



CITY OF SIMI VALLEY

Home of The Ronald Reagan Presidential Library

July 12, 2013

Law Office of Omar Figueroa
7770 Healdsburg Ave., Ste. A
Sebastopol, CA 95472-3352
ATTN: Marco

via email only
marco@omarfigueroa.com

Public Records Act request received June 14, 2013

Dear Marco,

With respect to the Public Records Act request submitted by your office via mail received by the City of Simi Valley ("City") on June 14, 2013, seeking "*any and all documents or information concerning medical marijuana, Proposition 215 (codified as Health and Safety Code § 11362.5) and/or Senate Bill 420 (codified as Health and Safety Code §§ 11362.7-11362.83), including, but not limited to, any and all guidelines, bulletins, orders, directives, policies, and/or protocols. Please provide any and all documents or information concerning medical marijuana doctors, patients, caregivers, dispensaries, collectives, cooperatives and/or associations,*" you and I spoke via phone to more specifically scope the nature of the documents your office is interested in receiving.

Based on this conversation, the City Clerk's Office has retrieved documents related to the presentation, consideration, and adoption of a City moratorium and subsequent City ordinance prohibiting the establishment of medical marijuana dispensaries within the City.

The City has received your payment of \$13.80 for the duplication/scanning of the responsive documents, enclosed herewith, and will consider your request fulfilled at this time. Should you have questions or additional needs, please call the City Clerk's Office at (805) 583-6813.

Respectfully,

A handwritten signature in blue ink that reads "Ky Spangler".

Ky Spangler
Assistant City Clerk

Enclosures

Agenda
Item: 7C
Date: 12-11-06

CITY OF SIMI VALLEY
MEMORANDUM

December 11, 2006

TO: City Council
FROM: Office of the City Attorney
SUBJECT: CONSIDERATION OF AN ORDINANCE PROHIBITING MEDICAL MARIJUANA DISPENSARIES IN THE CITY OF SIMI VALLEY

RECOMMENDATION

It is recommended that the City Council introduce the attached ordinance (page 5) prohibiting medical marijuana dispensaries in the City of Simi Valley.

BACKGROUND AND OVERVIEW

On February 28, 2005, after the City received inquiries regarding establishing a “medical marijuana dispensary”, the City Council adopted an emergency ordinance establishing a moratorium on such facilities. The initial moratorium was subsequently extended pursuant to the authority in Government Code Section 65858, and will expire on February 28, 2007. Proposition 215, which was enacted by the voters in November 1996, permits the medical use of marijuana, however, such use violates Federal law. In addition, it is well-documented that in communities where medical marijuana facilities have been allowed to operate, they create adverse secondary effects. Accordingly, the Police Department has recommended that the City Council prohibit medical marijuana dispensaries in the City of Simi Valley.

Attached for the City Council’s reference is the staff report that was presented on January 23, 2006, (Attachment A, page 8) when the City Council extended the moratorium on medical marijuana dispensaries. This report will serve to update the information in the January 23, 2006 memorandum. In summary, the law has still not been clarified with respect to the conflict between Proposition 215, which permits the medical use of marijuana, and the Federal Controlled Substances Act, which prohibits cultivation, distribution and use of marijuana. Currently 71 cities in California have moratoriums on medical marijuana dispensaries, 43 other cities ban such facilities and 27 cities have ordinances that allow them.

As noted in the January 23, 2006 report, several cities have been sued over their bans on medical marijuana dispensaries by an organization called Americans For Safe Access. The City of Fresno was sued in April 2005, however, that case has been stayed and is no longer

being pursued. In October 2005, three other cities were sued. Two of those cases, against the cities of Concord and Susanville, were withdrawn by the plaintiffs before motions to dismiss that had been filed by the cities could be heard. Another lawsuit against the City of Pasadena was never served.

A lawsuit was also filed by the County of San Diego against the State of California in an effort to seek a judicial ruling that State regulations which require Counties to issue medical marijuana identification cards are pre-empted by Federal law. On December 6, 2006, a Superior Court Judge ruled against the County. Newspaper reports indicate that the County has not yet made a decision as to whether or not it will appeal this ruling. In addition, the City of Garden Grove is involved in a case pending in the Court of Appeals that is related to a challenge to a trial court order requiring that their Police Department return confiscated marijuana. It has been reported that this case will also include arguments related to the conflict between State and Federal law and pre-emption of Federal law. Regardless of the decisions in these cases, it is expected that the Federal pre-emption issue will ultimately be decided by higher courts.

Despite voter approval of Proposition 215, the Federal Drug Enforcement Agency continues to conduct raids on medical marijuana dispensaries. For example, during the month of October 2006, medical marijuana dispensaries were raided by the DEA in San Francisco, Los Angeles, Palm Springs, Modesto, and Torrance.

FINDINGS AND ALTERNATIVES

As the foregoing demonstrates, there still is no judicial resolution to the conflict between State and Federal law in the regulation of medical marijuana. In reviewing this issue, the Chief of Police has indicated that the position of the Simi Valley Police Department is that medical marijuana dispensaries should not be permitted in the City. Cities that have prohibited such facilities have done so on the basis that Federal law prohibits marijuana use, and in addition many cities also prohibit dispensaries based upon evidence that they cause adverse secondary effects, including increases in crime. Accordingly, attached to this report, and made a part of the record, is a report that was prepared by the City of El Cerrito Police Department (Attachment B, page 36) as part of that City's recent consideration of an ordinance prohibiting medical marijuana dispensaries. The El Cerrito Police Department searched media databases and contacted law enforcement agencies in 25 cities, 11 counties and two unincorporated towns in California where medical marijuana dispensaries are currently located, and the report delineates criminal activity that has occurred at such facilities. Also attached for the City Council's reference is a "White Paper" that was recently prepared by the Riverside County District Attorney's Office discussing medical marijuana (Attachment C, page 55). That report, issued in September 2006, concluded that their Office "believes that the cooperatives being considered are illegal and should not be permitted to exist within the County's borders. They are a clear violation of federal and state law, they invite more crime, and they compromise the health and welfare of the citizens of this County."

The maximum period for moratoriums adopted under Government Code Section 65858 is two years. Therefore, the current moratorium will expire on February 28, 2007 and cannot be extended. Two alternatives are available to the City Council. The first would be to adopt an ordinance prohibiting medical marijuana dispensaries based upon the fact that they clearly violate the Federal Controlled Substances Act, and also create adverse secondary effects, including criminal activity and negative impacts on nearby businesses. The second alternative would be to adopt a regulatory ordinance similar to ones that have been adopted by other cities in California. If the City Council chooses this latter alternative, staff would return with a regulatory ordinance as expeditiously as possible. Based upon the recommendation of the Police Department that such facilities should not be permitted in the City of Simi Valley, a draft ordinance has been prepared to add Chapter 41 to Title 5 of the Simi Valley Municipal Code prohibiting medical marijuana dispensaries.

The ordinance has been determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the State CEQA Guidelines which states that:

“A project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

No medical marijuana dispensaries currently exist in the City. The prohibition on their establishment would not cause any change to the environment. Therefore, the project would not have a significant effect on the environment and is exempt from further review under CEQA. A Notice of Exemption is attached to this report (Attachment D, page 65)

Based upon the foregoing, the alternatives available to the City Council are:


1. Introduce the attached ordinance adding chapter 41 to Title 5 of the Simi Valley Municipal Code prohibiting medical marijuana dispensaries in the City of Simi Valley;
2. Not introduce the attached ordinance and direct staff to return with options for a regulatory ordinance for medical marijuana dispensaries;
3. Provide staff with further direction.

Staff recommends Alternative No. 1.

SUMMARY

The City's moratorium on medical marijuana dispensaries will expire on February 28, 2007. Medical marijuana use is permitted under State law, but violates Federal law. Medical marijuana dispensaries that have been allowed in other cities have created well-documented

adverse secondary effects. The Police Department has recommended that such facilities not be allowed in the City of Simi Valley. Accordingly, a draft ordinance prohibiting medical marijuana dispensaries has been prepared for City Council consideration.



David H. Hirsch, City Attorney

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ORDINANCE NO. 1106

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF SIMI VALLEY ADDING CHAPTER 41 TO TITLE 5 OF
THE SIMI VALLEY MUNICIPAL CODE TO PREVENT THE
ESTABLISHMENT OF MEDICAL MARIJUANA
DISPENSARIES IN THE CITY

WHEREAS, on November 5, 1996, the voters of the State of California enacted Proposition 215, The Compassionate Use Act of 1996 (codified at Health & Safety Codes Section 11362.5, et seq.) which allows the medical use of marijuana by certain persons; and

WHEREAS, in October 2003 the State enacted Senate Bill 420 (codified at Health & Safety Codes Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act of 1996 and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, Congress has enacted the Controlled Substances Act (CSA) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana; and

WHEREAS, on June 6, 2005, the United States Supreme Court issued its decision in the case of *Gonzales vs. Raich* which held that Congress, under the Commerce Clause of the United States Constitution, has the authority, and, under the Federal Controlled Substances Act (21 USC Section 841) the power to prosecute the local cultivation and use of marijuana even if such use is in compliance with California law; and

WHEREAS, evidence has been provided to the City Council regarding the adverse secondary effects caused by facilities that furnish marijuana to persons for medicinal purposes, including but not limited to, increased crime in the vicinity of such facilities. The City Council takes legislative notice of the fact that several California cities and counties which have permitted the establishments of medical marijuana dispensaries have experienced serious adverse impacts associated with and resulting from such dispensaries. This includes increases in crime, including burglaries, robberies, violence, illegal sales of marijuana too, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries; and

WHEREAS, the federal agency charged with enforcing the CSA, the Drug Enforcement Agency ("DEA") has continued to enforce the CSA despite Proposition 215 based upon the concept of the supremacy of federal law and that the use and possession of marijuana for any reason is prohibited by federal law; and

WHEREAS, based upon its concerns regarding the adverse impacts on those communities where medical marijuana dispensaries have been established, and until the inconsistency between federal and state law is finally resolved and until additional information

regarding the impacts of medical marijuana dispensing is considered, it is the intent of the City Council of the City of Simi Valley to prohibit medical marijuana dispensaries within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 41 of Title 5 of the Simi Valley Municipal Code is hereby added to read as follows:

Chapter 41

MEDICAL MARIJUANA DISPENSARIES

5-41.01 Definitions.

A "medical marijuana dispensary" means any facility or location, whether fixed or mobile, where medical marijuana is made available to or distributed by or distributed to one (1) or more of the following: a primary caregiver, a qualified patient, or a patient with an identification card. All three of these terms are identified in strict accordance with California Health & Safety Code Section 11362.5 et seq. A medical marijuana dispensary shall not include the following uses, as long as the location of such uses is otherwise regulated by this code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code; a healthcare facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code; a facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as such use complies strictly with applicable law, including but not limited to, Health & Safety Code Section 11362.5 et seq.

5-41.02 Medical Marijuana Dispensary as a prohibited use.

A medical marijuana dispensary, as defined in Section 5-41.01 is prohibited in all zones throughout the City of Simi Valley.

5-41.03 Criminal Penalties.

A violation of this chapter is a misdemeanor.

5-41.04 Civil Injunction.

The violation of any provision in this Chapter shall be and is hereby be declared to be a public nuisance and contrary to the public interest and shall, at the discretion of the City, create a cause of action for interim injunctive relief.


SECTION 2. This Ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including without limitation, the Constitution of the State of California and the Constitution of the United States. If any section, subsection, sentence, clause, portion, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this ordinance. The City Council hereby declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the ordinance would be subsequently declared invalid or unconstitutional. Any provision of the Simi Valley Municipal Code inconsistent with the provisions of this ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to effectuate the provisions of this ordinance.

SECTION 3. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.


SECTION 4. This ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED and ADOPTED this 18th day of December 2006.

Attest:



Alice K. Redondo
Deputy Director/City Clerk



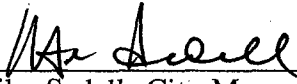
Paul Miller, Mayor of the City of
Simi Valley, California

Approved as to Form:

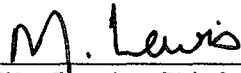


David H. Hirsch, City Attorney

Approved as to Content:



Mike Sedell, City Manager



Mike Lewis, Chief of Police

I, Deputy Director/Assistant City Clerk of the City of Simi Valley, California, do hereby certify that the foregoing Ordinance No. 1106 was regularly introduced and adopted by the City Council of the City of Simi Valley, California, at an adjourned meeting thereof held on the 18th day of December 2006 by the following vote of the City Council:

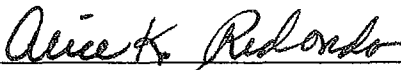
AYES: Council Members Foster, Becerra,
Mayor Pro Tem Sojka, and Mayor Miller

NAYS: None

ABSENT: Council Member Williamson

ABSTAINED: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Simi Valley, California, this 19th day of December 2006.



Alice K. Redondo
Deputy Director/Assistant City Clerk

Agenda
Item: 2B
Date: 1-23-06

CITY OF SIMI VALLEY
 MEMORANDUM

January 23, 2006

TO: City Council

FROM: Office of the City Attorney
 Police Department

SUBJECT: A PUBLIC HEARING TO CONSIDER EXTENDING THE
 MORATORIUM RELATING TO MEDICAL MARIJUANA
 DISPENSARIES

RECOMMENDATION

It is recommended that after holding a public hearing, the City Council adopt the attached ordinance (page 7) extending the current moratorium prohibiting the opening of medical marijuana dispensaries for an additional 12 month period, as permitted by Government Code Section 65858 (four affirmative votes are required).

