



City of San Leandro

Meeting Date: December 3, 2012

Staff Report

File Number: 12-569

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Jayne Williams
City Attorney

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for Presentation of DRAFT Medical Marijuana Dispensary Ordinance

SUMMARY AND RECOMMENDATIONS

Staff recommends the City Council review the DRAFT medical marijuana dispensary ordinance, take public comment, provide comments to staff, and provide direction to staff on next steps staff should take before it brings the ordinance back to the City Council for review and adoption.

BACKGROUND

Since the expiration of the moratorium on the issuance of land use entitlements related to uses involving medical marijuana dispensaries on October 1, 2012, the City Council, by and through its City Council Rules and Communications Committee, has reviewed, taken public comment, and provided comments upon a draft ordinance that would allow the operation of and impose regulations upon two medical marijuana dispensaries in the City. The City Council Rules and Communications Committee, after several versions of the ordinance, recommends the City Council review and provide comments upon the version of the ordinance presented.

Staff also requests direction on next steps it should take related to the community's review of the ordinance. Two public presentations, one before the Board of Zoning Adjustments, and one before the Planning Commission, will be scheduled early next year. Those two presentations will include a review of the proposed ordinance, and staff recommended amendments to the Zoning Code, to bring it in compliance with the provisions of the proposed ordinance.

ANALYSIS

Since September 2010, the City has had a moratorium on the issuance of land use

entitlements, building permits, and business licenses for new medical marijuana dispensary related operations in the City. The moratorium was passed, and subsequently extended pursuant to City Council findings that included, amongst others, uncertainty regarding the legality of dispensaries as legitimate means of complying with State and Federal law under the Compassionate Use Act, and Medical Marijuana Program Act, and various jurisdictions' efforts to ban, regulate, and raise revenue from such operations.

On July 16, 2012, pursuant to an appellate court decision that prohibit local jurisdictions from banning medical cannabis dispensary operations (**County of Los Angeles v. Alternative Medicinal Cannabis Collective** (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1)), the City Council decided that it would allow the moratorium to expire. The City Council also directed the City Council Rules and Communications Committee to develop an ordinance and amendments to the Zoning Code with staff to allow a limited number of dispensaries to operate in the City. That direction culminated in the draft proposed ordinance before the City Council. Recommended Zoning Code amendments that conform to the proposed ordinance are forthcoming, and would be presented, along with the proposed ordinance, to the City's Board of Zoning Adjustments for review and comment, and the Planning Commission for review, comment, and recommendation to the City Council.

The ordinance itself is modeled after the City of Oakland's 2011 amendments to its medical cannabis dispensary ordinance (see Attachment 2); the proposed ordinance also borrows from the City and County of San Francisco Department of Public Health's regulations related to edible cannabis product handling, labeling, and distribution (see Attachment 3). The ordinance is in strict compliance with the California Attorney General's August 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (see Attachment 4). Staff also believes that the ordinance complies with the common law related to the establishment and operation of medical marijuana dispensaries. (see Attachment 5)

Finally, staff has advised the City Council in past hearings and proceedings that the possession and distribution of marijuana is illegal under the Federal Controlled Substances Act. The United States Attorney for the Northern District of California has raided and shut down several medical cannabis dispensaries in Oakland and San Francisco. If the City passes regulations in strict compliance with the California Attorney General's Guidelines, and dispensaries operate in conformance with the City's ordinance, staff is of the opinion that the likelihood of a raid of City approved dispensaries by Federal law enforcement agencies for violation of the Controlled Substances Act is low.

The ordinance's main provisions are as follows:

- ❖ 2 valid permits are allowed;
- ❖ The City Manager may impose separate conditions of approval, including allowing later hours of operation;
- ❖ A public hearing on approval of a Dispensary permit must be held by the Board of Zoning Adjustments pursuant to the approval of a conditional use permit;
- ❖ Operating, security, recordkeeping, facilities, and signage regulations are set in the ordinance;
- ❖ Dispensaries may only be located in the City's industrial and commercial zoning districts, and cannot be within 1,000 feet of a school, library, youth center, park and recreation facility, and another dispensary, and cannot be within 500 feet of a residential zone;

- ❖ On-site cooking and distribution of edible cannabis products is allowed and regulated to prevent the transmission of foodborne illnesses; and
- ❖ Payment of a non-refundable permit application fee, an annual permit renewal fee, and annual business license fee will be required and the amounts set by the City Council.

Previous Actions

October 4, 2010: The City Council passed An Interim Urgency Ordinance Prohibiting Consideration and Approval of Use Permits, Variances, Building Permits, Start of New Construction, or Other Entitlements for Any Establishment or Operation of Medical Marijuana Dispensaries, Marijuana Cultivation Facilities, or Other Land Uses that Could Be Proposed Should Prop 19 Be Approved by Voters for a Forty-Five Day Period

November 15, 2010: The City Council extended the Interim Urgency Ordinance to October 1, 2011.

May 16, 2011: The City Council heard and did not pass an ordinance that would prohibit the establishment of medical marijuana dispensaries in the City. The moratorium continued in effect.

September 6, 2011: The City Council extended the Interim Urgency Ordinance an additional 12 months, to September 30, 2012

June 15, 2012: Approved at First Reading an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 2, 2012: The City Council tabled discussion and action at Second Reading of an ordinance prohibiting the establishment and operation of medical marijuana dispensaries with a sunset date.

July 16, 2012: The City Council directed the City Council Rules and Communications Committee to work with staff on an ordinance that would permit the establishment and operation of medical marijuana dispensaries within the City.

November 7, 2012: The City Council Rules and Communications Committee approved the proposed ordinance, and forwarded it to City Council for review and comment.

ATTACHMENTS

1. DRAFT Medical Marijuana Dispensary Ordinance
2. City of Oakland Medical Cannabis Dispensary Ordinance and Administrative Regulations
3. City and County of San Francisco edible cannabis regulations
4. 2008 Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use
5. Update on Case law provided to City Council Rules and Communications Committee Related to Medical Marijuana Dispensary Regulations.

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CITY OF SAN LEANDRO

CITY COUNCIL

AN ORDINANCE ADDING CHAPTER 4-33 TO TITLE 4 OF THE SAN LEANDRO MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITS

NOW THEREFORE, the City of San Leandro City Council does hereby ordain:

Section I. Amendment to Title 4, PUBLIC WELFARE

San Leandro Municipal Code Title 4 is hereby amended to add the following Chapter, 4-33, as follows:

4-33-100 - Definitions.

The following words or phrases, whenever used in this Chapter, shall be given the following definitions:

(a). "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use," issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

(b). "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant incapable of germination.

(c). "Cannabis Dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 *et seq.*

(d) "City" means the City of San Leandro, and any legislative body granted regulatory authority over Dispensary operations by this ordinance.

(e). "City Manager" means the City Manager of the City of San Leandro or his/her designee.

(f). "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

(g). "Cooperative" means a business organization recognized by the state of California through properly registered articles of incorporation under the Corporations or Food and Agricultural Code that conducts its business for the mutual benefit of its members, as described in the Attorney General Guidelines.

(h). "Medical Marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 *et seq.*, as such sections may be amended from time to time.

(i). "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

(j). "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended from time to time, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

1. In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illnesses licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2 of the California Health and Safety Code; a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2 of the California Health and Safety Code; the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.
2. An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.
3. An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(k). "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means a person who is entitled to the protections of

California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 *et seq.*

(l). "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means all of the following medical conditions:

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(m). "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

4-33-200 – Dispensary Permit required and Application for Permit.

(a) Except for hospitals, it is unlawful for any owner, operator, collective, cooperative, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any Dispensary in the City of San Leandro unless there exists a valid Dispensary permit in compliance with the provisions of this Chapter.

