

September 28, 2009

Date: 9-29-09  
Submitted in PLUM Committee  
Council File No: 08-0923  
Item No.: 1.a-d.  
Deputy: P. Lathmore

To: Councilman Ed Reyes  
PLUM Committee Chairman

Councilman Jose Huizar  
Member PLUM Committee

Councilman Dennis Zine  
Member PLUM Committee

RE: Constitutionally Impermissible Language In The Latest Medical Marijuana  
Draft Ordinance

Gentlemen:

Several years ago, I stood before the full council and asked for a working group, which would help the city draft its Medical Marijuana Ordinance. Once the group was formed, I participated enthusiastically.

I was so impressed with my fellow members, particularly people like Don Duncan, that I was content to let my fellow members interact with you directly. They were conveying my sentiments and I saw no reason to take up your time with needless replication.

However, in both Chairman Reyes' version of the ordinance and the new City Attorney's version, there's language that would rob citizens of basic constitutional rights, and put patients in grave danger merely because they must medicate. I'm writing to request this language be taken out of the final ordinance.

In a worst case scenario, this language might generate more lawsuits against the city (something I badly want to avoid) and would forever mark Los Angeles as the city which demonized the sick and the dying, forcing them to trade basic constitutional protections for the right to medicate.

I'm speaking, of course, of the requirement that dispensaries keep all contact and medical recommendations relating to their patients and patient cultivators on-site, and show that information to any city or police agencies who wish to stroll in and take a look.

Gentlemen, when you visit your doctors, your medical records and contact information are considered your private business. The same would hold true for any business records you kept. That's the rule whether those records are stored at the doctor's office, your chiropractor, your pharmacy, or someplace else.

People, including the police, are not allowed to just drop by and take a look, absent the

constitutional requirement of a warrant.

Yet, both drafts of the ordinance require that dispensaries surrender this type of information on demand. Somehow, because I'm a medical marijuana patient, my constitutional right of a reasonable expectation of privacy disappears, while yours remain intact. Surely this cannot be right.

It's easy enough for police to obtain a warrant, and a dispensary isn't going to disappear during the time it would take to obtain a warrant. After all, a dispensary's goal is to be in the same place and open for business every day. Why would it disappear?

Allowing Los Angeles Police Department employees to demand personal, medical and business records without a warrant requirement presents additional dangers to patients, because fourteen Los Angeles Police Officers are cross-sworn as federal agents.

Traditionally, cross-sworn officers in other jurisdictions have used this designation to pursue their opposition to Medical Marijuana, by walking cases over to the federal government when the city declined to prosecute. They've done this while wearing state uniforms, and while under a state mandate to uphold state law, including California's Medical Marijuana laws.

This happened in San Francisco and it was a real mess. Attached please find an article about this situation. If for no other reason than to avoid such an embarrassing and expensive boondoggle, the City of Los Angeles should not force Medical Marijuana patients to give up basic constitutional protections.

Let the officers who feel abuses are taking place appear before a neutral magistrate and obtain a warrant as they always have. Obviously, police do need a way to identify Medical Marijuana grows so that they do not waste city resources investigating legal entities. Forcing dispensaries to disclose information about their patient-cultivators is a draconian solution to this problem, it violates basic constitutional rights and is so unnecessary.

Re-convene the working group, which has always included Los Angeles Police personnel, and let them find a way to provide the police with the information they need about Medical Marijuana grows, without putting the sick and dying in the position of having to give up constitutional protections in order to obtain their medicine.

Thank you for your time and attention to this matter. I can be reached at (805) 497-3157 if you have any questions.

Sincerely,



Sarah Armstrong  
Founding Member

The Working Group For The City of Los Angeles' Medical Marijuana Ordinance

Encl: 1 Article excerpt, "Waiting To Exhale"

Cc:

Eric Garcetti

Janice Hahn

Tom La Bonge

Paul Koretz

Tony Carcenas

Richard Alarcon

Bernard Parks

Jan Perry

Herb Wesson

Bill Rosendahl

Greig Smith

Charles Beck, LAPD Deputy Chief

Carmen Trutanich - City Attorney

Jeri Burge - City Attorney's Office

Heather Aubry - City Attorney's Office

Brian Perry - Councilman Dennis Zine's Office

Guadalupe Duran-Medina - Councilman Ed Reyes' Office

Erik Sanjuro- Councilman Jose Huizar's Office

Don Duncan - Member Working Group

Yami Belanos - Member Working Group

Joanna La Force - Member Working Group

Dege Coute - Member Working Group

Michael Levitt - Member Working Group

Lisa Sawoya - Member Working Group

Michael Backes - Cornerstone Research

Allison Margolin, Esq. - Advisory Board Member The Landa Prison Outreach Program

Bruce Margolin, Esq. - Founder National Institute of Court Qualified Cannabis Experts