BACKGROUND AND OVERVIEW

In early 2005, the City received inquiries from a person interested in establishing a "medical marijuana dispensary" in the City of Simi Valley. On February 28, 2005, the City Council adopted an urgency ordinance establishing a 45-day moratorium on such facilities. Thereafter, on April 4, 2005, in accordance with the authority contained in Government Code Section 65858, the City Council adopted Ordinance 1070, extending the moratorium an additional 10 months and 15 days. Copies of the staff reports and previous moratorium ordinances as adopted by the City Council are attached as Attachments A and B (pages 10 and 19). The current moratorium is set to expire on February 28, 2006, and staff is recommending that the City Council adopt an ordinance to extend the moratorium.

Proposition 215, which was enacted in November 1996, allows a person to use marijuana for medical purposes when recommended by a physician. In addition, in 2003, the state legislature enacted SB 420, which establishes the Medical Marijuana Program, and provides a voluntary system for qualified patients and caregivers to obtain identification cards. SB 420 does not expressly authorize establishment of medical marijuana dispensaries or cooperatives, however, it contains provisions pursuant to which "caregivers" can have multiple patients, distribute marijuana and receive compensation for their efforts. It might be noted that the terms "dispensaries" and "cooperatives" are frequently used in reference to medical marijuana distribution facilities, however, it is not clear what the difference between a "dispensary" and a "cooperative" is. Ordinances banning marijuana dispensaries are typically worded in a fashion that is broad enough to encompass facilities that characterize themselves as a "cooperative".

On June 6, 2005, the U.S. Supreme Court issued its decision in *Gonzales vs. Raich* (2005) 125 S.Ct. 2201, ruling that California's Proposition 215, which allows the use of marijuana for medical purposes, does not supercede the federal Controlled Substances Act, which prohibits cultivation, distribution and use of marijuana. Although the *Raich* decision makes it clear that medical use of marijuana, as well as facilities such as medical marijuana dispensaries and cooperatives, violate federal law, there is still uncertainty regarding the conflict between state and federal law and the ability of cities to either regulate or prohibit medical marijuana dispensaries and cooperatives.

Immediately following the U.S. Supreme Court's decision in *Gonzales vs. Raich*, the California Attorney General issued a bulletin to all California law enforcement agencies advising that "law enforcement agencies should not change their current practices for the non-arrest and non-prosecution of individuals who are within the legal scope of California's "Compassionate Use Act." The Attorney General apparently reached this conclusion because the *Raich* case did not directly invalidate Proposition 215. In addition, on September 12, 2005, a California appellate court, in a case involving the criminal prosecution of a person who had been charged with illegally cultivating and selling marijuana under state law, remanded the case to allow the defendant to raise as a defense that he was acting in accordance with SB 420. The court in *People vs. Urziceanu* held that SB 420 "... contemplates the formation and operation of medical marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provisions of that marijuana." The *Urziceanu* case makes no reference to federal law in its 62-page decision. The current state of the law is that use of marijuana for medical purposes is considered "legal" under state law, however, it is illegal under federal law and subject to federal enforcement and prosecution.

Almost immediately after the U.S. Supreme Court issued its ruling in *Gonzales vs. Raich* a medical marijuana advocacy organization, Americans For Safe Access, sent correspondence to city attorneys and county counsels throughout the state asserting that the *Raich* decision was narrow, and that medical marijuana patients continued to have rights under Proposition 215 and SB 420. In their correspondence Americans For Safe Access urged cities and counties to regulate "dispensing facilities" and further stated that "... where cities and counties pass ordinances that permanently ban dispensing of medical marijuana, state courts will be called upon to adjudicate the issue." In October 2005, Americans For Safe Access filed lawsuits against three cities that had adopted ordinances prohibiting medical marijuana dispensaries, Pasadena, Concord and Susanville. The basis of these lawsuits is that the ordinances are inconsistent with state law and therefore preempted. Also, on October 25, 2005 the Planning Director received a new inquiry regarding opening a medical marijuana dispensary in the City of Simi Valley, and another request to open such a facility was made in late November.

FINDINGS AND ALTERNATIVES

As the foregoing demonstrates, cities and counties are caught in the middle of the medical marijuana debate. According to the Americans For Safe Access website, as of December, 2005, 48 cities and six counties have adopted moratoriums on medical marijuana dispensaries. Fifteen cities and two counties have adopted ordinances banning them, and 23 cities and three

counties have adopted ordinances regulating such facilities. In addition to cities that have adopted ordinances banning dispensaries, several other cities, including Sacramento and Stockton, reportedly prohibit them based upon interpretations of existing city code provisions that do not allow uses that violate state or federal law. It might be noted that although a few cities have recently adopted regulatory ordinances, most of the ordinances regulating medical marijuana dispensaries were adopted prior to the Supreme Court's decision in *Raich*. Most of the ordinances banning such facilities have been adopted since the Supreme Court's decision in *Raich*.

Illustrating the dilemma facing cities is the fact that on November 8, 2005, the San Diego County Board of Supervisors voted to sue the State of California in federal court on the basis that federal law preempts the state regulations. Also, in early December federal drug agents raided 13 medical marijuana dispensaries in the San Diego area, and on December 21st the Federal Drug Enforcement Agency conducted a raid on a medical marijuana "co-op" in San Francisco. In addition, recently the District Attorneys of Ventura and Kern Counties have requested that the Attorney General issue a formal opinion on whether police officers, government employees and judges actions in compliance with various aspects of the state medical marijuana laws constitutes aiding and abetting the commission of a federal crime.

There are several alternatives available to the City Council with regard to the issue of medical marijuana dispensaries in the City of Simi Valley. Based upon the current state of the law, the City Attorney's Office is recommending that the current moratorium be extended for an additional one-year period, which is the maximum that is allowed under Government Code Section 65858. The basis of this extension would be the unsettled state of the law, which is demonstrated by the recent litigation that has been filed against cities that prohibit medical marijuana dispensaries, while at the same time federal authorities are pursuing dispensaries as criminal narcotics operations. Extending the moratorium would allow more time for the courts to sort out the current conflict between state and federal law.

Another approach would be to adopt an ordinance prohibiting medical marijuana dispensaries based upon the fact that they clearly violate federal law. The approach taken by cities that have adopted such ordinances is to amend their zoning ordinance to prohibit such facilities. As has been noted in the reports that were presented to the City Council earlier this year, medical marijuana dispensaries are documented to have created police-related problems such as criminal activity and negative impacts on nearby businesses. Although groups like Americans For Safe Access will urge that such a ban violates their "right" to have a "cooperative" in accordance with SB 420, such a prohibition would not foreclose an individual from cultivating, obtaining or using medical marijuana as otherwise allowed by state law.

The other alternative available to the City Council would be to adopt a regulatory ordinance similar to ones that have been adopted by some cities and counties. It is unclear, however, whether doing so would in of itself be a violation of federal law. It would appear that if the City purported to permit such facilities, it could be accused of facilitating violations of federal law. Also, despite the argument being made that cities are preempted by state law from banning such facilities, adopting an ordinance allowing such uses is arguably in excess of the City's authority. Government Code Section 37100 provides that the City Council "... may

pass ordinances not in conflict with the Constitution and laws of the State *or the United States*" (emphasis added).

In addition, staff has also evaluated the option of allowing the moratorium to expire and taking no further action. This option, however, is not recommended. Unlike the basis of the previously discussed approach taken by cities such as Sacramento and Stockton, the Simi Valley Municipal Code does not contain a general prohibition of uses that violate state or federal law. Also, medical marijuana dispensaries are not called out as permitted uses in the Development Code. Under Section SVMC 9-22.030 uses not listed are subject to determinations by the Director of Environmental Services as to whether they are similar to other allowed uses (i.e. such as pharmacies or other medical facilities). Such determinations can be appealed to the Planning Commission and City Council, and any such determination could also result in a legal challenge.

A draft ordinance extending the moratorium for an additional year has been prepared for City Council consideration. If the City Council would like to either adopt an ordinance prohibiting medical marijuana dispensaries or have staff to develop options to regulate medical marijuana dispensaries, it is recommended that the attached ordinance extending the moratorium initially be adopted to allow additional time to prepare an ordinance and schedule public hearings.

Based upon the foregoing, the alternatives available to the City Council are:

1. Adopt the attached ordinance extending the moratorium on medical marijuana dispensaries for an additional one-year period, pursuant to Government Code Section 65858;
2. Adopt the moratorium ordinance extension, and direct staff to return with an ordinance prohibiting medical marijuana dispensaries and cooperatives in the City of Simi Valley;
3. Adopt the moratorium ordinance extension, and direct staff to return with options for a regulatory ordinance for medical marijuana dispensaries;
4. Allow the moratorium to expire on February 28, 2006 and take no further action;
5. Provide staff with further direction.

Staff recommends Alternative No. 1.


SUMMARY

After receiving inquiries relating to opening a medical marijuana dispensary the City Council adopted ordinances establishing a moratorium on such facilities that is set to expire on February 28, 2006. Based upon the continuing unsettled state of the law relating to medical

marijuana, the City Attorney's Office is recommending extending the moratorium for an additional year, as permitted by Government Code Section 65858.



David H. Hirsch, City Attorney



Mark Layhew, Chief of Police

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PUBLIC HEARING PROCEDURE

HEARING DATE: January 23, 2006

1. MAYOR: This is the time and place set for a public hearing on the consideration of an ordinance extending the moratorium relating to medical marijuana dispensaries.

May we have an oral report on this matter by staff?
2. STAFF: (Report)
3. ANY COUNCIL MEMBER : (Questions of staff)
4. MAYOR: Is there anyone in the City Council Chamber wishing to be heard on this matter?
5. AUDIENCE: (Comments)
6. MAYOR: The hearing is closed. Are there any comments or questions from members of the City Council?
7. ANY COUNCIL MEMBER : (Comments)
8. MAYOR: The Chair will now entertain a motion.
9. ANY COUNCIL MEMBER : City Council Actions (by motion of any Council Member):
 - 1) Adopt, modify, or not adopt Ordinance No. _____ (requires four affirmative votes).

ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SIMI VALLEY EXTENDING A MORATORIUM ON
MEDICAL MARIJUANA DISPENSARIES

WHEREAS, California voters enacted Proposition 215, "The Compassionate Use Act of 1996," which allows personal medical marijuana use with a doctor's recommendation; and

WHEREAS, the State Legislature adopted SB 420 in 2003, (Health and Safety Code Section 11362.7 et seq.) establishing further regulations relating to medical marijuana; and

WHEREAS, at least three persons have inquired about opening a medical marijuana dispensary in the City of Simi Valley; and

WHEREAS, the Simi Valley Municipal Code does not currently address such uses; and

WHEREAS, in June 2005 the United States Supreme Court ruled in Gonzales vs. Raich that the Federal Controlled Substances Act can be enforced against persons cultivating and using marijuana in compliance with Proposition 215 and therefore it is a violation of federal law to possess or distribute marijuana, even for medical purposes; and

WHEREAS, fifteen cities and two counties in California, have adopted ordinances banning medical marijuana dispensaries because of deleterious secondary effects; and twenty-three cities and three counties have adopted ordinances regulating such facilities, and

WHEREAS, forty-eight California cities and six counties have adopted urgency moratorium ordinances in order to study the issues of prohibition or regulation of medical marijuana dispensaries; and

WHEREAS, subsequent to the United States Supreme Court ruling in Raich, the cities of Pasadena, Susanville and Concord have been sued over their bans on medical marijuana dispensaries on the basis that such bans violate state law and are preempted; and

WHEREAS, the Board of Supervisors for the County of San Diego has directed that their County Counsel file a lawsuit in Federal District Court challenging California's medical marijuana laws on the basis that they conflict with Federal law, and

WHEREAS, on February 28, 2005 the City Council adopted an ordinance as an urgency measure establishing an interim prohibition/moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries for a period of forty-five days, and on April 4 the City Council extended the moratorium for an additional 10 months and 15 days, which will expire on February 28, 2006.

ORD. NO.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose and findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtaining 'identification cards' to qualify for medical marijuana, and other increases in criminal activity. Recent examples from last year include: men who kicked in the window of a medical marijuana dispensary in Oakland and tried to rob the dispensary; at another medical marijuana dispensary in Alameda County, thieves broke into the building and robbed the safe as well as persons present. The United States Department of Justice's (DOJ) California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. Furthermore, if the City were to permit medical marijuana dispensaries it would be sanctioning conduct that violates federal laws, however if it bans such facilities it would face potential legal challenges as a result of the many unresolved legal issues related to Federal preemption and State law. To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, City staff needs additional time to study prohibition and/or licensing.

SECTION 2. Interim Prohibition.

There shall be an interim prohibition/moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which includes any site, facility, location, use, cooperative or business which distributes, 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 Proposition 215, the "Compassionate Use Act of 1996", (Health and Safety Code Section 11362.7 et seq.) or any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

Based on the findings set forth herein, no land use approval or building permit may be issued for a medical marijuana dispensary for the effective period of this Ordinance.

SECTION 3. Immediate threat to health, safety and welfare.

Based on the recitals and findings herein, this ordinance is adopted pursuant to California Government Code §65858 and is required to address a current and immediate threat to the public health, safety and welfare. The City Council has determined that granting additional land use approvals or building permits for medical marijuana dispensaries would result in a threat to the public health, safety and welfare.

ORD. NO.

SECTION 4. Urgency Ordinance.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption.

SECTION 5. Effective Period.

In accordance with California Government Code §65858, the interim prohibitions established by Ordinances 1069 and 1070 shall be extended for a period of one year, as permitted by California Government Code §65858 and shall expire on February 28, 2007.

SECTION 6. Conflicting Laws.

For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 7. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 8. This ordinance shall go into effect immediately and be in full force and effect at 12:01 a.m. the day after its passage.