(b) This Chapter does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a Dispensary permit under this Chapter, but must comply with all applicable State Laws and the Attorney General Guidelines.

(c) The City shall issue no more than two (2) valid permits for the operation of dispensaries in the City.

(d) In addition to the requirements specified in Chapter 2-2 related to Business Licenses, the permit application for a Dispensary shall set forth the following information:

(1) Unless it is determined by the City that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such Dispensary is not within one thousand (1000') feet of a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facilities, and another Dispensary and five hundred (500') feet from a residential zone. The proposed Dispensaries must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.

(2) A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.

(3) A plan of operations that will describe how the Dispensary will operate consistent with the intent of State law, the provisions of this Chapter, the Attorney General Guidelines, the City's Municipal and Zoning Codes, and conditions of approval including but not limited to:

(i) Controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers; and

(ii) Controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.

(iii) A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft and burglary, and patrons and customers from robbery. The security plan shall be reviewed by the Police Department and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).

(iv) Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.

(e) The City Manager shall designate the investigating official to whom an application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, such designee shall give particular consideration to the capacity, capitalization, and history of the applicant and any other factors that in the City's discretion it deems necessary to maintain the peace, order and welfare of the public. The City Manager on his or her own power and in addition to any other conditions of approval imposed by any other City departments, boards, commissions or legislative bodies, may impose any conditions on a Dispensary permit he or she deems necessary to maintain the peace, order, and welfare of the public.

(f) At the time of submission of a Dispensary permit application, the applicant shall pay a non-refundable Dispensary permit application fee. The fee amount shall be set by the City Council.

(g) The issuance of a Dispensary permit shall not be effective until the permit applicant has received all other permits and approvals required by the City's ordinances, rules and regulations, including but not limited to any conditional use permit and building permit, and paid all fees.

4-33-300 – Compliance with State Law and Municipal Code.

(a) A Dispensary must comply with all applicable state and local laws, policies, rules and regulations, including but not limited to the California Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, the San Leandro Municipal Code, the San Leandro Zoning Code, and the San Leandro Administrative Code including any and all rules and regulations related to the land use entitlement process, Dispensary operations, annual Dispensary permit fee, annual business license fee, and the Americans with Disabilities Act to be in compliance with the Dispensary permit.

The Dispensary must comply with any and all Conditions of Approval imposed upon it pursuant to any land use permit or entitlement granted.

Failure to comply with the Conditions of Approval or any conditions imposed upon a Dispensary permit by the City Manager, and all applicable local and state laws or regulations, and failure to pay when due all fees may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City's nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution as defined in San Leandro Municipal Code Chapter 1-12.

4-33-400 – Renewal of Permits

(a) Dispensary Permits must be renewed annually. Permit Holders shall contact the City's Community Development Director in writing no later than forty-five (45) days before the expiration of the current permit to begin the renewal process. At that time, the Dispensary shall submit verification of a current Business License, audited financial statements for the previous permit term, and any other requested financial documents or information as required by the San Leandro Municipal Code or the Dispensary's Permit.

As part of the annual renewal process the Dispensary shall be inspected by the Building Inspector and Fire Marshall or their designees. Violations of the San Leandro Municipal Code shall be corrected within a reasonable time, as determined by the Building Inspector, Fire Marshal or his/her designee. The Dispensary shall provide proof to the City that there are no outstanding violations of the San Leandro Municipal Code.

(b) A Dispensary Permit will not be renewed without payment of the annual renewal fee, or any other fees on such operations established by the City Council.

4-33-500 - Performance standards.

(a) Operations

A Dispensary shall operate in conformance with the following minimum standards, and such standards shall be deemed to be part of the conditions of approval on the Dispensary's Permit to ensure that its operation is in compliance with California law, the Attorney General Guidelines, and this Municipal Code, and to mitigate any potential adverse impacts of the Dispensary on the public health, safety, and welfare.

(1) A Dispensary shall provide the City, the Chief of Police, and all neighbors located within fifty (50) feet of the premises with the name, phone number, facsimile number and email address of an on-site community relations staff person that can be contacted related to Dispensary issues, twenty-four hours a day, seven days a week.

(2) Medical marijuana shall only be distributed by a Dispensary at the property identified and approved as the location for the Dispensary on the Dispensary permit application.

(3) A Dispensary shall only provide, distribute, dispense, or give medical marijuana to qualified patients or primary caregiver members. It is within the City's discretion to limit the number of members allowed per Dispensary.

(4) Only qualified patients, caregivers, and their guests shall be allowed inside of a Dispensary. The Dispensary shall comply with all occupancy rules imposed by State law or the Fire Marshal.

(5) A Dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the Dispensary should only be an amount necessary to cover overhead costs and operating expenses. Retail sales of medical marijuana that violate California law or this ordinance are expressly prohibited.

(6) A Dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. A Dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature marijuana plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. For purposes of determining the quantity of marijuana, only the dried mature processed flowers of female cannabis plants or the plants conversion shall be considered.

(7) A Dispensary may operate no later than 7pm daily unless it is determined by the City that a later hour will not affect public health, safety, or welfare. A Dispensary is prohibited from operating between the hours that the City determines the Dispensary should close and 9 a.m. the next ensuing day unless further restricted by the City.

(8) Dispensaries shall disclose the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabiniol in medical cannabis to qualified patients before providing medical cannabis.

(9) Dispensaries shall follow the directions of the City Manager or his/her designee regarding any medical cannabis found to be non-compliant with testing standards. These instructions extend to any

medical cannabis found to be unsafe on the basis of such testing results, or to the Dispensary's operations and practices generally.

(10) Representative samples of medical marijuana distributed by a collective or cooperative shall be analyzed by an independent laboratory to ensure it is free of harmful pesticides and other contaminants regulated by local, state or federal regulatory statutory standards. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level that exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith.

(11) Any medical marijuana provided to collective members shall be properly labeled in strict compliance with state and local laws, regulations and policies.

(12) Dispensaries shall not allow cannabis to be smoked, ingested or otherwise consumed on the premises. The term premises includes the actual building, as well as any accessory structures, parking areas, or other immediately surrounding areas.

(13) Dispensaries shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. Dispensaries shall not operate as a restaurant, cafe or lounge serving food or drinks for consumption on-site. There shall be no seating area, tables, couches, or chairs for the gathering or congregating of patients or primary caregivers.

(14) A Dispensary shall post a copy of the Business License Certificate issued by the City's Finance Department and a copy of the Cannabis Dispensary Permit issued by the City in a conspicuous place on the premises.

(15) The regulation of edible cannabis products shall be as follows:

(a) No edible cannabis products requiring refrigeration or hot-holding shall be manufactured for sale or distribution at a Dispensary, due to the potential for food-borne illness. Exemptions may be granted by the City, in consultation with the Alameda County Department of Public Health (DPH) on a case-by-case basis. For such exempted edible cannabis products, DPH may require a HACCP (Hazard Analysis and Critical Control Points) plan before approving the distribution of such medical cannabis products at a Dispensary. Such products requiring a HACCP plan may include ice cream and other dairy products.

(b) Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at a Dispensary.

(c) All items shall be individually wrapped at the original point of preparation. Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package. A warning that the item is a medication and not a food must be distinctly and clearly legible on the front of the package. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children. The label must also state that the product contains medical cannabis, and must specify the date of manufacture.

(d) Packaging that makes the product attractive to children or imitates candy is not allowed. Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the Dispensary. Deliveries must be in properly labeled opaque packages when delivered to a patient.

(e) Individuals conducting the manufacturing or sale of products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible cannabis products.

(f) In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible cannabis products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Anyone who has sores or cuts on their hands must use gloves when preparing and handling edible cannabis products.

