreement, which the applicant must sign as a condition of approval, which releases the county and its agents from injuries, damages, or liabilities that may result from the operation of the dispensary and indemnifies the County should any liabilities and claims be brought against the dispensary. Under the Business Licenses Code, a medical marijuana dispensary must carry a liability insurance of $1 million dollars.

f. FAQs

What are Proposition 215 (Prop 215), the Compassionate Use Act of 1996, and Senate Bill (SB) 420?

Prop 215 is another term for the Compassionate Use Act of 1996. Prop 215 was the first statewide medical marijuana measure voted into law in the United States. Prop 215 provides protections to seriously ill persons who have their doctor's recommendation to use marijuana for medical purposes. Prop 215 also provides protections to the physicians and primary caregivers who assist these seriously ill persons, who are known as "qualified patients" under SB 420 (Chapter 875, Statutes of 2003). SB 420 was enacted into the Health and Safety Code of California (Sections 11362.7 through 11362.83) to address problems with Prop 215. SB 420 requires the California Department of Health Services to create the Medical Marijuana Program (MMP). The state MMP is responsible for developing and maintaining an online registry and verification system for Medical Marijuana Identification Cards or "MMICs." MMICs are available to qualified patients and their primary caregivers. The intent of SB 420 is to help law enforcement and qualified patients by creating a form of identification for qualified patients that is official and uniform throughout the State. The online registry allows law enforcement to verify that a MMIC is valid. For more information see the MMP's home page.

What is the Medical Marijuana Program (MMP) and what does it do?

The California Department of Health Services (CDHS) manages the State's MMP as authorized by SB 420. Several counties also use the term "MMP" for their programs. The MMP developed the "Medical Marijuana Identification Card" or "MMIC" and operates the internet system to verify these MMICs.

What is a Medical Marijuana Identification Card (MMIC) and how can it help me?

The MMIC identifies the cardholder as a person protected under the provisions of Prop 215 and SB 420. It is used to help law enforcement identify the cardholder as being able to legally possess certain amounts of medical marijuana under specific conditions.

How do I know if I qualify for a MMIC?

You will need to discuss this with your attending physician. In order to qualify for the protections of Prop 215 and SB 420, you will need to be diagnosed with a serious medical condition. The diagnosis and your physician's recommendation that the use of medical marijuana is appropriate for you must be documented in your medical records.

What serious medical condition(s) do I need to have to qualify for a MMIC?

A serious medical condition, as defined by SB 420, is any of the following: AIDS; anorexia; arthritis; cachexia (wasting syndrome); cancer; chronic pain; glaucoma; migraine; persistent muscle spasms (i.e., spasms associated with multiple sclerosis); seizures (i.e., epileptic seizures); severe nausea; any other chronic or persistent medical symptom that either substantially limits a person's ability to conduct one or more of major life activities as defined in the Americans with Disabilities Act of 1990, or if not alleviated, may cause serious harm to the person's safety, physical, or mental health.

When and where can I apply for a MMIC?

The state MMP will begin with its pilot program in May of 2005, and will begin statewide implementation by late summer of 2005. Four counties are participating in the pilot phase. To learn if your county has started accepting applications, view the list of county programs web page. Hours of operation, fees, and application locations will vary. You may need to contact your county's program for more information.

Are medical marijuana patients and their primary caregivers required to enroll in the MMP?

No. Participation in the MMP is voluntary.

I am a qualified patient. How do I apply for a MMIC?

In order to see if your county is accepting applications you will need to view the list of county programs. When your county begins accepting applications for MMICs, you will need to fill out an Application/Renewal Form. You must reside in the California county where the application is submitted. You will need to provide current documentation with your application as follows:

A copy of your medical records that documents the use of medical marijuana is appropriate for you.

Proof of identity. This can be a California Department of Motor Vehicles (DMV) driver's license or identification (ID) card or other government-issued photo ID card.

Proof of residency which can be:

- Rent or mortgage receipt.
- Utility bill
- California DMV motor vehicle registration.

You must apply in person at your county's program. There you will be asked to:

- Pay the fee required by your county program. Medi-Cal beneficiaries will receive a 50 percent reduction in the application fee.
- Have your photo taken at the county's program office. This photo will appear on your MMIC.

Is it necessary to include copies of my medical records with my application?

Yes. To simplify this requirement, the state MMP offers a form to serve this purpose. It is the Written Documentation of Patients Medical Records form. It is simply a form your physician can use to state in writing that you have a serious medical condition and that the use of medical marijuana is appropriate. The original is submitted with your application and a copy must be kept in your medical records at your physician's office.

How much does it cost to apply for a card?

Fees vary by county. You will need to contact your county's program to find out the fee your county charges for a MMIC application. Also, if you request the 50 percent Medi-Cal reduction, you will need to provide proof of participation in the Medi-Cal Program. Your county's program will provide you with information on what type of proof you need to qualify for the reduction.

What is a primary caregiver?

A primary caregiver is a person who is consistently responsible for the housing, health, or safety of a qualified patient. A primary caregiver must be at least 18 years of age, unless the primary caregiver is an emancipated minor or the parent of a minor child who is a qualified patient. A primary caregiver can also be an owner, operator, or up to three employees of a clinic, facility, hospice, or home health agency. For more information please visit the Responsibilities: Applicant, Primary Caregiver, and Physician web page.