PASSED and ADOPTED this

Attest:

Alice K. Redondo
Assistant City Clerk

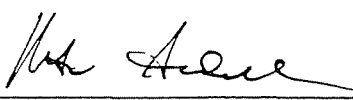
Paul Miller, Mayor of the City of
Simi Valley, California

Approved as to Form:

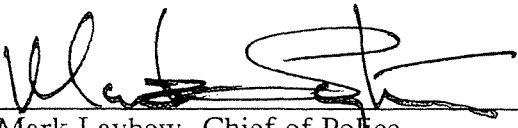


David H. Hirsch, City Attorney

Approved as to Content:



Mike Sedell, City Manager



Mark Layhew, Chief of Police

**CITY OF SIMI VALLEY
MEMORANDUM**

February 28, 2005

TO: City Council

FROM: Police Department

SUBJECT: MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

RECOMMENDATION

It is recommended that the City Council adopt the attached ordinance as an urgency measure (four affirmative votes are required) prohibiting the opening of any medical marijuana dispensary in the City of Simi Valley for a period of forty-five (45) days from its adoption, and direct staff to study the issues relating to regulating or prohibiting such a use and to return with a proposed ordinance and procedures.

BACKGROUND AND OVERVIEW

As the result of the adoption of Proposition 215 and subsequent legislation relating to the medical use of marijuana, the City has received inquiries regarding the establishment of a "medical marijuana dispensary" in the City of Simi Valley. The City does not currently have in place specific regulations for restricting or licensing such facilities. Furthermore, the City's Zoning Ordinance does not specifically define medical marijuana dispensaries as uses which are prohibited or permitted within specific zoning districts.

In November, 1996, California voters enacted Proposition 215, "The Compassionate Use Act of 1996", which allows a person to use marijuana for medical purposes with a doctor's prescription, without violating state law regarding possession or cultivation of marijuana. More recently, the State Legislature has adopted SB 420, which is now codified as Health and Safety Code Section 11362.7, et seq., which establishes further regulations relating to medical marijuana. These regulations include a voluntary program for identification cards for qualified patients and primary caregivers, limits on the amount of dried marijuana or marijuana plants per qualified patient, and confidentiality and privacy restrictions.

Proposition 215 and this more recent statute are being interpreted by some persons as allowing the establishment of "medical marijuana dispensaries", which are businesses that sell marijuana to those entitled to possess it under state law. It should be noted that it is still unclear as to whether California's Proposition 215 and subsequent legislation can supersede federal restrictions on marijuana.

Medical marijuana dispensaries have been established in several locations in Northern California primarily in the Bay Area, including San Francisco and Oakland. As a result of the presence of medical marijuana dispensaries, some local agencies have, as further delineated in the attached ordinance, reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and other increases in criminal activity. Establishment of medical marijuana dispensaries have also resulted in increased demands for police response. Medical marijuana dispensaries have been banned by ordinance in at least two California cities, Rocklin and San Rafael. Numerous other cities have adopted moratoriums and are currently studying the issue.

Recently, a person made inquiries to the City of Simi Valley's Environmental Services Department and the City Attorney's Office about locating a medical marijuana dispensary within the City of Simi Valley. Medical marijuana dispensaries are not a type of use, which is specifically defined in the Simi Valley Municipal Code (SVMC) zoning regulations. Because a medical marijuana dispensary is not specifically defined in the SVMC, an interested person could apply to conduct such a use, and claim that it is similar to a pharmacy, medical office, or limited retail use. Under SVMC Section 9-1.504 uses not listed in the Zoning Ordinance are subject to determinations by the Director of Environmental Services as to whether they are similar to other allowed uses. The Director's determination can be appealed to the Planning Commission and potentially, the City Council.

FINDINGS AND ALTERNATIVES

Following the City Council's adoption of the forty-five (45) day moratorium on medical marijuana dispensaries, staff contacted several police department representatives across the State who have had experience with these types of establishments and found that:

The City of San Francisco is being overrun with medical marijuana dispensaries, or cannabis clubs as they call them. The situation is exacerbated by the fact that the City of Oakland has, by ordinance, reduced the number of operational medical marijuana facilities in their jurisdiction from fifteen (15) to four (4), due to the crime trend that followed their establishment in the city.

The San Francisco Police Department receives numerous citizen complaints on a regular basis regarding the increase in crime in the neighborhoods surrounding the facilities. Police officials in the following California jurisdictions: Arcata, Berkeley, Roseville, Hayward, Lake County, and Fairfax, admitted that the medical marijuana dispensaries operating in their jurisdictions have caused adverse impacts in and around the facilities. Some of the problems observed by the agencies are as follows:

- Subjects smoking marijuana in and around the facilities
- Patients congregating and smoking marijuana in nearby parks
- Patients reselling marijuana after purchasing
- Attempted burglaries into the facilities
- Increase in crime near the facilities

- Negative impact on nearby businesses
- Increase in number of out-of-town purchasers

On the other hand, the City of Fort Bragg, California, has a medical marijuana facility operating in its jurisdiction and has experienced no problems. They attribute the lack of related issues to the fact that the dispensary is located in an industrial area, well away from housing and businesses.

Staff believes it is appropriate to continue the moratorium on medical marijuana dispensaries until the identified issues can be further evaluated. Extension of the moratorium as an urgency measure is necessary due to the recent adoption of State regulations regarding medical marijuana dispensaries, inquiries from at least one interested person regarding the establishment of a medical marijuana dispensary in the City of Simi Valley, and the mixed experiences of other local jurisdictions. The scope of the comprehensive evaluation developed during the moratorium may include a recommendation for an outright ban of such a use.

The extension of the moratorium will give City staff additional time to study this issue; prevent medical marijuana dispensaries from locating in the City unless authorized; and, if authorized, until proper procedures and regulations are established.

State law sets restrictions on the adoption of a moratorium. The initial moratorium approved by the City Council is only in force and effect for a 45-day period. The moratorium may be extended for an additional 10 months and 15 days after holding a noticed public hearing. Any extension as an urgency measure also requires four affirmative votes for adoption. In addition, the statute requires that ten (10) days prior to the expiration of the interim ordinance, the City Council is to issue a report on the status of the matter that led to the adoption of the moratorium and the steps being taken to alleviate the condition. This staff report serves to meet the written report requirement. Because the Police Department estimates that it will take several months to complete the study of the issues related to medical marijuana dispensaries, staff requests that the City Council extend the moratorium for ten (10) months and fifteen (15) days, as permitted by state law.

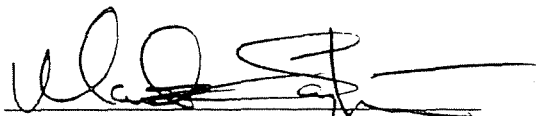
The following alternatives are available to the City Council:

1. Adopt the attached ordinance as an urgency measure (four affirmative votes are required), extending the prohibition against opening any medical marijuana dispensary in the City and direct staff to return with a proposed ordinance and procedures;
2. Decline to adopt the ordinance;
3. Provide staff with further direction.

Staff recommends Alternative No. 1.

SUMMARY

The City of Simi Valley needs additional time to study the issue of whether medical marijuana dispensaries should be banned entirely or allowed and regulated in certain zones. Currently, such uses are not addressed in the City's Municipal Code. Accordingly, staff recommends that this ordinance extending the current moratorium on medical marijuana dispensaries be adopted as an urgency measure pursuant to Government Code Section 65858 et seq., to go into effect immediately after enactment for a period of ten (10) months and fifteen (15) days.


Mark Layhew, Chief of Police

Submitted to Council on 4-4-05

Item No. 2C

Page No. _____

Ord. No. 1070

Introduced Adopted

Status _____

ORDINANCE NO. 1070AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SIMI VALLEY ADOPTING A MORATORIUM ON
MEDICAL MARIJUANA DISPENSARIES

WHEREAS, California voters enacted Proposition 215, "The Compassionate Use Act of 1996," which allows personal medical marijuana use with a doctor's recommendation; and

WHEREAS, the State Legislature adopted SB 420 in 2003, (Health and Safety Code Section 11362.7 et seq.) establishing further regulations relating to medical marijuana; and

WHEREAS, at least one person has recently inquired about opening a medical marijuana dispensary in the City of Simi Valley; and

WHEREAS, the Simi Valley Municipal Code does not currently address such uses;
and

WHEREAS, at least two cities in California, the City of Rocklin and the City of San Rafael, have adopted ordinances banning medical marijuana dispensaries because of deleterious secondary effects; and

WHEREAS, several California cities have adopted urgency moratorium ordinances in order to study the issues of prohibition or regulation of medical marijuana dispensaries; and

WHEREAS, the case of Ashcroft v. Raich is pending before the United States Supreme Court and a decision therein may determine whether California's marijuana regulations are invalid due to federal pre-emption; and

WHEREAS, on February 28, 2005 the City Council adopted an ordinance as an urgency measure establishing an interim prohibition/moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries for a period of forty-five days.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY
DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose and findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtaining 'identification cards' to qualify for medical marijuana, and other increases in criminal activity. Recent examples from last year include: men who kicked in the window of a medical marijuana dispensary in Oakland and tried to burglarize the dispensary; at another medical

PUBLIC HEARING PROCEDURE

HEARING DATE: April 4, 2005

EXTENSION OF MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES

1. MAYOR: This is the time and place set for a public hearing to consider adoption of an urgency ordinance extending the current moratorium on medical marijuana dispensaries.

May we have an oral report on this matter by staff?
2. STAFF: (Report)
3. ANY COUNCIL MEMBER : (Questions of staff)
4. MAYOR: Is there anyone in the City Council Chamber wishing to be heard on this matter?
5. AUDIENCE: (Comments)
6. MAYOR: The hearing is closed. Are there any comments or questions from members of the City Council?
7. ANY COUNCIL MEMBER : (Comments)
8. MAYOR: The Chair will now entertain a motion.
9. ANY COUNCIL MEMBER : City Council Actions (by motion of any Council Member):
 - 1) Approve, modify, or deny the findings in the staff report and staff recommendation (requires a second and a vote);
 - 2) Adopt Ordinance No. **(requires four affirmative votes; requires reading of ordinance).**

* Any action to refer the matter back to staff or to continue the matter requires a second and a vote.

marijuana dispensary in Alameda County, thieves broke into the building, burglarized the safe and robbed persons present. The United States Department of Justice's (DOJ) California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. Furthermore, the State of California has not implemented its State-wide identification card program for qualified patients, and their primary care givers, related to medical marijuana; and many unresolved legal issues related to Federal preemption of State law remain. To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, City staff needs time to study prohibition and/or licensing and criminal background check procedures, as well as determine which zoning districts may be appropriate for such a use, and pursuant to what level of discretionary review.

SECTION 2. Interim Prohibition.

There shall be an interim prohibition/moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which includes any site, facility, location, use, cooperative or business which distributes, 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 Proposition 215, the "Compassionate Use Act of 1996", (Health and Safety Code Section 11362.7 et seq.) or any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

Based on the findings set forth herein, no land use approval or building permit may be issued for a medical marijuana dispensary for the effective period of this Ordinance.

SECTION 3. Immediate threat to health, safety and welfare.

Based on the findings herein, this ordinance is adopted pursuant to California Government Code §65858 and is required to address a current and immediate threat to the public health, safety and welfare. The City Council has determined that granting additional land use approvals or building permits for medical marijuana dispensaries would result in a threat to the public health, safety and welfare.

SECTION 4. Urgency Ordinance.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption.

SECTION 5. Effective Period.

In accordance with California Government Code §65858, this ordinance shall be in full force and effect for a period of ten (10) months and fifteen (15) days from the date of its adoption. This period may be extended for an additional one (1) year by the City Council in accordance with the provisions of California Government Code §65858.

SECTION 6. Conflicting Laws.

For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 7. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

SECTION 8. This ordinance shall go into effect and be in full force and effect immediately after its passage.

PASSED and ADOPTED this 4th day of April 2005.

Attest:



Alice K. Redondo
Assistant City Clerk



Paul Miller, Mayor of the City of
Simi Valley, California

Approved as to Form:

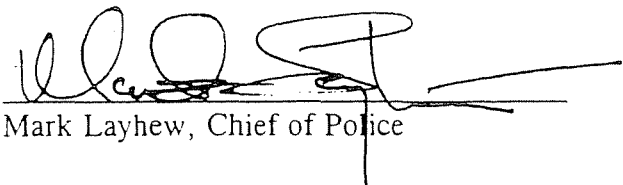


David H. Hirsch, City Attorney

Approved as to Content:



Mike Sedell, City Manager



Mark Layhew, Chief of Police

ORD. NO. 1070

I, Assistant City Clerk of the City of Simi Valley, California, do hereby certify that the foregoing Urgency Ordinance No. 1070 was regularly introduced and adopted by the City Council of the City of Simi Valley, California, at a regular meeting thereof held on the 4th day of April 2005 by the following vote of the City Council:

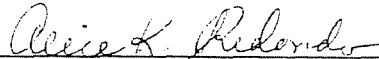
AYES: Council Members Foster, Sojka, Becerra,
Mayor Pro Tem Williamson, and Mayor Miller

NAYS: None

ABSENT: None

ABSTAINED: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Simi Valley, California, this 5th day of April 2005.



Alice K. Redondo
Assistant City Clerk

CITY OF SIMI VALLEY
MEMORANDUM

April 4, 2005

TO: City Council

FROM: Police Department

SUBJECT: A PUBLIC HEARING TO CONSIDER EXTENSION OF
MORATORIUM ON MEDICAL MARIJUANA DISPENSARIES;
AND ADOPTION OF ORDINANCE

RECOMMENDATION

It is recommended that the City Council, at the conclusion of the public hearing, adopt the attached ordinance as an urgency measure (four affirmative votes are required) extending the prohibition against opening any medical marijuana dispensary in the City and direct staff to return with a proposed ordinance and procedures to address this issue.