(g) Edible cannabis products for sale or distribution at a Dispensary must have been prepared by a member of that Dispensary. No non-member edible cannabis products are allowed for sale or distribution at a Dispensary.

(h) A patient or primary caregiver who produces edible cannabis products that are sold at more than one Dispensary in the City or Alameda County must become a State certified food handler. If more than one person is involved in producing edible cannabis products at one facility, only one person needs to be certified. The valid certificate number of the member who has prepared the edible cannabis product must be on record at the Dispensary where the product is sold or distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

(16) All employees responsible for the handling, processing, dispensing, providing and cultivation of marijuana must be members of the Dispensary. Prior to employment, the employee members must be fingerprinted (through a Live Scan) for the purpose of conducting a background check. The purpose is to determine whether the employee has been convicted or plead guilty, plead for or was granted entry into a diversion program in lieu of conviction for, or plead *nolo contendere* to the following criminal offenses, or their equivalent if arising out of state:

- i) Health and Safety Code Sections 11350 *et al* (pertaining to controlled substances, with the exception of marijuana related offenses)
- ii) Penal Code Section 187 (homicide)
- iii) Penal Code Section 207 (kidnapping)
- iv) Penal Code Section 211 (robbery)
- v) Penal Code Sections 240-248 (assault & battery)
- vi) Penal Code Section 261 (rape)
- vii) Penal Code Section 314 (indecent exposure)
- viii) Penal Code Section 450 (arson)
- ix) Penal Code Sections 458-464 (burglary)
- x) Penal Code Sections 470-483.5 (forgery)
- xi) Penal Code Sections 484-502.9 (larceny)
- xii) Penal Code Sections 503-515 (embezzlement)

The employee applicant must contact the Chief of Police for information related to the processing and cost of the fingerprinting, and any costs must be paid for in advance by the employee applicant. The background check shall review the last five (5) years of the employee applicant's criminal history. If the background investigation determines the employee has been convicted of one of the above offenses, the Dispensary shall no longer employ the member as an employee.

(b) Recordkeeping

The Dispensary shall maintain records of its members using only the State of California Medical Marijuana Identification Card number issued by the County or the County's designee, pursuant to California Health and Safety Code Section 11362.7 *et seq.*, or a copy of the written doctor's recommendation, as a protection for the confidentiality of the cardholders. The Dispensary shall track when members' medical marijuana recommendations and/or identification cards expire and enforce conditions of membership by excluding members whose identification cards or recommendations are invalid or expired. The Dispensary shall maintain member records in a manner to protect confidential information in the records if the records contain information protected by applicable law, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and Public Law 104-191. A Dispensary shall exclude members who are caught diverting marijuana for non-medical use. All membership records shall be maintained on site.

(1) A Dispensary shall, by using the patient or caregiver's identification number, keep an accurate account of the number of members that visit the Dispensary each month, and also for the entire permit year.

(2) Within thirty (30) days of the end of a calendar quarter, the Dispensary shall provide the City a count of the total number of members of the Dispensary and the number of Dispensary visits by each member during the previous calendar quarter.

(3) Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City a listing of the medical marijuana products for sale during the previous calendar quarter, the prices of such products, and the end of quarter quantity on hand, listed in the applicable units, for each product.

(4) The Dispensary shall keep accurate records, follow accepted cash handling practices and maintain a general ledger of cash transactions. The Dispensary shall maintain records of all members' contribution of labor, resources or money to the Dispensary.

(5) The Dispensary shall allow the City to access the books, records, accounts and all data relevant to its operations for purposes of conducting an audit or examination to determine compliance with the Municipal Code, Administrative Regulations, conditions of approval, and applicable laws. Books, records, accounts and all relevant data shall be produced no later than twenty-four (24) hours after receipt of the City's request.

(6) The Dispensary shall maintain a log of patient complaints and shall make the log available to the City upon request. The log shall contain at a minimum the date of the complaint, the complaining patient's identification number or reference to his/her written recommendation, the nature of the complaint, and the action taken by the Dispensary to address the complaint.

(c) Facilities

(1) A Dispensary must be located at least one thousand feet (1000') from a public or private school, public library, youth center (serving youth ages eighteen (18) and under), parks and recreation facilities, and another Dispensary and five hundred feet (500') from a residential zone.

(2) The Dispensary shall not permit any breach of peace inside of the Dispensary or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct.

(3) The City may impose Dispensary facility size and height conditions to preserve the public health, safety, and welfare of surrounding properties.

(4) The Dispensary shall be designed with sufficient sound absorbing insulation so that the noise generated inside the Dispensary is not audible on the premises, beyond that of normal commercial offices, or public rights-of-way, or any other building or other separate unit within the same building as the Dispensary.

(5) The Dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust systems so that any odor generated inside the Dispensary is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the Dispensary, if the use only occupies a portion of a building.

(6) The Dispensary shall provide litter removal services twice (2) each operating day on and in front of the premises and on public sidewalks within one hundred feet (100') of the Dispensary.

(d) Security

(1) Security cameras shall be installed and maintained in good condition, and the camera and recording system must be of adequate quality, color rendition and resolution to allow the identification of an individual. The cameras shall be in use 24 hours a day, 7 days per week, and shall cover the marijuana dispensing areas, storage areas, all doors and windows to the Dispensary, parking areas and other areas as determined by the Chief of Police. The recordings shall be maintained at the Dispensary property for a period of sixty (60) days.

(2) The Dispensary shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 *et seq.* and whose agents are properly licensed and registered under applicable law.

(3) During Business Hours, the Dispensary shall provide a minimum of three (3) security guards duly licensed by the State of California, Department of Consumer Affairs. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms or tasers.

(4) Security guard duties shall include, but are not limited to, ensuring no person smokes any substance within twenty-five feet (25') of any building entrance, exit, window and air intake vent.

(5) The Dispensary shall direct its security guards to monitor the outside of the premises for loitering and unlawful sale of medical marijuana by members. Security guards shall be directed to report to the Dispensary all unlawful sales of medical marijuana by members. The Dispensary shall immediately cease providing medical cannabis to the reported member, and make a report within twenty-four (24) hours to the Chief of Police, and the Alameda County Health Department and/or the doctor that issued the medical marijuana recommendation for the member. The Dispensary shall keep a record of all incidents where members unlawfully provided marijuana to non-members. The Dispensary shall inform patients and

primary caregivers about this provision and remind them that it is unlawful for them to sell medical cannabis to non-members.

(6) Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry and also equipped with latches that may be released quickly from the inside to allow exit in the event of an emergency.

(7) The Dispensary shall maintain adequate exterior lighting in parking areas.

(e) Signage

(1) Exterior signage for a Dispensary shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated.

(2) The Dispensary shall, within sixty (60) days of the issuance of the Dispensary permit, post and thereafter maintain signs inside the Dispensary where they may be easily read by members. Each sign shall be white with black lettering, and shall comply with the following regulations regarding text, size and content:

Sign 1: Font size at least 1 inch; Overall size at least 18" by 33"

PATIENT NOTICE

1. YOU HAVE THE RIGHT TO HAVE YOUR PRODUCT REWEIGHED AND SUPPLEMENTED IF IT IS UNDER THE STATED WEIGHT AT THE TIME OF PURCHASE.

2. IF YOU DO NOT HAVE A VALID STATE OF CALIFORNIA IDENTIFICATION CARD ISSUED BY ALAMEDA COUNTY HEALTH DEPARTMENT, THIS DISPENSARY MUST CONFIRM YOUR MEDICAL NEED FOR MARIJUANA. IF YOU HAVE A VALID IDENTIFICATION CARD, YOU SHOULD NOT BE ASKED FOR ADDITIONAL INFORMATION, UNLESS OTHER HEALTHCARE SERVICES ARE BEING PROVIDED.