Thomas Kikuchi - Advisory Board Member The Landa Prison Outreach Program

Stephanie Landa - Advisory Board Member The Landa Prison Outreach Program

**Below is an excerpt from an article written by Ann Harrison for the S.F. Bay Guardian entitled: "Waiting to Exhale" The article appeared on June 8, 2006.**

"People don't trust the government, because politicians act one way and police act another," medical cannabis patient Clark Sullivan told us. "There are good officers out there that respect the law, but there are cops who make their own guidelines."

**Mixed messages**

The risks involved in a case-by-case approach are clear to Stephanie Landa, Kevin Gage, and Thomas Kikuchi. In February 2002, they say, they attended a Medical Marijuana Task Force meeting with Halloran and Capt. Kevin Cashman, then head of the SFPD narcotics unit.

According to Landa, Cashman said at the meeting that the Board of Supervisors had designated San Francisco as a medical marijuana sanctuary and police wouldn't cooperate with federal law enforcement.

Landa told us Cashman explained that as long as they used licensed electricians, kept their medical marijuana garden within city limits, and sold only to medical marijuana dispensaries, they would have no trouble. She said Cashman presented them with a handout noting that there was no medical marijuana plant limit in San Francisco and told them if they had any burglaries, they should call the police.

Sullivan, who organized the meeting, supports Landa's account.

After more assurances from then-district attorney Terence Hallinan, Landa and her partners borrowed \$250,000, moved from Los Angeles, secured a business license, and began creating a nonprofit medical cannabis collective. In April 2002 they rented a warehouse for an indoor garden at 560 Brannan St., less than three blocks from police headquarters, and began growing 40 strains of cannabis to treat different conditions.

"We wanted to be near them so they could protect us as promised," Landa told us.

Four months later a group of plainclothes San Francisco police officers burst into the warehouse, threw Landa and Gage to the ground, and pointed guns at their heads. Leading the raid was Halloran, whom Landa said denied ever having met her.

When Cashman arrived, Landa told us, he recognized her and ordered her handcuffs removed. They weren't arrested, but Cashman asked Landa and Gage to give statements and come back the next day.

When they returned, Landa said, more than 1,000 small marijuana plants were gone, \$2,000 in cash was missing, and the entire growing facility had been heavily vandalized.

Two weeks later Landa, Gage, and Kikuchi were indicted on federal charges for growing more than 1,000 marijuana plants with intent to distribute.

Landa charges that when they couldn't make a state case, police simply turned over the evidence to federal authorities who weren't present at the raid; police dispute that characterization.

"The federal authorities were on the scene that day, and they adopted the case," Halloran told us.

He said a citizen complaint prompted him to investigate and secure a search warrant. Despite repeated requests, the SFPD wouldn't make Cashman available to set the record straight, and he has been transferred from his former post.

But Halloran told us Cashman never made the statements Landa claims he did. "At no time did we give assurances that someone who cultivated 1,500 plants two blocks from the Hall of Justice would not be prosecuted under state and federal law," said Halloran, who charges that the group didn't possess enough medical cannabis recommendations to prove they were growing for a large group of patients.

"They can possess marijuana if they possess a recommendation, and if they possess a recommendation, we said at that meeting that we handle all cases on a case-by-case basis."

Landa said the paperwork was forthcoming and they hadn't yet sold any cannabis. Nevertheless, federal prosecutor George Bevan threatened to put Landa in prison for life because of a prior heroin-smuggling charge 35 years earlier and proposed 10-year sentences for Kikuchi and Gage.

In a plea agreement written by Bevan, Landa said she and her partners weren't allowed to mention the roles of Halloran and Cashman in the case and were forced to sign away their right to an appeal. Bevan didn't return calls seeking comment.

Landa says 10 San Francisco city supervisors wrote letters to the judge on their behalf. But they were sentenced last summer to 37 to 41 months in federal prison. Gage and Kikichi are now eight months into their terms at a federal prison camp in Sheridan, Ore. Landa, who was given a delayed sentence because she and Kikichi have a child, will begin serving her 41 months in a maximum-security prison in about two years.

"When government officials gave us permission to do this, this was not in the plan," said Landa, who sobbed as she recounted the ordeal. "I can't figure out why they would tell us something and then come in and destroy it. It doesn't make sense."