BACKGROUND AND OVERVIEW

As the result of the adoption of Proposition 215 and subsequent legislation relating to the medical use of marijuana, the City has received inquiries regarding the establishment of a "medical marijuana dispensary" in the City of Simi Valley. The City does not currently have in place specific regulations for restricting or licensing such facilities. Furthermore, the City's Zoning Ordinance does not specifically define medical marijuana dispensaries as uses which are prohibited or permitted within specific zoning districts. On February 28, 2005, the City Council adopted a forty-five (45) day moratorium on medical marijuana dispensaries pursuant to Government Code Section 65858, et seq. That moratorium will expire on April 14, 2005.

In November 1996, California voters enacted Proposition 215, "The Compassionate Use Act of 1996", which allows a person to use marijuana for medical purposes with a doctor's prescription, without violating state law regarding possession or cultivation of marijuana. More recently, the State Legislature has adopted SB 420, which is now codified as Health and Safety Code Section 11362.7, et seq., which establishes further regulations relating to medical marijuana. These regulations include a voluntary program for identification cards for qualified patients and primary caregivers, limits on the amount of dried marijuana or marijuana plants per qualified patient, and confidentiality and privacy restrictions.

Proposition 215 and this more recent statute are being interpreted by some persons as allowing the establishment of medical marijuana dispensaries, which are businesses that sell marijuana to those entitled to possess it under state law. It should be noted that it is still unclear as to whether California's Proposition 215 and subsequent legislation can supersede federal restrictions on marijuana.

Medical marijuana dispensaries have been established in a few locations in Northern California primarily in the Bay Area, including San Francisco and Oakland. As a result of the presence of medical marijuana dispensaries, some local agencies have, as further delineated in the attached ordinance, reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtained identification cards, and other increases in criminal activity. Establishment of medical marijuana dispensaries have also resulted in increased demands for police response. Medical marijuana dispensaries have been banned by ordinance and in least two cities, Rocklin and San Rafael. Numerous other cities have adopted moratoriums and are currently studying the issue.

Recently, a person made inquiries to the City of Simi Valley's Environmental Services Department and the City Attorney's Office about locating a medical marijuana dispensary within the City of Simi Valley. Medical marijuana dispensaries are not a type of use which is specifically defined in the Simi Valley Municipal Codes (SVMC) zoning regulations. Because a medical marijuana dispensary is not specifically defined in the SVMC, an interested person could apply to conduct such a use, and claim that it is similar to a pharmacy, medical office, or limited retail use. Under SVMC Section 9-1.504 uses not listed in the Zoning Ordinance are subject to determinations by the Director of Environmental Services as to whether they are similar to other allowed uses. The Director's determination can be appealed to the Planning Commission and potentially, the City Council.

FINDINGS AND ALTERNATIVES

Because of the recent adoption of State regulations regarding medical marijuana dispensaries, inquiries from at least one interested person regarding the establishment of a medical marijuana dispensary in the City of Simi Valley, and the experiences of other local jurisdictions, staff believes it is appropriate to adopt a moratorium on medical marijuana dispensaries until the issue is further studied. The scope of the study resulting from the moratorium may include a recommendation for an outright ban of such a use.

The adoption of a moratorium will give City staff sufficient time to study this issue, and prevent medical marijuana dispensaries from locating in the City unless authorized; and, if authorized, until proper procedures and regulations are established.

State law sets restrictions on the adoption of a moratorium. The moratorium must be approved by at least four affirmative votes of the City Council, and the initial effective period is only forty-five (45) days. Because the Police Department estimates that it will take a several months to study issues related to medical marijuana dispensaries, staff will return to the City Council prior to the ordinance's expiration with a request for a moratorium extension as permitted by state law.

The alternatives available to the City Council are:

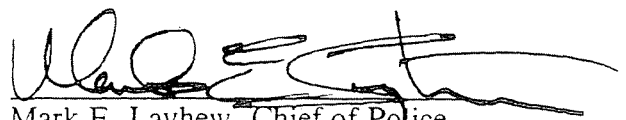
1. Adopt the proposed moratorium ordinance as an urgency measure with a 4/5th vote, direct staff to study the issues relating to prohibiting or regulating and to return with a proposed ordinance and procedures;

- 2. Decline to adopt the ordinance;
- 3. Provide staff with further direction.

Staff recommends Alternative No. 1.

SUMMARY

With the passage of Proposition 215 in 1996 authorizing personal use of marijuana for medical purposes in specified circumstances, enactment of SB 420 establishing further regulations related to "medical marijuana," and at least one inquiry about opening such a dispensary, the City of Simi Valley needs time to study the issue of whether medical marijuana dispensaries should be banned entirely or allowed and regulated in certain zones. Currently, such uses are not addressed in the City's Municipal Code. Accordingly, staff recommends that this ordinance be adopted as an urgency measure pursuant to Government Code Section 65858, to go into effect immediately after enactment for a period of forty-five (45) days.



Mark E. Layhew, Chief of Police

Submitted to
Council on 2-24-05

Item No. 114

Res. No. _____

Ord. No. 007 - 114 - 05

Introduced Adopted

Status _____

ORDINANCE NO. 1069AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF SIMI VALLEY ADOPTING A MORATORIUM ON
MEDICAL MARIJUANA DISPENSARIES

WHEREAS, California voters enacted Proposition 215, "The Compassionate Use Act of 1996," which allows personal medical marijuana use with a doctor's recommendation; and

WHEREAS, the State Legislature adopted SB 420 (Health and Safety Code Section 11362.7 et seq.) establishing further regulations relating to medical marijuana; and

WHEREAS, at least one person has recently inquired about opening a medical marijuana dispensary in the City of Simi Valley; and

WHEREAS, the Simi Valley Municipal Code does not currently address such uses;
and

WHEREAS, at least two cities in California, the City of Rocklin and the City of San Rafael, have adopted ordinances banning medical marijuana dispensaries because of deleterious secondary effects; and

WHEREAS, several California cities have adopted urgency moratorium ordinances in order to study the issues of prohibition or regulation of medical marijuana dispensaries; and

WHEREAS, the case of Ashcroft v. Raich is pending before the United States Supreme Court and a decision therein may determine whether California's marijuana regulations are invalid due to federal pre-emption.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SIMI VALLEY
DOES ORDAIN AS FOLLOWS:

SECTION 1. Purpose and findings.

Medical marijuana dispensaries have been established in several locations in California, and as a consequence, some local agencies have reported increases in illegal drug activity, illegal drug sales, robbery of persons leaving dispensaries, loitering around dispensaries, falsely obtaining 'identification cards' to qualify for medical marijuana, and other increases in criminal activity. Recent examples from last year include: men who kicked in the window of a medical marijuana dispensary in Oakland and tried to burglarize the dispensary; at another medical marijuana dispensary in Alameda County, thieves broke into the building, burglarized the safe and robbed persons present. The United States Department of Justice's (DOJ) California Medical Marijuana Information report has advised that large-scale drug traffickers have been posing as "care givers" to obtain and sell marijuana. Furthermore, the State of California has not implemented its State-wide identification card program for qualified patients, and their primary care givers, related to medical marijuana; and many unresolved legal issues related to Federal preemption of State law

remain. To protect residents and businesses from harmful secondary effects of medical marijuana dispensaries, City staff needs time to study prohibition and/or licensing and criminal background check procedures, as well as determine which zoning districts may be appropriate for such a use, and pursuant to what level of discretionary review.

SECTION 2. Interim Prohibition.

There shall be an interim prohibition/moratorium on land use approvals and building permits in all zoning districts for medical marijuana dispensaries, which includes any site, facility, location, use, cooperative or business which distributes, 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 Proposition 215, the "Compassionate Use Act of 1996", (Health and Safety Code Section 11362.7 et seq.) or any State regulations adopted in furtherance thereof. Marijuana shall also mean cannabis and all parts of that plant.

Based on the findings set forth herein, no land use approval or building permit may be issued for a medical marijuana dispensary for the effective period of this Ordinance.

SECTION 3. Immediate threat to health, safety and welfare.

Based on the findings herein, this ordinance is adopted pursuant to California Government Code §65858 and is required to address a current and immediate threat to the public health, safety and welfare. The City Council has determined that granting additional land use approvals or building permits for medical marijuana dispensaries would result in a threat to the public health, safety and welfare.

SECTION 4. Urgency Ordinance.

This ordinance is an urgency ordinance and shall take effect and be enforced immediately upon adoption.

SECTION 5. Effective Period.

In accordance with California Government Code §65858, this ordinance shall be in full force and effect for a period of forty-five (45) days from the date of its adoption. This period may be extended by the City Council in accordance with the provisions of California Government Code §65858.

SECTION 6. Conflicting Laws.

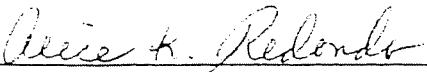
For the term of this ordinance, as set forth in Section 5 above, the provisions of this ordinance shall govern. To the extent that there is any conflict between the provisions of this ordinance and the provisions of any other City code, ordinance, resolution or policy, all such conflicting provisions shall be suspended.

SECTION 7. The City Clerk shall cause this ordinance or a summary hereof to be published in a newspaper of general circulation, published in the County of Ventura and circulated in the City, and if applicable, to be posted, in accordance with Section 36933 of the California Government Code; shall certify to the adoption of this ordinance and shall cause a certified copy of this ordinance, together with proof of publication, to be filed in the Office of the Clerk of this City.

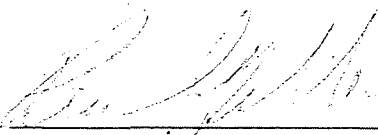
SECTION 8. This ordinance shall go into effect and be in full force and effect immediately after its passage.

PASSED and ADOPTED this 28th day of February 2005.

Attest:



 Alice K. Redondo
 Assistant City Clerk



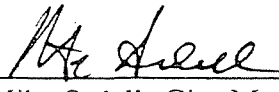
 Paul Miller, Mayor of the City of
 Simi Valley, California

Approved as to Form:




 David H. Hirsch, City Attorney

Approved as to Content:



 Mike Sedell, City Manager



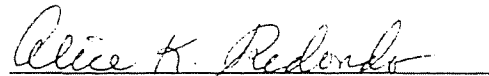
 Mark Layhew, Chief of Police

ORD. NO.1069

I, Assistant City Clerk of the City of Simi Valley, California, do hereby certify that the foregoing Ordinance No.1069 was regularly introduced and adopted by the City Council of the City of Simi Valley, California, at an adjourned meeting thereof held on the 28th day of February 2005 by the following vote of the City Council:

AYES:	Council Members Foster, Sojka, Becerra, Mayor Pro Tem Williamson, and Mayor Miller
NAYS:	None
ABSENT:	None
ABSTAINED:	None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Simi Valley, California, this 1st day of March 2005.



Alice K. Redondo
Assistant City Clerk

FILE NO: 420-15

CITY OF SIMI VALLEY
MEMORANDUM

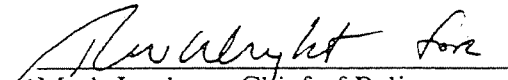
April 4, 2005

TO: City Council

FROM: Police Department

SUBJECT: A PUBLIC HEARING TO CONSIDER EXTENSION OF MORATORIUM ON
MEDICAL MARIJUANA DISPENSARIES; AND ADOPTION OF
ORDINANCE

The attached correspondence was received subsequent to preparation of the subject staff report.


Mark Layhew, Chief of Police

Submitted to
Council on 4-4-05

Item No. 2C Supplemental

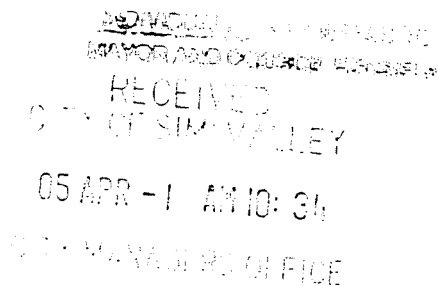
Res. No. _____

Ord. No. 1077

Introduced Adopted

Status _____

Michael Simpson
 PO Box 1893
 Simi Valley, CA 93093
 805.433.3639



Simi Valley City Council:
 Mayor Paul Miller
 Mayor Pro Tem Barbara Williamson
 Council Member Glen T. Becerra
 Council Member Steven J Sojka
 Council Member Michelle S. Foster
 2929 Tapo Canyon Road
 Simi Valley, CA 93063

Dear City Council Members:

Subject: Medical Marijuana Dispensary

Recently, I have contacted the office of the City Planner in regards to the possibility of opening a medical marijuana dispensary in your city. I was informed that there are currently no planning regulations in place to accommodate such a facility in your jurisdiction.

If I may, I would like to offer clarity on the intent of the organization I propose, pending approval of your department and the City Council. I would like to open a dispensary for patients who reside within 25 miles of my proposed office who possess a recommendation for marijuana use from a licensed California doctor. I intend to supply medical grade marijuana products to these patients from a location off any main streets, perhaps from a commercial/industrial building at least a half-mile from any school and out of visual range of any path or route children may take on the way to school. I do not intend to or display a sign using the words "Marijuana" or "Cannabis". I will, however need a way to gather a client base in the city of Simi Valley, perhaps by placing employees in front of the large retail complexes here with sign-up forms or random mailings of discrete inquiries. For any potential customers, the doctor's recommendations will be authenticated, the facts provided me on these forms will be verified and all applicants screened before they may receive any services. I will only serve patients with 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.

As per California Health and Safety Code section 11362.71(h)

March 30, 2005

I plan to have a representative signed up as caregiver for all or the clients I will serve. As the law provides for a twenty-five mile service radius, I believe only one dispensary is necessary in Simi Valley. Also, marijuana will be grown for each patient on the premises so as to avoid any transport issues and increased security for the facility will possibly include armed patrol by a local security company and video cameras with recording equipment. A limit of 12 immature plants, 6 mature plants or 8 ounces of mature buds will be strictly adhered to as per H&S code 11362.77(a). Currently, persons in possession of a valid doctor's recommendation have no alternative but to seek their much-needed medicinal marijuana on the streets of Simi Valley, contributing to the black market, or growing the product themselves inviting other types of crimes upon themselves or their property. I believe that a facility such as the one I propose will drastically reduce the trafficking of illicitly grown marijuana and make back yard marijuana farms unnecessary in Simi Valley.