Sign 2: Font size at least 1 inch; Overall size at least 18" by 33"

TO REGISTER COMPLAINTS ABOUT THIS DISPENSARY PLEASE CONTACT _____

Sign 3: Font size at least 1 inch; Overall size at least 23" by 32"

THE DIVERSION OF MARIJUANA FOR NONMEDICAL PURPOSES IS A VIOLATION OF STATE LAW.

Sign 4: Font size at least 1 inch

THE USE OF MARIJUANA MY IMPAIR A PERSON'S ABILITY TO DRIVE A MOTOR VEHICLE OR OPERATE HEAVY MACHINERY.

Sign 5: Font size at least 1 inch

LOITERING AT THE LOCATION OF A MEDICAL CANNABIS DISPENSARY FOR AN ILLEGAL PURPOSE IS PROHIBITED BY CALIFORNIA PENAL CODE SECTION 647(h).

Sign 6: Font size at least 1 inch

THIS MEDICAL CANNABIS DISPENSARY HAS RECEIVED A PERMIT TO OPERATE FROM THE CITY OF SAN LEANDRO

4-33-600 – Seller’s Permit Requirement.

The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller’s Permit from the State Board of Equalization. Such permit shall be conspicuously displayed at the Dispensary. Failure to maintain the Seller’s Permit is grounds for revocation of the Dispensary permit.

4-33-800 Revocation, Suspension and Appeals.

For suspensions or revocations of Dispensary permits, the City shall follow the procedures set forth in San Leandro Zoning Code section 5-2906, unless the suspension shall be effective immediately by order of the City Manager or his or her designee pursuant to section 4-33-900 of the Municipal Code.

4-33-900 - Prohibited operations; Nonconforming Use and Immediate Suspension of Permit.

All dispensaries in violation of California Health and Safety Code Section 11362.7 *et seq.* and 11362.5 *et seq.*, this Chapter, or any other applicable State law are expressly prohibited. It is unlawful for any Dispensary in the City, or any agent, employee or representative of such Dispensary to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the Dispensary, or to violate any State law, or this Chapter. Any person arrested for violation of law, or acts expressly prohibited herein while upon, inside, or within 10 feet of the premises shall be just cause for immediate suspension of the Dispensary permit by the City Manager until such time that a hearing in accordance with San Leandro Zoning Code section 5-2906 is held, and a final decision made.

No use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the San Leandro Zoning Code, the San Leandro Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

4-33-110 - Liability.

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the city of San Leandro.

Section II. Severability.

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

Section III. EFFECTIVE DATE AND PUBLICATION. This ordinance shall take effect thirty (30) days after adoption. The City Clerk is directed to publish the title once and post a complete copy thereof on the City Council Chamber bulletin board for five (5) days prior to adoption.

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

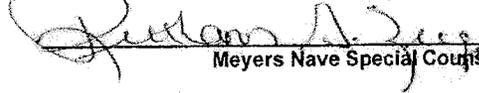
ABSTENTION-

Attest: _____

Marian Handa
City Clerk
City of San Leandro, California

1964161.1

1964161.3


Meyers Nave Special Counsel

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

AN ORDINANCE AMENDING CHAPTER 5.80 OF THE OAKLAND MUNICIPAL CODE PERTAINING TO MEDICAL CANNABIS DISPENSARY PERMITS

Now therefore, the Oakland City Council does hereby ordain:

Section I. Amendment to Chapter 5.80

Oakland Municipal Code Chapter 5.80 is hereby amended to read as follows:

5.80.010 - Definitions.

The following words or phrases, whenever used in this chapter, shall be given the following definitions:

A. "Attorney General Guidelines" shall mean the California Attorney General Guidelines for the Security and Non-diversion of Marijuana Grown for Medical Use," issued by the Attorney General's Office in August 2008, as amended from time to time, which sets regulations intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients or primary caregivers.

B. "Cannabis" or "Marijuana" shall have the same definition as Health and Safety Code § 11018, as amended from time to time, which defines "cannabis" as all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.

C. "Cannabis dispensary" or "Dispensary" shall mean a collective or cooperative that distributes, dispenses, stores, exchanges, processes, delivers, makes available, transmits and/or gives away marijuana in the City for medicinal purposes to four (4) or more qualified patients and/or primary caregivers pursuant to California Health and Safety Code Sections 11362.5, 11362.7 *et seq.*

~~Manager~~
D. "City Administrator" means the City Administrator of the City of Oakland or his/her designee.

E. "Collective" means any association, affiliation, or establishment jointly owned and operated by its members that facilitates the collaborative efforts of qualified patients and primary caregivers, as described in the Attorney General Guidelines.

F. "Medical Marijuana" means marijuana authorized in strict compliance with Health & Safety Code §§ 11362.5, 11362.7 *et seq.*, as such sections may be amended from time to time.

G. "Parcel of Land" means one piece of real property as identified by the county assessor's parcel number (APN) that is one contiguous parcel of real property, which is used to identify real property, its boundaries, and all the rights contained therein.

H. "Primary caregiver" shall have the same definition as California Health and Safety Code Section 11362.7, and as may be amended, and which defines "Primary Caregiver" as an individual designated by a qualified patient or by a person with an identification card who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

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

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

I. "Qualified patient" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means a person who is entitled to the protections of California Health & Safety Code Section 11362.5. For purposes of this ordinance, qualified patient shall include a person with an identification card, as that term is defined by California Health and Safety Code Section 11362.7 *et seq.*

J. "Serious medical condition" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which means all of the following medical conditions: _____

1. Acquired immune deficiency syndrome (AIDS);
2. Anorexia;
3. Arthritis;
4. Cachexia;
5. Cancer;
6. Chronic pain;
7. Glaucoma;
8. Migraine;
9. Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis;
10. Seizures, including, but not limited to, seizures associated with epilepsy;
11. Severe nausea;
12. Any other chronic or persistent medical symptom that either:
 - a. Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).
 - b. If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

K. "Written documentation" shall have the same definition as California Health and Safety Code Section 11362.7 *et seq.*, and as may be amended, and which defines "written documentation" as accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of California Health and Safety Code Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

Dispensary
~~X~~

5.80.020 – Business Permit required and Application for Permit.

- A. Except for hospitals, research facilities, or an entity authorized pursuant to OMC Section 8.46.030, it is unlawful for any owner, operator, or association to own, conduct, operate or maintain, or to participate therein, or to cause or to allow to be conducted, operated, or maintained, any dispensary in the city of Oakland unless there exists a valid Business Permit in compliance with the provisions of Chapter 5.02 and a permit issued under this Chapter.
- B. This Chapter, and the requirement to obtain a Business Permit, does not apply to the individual possession or cultivation of medical marijuana for personal use, nor does this Chapter apply to the usage, distribution, cultivation or processing of medical marijuana by qualified patients or primary caregivers when such group is of three (3) or less individuals, and distributing, cultivating or processing the marijuana from a residential unit or a single non-residential parcel of land. Associations of three (3) or less qualified patients or primary caregivers shall not be required to obtain a permit under Chapter 5.80, but must comply with applicable State Law and the Attorney General Guidelines.
- C. The City Administrator shall issue no more than eight (8) valid permits for the operation of dispensaries in the City.
- D. In addition to the requirements specified in Section 5.02.020 for Business Permits, the permit application for a dispensary shall set forth the following information:
 - 1. Unless the City Administrator in his/her discretion determines that the location will not impact the peace, order and welfare of the public, evidence that the proposed location of such dispensary is not within six hundred (600) feet of a public or private school, public library, youth center (serving youth age eighteen (18) and under), parks and recreation facilities, residential zone or another dispensary. The proposed dispensary must be located in a commercial or industrial zone, or its equivalent as may be amended, of the City.
 - 2. A complete description of the type, nature and extent of the enterprise to be conducted, with evidence satisfactory to the City Administrator that the enterprise is either a collective or cooperative, as described in the Attorney General Guidelines.
 - 3. A plan of operations that will describe how the dispensary will operate consistent with the intent of State law, the provisions of this Chapter and the Attorney General Guidelines, including but not limited to:

- a. controls to verify membership in collectives and cooperatives to ensure medical marijuana will be dispensed only to qualified patients and primary caregivers; and
 - b. controls to acquire, possess, transport and distribute marijuana to and from members, and plans to ensure marijuana is acquired as part of a closed-circuit of marijuana cultivation and consumption.
 4. A security plan, as a separate document, outlining the proposed security arrangements for ensuring the safety of persons and to protect the premises from theft. The security plan shall be reviewed by the Police Department and the Office of the City Administrator and shall be exempt from disclosure as a public record pursuant to Government Code Section 6255(a).
 5. Such other information deemed necessary to conduct any investigation or background check of the applicant, and for the City Administrator to determine compliance with this Chapter, the City's Municipal Code and Zoning Code.
- E. Public notice of the hearing on the application shall be given as provided in Section 5.02.050. The City Administrator shall be the investigating official referred to in Section 5.02.030 to whom the application shall be referred. In recommending the granting or denying of such permit and in granting or denying the same, the City Administrator shall give particular consideration to the capacity, capitalization, and complaint history of the applicant and any other factors that in the City Administrator's discretion he/she deems necessary to the peace, order and welfare of the public. All Applicants shall pay an application fee, a permit fee, and all inspection fees that may be required as part of the application process.
- F. At the time of submission of dispensary permit application, the applicant shall pay a dispensary permit application fee. The fee amount shall be set by City Council resolution.

5.80.030 - Regulations.

The City Administrator shall establish administrative regulations for the permitting of dispensaries and may set further standards for operation of dispensaries. The dispensary shall meet all the operating criteria for the dispensing of medical marijuana required pursuant to California Health and Safety Code Section 11362.7 *et seq.*, the City Administrator's administrative regulations, and this Chapter.

5.80.040 - Performance standards.

The City Administrator shall develop and implement performance standards consistent with those set forth in Ordinance No. 12585 in the Office of the City Administrator Guidelines and shall modify such Guidelines from time to time as required by applicable law and consistent with public health, welfare and safety. The following performance standards shall be included in the City Administrative regulations:

- A. No cannabis shall be smoked, ingested or otherwise consumed on the premises of the dispensary.
- B. The dispensary shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

5.80.050 - Regulatory fees; Seller's Permit.

- A. In addition to the dispensary application fee, the dispensary shall pay an annual regulatory fee at the same as applying for the business tax certificate or renewal thereof. The dispensary shall post a copy of the business tax certificate issued pursuant to Chapter 5.04, together with a copy of the dispensary permit issued pursuant to this Chapter and Section 5.02.020, in a conspicuous place in the premises approved as a dispensary at all times.
- B. The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit from the State Board of Equalization.
- C. The fees referenced herein shall be set by Council resolution, as modified from time to time.

5.80.060 - Profit.

The Dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead costs and operating expenses.

Retail sales of medical marijuana that violate California law or this ordinance are expressly prohibited.

5.80.070 Revocation, Suspension and Appeals.

Notwithstanding Chapter 5.02, any decision by the City Administrator, except for the suspensions or revocations of permits, shall be final and conclusive, and there shall be no right of appeal to the City Council or any other appellate body.

For suspensions or revocations the City shall follow the procedures set forth in Section 5.02.080, except an independent hearing officer shall make the initial determination as to whether to suspend or revoke the permit. The appeal authorized in Section 5.02.100 shall be to the City Administrator, and such request for appeal must be made in writing within 14 days of the hearing officer's decision. The decision of the City Administrator shall be final and conclusive.

5.80.080 - Prohibited operations; Nonconforming Uses.

- A. All dispensaries in violation of California Health and Safety Code Section 11326.7 *et seq.* and 11362.5 and this Chapter are expressly prohibited. It is unlawful for any dispensary in the City, or any agent, employee or representative of such dispensary, to permit any breach of peace therein or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct on the premises of the dispensary.
- B. Except for uses established pursuant to OMC Chapter 8.46, no use which purports to have distributed marijuana prior to the enactment of this Chapter shall be deemed to have been a legally established use under the provisions of the Oakland Planning Code, the Oakland Municipal Code, or any other local ordinance, rule or regulation, and such use shall not be entitled to claim legal nonconforming status.

5.80.090 - Liability.

To the fullest extent permitted by law, any actions taken by a public officer or employee under the provisions of this Chapter shall not become a personal liability of any public officer or employee of the city of Oakland.

5.80.100 – Examination of books, records, witnesses – Penalty.

- A. The City Administrator shall be provided access to any and all financial information regarding the dispensary at any time, as needed to conduct an audit of the permittees under this Chapter to verify tax compliance under Chapter 5.80 and/or gross receipts tax requirements.
- B. The City Administrator is authorized to examine the books, papers, tax returns and records of any permittee for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax due.
- C. The City Administrator is authorized to examine a person under oath, for the purpose of verifying the accuracy of any declaration made, or if no declaration was made, to ascertain the business tax, registration or permit fees due under this Chapter. In order to ascertain the business tax, registration or permit fees due under this Chapter, the City

Administrator may compel, by administrative subpoena, the production of relevant books, papers and records and the attendance of all persons as parties or witnesses.

- D. Every permittee is directed and required to furnish to the City Administrator, the means, facilities and opportunity for making such financial examinations and investigations.
- E. Any permittee refusal to comply with this Section shall be deemed a violation of this Chapter, and administrative subpoenas shall be enforced pursuant to applicable law.

Section II. Severability.

This Chapter shall be enforced to the full extent of the authority of the City. If any section, subsection, paragraph, sentence or word of this chapter is deemed to be invalid or beyond the authority of the City, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the applications thereof; and to that end the sections, subsections, paragraphs, sentences and words of this chapter shall be deemed severable.

Section III. Effective Date

This ordinance shall take effect immediately if it is passed with six or more affirmative votes; otherwise it will take effect seven days after final passage pursuant to Section 216 of the Charter of the City of Oakland; provided, however, permits shall be issued under this Chapter until _____, 2011.

In Council, Oakland, California, _____, 2011,

PASSED BY THE FOLLOWING VOTE:

AYES-

NOES-

ABSENT-

ABSTENTION-

Attest: _____

La Tonda Simmons
City Clerk and Clerk of the Council
Of the City of Oakland, California

ADMINISTRATIVE REGULATIONS AND PERFORMANCE STANDARDS FOR OAKLAND MEDICAL CANNABIS DISPENSARIES

I. Introduction

Oakland Municipal Code § 5.80.030 requires the City Administrator to establish and amend administrative regulations for the permitting of dispensaries, and also authorizes the City Administrator to set forth standards for operation of medical cannabis dispensaries.

The definitions set forth in Oakland Municipal Code Chapter 5.80 apply to the interpretation and understanding of these Administrative Regulations (“Regulations”).

II. Compliance with State Law, Municipal Code and Regulations

The Dispensary shall meet all of the operating criteria for the dispensing of medical marijuana, incompliance with State law, including California Health and Safety Code Section 11362.7 *et seq.*, the Oakland Municipal Code, and the City Administrator’s Regulations for the permitting and operation of medical cannabis dispensaries.