I am a primary caregiver for a qualified patient. How do I apply for a MMIC?

As a primary caregiver you cannot apply for a MMIC. The patient you care for is responsible for applying for your MMIC. Your patient will need to fill out an Application/Renewal Form and check the appropriate

box on the top of page one to include primary caregiver. You do not need to reside in the California county where the application is submitted, but you must provide information on your residence. If you are the primary caregiver for more than one qualified patient you must reside in the same county as them. You will need to provide proof of identity which can be a California DMV driver's license or California ID card or other government-issued photo ID card. You must apply in person at your county's program. There you will be asked to:

- Pay the fee required by your county program. Medi-Cal beneficiaries and their primary caregivers will receive a 50 percent reduction to the application fee.

- Have your photo taken at the county office. This photo will appear on your MMIC.

How long will it take to get my MMIC?

Once you submit your completed and signed application form with the required documents (proof of residency, medical documentation, etc.) to your county's program, the county program has 30 days to approve or deny your application. Once the application is approved, the county program has five days to make the MMIC available to you. It can take 35 days to receive your MMIC if the application is complete and the county program finds no reason to deny your application. If any information or documents are missing, this may delay processing your application. If this is the case, your county's program will contact you within 30 days from the day you submit your application. If you do not receive your MMIC in 35 days, contact your county's program.

How long is a MMIC valid?

Generally, one year.

How do I renew my MMIC?

Renewing a MMIC requires the same process as when you originally applied. This includes verifying your information and giving you a new MMIC and new number. If your medical documentation is still valid, you may use this for your renewal. It may not be necessary for you to obtain new medical documentation. Your county's program will verify any information they feel is necessary. You will need to contact their office for more information.

Is my MMIC valid outside of California?

No.

Is my MMIC valid in other California counties?

Yes. This is a statewide identification card and registry program.

Do I need to let my county's program know when I change my attending physician or primary caregiver?

Yes. You need to contact them within seven days. Failure to do so may result in the invalidation of your MMIC.

Can the state MMP refer me to a doctor?

No. The MMP does not maintain lists of physicians nor is it a referral service.

What happens to my application and other private health information after I give it to my county's MMP?

Your application will be kept confidential and secure. The only release of your application will be with your written permission. This includes appeals of denied applications to the state MMP. (The Appeals Form contains a declaration and signature block regarding this release.)

I am a legal representative for a qualified patient who cannot make their own medical decisions. Can I apply for them?

Yes. A conservator with authority to make medical decisions, surrogate decision maker authorized under an advanced health care directive, an attorney-in-fact under durable power of attorney for healthcare, or any other individual authorized by statutory or decisional law to make medical decisions for the qualified patient may apply for that patient.

Why do I need to apply for my MMIC in person?

You will need to have your photo taken which will appear on the MMIC. Also, certain verifications will need to be completed in person.

I am a caregiver for a bedridden qualified patient. What can I do to help my patient apply for a MMIC?

Check with your county's program for information.

Why does my primary caregiver need to come to my county's program office with me to apply for our cards?

Only a patient can apply for either type of card, and both the patient and the primary caregiver must provide certain personal information to the county program. You both need to apply in person at the county program office because you will both be photographed for each MMIC.

My primary caregiver lives in a different county than I do. Which county program do we apply in?

The county the patient resides in.

Can a minor apply for a MMIC?

Yes. A minor can apply as a patient or caregiver under certain conditions. Minors may apply for themselves as qualified patients if they are lawfully emancipated or have declared self-sufficiency status. If the minor has not declared self-sufficient status or is not emancipated, the county's program is required to contact the minor's parent, legal guardian, or person with legal authority to make medical decisions for the minor. This is to verify information on the Application/Renewal Form. An emancipated minor or the minor's parent of a qualified patient may apply as a primary caregiver. If a minor declares status as a self-sufficient minor or is an emancipated minor, his or her county program may require additional documentation. Contact your county's program for more information on additional required documentation.

What can be proof of identity for a minor?

Minors may use government-issued photo identification, such as a California driver's license or a California ID card. A certified copy of a birth certificate can be sufficient proof of identity for a minor.

My application for a MMIC was denied. How can I appeal this decision?

Please see the Appeals web page for more information on appealing a county's decision to deny your application.

What information will appear on the MMIC?

A unique user identification number of the cardholder

Date of expiration of the identification card

Name and telephone number of the county program that has approved the application

Internet address used to verify the validity of the MMIC

Photo identification of the cardholder

"Patient" or "Primary Caregiver" to specify the cardholder

How do I replace my MMIC if it is lost, stolen, or damaged?

Please contact your county's program for more details and fees.

How much marijuana can I have in my possession?

For information on possession limits please visit the Health and Safety Code Section 11362.77 or contact your local law enforcement authority.

Where can I get the seeds or plants to start growing marijuana for my medical use? How can I get related products?

The MMP is not authorized to provide information on acquiring marijuana or other related products.

For further reading of council file on the medical marijuana issue, please visit
http://cityclerk .lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=05-0872