As you are probably aware, there have been at least two articles in the Simi Valley Star, the subject matter of which has been my request to open a dispensary. Following these two articles in early March there have been several positive letters to the editor in favor of making a safe, legal supply of medical marijuana available to legitimate patients who would suffer without it. I believe that this is evidence that public opinion is behind me and that it would be a positive move on the City's part to allow just one dispensary in Simi Valley.

Please note that I will be awaiting the verdict of a relevant case currently being heard on appeal in the US Supreme Court, Raich/Monson vs. Ashcroft, in which two California residents are challenging the federal government's authority to supercede State law, in particular Prop 215 and SB 420, which amends California Health and Safety and Family Codes allowing for legal medical use of marijuana before I will pursuing this project any further. If the Supreme Court rules in favor of Raich/Monson I should like to move forward. If the court rules in favor of Mr. Ashcroft, you may disregard my inquiry. The decision should be handed down sometime this spring.

If there are any issues that I might be able to help you resolve, or if I may answer any questions you may have of me please do not hesitate to use the contact information above.

Respectfully,


Michael Simpson

cc: Paul Drew Director, City Planning

Report on Medical Marijuana Dispensaries

This report was prepared by the El Cerrito Police Department and is based upon conversations with other law enforcement personnel and news accounts.

Areas that currently act as a hindrance to a true study of this topic are the following:

Under Reporting: With few exceptions, agencies contacted stated that they felt that the crimes related to medical marijuana dispensaries were under reported, if reported at all. Confidential informants have provided information that these additional crimes (robberies, assaults and burglaries involving marijuana or large amounts of cash) are not reported so as to not draw additional law enforcement and media scrutiny to this issue.

Crime Classification: Another barrier to collection of this data is the lack of classification of this data as medical marijuana related. In years past, statistical analysis of domestic violence and hate crimes was difficult. These crimes now receive their own classification so tracking them is much easier. However until such time as medical marijuana crimes receive their own classification, separating these crimes from non medical marijuana related crimes is very difficult.

Lack of Straight Statistical Data: Gathering statistical data on this topic would appear to be a simple task. One would imagine that you would look at crime in a given location prior to the arrival of a medical marijuana dispensary and then look at crime after its arrival. This presents several difficulties. First, based on Internet research, there appears to be approximately 240 medical marijuana dispensaries (www.canorml.org) located in almost as many jurisdictions. No one agency can access data from all these locations and not all agencies compile this data. We spoke with several agency representatives and each had information regarding this issue, however few had specific crime statistics. Secondly, not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees or patrons. Lastly not all the secondary issues related to medical marijuana dispensaries are crimes. Loitering, additional vehicle and pedestrian traffic, use of medical marijuana at or near the facilities are described as quality of life issues and are only really quantified when they appear in the newspaper or the complainants appear at a City Council meeting.

Prior to discussing the reports of other law enforcement agencies, we would like to present some information from our Department. While our City does not currently have a medical marijuana dispensary, this does not mean that we are immune from their effects.

On January 7, 2004 a resident of El Cerrito was arrested for possession of marijuana for sale. The subject was found to be in possession of 133 grams (4.6 ounces) of marijuana, a small amount of cash, a "replica handgun" pellet gun and three medical marijuana dispensary cards (Oakland Cannabis Buyers Collective, Cannabis Buyers Collective of Marin and Compassionate Caregivers of Oakland).

On February 25, 2005, the same subject mentioned above was discovered to be growing marijuana in his house. He was found to be in possession of 15 adult plants, 72 starter plants, 505 grams (1.10 lbs) of processed marijuana, 50 grams (1.75 oz) of hashish packaged for sale and two assault rifles as well as \$6,000.00 in cash. The subject claimed that these plants were medical marijuana. An investigation was conducted with the assistance of the West Contra Costa County Narcotic Enforcement Team and resulted in the conviction of the resident for unauthorized possession of cannabis and possession of an assault weapon.

On July 9, 2005, during a suspicious vehicle check, one of our Officers determined that a resident (who is a member of the Oakland Cannabis Buyers Cooperative) possessed 55 immature plants with the intent of cultivating them and selling them to a medical marijuana dispensary. The District Attorney has filed a complaint containing two felony charges of possession and cultivation of marijuana. This case is awaiting adjudication as the subject has failed to appear in court (it is believed he has fled to the state of Oregon) and a bench warrant has been issued for his arrest.

On March 8, 2006 our School Resource Officer received information that several students were ill after eating a cookie. The investigation revealed that a student had made cookies with a butter obtained outside (secondary sale) a medical marijuana dispensary containing a highly concentrated form of tetrahydrocannabinol (THC the active ingredient in marijuana). The student used the "butter to bake and then sell these cookies to other students. After the student discovered that the cookies were so potent that some of his fellow students had to be treated at local hospitals, instead of throwing them away, he gave them to other students without telling them what they were laced with. This incident resulted in at least four students requiring hospitalization and it is suspected at least two or three others were intoxicated to the point of sickness.

Gathering the data from these incidents required hours of research and examination. Many agencies have neither the available resources nor the inclination to gather data of this kind. We have spoken with representatives of other agencies who either have been told to avoid the issue or not to share data with other agencies. This makes presenting the data for consideration in this matter very difficult.

The following is a compilation of conversations with law enforcement personnel from jurisdictions that have dispensaries as well as news accounts. In all of these communities, law enforcement leaders were concerned with the impacts to the public health, safety and welfare by the commercial marijuana dispensing enterprise. All wished that they did not exist in their community. The trouble seems to occur when a large number of marijuana users, legal (under State law) and illegal gather at one location making them easy targets for illegal drug dealers; those freelance illegal drug dealers who are trying to recruit individuals with a doctors recommendation to legitimize (under State law) their sales and possession; and those who wish to prey upon the ill to steal their marijuana. This is compounded by the vast amounts of cash and little or no oversight of the processes of prescription, procurement and sales of medical marijuana.

ANAHEIM

May 19, 2004 a medical marijuana dispensary 420 Primary Caregivers obtained a business license and began operations.

Fall 2004, The Police Department began to receive complaints from neighboring businesses in the complex. The complaints centered around the ongoing sales of marijuana to subjects who did not appear to be physically ill, the smell of marijuana inside the ventilation system of the building and the repeated interruption to neighboring businesses.

January 2005, The medical marijuana dispensary was robbed at gunpoint by three masked subjects who took both money and marijuana from the business.

April 5, 2005, The Police Department met with the property management company, owners and representatives from the businesses in the complex which housed the medical marijuana dispensary. The meeting focused on the safety of the employees and patrons of adjacent businesses. Many neighboring businesses complained of marijuana use on the premises and in the surrounding area as well as a loss of business based on the clientele of the medical marijuana dispensary hanging around the area.

Since this meeting, two businesses have ended their lease with the property management company. A law firm that had been in that location for ten years left citing marijuana smoke had inundated their office....and they can no longer continue to provide a safe, professional location for their clientele and employees. A health oriented business terminated their lease after six years and moved out of the complex citing their business is repeatedly interrupted and mistaken multiple times a day for the store that has the marijuana. The owner fears that he or his employees may be shot if they are robbed by mistake and the suspects do not believe they do not have marijuana.

The property management company indicated at least five other businesses have inquired about terminating their lease for reasons related to 420 Primary Caregivers.

Arrests have been made supporting the belief that some qualifying patients purchase marijuana with a doctor's recommendation, then supply it to their friends for illicit use. Criminal investigations have revealed the business is obtaining its marijuana from a variety of sources including marijuana smuggled into the United States from South and Central America. The Police department has conservatively estimated the 420 Primary Caregivers business to be generating approximately \$50,000.00 a week in income. (Source Declaration of Sgt. Tim Miller Anaheim P.D. Street narcotic Unit)

ALAMEDA COUNTY

January 12, 2005 a medical marijuana customer was robbed after leaving the The Health Center medical marijuana dispensary (San Leandro). The victim was accosted by two subjects who possibly followed the victim away from the dispensary.

February 6, 2005 a medical marijuana dispensary, the Compassion Collective of Alameda County was robbed by two subjects armed with handguns. The robbery took place at

4:50 pm in the afternoon and the suspects took an unspecified amount of cash and marijuana.

April 27, 2005 a medical marijuana dispensary, The Health Center (San Leandro) was burglarized at approximately 3:05 am. No specifics were provided as to the loss sustained as a result of the burglary.

May 24, 2005 a patron of a medical marijuana dispensary, A Natural Source (San Leandro) was robbed by three subjects in the parking lot of the dispensary after making a purchase of marijuana.

August 19, 2005: Five subjects armed with assault rifles conducted a take over robbery of a medical marijuana dispensary A Natural Source (San Leandro). They engaged in a shoot out with two employees and one of the suspects was killed in the exchange of gun fire.

Sept. 12, 2005: Both money and marijuana were stolen from the Alameda County Resource Center (16250 East 14th St.) when burglars chopped through the wall of an adjacent fellowship hall during the night.

(Source Declaration by Lt. Dale Amaral Alameda County Sheriff's Department)

(Unincorporated San Leandro and Hayward)

Officer initiated events may be vehicle stops or on-view arrests.

16043 East 14th Street: 2003: 2 Officer initiated activity events, 2004: 1 Officer initiated activity events. This business is now closed.

21227 Foothill Blvd., Garden of Eden, 2003: 1 Officer initiated activity event, 2004: No calls for service, 2005: 1 Theft call, 4 alarm calls, 1 Officer initiated activity event.

913 E. Lewelling Blvd., We are Hemp, 2003: 1 Officer initiated activity event, 2004: 1 Assault call, 2 Officer initiated activity events, 2005: 1 Assault call, 1 Officer initiated activity event.

16250 East 14th Street: 2003: 11 Officer initiated activity events, 2004: 3 loitering calls, 9 Officer initiated activity events, 2005: 5 Officer initiated activity events.

15998 East 14th Street: The Health Center 2003: 1 Officer initiated activity event, 2004: 1 trespassing call, 1 assault, 2 disturbance calls, 2 miscellaneous, 26 Officer initiated events, 2005: 1 robbery, 1 aggravated assault, 1 grand theft, 3 petty thefts, 2 vehicle thefts, 4 trespassing calls, 5 loitering calls, 1 weapons possession, 2 controlled substance cases, 4 alarm calls, 9 disturbance calls, 3 miscellaneous calls and 21 Officer initiated events.

16360 Foothill Blvd: 2003: 1 Officer initiated activity event, 2004: 2 Officer initiated activity events, 2005: 1 homicide, 2 aggravated assaults, 1 grand theft, 1 controlled substance case, 13 alarm calls, 2 Officer initiated events.

21222 Mission Blvd: Compassionate Collective of Alameda County 2003: 2 Officer initiated events, 2004: 5 Officer initiated events, 2005: 1 attempted homicide, 2 robberies, 2 burglaries, 2 controlled substance cases, 10 alarm calls, 2 disturbance calls, 1 miscellaneous calls and 2 Officer initiated events.

(Source Alameda County Sheriff's Department Report)

Linda Sandsmark San Leandro Times

San Leandro, CA Sept 29, 2005 -- A woman was carjacked and robbed Monday afternoon after she left The Health Center (THC) marijuana club at 15998 East 14th Street. Citizens in the area saw the crime occur about four blocks from THC and called police on their cell phones....The unidentified woman, who is from Garberville in Humboldt County, walked back toward the clinic and her car was found on nearby Liberty Street.

BAKERSFIELD

Sep 8th, 2005. DEA arrested three subjects in raid on the Free and Easy cannabis dispensary. Kern County sheriffs summoned the DEA after being called to investigate a robbery at the facility. Police found plants growing at one subject's home plus 20 lbs of marijuana, and illegally possessed firearms.

(Source) <http://www.canorml.org/news/fedmmjcases.html>

BERKELEY

March 30, 2000: Two males armed with sawed off shotguns forced entry into a residence and forced the occupant at gun point to turn over a safe. A subsequent investigation revealed that a second resident who was not home at the time was a former director of a medical marijuana dispensary and was the intended target of the robbery.

October 2001, December 2001 and June 2002: The medical marijuana dispensary on University was robbed. Large sums of money and marijuana taken.

March 2003: A home invasion robbery over marijuana cultivation escalated into a homicide.

December 2003: The medical marijuana dispensary on Telegraph was robbed. (No further info provided)

David Scharfenberg, Daily Planet staff (06-07-02)

Four men stole \$1,500 and \$3,500 worth of marijuana from the Berkeley Medical Herbs pot club yesterday after two of them were allowed on site without proper identification. The afternoon heist renewed concerns about the integrity of the club's security and reignited some anger in the neighborhood. "I think it's a public nuisance and I think it needs to be closed," said City Councilmember Linda Mayotte incident marks the third time in a year robbers have stormed the medicinal marijuana club, located in a small brick building at 1627 University Avenue.

The last robbery, in December, prompted a rash of concern from city officials about security at the club. Medical Herbs responded to that by closing at 4 p.m. so it would only be open during daylight hours. The club hired a licensed security guard, installed video cameras, and it agreed to limit the amount of cash and pot on the premises, among other measures....