The Dispensary must comply with all applicable state and local laws, policies or regulations, including the Health and Safety Code, the City adopted Building Code, Plumbing Code, Electrical Code, Mechanical Code, Fire Code, and the Americans with Disabilities Act.

The Dispensary must pay the Cannabis Tax as required pursuant to Section 5.04.480 of the Oakland Municipal Code.

The Dispensary must comply with the Conditions of Approval and City Administrator’s Administrative Regulations for Cannabis Dispensaries, including any additions or revisions thereto.

Failure to comply with the Conditions of Approval, City Administrator’s Administrative Regulations for Cannabis Dispensaries, and all applicable local and state laws or regulations may result in the imposition of fines, and suspension or revocation of the Dispensary permit after an administrative hearing. The Dispensary may also be subject to enforcement through the City’s nuisance abatement process and other administrative enforcement mechanisms, civil action, and criminal prosecution.

III. Permitting

A. Applications for Permit

The City Administrator shall be responsible for implementing a process for selection of qualified Dispensaries, and may set forth criteria in any request for permit applications standards and requirements to determine a Dispensary's qualifications to meet the City's ordinance, regulations and state law. In addition to the standards set forth in Oakland Municipal Code Chapter 5.80, the Request for Permit Application ("RFPA"), and these Regulations, the City Administrator or his/her designee may consider the history of applicant's operating experience in the City of Oakland during the review of his or her application for Cannabis Dispensary permit or the renewal thereof.

In applying for a dispensary permit, the Dispensary shall pay the required regulatory fee, permit application fees, and other processing fees annually in advance as mandated in Chapter 5.80 of the Oakland Municipal Code. Dispensary Permits are valid for one (1) year from the date of issuance. Permit fees shall be due in four (4) quarterly installments, with the initial installment due prior to issuance of the permit.

The Dispensary shall comply with any specific, additional administrative regulations, procedures and measures imposed as conditions of approval by the City Administrator to ensure that the operation of the Dispensary is consistent with protection of the health, safety and welfare of the community and will not adversely affect surrounding uses. Additionally, any approved aspects of the Dispensary's Permit application shall be deemed to be incorporated into the Dispensary's Permit; failure to comply with the Business Plan and other aspects of the permit may be grounds for revocation of the Permit.

B. Renewal of Permits

Dispensary Permits must be renewed annually with the City Administrator's Office. Permit Holders shall contact the City Administrator's Office no later than forty-five (45) days before the expiration of the current permit to begin the renewal process. At that time, the Dispensary shall submit verification of the current Business Tax Certificate, audited financial statements for the previous permit term, and any other requested financial documents or information as required by the Oakland Municipal Code or the Regulations. If the Oakland Dispensary is part of a multi-dispensary business or is included as part of a non-dispensary business for tax reporting purposes, the audited financial statements must be for the Oakland dispensary part of the business.

As part of the annual renewal process the Dispensary shall be inspected by the Building Inspector, Fire Marshall, or their designees. Violations of the Oakland Municipal Code shall be corrected within a reasonable time, as determined by the Building Inspector, Fire Marshal or his/her designee. The Dispensary shall provide proof to the City Administrator's Office that there are no outstanding violations of the Oakland Municipal Code.

C. Revocation

Suspensions and revocations of permits shall follow the procedures set forth in Oakland Municipal Code Section 5.80.080.

IV. Performance Standards

A Dispensary shall operate in conformance with the following standards, and such standards shall be deemed to be conditions of approval on the Dispensary's Permit, to ensure that its operation is in compliance with California law, the Guidelines, and Municipal Code, and to mitigate any potential adverse impacts of the Dispensary.

Operations at the Dispensary

1. The Dispensary shall provide the City Administrator, the Chief of Police, and all neighbors located within fifty (50) feet of the premises with the name, phone number, and facsimile number of an on-site community relations staff person to whom one can provide notice if there are operating problems associated with the Dispensary. The Dispensary shall make a good faith effort to encourage neighbors to call the community relations staff person to try to solve operating problems, if any, before any calls or complaints are made to the City Administrator or Police Department.
2. Medical marijuana shall only be distributed by the dispensary at the property identified and approved as the location for the Dispensary on the permit application.
3. The Dispensary shall only provide, distribute, dispense, give or transmit medical marijuana to qualified patients or primary caregivers.
4. With the exception of security guards, only qualified patients and caregivers shall be allowed inside of the Dispensary.
5. The Dispensary shall not profit from the sale or distribution of marijuana. Any monetary reimbursement that members provide to the dispensary should only be an amount necessary to cover overhead cost and operating expenses. Retail sales of medical marijuana that violate state law are prohibited.
6. The Dispensary may only dispense, store, or transport marijuana in aggregate amounts tied to its membership numbers. The dispensary may possess no more than eight (8) ounces of dried marijuana per qualified patient or caregiver, and maintain no more than six (6) mature and twelve (12) immature marijuana plants per qualified patient. However, if a qualified patient or primary caregiver has a doctor's recommendation that the above quantity does not meet the qualified patient's needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs. For purposes of determining the quantity of marijuana, only the dried mature processed flowers of female cannabis plants or the plants conversion shall be considered.

7. The maximum operating hours for the Dispensary shall be as follows: 7:01 am to 7:59 pm daily. The Dispensary is prohibited from operating between the hours of 8:00 p.m. and 7:00 a.m. the next ensuing day.

8. Dispensaries are encouraged to disclose the percentage level of delta-9 (trans) tetrahydrocannabinol, cannabidiol, and cannabinol in medical cannabis to qualified patients before providing medical cannabis.

9. Dispensaries shall follow the direction of the City Administrator or his/her designee regarding any medical cannabis found to be non-compliant with testing standards. These instructions may extend to any medical cannabis found to be unsafe on the basis of such testing results, or to the Dispensary's operations and practices generally.

10. Representative samples of medical marijuana distributed by the collective shall be analyzed by an independent laboratory to ensure it is free of harmful pesticides and other contaminants regulated by local, state or federal regulatory statutory standards. Any medical marijuana from which the representative sample tested positive for a harmful pesticide or other contaminant at a level which exceeds the local, state or federal regulatory or statutory standards shall be destroyed forthwith.

11. Any medical marijuana provided to collective members shall be properly labeled in strict compliance with state and local laws, regulations and policies.

12. The Dispensary shall not allow cannabis to be smoked, ingested or otherwise consumed on the premises. The term premises includes the actual building, as well as any accessory structures, parking areas, or other immediately surrounding areas.

13. The Dispensary shall not hold or maintain a license from the State Department of Alcoholic Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages.

14. The Dispensary shall post a copy of the Business Tax Certificate issued by the Business Tax Office and a copy of the Cannabis Dispensary Permit issued by the City Administrator's Office in a conspicuous place on the premises.

15. Dispensaries that offer edible marijuana products shall keep and display the edible marijuana products separate from edible non-marijuana products. In addition, edible marijuana products be clearly labeled pursuant to state or local law, rules or regulations.

16. Dispensaries that manufacture edible medical marijuana products, including but not limited to drinks, infused water, cookies, candy or brownies, shall manufacture the edible products for the sole consumption by qualified patient members in compliance with all applicable state and local laws, including any requirements of the Department of Health.

17. All employees responsible for the handling, processing, dispensing, providing and cultivation of marijuana must be members of the Dispensary. Prior to employment, the employee members must be fingerprinted (live scan) for the purpose of conducting a background check. The purpose is to determine whether the employee has been convicted or plead guilty or *nolo contendere* to the following criminal offenses, or their equivalent if arising out of state:

- a) Health and Safety Code Sections 11350 *et al* (pertaining to controlled substances, with the exception of marijuana related offenses)
- b) Penal Code Section 187 (homicide)
- c) Penal Code Section 207 (kidnapping)
- d) Penal Code Section 211 (robbery)
- e) Penal Code Sections 240-248 (assault & battery)
- f) Penal Code Section 261 (rape)
- g) Penal Code Section 314 (indecent exposure)
- h) Penal Code Section 450 (arson)
- i) Penal Code Sections 458-464 (burglary)
- j) Penal Code Sections 470-483.5 (forgery)
- k) Penal Code Sections 484-502.9 (larceny)
- l) Penal Code Sections 503-515 (embezzlement)

The employee must contact the Chief of Police and/or City Administrator for information related to the processing and cost of the fingerprinting, and any costs must be paid for in advance by the employee applicant. The background checks shall review the last five (5) years of the employee's criminal history. The results of the background checks shall be reported to the City Administrator's Office no later than 30 days following hire of the employee, unless the City Administrator grants an extension of time. If the background investigation determines the employee has been convicted of one of the above offenses, the Dispensary shall no longer employ the member as an employee.

Records

18. The Dispensary shall maintain records of its members using only the State of California Medical Marijuana Identification Card number issued by the county or the County's designee, pursuant to California Health and Safety Code Section 11362.7 *et seq.*, or a copy of the written recommendation, as a protection of the confidentiality of the cardholders. The Dispensary shall track when Members' medical marijuana recommendation and/or identification cards expire and enforce conditions of membership by excluding members whose identification card or recommendation are invalid or have expired. The Dispensary shall maintain member records in a manner to protect confidential information in the records if the records contain information protected by applicable law, including but not limited to Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, and the Administrative regulations. Additionally, the Dispensary shall exclude members who are caught diverting marijuana for non-medical use. All membership records shall be maintained on site.

19. The Dispensary shall, by using the patient or caregiver's identification number keep an accurate account of the number of members that visit the Dispensary each month, and also for the entire permit year.

20. Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City Administrator count of the total number of members of the Dispensary, the number of Dispensary visits during the previous calendar quarter.

21. Within thirty (30) days of the end of the calendar quarter, the Dispensary shall provide the City Administrator a listing of the medical marijuana products for sale during the previous calendar quarter, the prices of such products, and the end of quarter quantity on hand, listed in the applicable units, for each product.

22. The Dispensary shall keep accurate records, follow accepted cash handling practices and maintain a general ledger of cash transactions. Additionally, a Dispensary shall maintain records of all members' contribution of labor, resources or money to the Dispensary.

23. The Dispensary shall allow the City Administrator to access the books, records, accounts and all data relevant to its operations for purposes of conducting an audit or examination to determine compliance with the Municipal Code, the Regulations and applicable laws. Books, records, accounts and all relevant data shall be produced no later than twenty-four (24) hours after receipt of the City Administrator's request.

24. The Dispensary shall maintain a log of patient complaints and shall make the log available to the City Administrator upon request. The log shall contain at a minimum the date of the complaint, the complaining patient's identification number or reference to his/her written recommendation, the nature of the complaint, and the action taken by the Dispensary to address the complaint.

Facilities

25. The Dispensary must be located six hundred feet (600') from public or private school, public library, youth center (serving youth eighteen (18) and under), parks and recreation facilities, residential zone or another dispensary.

26. The Dispensary shall not permit any breach of peace inside of the dispensary or any disturbance of public order or decorum by any tumultuous, riotous or disorderly conduct.

27. The Dispensary shall be designed with sufficient sound absorbing insulation so that the noise generated inside the Dispensary is not audible on the premises, beyond that of normal commercial offices, or public rights-of-way, or any other building or other separate unit within the same building as the Dispensary.

28. The Dispensary shall be designed to provide sufficient odor absorbing ventilation and exhaust system so that any odor generated inside the Dispensary is not detected outside the building, on adjacent properties or public rights-of-way, or within any other unit located within the same building as the Dispensary, if the use only occupies a portion of a building.

29. The dispensary shall provide litter removal services twice (2) each operating day on and in front of the premises and, if necessary, on public sidewalks within one hundred feet (100') of the Dispensary.

Security

30. Security cameras shall be installed and maintained in good condition, and the camera and recording system must be of adequate quality, color rendition and resolution to allow the identification of an individual. The cameras shall be in use 24 hours a day, 7 days per week, and shall cover the marijuana dispensing areas, storage areas, all doors and windows to the Dispensary, parking areas and other areas as determined by the Chief of Police. The recordings shall be maintained at the dispensary property for a period of thirty (30) days.

31. The Dispensary shall be alarmed with a centrally-monitored fire and burglar alarm system, and monitored by an alarm company properly licensed by the State of California Department of Consumer Affairs Bureau of Security and Investigative Services in accordance with California Business & Professions Code § 7590 *et seq.* and whose agents are properly licensed and registered under applicable law.

32. During Business Hours, the Dispensary shall provide a minimum of three (3) security guards duly licensed by the State of California, Department of Consumer Affairs. Each security guard shall possess a "Security Guard Card" at all times, and shall not possess firearms or tasers.

33. Among other things, Security guards shall be responsible for ensuring compliance with Chapter 8.30 of the Oakland Municipal Code which prohibits smoking within twenty-five feet (25') of any building entrance, exit, window and air intake vent of service buildings.

34. The Dispensary shall direct its security guards to monitor the outside of the premises for loitering and unlawful sale of medical marijuana by members. Further those security persons shall be directed to report to the Dispensary all unlawful sales of medical marijuana by members. The Dispensary shall immediately cease providing medical cannabis to the reported member, and make a report within twenty-four (24) hours to Alameda County Health Department or the doctor that issued the medical marijuana recommendation for the member. If the patient is cleared by county health or its agent, the dispensary may resume the providing medical marijuana to the patient and caregiver. The dispensary shall keep a record of all incidents where members unlawfully provide marijuana to non-members. Additionally, the dispensary shall inform patients and

caregivers about this condition and remind them that it is unlawful for them to sell medical cannabis.

35. Windows and roof hatches at the property shall be secured so as to prevent unauthorized entry and also equipped with latches that may be released quickly from the inside to allow exit in the event of an emergency.

36. The Dispensary shall maintain adequate exterior lighting in the parking areas to help provide safety for qualified patients, primary caregivers, and employees.

Signage

37. That exterior signage for the dispensary shall be limited to one wall sign not to exceed ten (10) square feet in area, and one (1) identifying sign not to exceed two (2) square feet in area. Such signs shall not be directly illuminated.

38. The dispensary shall, within sixty (60) days of the issuance of permit, post, and thereafter maintain signs inside the Dispensary where they may be easily read by members. Each sign shall be white with black lettering, and shall comply with the following regulations regarding text, size and content:

Sign 1: Font size at least 1 inch; Overall size at least 18” by 33”

PATIENT NOTICE

1. YOU HAVE THE RIGHT TO HAVE YOUR PRODUCT REWEIGHED AND SUPPLEMENTED IF IT IS UNDER THE STATED WEIGHT AT THE TIME OF PURCHASE.

2. IF YOU DO NOT HAVE A VALID STATE OF CALIFORNIA IDENTIFICATION CARD ISSUED BY ALAMEDA COUNTY HEALTH DEPARTMENT, THIS DISPENSARY MUST CONFIRM YOUR MEDICAL NEED FOR MARIJUANA. IF YOU HAVE A VALID IDENTIFICATION CARD, YOU SHOULD NOT BE ASKED FOR ADDITIONAL INFORMATION, UNLESS OTHER HEALTHCARE SERVICES ARE BEING PROVIDED.