BUTTE COUNTY

Butte County does not track statistics related to medical marijuana dispensaries, however a Detective in the Investigations Unit knew of at least six robberies or attempts, one of which involved a shoot out between the suspect and victim occurred during the months of August to October 2005. Each of these robberies took place at the victim's residence and the target was the victim's marijuana cultivation. He stated that this is the busy time of year for these activities as it is harvest time for the marijuana grows.
(Source Det. Jake Hancock Butte County Sheriff's Department)

CALAVERAS COUNTY

Jan. 2005. Federal government files forfeiture suit after local sheriff finds 134 marijuana plants. Government seeks to forfeit a home and five acres of land. The defendant says he was growing for half a dozen friends and family members and had checked with local authorities to make sure he was within legal guidelines.
(Source <http://www.canorml.org/news/fedmmjcases.html>)

CHERRYLAND

Cherryland, CA June 30, 2005 -- An employee of a marijuana dispensary narrowly escaped with his life after a gunman opened fire as he waited outside the establishment for co-workers to arrive. The employee, whom authorities declined to identify, was sitting inside his car in the rear parking lot of the Collective Cannabis Club at 21222 Mission Boulevard on Tuesday morning when a masked gunman appeared, said Lt. Dale Amaral, spokesman for the Alameda County Sheriff's Department.
(Source http://www.hempevolution.org/media/santa_cruz_sentinel/scs041213.htm)

CLEAR LAKE

There have been a few reported robberies of medical marijuana patients away from the dispensaries. One significant case involved home invasion robbery. Multiple suspects entered the home of a person who was known to be a medical marijuana user. During the robbery, one resident was beaten with a baseball bat while the suspects made inquires regarding the location of the marijuana. Two of the suspects were shot and killed by the homeowner.
(Source Clear Lake P.D. Inv. Clawson)

CONCORD

Late last year we passed a zoning ordinance prohibiting all dispensaries. PD involvement was limited to providing input on the secondary effects of dispensaries on public safety (211's, 459's, clientele coming and going, parking issues, etc.) The night Council voted on the ordinance we had a parade of medicinal marijuana users who all shared their stories about how marijuana saved their lives.

So now, we have a total ban. We were facing a lawsuit from one of the dispensaries, but in order to move forward with their permit application to relocate to Pacheco, they agreed to drop the suit.

We had very few incidents directly associated to our dispensary. In fact, most of the issues were quality-of-life issues such as loitering and parking problems. Some of the adjacent businesses complained about clients taking up parking stalls, double parking, etc. in order to run in and obtain their medication.

So, we don't have much for you. However, we relied on some information from Alameda County, particularly their experience with 211 activity and a shooting outside of one of their clubs.

Best contact, for starters anyway, is our Assistant City Attorney, Mark Boehme.

CLOVIS

In December of 2005 the Clovis Police Department in conjunction with the Fresno County Sheriff's Department conducted an investigation which resulted in the arrest of a subject for possession of 120 pounds of marijuana. The subject of the investigation was found to have a medical marijuana card which helped facilitate his possession and sales of marijuana.

(source www.ci.clovis.ca.us/PressRelesaseDetail.asp?ID=838)

EL DORADO COUNTY

Medical marijuana dispensary operated medical marijuana clinic in Cool, California with 6000 patients; DEA raided Sep. 28, 2001; seized patient records. Indicted Jun 22, 2005 for marijuana found on premises.

(Source <http://www.canorml.org/news/fedmmjcases.html>)

FAIRFAX

- Chief of Police Ken Hughes, advised the following:
- Fairfax has one marijuana dispensary
- Fairfax has had some problems with patients selling to non-patients
- They have had problems with purchasers from dispensary congregating at a baseball field to smoke their marijuana
- Fairfax police arrested one person who purchased marijuana at the dispensary and then took it to a nearby park where he tried to trade it to a minor for sex
- Very small town and low crime rate

(Source Rocklin P.D. report)

HAYWARD P.D.

- Acting Chief Lloyd Lowe, advises the following:
- Hayward has three dispensaries total, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases
- They have problems with user recommendation cards – not uniform, anyone can get them

- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made
- They have received complaints that other illegal drugs are being sold inside of dispensaries
- The dispensaries are purchasing marijuana from growers that they will not disclose
- Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006

(Information provided by Rocklin P.D. report)

HUMBOLDT COUNTY

One subject arrested in Humboldt County Aug 01, 2001 growing 204 plants for the Salmon Creek patients' collective; case turned over to the feds, pled guilty Dec 6; sentenced to 15 months for possession. Released from prison May 2003.

Meanwhile, in a separate case, this subject won a landmark federal lawsuit for return of one ounce of pot seized by the DEA at the request of the Humboldt sheriff after the latter was ordered to return under Prop. 215. This subject is now missing and presumed dead since Aug 2003; police suspect foul play.

(Source <http://www.canorml.org/news/fedmmjcases.html>)

LAYTONVILLE

QUINCY CROMER/The Daily Journal (Excerpts from the article)

The owner of Mendo Spiritual Remedies in Laytonville and Hemp Plus Ministry in Ukiah -- who says he provides medical marijuana to more than a thousand people in Mendocino County -- will be in court next week to face charges for cultivation of marijuana. Les Crane, founder and self-proclaimed reverend of the two churches where medical marijuana is available locally, said some 5,000 cannabis plants and his life savings -- about \$6,000 converted into gold -- were seized by the Mendocino County Sheriff's Office on May 16. "They came here because a guy was coming to rob my house. I called them to come and solve the problem and then they found out about the grow. We showed them all the documentation and they left and went and got a search warrant and came back and searched my church," Crane said.

(Source) <http://www.hightimes.com/ht/news/content.php?bid=1203&aid=10>

Saturday, November 19, 2005

By GLENDA ANDERSON, THE PRESS DEMOCRAT

A Laytonville pot guru who founded two Mendocino County medicinal cannabis dispensaries was shot to death during an apparent robbery in his home early Friday morning. Les Crane, who called his pot dispensaries churches and referred to himself as a reverend, said he was in the business to help ailing people, not to make money. He had said he had nearly 1,000 patients. He was killed at about 2:30 a.m. Friday in his home,

which is about a mile from the center of Laytonville.... Two other people in Crane's home at the time of the shooting were beaten....Crane's death is believed to be related to his marijuana-growing and dispensing activities, Mendocino County authorities said. "I am totally surprised we haven't had more robberies and violent crimes associated with these things because of the amount of money involved and the value of the product," Sheriff Tony Craver said. Crane's Ukiah cannabis dispensary, Hemp Plus, offered exotic varieties of pot that sell for as much as \$350 an ounce. He also had a dispensary in Laytonville. He called marijuana "the tree of life" and said God placed it on Earth to benefit man. His religious credentials were issued by the Universal Life Church, which supplies certificates through the mail and the Internet. Sheriff's Lt. D.J. Miller provided few details of the crime, pending further investigation, including how many times Crane was shot or if any money or items were taken. Mendocino County officials had doubts about Crane's purpose for growing pot, and in May he was arrested for marijuana cultivation and several thousand pot plants were confiscated from his home. The criminal case was pending when he was killed.

Local governments throughout California have reacted to crime concerns by adopting laws regulating the sale and cultivation of medicinal pot. But there have been just a handful of medical pot-related crimes in Mendocino County in the past few years, Craver said. They include a 2002 incident in which two Willits residents were shot and wounded during a home-invasion robbery..

(Source)<http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303>

LAKE COUNTY TASK FORCE: (Bureau of Narcotic Enforcement)

One recent case currently in federal litigation involves the seizure of 32,000 plants from one grow. The cultivator claims that he is a provider for medical marijuana patients and therefore exempt from prosecution for cultivation. The subject was arrested and released on bail pending trial on marijuana charges with possible sentence of 12 years to life. On Feb 16, 2005 this subject was re-arrested along with another subject after allegedly selling one pound of marijuana to DEA agents, who claim they did not mention medical purposes.

(Source) Lake County Narcotic Enforcement Team

LAKE COUNTY IMPACTS

Sheriff Rod Mitchell, advised the following:

- Lake County has one marijuana dispensary in Upper Lake (Two as of this writing)
- The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175
- Many "patients" come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor
- Upper Lake has been impacted by the type of people coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users ("dopers").

- One quilt shop owner has told the sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in the very small town.
 - They also have a notorious marijuana grower who beat prosecution for cultivation by making a medical claim. Law enforcement has taken a hands off approach even though he is blatantly violating the law.
 - The marijuana grower has recently claimed to be a church to avoid paying taxes.
- (Source Rocklin P.D. report)

LOS ANGELES COUNTY

January 2004, Approximately six to eight known medical marijuana dispensaries operating in West Hollywood. Several of the medical marijuana dispensaries have generated calls for service.

January 10, 2004, An assault with a deadly weapon and a vandalism are reported at one of the medical marijuana dispensaries as well as calls generated reporting obstruction of the street or sidewalk.

February 19, 2005, A medical marijuana dispensary LA Patients and Caregivers reported that two subjects armed with handguns robbed the dispensary.

May 6, 2005, A search warrant was served at one of the dispensaries by L.A.P.D. (no further information provided)

May 15, 2005, A medical marijuana dispensary Alternative Herbal Health Services four to five subjects are with handguns entered the business at 4:25 pm, one of the employees was pistol whipped as the suspects demanded access to the dispensary's safe.
(Source Declaration of Sgt. Robert McMahon Los Angeles County Sheriff's Department)

LOS ANGELES

RECENT INVESTIGATIONS

In May 2005, the LAPD began investigating Compassionate Caregivers Group (CCG) Inc., a medical marijuana dispensary located in West Hollywood, that bordered the City of Los Angeles. The dispensary was one of seven CCG medical marijuana dispensaries throughout the state. The owner of CCG, a marijuana trafficking fugitive from another state, also owned Green Medicine Group (GMG) that referred prospective patients to their group of doctors throughout the state. One of the GMG doctors saw as many as 49 patients a day charging from \$150-\$250 per patient. The same doctor saw 293 patients in one week. The doctor allegedly examined each patient from a closed-circuit television monitor and a clerk in another office where the patient was, handed out pre-signed medical recommendations. Young people from all over Los Angeles County flocked to CCG to buy marijuana and then returned to their respective communities to conduct street sales of the drug. No one on the premises had medical or pharmaceutical training or licensing to distribute marijuana, edibles, plants and liquids. There was no first aid kit, defibrillator or trauma kit present at the location in case of a medical emergency. Furthermore, the business promoted the sale and cultivation of 60 strains of marijuana, of

which, only six strains were for medical purposes. Evidence was also recovered at the scene that showed the dispensary was in business to make a profit. Over \$1.7 million in cash alone was received during the month of March 2005. And, most importantly, only three medical marijuana recommendations were found for patients residing in Los Angeles County, yet they provided medical marijuana to an average of 300 patients per week. The County Ordinance provides for the sales and consumption of edible marijuana. Edibles are food products, i.e. soda pop, peanut butter, candy, bakery items, jam and other liquids that contain various levels of Tetrahydrocannabinol (THC), the psychoactive agent of marijuana. There were no regulations in the ordinance for the quality control, potency, dosage and legality of the products sold. There is no Food and Drug Administration approval of the products. On March 23, 2006 in Oakland, "Beyond Bomb," one of a handful of manufacturers and distributors of edible marijuana products, who distribute edibles to medical marijuana dispensaries in California and the US, was searched by the Drug Enforcement Administration (DEA). The owner was arrested for marijuana trafficking.

The ordinance called for a security system and guards for each location. This requirement has not been an issue in the past. Medical marijuana dispensaries typically have had more extensive security systems than Sav-On, Rite Aide or Walgreen drug stores, and yet they still have been robbed and assaults and murders have occurred because they keep exorbitant amounts of cash and marijuana on hand. In addition, the security systems and guards do nothing for the surrounding businesses or area. Many of the dispensaries locally employ street gang members with extensive criminal histories as security guards and many of them are armed. In addition, where medical marijuana dispensaries have sprung up, the surrounding area has seen a 50 percent increase in Part I crime. Several unincorporated areas within the County of Los Angeles border the City of Los Angeles. Compounding this issue, the Los Angeles County Sheriff's Department has a policy of not enforcing the law at medical marijuana dispensaries. Therefore, if the City of Los Angeles does adopt the same ordinance, crime will significantly increase in these areas making it extremely difficult to enforce the law.

(Source Det. Dennis Packer Asset Forfeiture/Narcotics Vice Division L.A.P.D.)

MERCED

Aug 10th, 2005. a medical marijuana patient activist was arrested on federal charges. The charges stemmed from a raid in February 2004, when some 900 plants were seized from the subject's greenhouse. The subject had maintained that the plants were all for legal Prop. 215 patients. After 18 months of court continuances, state officials turned DC's case over for federal prosecution.

(Source <http://www.canorml.org/news/fedmmjcases.html>)

MODESTO

July 18th, 2005. DEA arrests three subjects on charges stemming from a raid by Stanislaus Co sheriffs, who reported discovering 49 plants and 235 pounds of marijuana there. The main subject of the investigation and his wife had been providing medical marijuana for patients at a San Francisco dispensary.

(Source <http://www.canorml.org/news/fedmmjcases.html>)

OAKLAND

- Large criminal element drawn to the dispensary location
- Marijuana dealers who have a doctor recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have a recommendation.
- Street criminals in search of the drugs are robbing medical use patients for their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- Chief Word mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- They had more than 15 total in city, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.
- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told the police that they cannot keep the criminal element out.

(Source) Rocklin P.D. report

Oakland Tribune by Susan McDonough,
November 10, 2003 A medical marijuana club in Oakland's so-called Oaksterdam district was the target of an invasion-style armed robbery Sunday morning. Four men, one with a gun, tied up a bouncer outside Compassionate Caregivers at about 8:10 a.m. and barreled their way to where the cannabis club is located on the top floor of the three-story building, police said. Several medical marijuana patients and staff members were inside the club at 1740 Telegraph Ave.....The gunmen tied up another person inside the dispensary and took several ounces of marijuana and a significant amount of cash before fleeing, police said..... Oakland Police Sgt. Hugh Kidd said no one was injured and no patrons or staff members were robbed individually. Oakland was one of the first U.S. cities to legitimize the use of medical marijuana by deputizing a former club on Broadway as a distributor. That dispensary was shut down by the U.S. Drug Enforcement Agency in 1998, but a number of marijuana-related businesses have sprung up in the neighborhood to replace it. Cannabis clubs in Berkeley and Sacramento have been hit by similar armed robberies in recent years.

(Source) <http://www.mapinc.org/newscmc/v03/n1750/a02.html>

June 30, 2004: Five subjects were arrested by DEA following a CHP raid on a warehouse where 4,000 plants were found. The subjects claim that the plants were for a

licensed dispensary. Police gave conflicting accounts of the incident; the CHP says it called on the DEA after Oakland police declined to help. Two defendants have pled not guilty to manufacturing charges bearing a 10-year to life sentence.

March 16, 2006. DEA raids cannabis candy manufacturer, "Beyond Bomb," at three different East Bay sites, seizing over 5,000 plants, \$150K cash, and the company's stash of cannabis candies & soda pop. Arrested are the owner and 11 other employees. DEA says products were packaged in eye-catching candy wrappers that might pose danger to kids. Supporters say that products were distributed for use by medical marijuana patients. (Source) <http://www.canorml.org/news/fedmmjcases.html>

One Department representative was willing to speak with me, but did not wish to be quoted for this report. They advised me of a recent carjacking. This event involved an owner and three employees of a medical marijuana dispensary. None of the four could agree on any fact relating to the case other than while property of the dispensary was stolen, no marijuana or cash was taken.

PLEASANTON

The City of Pleasanton does not have any dispensaries operating in Pleasanton, whether legally or illegally. Pleasanton has a moratorium on dispensaries in place, has not prepared any reports on a ban, and staff will request that Council extend the moratorium for another 12 months. In support of the moratorium, the following health / safety / welfare information was cited;

Juveniles in Pleasanton found with marijuana which was re-sold to them after having been obtained from a dispensary.

A dispensary employee was the victim of a robbery at his home after he brought more than \$100,000.00 in cash from a medical marijuana dispensary back to his home to Pleasanton.

(Source Larissa Seto Assistant City Attorney)

ROSEVILLE:

- Street level dealers trying to sell to those going to the dispensary at a lower price
- People are smoking marijuana in public around the facility
- People coming to the community from out of town and out of state to obtain marijuana (Nevada State, San Joaquin County, etc)
- Marijuana DUI by people who have obtained from dispensary
- At least one burglary attempt into building

(Source Rocklin P.D. report)

On January 13, 2006 the proprietor of the Roseville's medical marijuana dispensary was indicated by a Federal Grand Jury on 19 counts of marijuana trafficking and money laundering. The indictment alleges that in an eight month period the defendant made approximately \$2,750,849.00 from the sale of medical marijuana and of that figure \$356,130.00 was traced to money laundering activities. The U.S. Attorney handling the

case stated, "This case is a perfect example of a person using medical marijuana as a smokescreen to hide his true agenda, which is to line his pockets with illegal drug money."

(Source Press release California State Attorney Generals Office)

SACRAMENTO

Sacramento has four dispensaries. Relatively few crimes other than at least two burglary attempts. Most of the complaints came to the council via citizens regarding quality of life issues i.e. loitering, traffic and use of marijuana in or near the dispensaries.

July 7, 2005. The director of Alternative Specialties dispensary, charged by feds following raid by Sacramento County Sheriff that uncovered two indoor gardens with an alleged 800 plants. Sheriffs say the subject had a criminal record for embezzlement and failed to file for a business license. He was charged with the manufacture of marijuana and illegal possession of weapons.

(Source <http://www.canorml.org/news/fedmmjcases.html>)

SAN LEANDRO

San Leandro does not have any medical marijuana dispensaries within their city limits. They do however have employees of medical marijuana dispensaries from other jurisdictions living in their city.

(Source Mark Decoulode San Leandro PD)

SAN FRANCISCO

June 22, 2005. Feds raid 3 dispensaries and indict 20, mainly Asian-Americans, in what is described as a major organized crime operation. Some defendants charged with money laundering and sales of ecstasy. Others include the director of first Asian-American medical cannabis dispensary.

(Source) <http://www.canorml.org/news/fedmmjcases.html>

Dec. 20, 2005 - DEA raids HopeNet Cooperative after first raiding home of HopeNet directors Steve and Catherine Smith. No arrests. Agents seize cash, medicine, a few hundred small indoor plants, mostly cuttings and clones.

(Source) <http://www.canorml.org/news/fedmmjcases.html>

Federal authorities raided three San Francisco medical marijuana dispensaries Wednesday, and investigators arrested at least 13 people as part of an alleged organized crime operation using the clubs as a front to launder money. Agents seized marijuana and other items from two cannabis clubs on Ocean Avenue in the Ingleside district and a third on Judah Street in the Inner Sunset district. The raids were the first in the Bay Area since the U.S. Supreme Court dealt a blow to the medical marijuana movement two weeks ago by ruling that the federal government had the authority to prosecute people whose activities are legal under state law.Twenty people were charged in an indictment that federal authorities planned to unseal today. Authorities would not comment on the specific allegations against them. Authorities said.that the operation controlled at least 10 warehouses where marijuana was grown in large quantities and that

those involved were bringing in millions of dollars. One warehouse in Oakland that federal agents raided earlier this month was capable of growing \$3 million worth of marijuana annually, investigators said. The marijuana ostensibly was for cannabis clubs, but the amount being grown was far more than needed to supply the dispensaries, authorities said.

(Source) <http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL>.

May 14, 2005--In a daring home-invasion robbery at around 10PM, the house of the owner of Alternative Health and Healing Services at 442 Haight St was robbed of several pounds of cannabis and the dispensary keys. Details are sketchy, but it is believed that the robbers burst into the owner's home at gunpoint.

(Source) http://www.hempevolution.org/thc/dispensary_robbed040514.htm

SAN DIEGO

Dec 12, 2005 - Interagency task force raids 13 of 19 San Diego dispensaries. Task force led by DEA with state police. Raids conducted under state, not federal search warrant. No arrests, investigation ongoing.

(Source) <http://www.canorml.org/news/fedmmjcases.html>

SANTA CRUZ

Santa Cruz Sentinel

Santa Cruz, CA Dec 13, 2004 -- Santa Cruz Police are asking for the public's help in finding four armed men who took marijuana grown for medicinal uses and electronics from two separate houses on Clay Street. Around 1 a.m. Sunday, a white, Asian and possibly two black males — all wearing masks and dark clothing — broke into two residences, rounded up their tenants, held them at gunpoint and ransacked their homes, all while demanding drugs and cash. Two of the victims were battered during the robbery, resulting in minor injuries not requiring hospital treatment. One of the suspects fired a single shot from a handgun when one of the victims tried to escape. No one was shot.

http://www.hempevolution.org/media/daily_review/dr050824.htm

SANTA CRUZ COUNTY

Capitola 2004: Three suspects entered the victims home armed with a handgun in search of the residents medical marijuana grow. The resident and two guests were ordered to the floor. During the robbery the resident was shot and stabbed but managed to fight off the suspects who fled prior to the arrival of the responding Deputys.

Live Oaks October 1, 2005: Four suspects attempted to conduct a home invasion robbery of a home cultivator of medical marijuana. The homeowner fired a shotgun at the suspects who fled and were later captured by police following a vehicle pursuit and crash.

Ben Lomond March 5, 2006: Two suspects who identified themselves as "Police" forced their way into the victims residence. The victim was assaulted, robbed and left tied up in his residence until the next day when he was discovered. Subsequent investigation revealed that the motive for the robbery was the victims medical marijuana supply.

SANTA ROSA

May 29, 2002 Federal agents raided a medical marijuana buyers club here Wednesday and arrested two people. A U.S. Drug Enforcement Administration spokesman said two addresses were searched, including the club near downtown. Marijuana, cash, a car and a weapon were seized. Authorities declined to identify the arrested pair, saying all information about the case was sealed by a federal judge.

(Source) <http://cannabisnews.com/news/12/thread12999.shtml>

September 29, 2004 The father of the owner of a medical marijuana dispensary was followed home from the dispensary and robbed at gunpoint in front of his residence. The owner of the club believed that his business was being "cased" and that "further robberies were eminent."

January 25, 2005 Suspects force entry into a closed medical marijuana dispensary and burglarize the business taking three pounds of marijuana and cash.

March 3, 2005 Suspects forced entry into a medical marijuana dispensary a stole a laptop computer, marijuana and smoking paraphernalia.

April 15, 2005 Employees of a medical marijuana dispensary were robbed by a suspect armed with a shotgun as they were closing the business. The suspect stole a duffle bag of marijuana.

April 18, 2005 Suspects forced entry into a closed medical marijuana and stole a digital scale.

April 19, 2005 Suspects forced entry into a medical marijuana dispensary and stole one half pound of marijuana.

Mar 17, 2006 Suspects forced entry into a closed medical marijuana dispensary, loss unknown at this time.

(Source) Lt. Briggs Santa Rosa P.D.

The Vice unit has been involved in the investigation of the following medical marijuana dispensary related crimes:

A homicide, during a residential robbery where the suspects sought marijuana cultivated for a dispensary.

Four residential robberies, where the suspects sought marijuana cultivated for a dispensary.

Twelve cases where individuals were cultivating marijuana for dispensaries, but were found to be operating outside medical marijuana guidelines and in a "for profit" status. Each of these cases resulted in the arrest of the cultivators and disposition is pending.

Instances where undercover officers have found subjects buying marijuana from medical marijuana dispensaries under the guise of medical marijuana and then reselling the marijuana to non medical marijuana users.
(Source) Sgt. Steve Fraga Santa Rosa P.D.

SONOMA COUNTY

A subject was arrested May 9, 2001 while growing for himself and other patients; convicted by a jury of cultivating more than 100 plants on Feb 11, 2002; sentenced to 5 yrs probation; He was re-arrested July 31, 2002 for cultivating while on probation. Convicted and sentenced to 44 months for growing 920 plants Dec 19, 2002. Released on bail April 2004; awaiting sentencing post-Raich 2005.

The proprietor of Genesis 1:29 club in Petaluma was arrested Sept 13, 2002. Agents uprooted 3,454 plants at the club's garden in Sebastopol. The suspect pled guilty July 2003; sentenced to 41 months, July 2005. Information provided by:
(Source) <http://www.canorml.org/news/fedmmjcases.html>

TEHEMA COUNTY

Two subjects were indicted by federal grand jury on Jan 8, 2004 after trying to assert medical marijuana defense in state court. Arrested with 100s of small seedlings, 33 mature plants, and a few pounds of processed marijuana in Red Bluff and Oakland. Defendants say they were for personal use. The Tehama DA turned the case over to the feds while pretending to negotiate a deal with their attorneys. Denied a *Raich* defense by Judge England.
(Source) <http://www.canorml.org/news/fedmmjcases.html>

TRINITY COUNTY

A subject and his wife were arrested in 2003 for a sizable outdoors grow; they were re-arrested the next year after deliberately replanting another garden in public view. While awaiting trial, they were arrested once again, this time for a personal use garden of approximately ten plants.
(Source) <http://www.canorml.org/news/fedmmjcases.html>

TUSTIN

After a medical marijuana dispensary opened, undercover officers conducted an investigation in the business. During the service of a search warrant, 25 pounds of marijuana was seized and the dispensary was shut down. The District Attorney still has not made a decision as to whether to file charges or not.
(Source) Scott Jordan Tustin PD

UKIAH

Over the last four years, the City of Ukiah has experienced an increase in crimes related to the medical marijuana dispensaries. They are four dispensaries in town as well as several citizens growing marijuana for the purpose of providing marijuana to dispensaries. There have been approximately ten robberies of either dispensaries or

private grows. Some of these robberies have resulted in shootings. There has also been an arson of a dispensary which the police department believes was the result of a dispute with a customer.

(Source) Det. Guzman Ukiah P.D.

Ukiah Daily News

An arson fire burned the Ukiah Cannabis Club Saturday morning, causing extensive damage and blackening neighboring structures as well. A man who told The Daily Journal he was upset with the Ukiah Cannabis Club, claiming club members owed him money for the crop of marijuana he grew for them, was arrested at the scene.

(Source http://www.hempevolution.org/media/ukiah_daily_news/udn020527.htm)

VENTURA

Two subjects were arrested Sept 28, 2001 for cultivating for the LACRC. Forfeiture filed against their property, including home they built for themselves, in July 02. Raided again and arrested for personal use garden of 35 plants in Aug 02; charged with cultivation. Pled guilty Sep 03. Ninth Circuit denied appeal March 2006.

(Source) <http://www.canorml.org/news/fedmmjcases.html>

CALIFORNIA CHIEFS OF POLICE

The California Chiefs of Police outlined their collective opinion on their web site; Law Enforcement Concerns to Medical Marijuana Dispensaries;

- It violates Federal Law
- Street dealers selling at lower prices to entice patients away from dispensaries
- Non-residents coming into city to purchase marijuana
- Neighboring businesses have experienced a loss of customers
- Increase in unreported crime to avoid negative publicity to the dispensary
- Problem of patients selling to non-patients (similar to providing alcohol to a juvenile waiting outside a liquor store
- Documented cases of robberies outside medical marijuana dispensaries
- Dispensaries create alternative methods to market products – such as food items called Buddafingers, Munchy Way, Rasta Reese's and Puff-a- Mint Pattie
- Complaints from patients that other illegal drugs are being sold at the dispensary
- Marijuana dispensaries perpetuate a sub-culture that openly supports behavior consistent with criminal activity and publishes instructional material on the web.

Examples include:

1. Assume you are under surveillance if you are in any way involved in providing medical marijuana to patients.
2. Do not discuss sensitive matters on the phone, through the mail, by e-mail, or in you home, car, dispensary collectives or office.
3. Don't gossip, brag or ask for compromising or unnecessary information about medical marijuana operations and activities.
4. You should be cautious of theft. Many patients and care providers have been robbed because the wrong person knows sensitive information

- Management from an established dispensary told police that they cannot keep the criminal element out.