Sign 2: Font size at least 1 inch; Overall size at least 18” by 33”

TO REGISTER COMPLAINTS OR COMPLIMENTS ABOUT THIS DISPENSARY, CONTACT: THE CITY OF OAKLAND 510-238-7542

Sign 3: Font size at least 1 inch; Overall size at least 23” by 32”

THE DIVERSION OF MARIJUANA FOR NONMEDICAL PURPOSES IS A VIOLATION OF STATE LAW.

Sign 4: Font size at least 1 inch

THE USE OF MARIJUANA MY IMPAIR A PERSON'S ABILITY TO DRIVE
A MOTOR VEHICLE OR OPERATE HEAVY MACHINERY.

Sign 5: Font size at least 1 inch

LOITERING AT THE LOCATION OF A MEDICAL CANNABIS
DISPENSARY FOR AN ILLEGAL PURPOSE IS PROHIBITED BY
CALIFORNIA PENAL CODE SECTION 647(h).

Sign 6: Font size at least 1 inch

THIS MEDICAL CANNABIS DISPENSARY HAS RECEIVED A PERMIT TO
OPERATE FROM THE CITY OF OAKLAND

V. Effective Date of Regulations and Changes

Any amendments to the regulations shall take effect immediately, and compliance with current regulations shall be required for all new permit applicants.

All dispensaries impacted by a change in the Regulations, including but not limited to, a change in the existing regulations or the addition of a new regulation, shall comply with the changed or new regulation within thirty (30) days of the effective date of the regulation, unless a longer time is approved in advance in writing by the City Administrator.

(Regulations Last Modified _____)

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Medical Cannabis Dispensary (MCD) Regulations for Preparation of Edible Cannabis Products

1. No edible cannabis products *requiring* refrigeration or hot-holding shall be manufactured for sale or distribution at an MCD, due to the potential for food-borne illness. Exemptions may be granted by the San Francisco Department of Public Health on a case-by-case basis. For such exempted edible cannabis products, DPH may require a HACCP (Hazard Analysis and Critical Control Points) plan before approving the distribution of such medical cannabis products at MCDs. Such products requiring a HACCP plan may include ice cream and other dairy products.
2. Baked medicinal products (i.e. brownies, bars, cookies, cakes), tinctures and other non-refrigerated type items are acceptable for manufacture and sale at MCDs.
3. *(Items noted in this section are advisory only, as DPH does not intend to regulate edible cannabis production occurring in one's home.)* Preparation may be completed in a home-type kitchen equipped with a sink available for hand washing (this sink may be a dishwash sink), liquid soap, and paper towels. No other food preparation should take place during the production of edible cannabis products, in order to avoid cross-contamination. During preparation, children and pets should not be in the kitchen/preparation area. Clean and sanitize all utensils, equipment, and food contact surfaces before and after preparation. Equipment and food contact surfaces should be in good, cleanable condition. Ingredient storage areas should be kept clean and vermin-free.
4. All items shall be individually wrapped at the original point of preparation. Labeling must include a warning if nuts or other known allergens are used, and must include the total weight (in ounces or grams) of cannabis in the package. A warning that the item is a medication and not a food must be distinctly and clearly legible on the front of the package. The package label must have a warning clearly legible emphasizing that the product is to be kept away from children. The label must also state that the product contains medical cannabis, and must specify the date of manufacture.
5. Packaging that makes the product attractive to children or imitates candy is not allowed. Any edible cannabis product that is made to resemble a typical food product (i.e. brownie, cake) must be in a properly labeled opaque (non see-through) package before it leaves the dispensary. Deliveries must be in properly labeled opaque packages when delivered to the patient.



City and County of San Francisco
DEPARTMENT OF PUBLIC HEALTH

Gavin Newsom, Mayor
Mitchell H. Katz, M.D.
Director of Public Health

OCCUPATIONAL & ENVIRONMENTAL HEALTH

Rajiv Bhatia, M.D.
Director, Environ. Health

6. Individuals conducting the manufacturing or sale of products shall thoroughly wash their hands before commencing production and before handling the finished product. Gloves must be worn when packaging edible cannabis products.
7. In order to reduce the likelihood of foodborne disease transmission, individuals who are suffering from symptoms associated with acute gastrointestinal illness or are known to be infected with a communicable disease that is transmissible through foodstuffs are prohibited from preparing edible cannabis products until they are free of that illness or disease, or are incapable of transmitting the illness or disease through foodstuffs. Anyone who has sores or cuts on their hands must use gloves when preparing and handling edible cannabis products.
8. Edible cannabis products for sale or distribution at an MCD must have been prepared by a member of that MCD. No non-member edible cannabis products are allowed for sale or distribution at an MCD.
9. A patient/caregiver who produces edible cannabis products that are sold at **more than one** MCD in San Francisco must become a State certified food handler. If more than one person is involved in producing edible cannabis products at one home or facility, only one person needs to be certified. The valid certificate number of the member who has prepared the edible cannabis product must be on record at the MCD where the product is sold or distributed, and a copy of the certificate kept either on-site, or made available during inspections if kept off-site.

**Medical Cannabis
Dispensary Inspection
Program**

**1390 Market Street, Suite 210
San Francisco CA, 94102**

**Phone (415) 252-3841
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**GUIDELINES FOR THE SECURITY AND NON-DIVERSION
OF MARIJUANA GROWN FOR MEDICAL USE**
August 2008

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

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

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

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

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

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

medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.” (§ 11362.5(b)(1)(A)-(B).)

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

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

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

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

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

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

D. Taxability of Medical Marijuana Transactions.

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

June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

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

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

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

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

F. The Federal Controlled Substances Act.

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

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

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

II. DEFINITIONS

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

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

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

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

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

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

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

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

4. Possession Guidelines:

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

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

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

medical marijuana in amounts that exceed the MMP's possession guidelines. (§ 11362.77(c).)

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

B. Enforcement Guidelines.

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

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

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

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

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

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

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

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

- a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.
- b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.
- c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.
- d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.
- e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

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

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

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case

City of Lake Forest v. Evergreen Holistic Collective (2012) 203 Cal.App.4th 1413, rev. granted by California Supreme Court, S201454.

- City enacted a ban calling dispensaries a per se public nuisance

People v. G3 Holistic, Inc. (2011); non-published opinion; rev. granted by California Supreme Court, S198395

- City enacted its ban through its zoning ordinance.

City of Riverside v. Inland Empire Patient's Health & Wellness Center, Inc. (2011) 200 Cal.App.4th 885; rev. granted by California Supreme Court S198638

- City's local nuisance law bans dispensaries

Pack v. Superior Court (2011) 199 Cal.App.4th 1070; rev. granted, **dismissed** by Cal. Supreme Court, S197169

County of Los Angeles v. Alternative Medicinal Cannabis Collective (July 2, 2012) 207 Cal.App.4th 601 (2d Distr., Div. 1).

Current Status

Appeals court ruled the City's total ban is preempted by the Compassionate Use Act (CUA) and the Medical Marijuana Program Act (MMPA).

- The case is before the Cal. Supreme Court, so it is not the law.

Appeals court ruled the City's total ban of dispensaries in its zoning ordinance is not preempted by the CUA/MMPA.

- The case is before the Cal. Supreme Court, so it is not the law.

Appeals court ruled that a local public nuisance law that bans dispensaries is not preempted by the CUA/MMPA

- The case is before the Cal. Supreme Court, so it is not the law.

- Dismissed by California Supreme Court.
- The appeals court ruled that a "Regulatory" ordinance allowing dispensaries with a permit is preempted by federal law.
- Federal preemption is still an issue, and has not been clearly decided.
- Unpublished court of appeal decision, so it is not the law

A public agency's total ban is preempted by the CUA/MMPA

- County was the regulatory agency in this case.

- Review before Cal. Supreme Court is pending, but has not been granted.

- This case is the current law