CALIFORNIA NARCOTIC OFFICERS ASSOCIATION

Agents have conducted sting operations on web sites such as "Craigslis" and recently conducted an investigation which resulted in the arrest of a subject for the sale of three pounds of marijuana as well as possession of an additional four pounds. This subject was an employee of a local medical marijuana dispensary.

RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE

WHITE PAPER

MEDICAL MARIJUANA: HISTORY AND CURRENT COMPLICATIONS

September 2006

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In November of 1996, California voters passed the Proposition 215 initiative.¹ The initiative set out to make medical marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act; which was enacted as Senate Bill 420 by the state legislature in 2003 and became effective in January of 2004. Across the state, counties have varied in their responses to medical marijuana. Some counties have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several counties once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available.

History of Medical Marijuana

The world history of marijuana for medicinal use is long and varied. Among other illnesses, the Chinese used it to treat gout, malaria and memory. Hindu sects have used it as a stress reliever. Ancient physicians prescribed marijuana for pain, childbirth and earaches. Early Americans used it to treat skin inflammation, rabies, and tetanus.²

However, evidence that marijuana lessens the symptoms of any medical condition is largely anecdotal.³ Additionally, medical marijuana is normally administered by smoking and not a single Federal Drug Administration approved medication is smoked.⁴

Federal Law

Federal law clearly and unequivocally states that all marijuana related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court recently decided, *Gonzales v. Raich*, (2005) 125 S.Ct. 2195, making the federal position absolutely plain. The court has declared that, despite the attempts of several states to partially legalize marijuana, it

continues to be wholly illegal since it is classified as a Schedule I drug. As such, there are no exceptions to its illegality. The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.⁵ The Commerce Clause states that “the Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”⁶

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under our state’s medical marijuana statute. The court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.⁷ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁸ The court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁹ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution.

California Law

On November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.¹⁰ The initiative added Health and Safety code section 11362.5 which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”¹¹ The codified section is known as the Compassionate Use Act of 1996.¹² Additionally, the state legislature passed Senate Bill 420 in 2003; it became the Medical Marijuana Program Act and took effect on January 1, 2004.¹³ This act expanded the definitions of “patient” and “primary caregiver”¹⁴ and created guidelines for identification cards.¹⁵ It defined the amount of marijuana that “patients” and “primary caregivers” can possess.¹⁶ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana.¹⁷

Despite their illegality, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside

of the statutes' parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a "qualified patient", "primary caregiver", or a member of a "cooperative". Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

A strict construction of California law

The California Attorney General, Bill Lockyer, has also spoken on medical marijuana. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. The Attorney General made the recommendation that law enforcement neither arrest nor prosecute "individuals within the legal scope of California's Compassionate Use Act."

When California's medical marijuana laws are strictly construed our two offices come to a point of agreement. We believe that *Gonzales v. Raich* does affect California law. However, we also acknowledge that the California statutes offer some legal protection to "individuals within the legal scope of" the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes and, if their conduct comports to the law, may have some state legal protection for specified marijuana activity. Conversely, all medical marijuana establishments that fall outside the letter and spirit of the statutes are not legal; including dispensaries and store-front facilities. These establishments have no legal protection. The Attorney General's opinion does not present a contrary view.

1. Conduct

Health and safety code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a "patient", "primary caregiver", or is a member of a legally recognized "cooperative" they have an affirmative defense to possessing a defined amount of marijuana. Under the statute no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁸ Note that if someone claims patient or primary caregiver status, and possesses more than this amount of marijuana, he can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana; but while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁹

However, for anyone who cannot lay claim to the appropriate status under the statutes: all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a

space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patient

Under section 11362.5(b)(1)(A), a patient is anyone a physician has determined will 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*.²⁰ A physician's recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

3. Primary Caregiver

A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient".²¹ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is important to note that it is almost impossible for a store-front medical marijuana business to gain true primary caregiver status. Businesses that call themselves "cooperatives", but function like store-front 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.²² 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.²³

The key to being a primary caregiver is not simply that medical marijuana is provided for a patient's health: the responsibility for the health must be consistent. Any relationship a store-front medical marijuana business has with a patient is more likely to be transitory than consistent. A patient can go to any dispensary he chooses. He can even visit different ones on a single day or any subsequent day. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make them one. The relationship between patient and primary caregiver must be consistent over time. Any business that cannot prove its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Store-front medical marijuana cooperatives and dispensaries

Since the passage of the Compassionate Use Act of 1996, many store-front medical marijuana businesses have opened in the state.²⁴ Some are referred to as

dispensaries, some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²⁵ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁶ These facilities are able to operate because they apply for and receive business licenses from cities.

Federally, all existing store-front medical marijuana businesses are subject to search and closure since they violate federal law.²⁷ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these store-front medical marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, no one else.²⁸ Although Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any store-front business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁹ Medical marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like, are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.³⁰ Clearly, it is doubtful that any of the store-front medical marijuana businesses currently existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

Riverside County

There appear to be four dispensaries currently operating in the County of Riverside: the Healing Nations Collective in Corona, Compassionate Caregivers in Palm Springs, C.A.P.S. in Palm Springs and CannaHelp³¹ in Palm Dessert.

The County of Riverside is currently considering ordinance number 348.4403 which provides for the zoning and licensing of medical marijuana cooperatives in the

county. As discussed above, all such store-front medical marijuana businesses are illegal. Consequently, all are subject to criminal prosecution.

Practical Issues in California

A. How existing dispensaries operate

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical medical marijuana dispensary works.³²

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom; although employees are neither pharmacists nor doctors. Baked goods containing marijuana may be available and sold; although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana they want and is told what the “contribution” will be for the product. The code specifically prohibits the sale of marijuana to a patient so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the figures in the article, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000.00 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000.00 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient”.³³ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a store-front medical marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety**.”³⁴ The key to being a primary caregiver is not simply that medical marijuana is provided for a patient’s health: the responsibility for the patient’s health must be consistent.

As seen in the Green Cross example, a store-front medical marijuana business' relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a store-front medical marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make them one. The consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

B. Secondary effects of dispensaries and similarly operating cooperatives

Of equal concern are the secondary effects of these dispensaries and store-front cooperatives. Throughout the state, many violent crimes have been committed that can be traced to their proliferation. On February 25, 2004, two men in Mendocino County 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 the state prison.³⁵

At least two murders can be traced to the existence of medical marijuana dispensaries. On August 19, 2005, 18-year-old Demarco Lowery was shot when he and his friends attempted a takeover robbery of a store-front medical marijuana business in the City of San Leandro. The owner fought back 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.³⁶ He did not survive. The second known murder occurred on November 19, 2005. Approximately six men broke into Les Crane's home in Laytonville while yelling "this is a raid". Les Crane, who owned a store-front medical marijuana business, was at home and shot to death. Another man present at the time was beaten with a baseball bat. The murderers left the home after taking currency and processed marijuana.³⁷

On July 17, 2006, the El Cerrito City Council voted to ban all such medical marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these store-front dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders and attempted murders.³⁸ As recently as August 10, 2006, an armed robbery took place at a Santa Barbara dispensary. A small amount of currency and fifteen medical marijuana baggies were stolen. The owner says it is the fourth time he has been robbed. He failed to report the first three because "medical marijuana is such a controversial issue".³⁹ Even though medical marijuana store-front businesses do not currently exist in the City of Monterey Park, it issued a moratorium on them after studying the issue in August 2006.⁴⁰ After allowing these establishments to operate within its borders, the City of West Hollywood recently 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"⁴¹

Medical marijuana store-front businesses have allowed criminals to flourish in California. This past summer the City of San Diego cooperated with federal authorities

and served search warrants on several medical marijuana locations. In addition to marijuana many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁴² The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁴³ Store-front medical marijuana businesses are very dangerous enterprises.

C. Liability Issues

With respect to issuing business licenses to medical marijuana store-front facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting is easily applied to counties and cities allowing medical marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the medical marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana he is committing a federal crime.

A county issuing a business license to a medical marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining medical marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of medical marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing store-front medical marijuana businesses to operate within their borders, San Diego and San Bernardino Counties have filed a lawsuit against the state. They seek to prevent California from enforcing the medical marijuana statutes which subject them to criminal liability.

Conclusion

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 illegal. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. We conclude that medical marijuana is not legal under federal law, despite the current California scheme.

Furthermore, store-front medical marijuana businesses are prey for criminals and create easily identifiable victims. The people growing the marijuana are looking to and

employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.⁴⁴ The others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed and murdered. Those buying and using medical marijuana are also being victimized.

Additionally, illegal medical marijuana facilities have the potential for creating liability issues for counties and cities.

The Riverside County District Attorney's Office believes that the cooperatives being considered are illegal and should not be permitted to exist within the County's borders. They are a clear violation of federal and state law, they invite more crime, and they compromise the health and welfare of the citizens of this County.

¹ Ten other states have enacted medical marijuana laws in some fashion: Alaska, Arizona, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington.

² Stack, *Inhaling to cure ailments is a lot older than you might believe* (October 27, 2002) Time Magazine.

³ Zimmerman, *Is Marijuana the Right Medicine for You* (1998) chapter 3.

⁴ "Medical" Marijuana - *the Facts* United States Drug Enforcement Administration, www.usdoj.gov.

⁵ U.S. Const. art. VI, cl. 2.

⁶ U.S. Const. art. I, section 8, cl. 3.

⁷ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2204.

⁸ *Id.*, see also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.

⁹ *Id.*

¹⁰ See *People v. Mower* (2002) 28 Cal.4th 457, 463.

¹¹ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.

¹² 11362.5(a).

¹³ 11362.7 et. seq.

¹⁴ 11362.7.

¹⁵ 11362.71 – 11362.76.

¹⁶ 11362.77.

¹⁷ 11362.765; 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747, 786.

¹⁸ 11362.77

¹⁹ 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.

²⁰ HS 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.

²¹ HS 11362.5(e); HS 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

²² *People v. Mower*, *supra*, 28 Cal.4th at 476.

²³ *Id.* emphasis added.

²⁴ For a statewide list: <http://canorml.org/prop/cbclist.html>.

²⁵ McClure, *Fuming Over Pot Clubs* (June 2006) California Lawyer Magazine.

²⁶ 11362.765(c); see, e.g. *Urziceanu*, *supra*, 132 Cal.App.4th at page 764.

²⁷ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.

²⁸ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also HS 11362.765.

²⁹ Packer, *Organization and Operation of Cooperatives* (4th ed. 1970) American Law Institute (1970) pp. 4-5; italics added.

³⁰ 11362.7(d)(1).

³¹ As of August 2006, the store CannaHelp leases is undergoing renovations and it is not currently operating out of that facility; it is unknown if it is operating out of another location.

³² See e.g. McClure, *Fuming Over Pot Clubs* (June 2006) California Lawyer Magazine.

³³ HS 11362.5(e); HS 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.

³⁴ *People v. Mower, supra*, 28 Cal.4th at 476, emphasis added.

³⁵ Scaramella, *No Good Deed Goes Unpunished*, (June 16, 2004) www.theava.com.

³⁶ Graham, *Police Link Suspect to Pot Club Robbery*, (August 9, 2006) www.insidebayarea.com.

³⁷ Clark, *Breaking News: Medical Marijuana Supplier Les Crane Killed*, (November 19, 2005) Ukiah Daily Journal; Clark, *Les Crane Murder Investigation Continues*, (November 27, 2005) Ukiah Daily Journal.

³⁸ Planning Commission Agenda, www.el-cerrito.org; *El Cerrito Bans Dispensaries*, www.420girls.com.

³⁹ Indy Staff, *Medical Marijuana Shop Robbed*, (August 10, 2006) Santa Barbara Independent.

⁴⁰ Ortega, *City bans outlets for medical marijuana*, (August 28, 2006) San Gabriel Valley Tribune.

⁴¹ *Id.*

⁴² Crime statistics, www.sandiego.gov.

⁴³ National Drug Intelligence Center, *Marijuana* (January 2001) www.usdoj.gov.

⁴⁴ *Id.*

NOTICE OF EXEMPTION

To: Ventura County Clerk
800 S. Victoria Avenue
Ventura, CA 93001

From: City of Simi Valley
2929 Tapo Canyon Road
Simi Valley, CA 93063

Project Title: An Ordinance Prohibiting Medical Marijuana Dispensaries in the City of Simi Valley

Project Location - Specific: Citywide

Project Location - City: Simi Valley Project Location - County: Ventura

Description of Project: The Ordinance will prohibit the establishment of medical marijuana dispensaries in the City of Simi Valley.

Name of Public Agency Approving Project: City of Simi Valley Date of Approval

Name of Person or Agency Carrying Out Project: City of Simi Valley

Exempt Status: (check one)

- Ministerial [Sec. 21080(b)(1); 15268];
- Declared Emergency [Sec. 21080(b)(3); 15269(a)];
- Emergency Project [Sec. 21080(b)(4); 15269(b)(c)];
- Categorical Exemption - State type and section number _____
- Statutory Exemptions - State code number _____
- General Rule [Sec. 15061(b)(3)]

Text of exemption and reasons why project is exempt:

Section 15061(b)(3) states that: "A project is exempt from CEQA if the activity is covered by the general rule that CEQA applies only to projects, which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

No medical marijuana dispensaries currently exist in the City. The prohibition on their establishment would not cause any change to the environment. Therefore, the project would not have a significant effect on the environment and is exempt from further review under CEQA.

Lead Agency

Contact Person: David Hirsch, City Attorney Area Code/Telephone (805) 583-6714

Signature: *Lauren Funaiole* Date: 11/27/06 Title: Senior Planner
Lauren Funaiole Dept. of Environmental Services

Signed by Lead Agency