Agenda Item No. 14

File Code No. 520.04

CITY OF SANTA BARBARA

COUNCIL AGENDA REPORT

AGENDA DATE: November 17, 2009

TO: Mayor and Councilmembers

FROM: City Administrator's Office

SUBJECT: Request From Councilmembers Falcone And Francisco Regarding Medical Marijuana

RECOMMENDATION:

That Council consider the request from Councilmembers Falcone and Francisco to reconsider its policy concerning medical marijuana, consider alternative models for meeting the needs of patients, and provide direction to the Ordinance Committee as appropriate.

DISCUSSION:

Attachment 1 is a memorandum from Councilmembers Falcone and Francisco requesting that Council give direction to the Ordinance Committee on Medical Marijuana. Attachment 2 is a memorandum from the City Attorney's Office regarding medical marijuana.

ATTACHMENTS: (1) Memorandum from Councilmembers Falcone and Francisco
(2) Memorandum from Steve Wiley, City Attorney

PREPARED BY: Linda Gunther, Administrator's Office Supervisor

SUBMITTED BY: Joan Kent, Assistant City Administrator

APPROVED BY: City Administrator's Office

City of Santa Barbara
Mayor and Council Office

Memorandum

DATE: October 26, 2009

TO: James L. Armstrong, City Administrator

FROM: Dale Francisco, Mayor Pro Tempore
Iya Falcone, Councilmember

SUBJECT: Direction to the Ordinance Committee on Medical Marijuana Dispensaries

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Pursuant to Council Resolution No. 05-073 regarding the Conduct of City Council Meetings, we request that an item be placed on the Santa Barbara City Council Agenda regarding Council's overall direction to the Ordinance Committee on revisions to Chapter 28.80 ("Medical Cannabis Dispensaries") of the Zoning Ordinance.

- Summary of Information to be Presented to the City Council

  Since the City Council originally gave direction to the Ordinance Committee early this summer to revise the section of the Zoning Ordinance dealing with medical marijuana dispensaries (MMDs), both community sentiment and the legal landscape regarding MMDs have shifted dramatically. Parents and school district leaders are concerned that at least some MMDs are functioning as conduits for introducing drugs into schools. In several recent court cases, other jurisdictions have shown that severe limitations on MMDs, including an outright ban, are consistent with state law. Santa Barbara is the only jurisdiction in Santa Barbara County, and one of the few in Southern California, that allows MMDs to be established. It is time for the City Council as a whole to evaluate the wisdom of this policy.

  As a possible alternative to the storefront dispensary model, we believe the Council should consider a "compassionate care collective" model. In such a model, a group of defined size, with members consisting of registered patients and registered caregivers, cultivates marijuana in limited quantities exclusively for its own use. This we believe would be consistent with state law, would provide patients who have a genuine medical need the means to obtain medical marijuana in a safe, legal manner, and would make it more difficult to divert marijuana to other than medical use, thus reducing the enforcement burden on both Community Development and the Police Department. The City of Los Angeles is currently considering an ordinance that would implement such a model. (See attachment 1.)

- Statement of Specific Action the Council will be asked to take

  We ask that City Council reconsider its policy of allowing MMDs in Santa Barbara, that it consider alternative models for meeting the needs of patients, and that it provide specific

policy direction to the Ordinance Committee on re-drafting chapter 28.80 of the Zoning Ordinance.

- Statement of the Reasons Why it is Appropriate and Within the Jurisdiction of the Council to Consider this Subject Matter and to Take the Requested Action

  The Zoning Ordinance is within the purview of City Council, and only the full Council can provide policy direction to the Ordinance Committee on this topic of vital community concern.

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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R09-0360

OCT 20 2009

REPORT RE:

FOURTH REVISED DRAFT ORDINANCE ESTABLISHING REGULATIONS REGARDING MEDICAL MARIJUANA COLLECTIVES

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, CA 90012

Council File No. 08-0923

Honorable Members:

This office has prepared and now transmits for your consideration the attached revised draft ordinance, approved as to form and legality. This draft ordinance would add Article 5.1 to Chapter IV of the Los Angeles Municipal Code (LAMC) regulating the collective cultivation of medical marijuana, pursuant to state law, in the City of Los Angeles. Pursuant to instructions from your Planning and Land Use Management (PLUM) Committee, it includes several changes from the last draft ordinance transmitted on September 22, 2009. The changes are summarized below.

When this matter is considered, we will be prepared to discuss the impacts of this ordinance, the case of *Los Angeles Collective Association, et al. v. City of Los Angeles,* LASC BC 422215 and any other relevant litigation. If necessary, we will ask that the meeting be recessed into closed session for this purpose, pursuant to Government Code section 54956.9(a) and (b)(1).

Background

On April 14, 2008, pursuant to a request from the City Council, the City Attorney's Office transmitted a draft ordinance for the regulation of medical marijuana cultivation. This Office transmitted a revised draft ordinance to the Council on January

26, 2009, and explained its provisions in a verbal presentation to the Planning and Land Use Management ("PLUM") Committee on January 27, 2009. Additional technical improvements were made and a second revised draft ordinance was transmitted to the Council on February 6, 2009. A third revised draft ordinance was filed on September 22, 2009 and presented to the PLUM Committee on that date and on September 29, 2009. The Committee directed this office to amend the draft ordinance in accordance with its instructions. The attached Fourth Revised Draft Ordinance reflects these changes and additional modifications, which we believe improve the draft, for your consideration.

CEQA Finding

If you wish to adopt the ordinance, you must first comply with the California Environmental Quality Act (CEQA). Regarding a finding pursuant to CEQA, this Office believes that adoption of this ordinance is exempt from CEQA under State CEQA Guidelines sections 15060(c)(2) and (3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment, since it merely establishes regulations for medical marijuana collectives and will result in a substantial decrease in the number of locations that are currently in existence. In addition, the City Council could determine that adoption of the ordinance is exempt from CEQA under City CEQA Guidelines Article II, Section 1 (General Exemption) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. If the City Council concurs, it may comply with CEQA by making one or both of these findings prior to or concurrent with its action on the ordinance. We recommend that you also direct staff to file a "Notice of Exemption" as permitted by CEQA. This will have the effect of shortening the period of time within which a CEQA-based legal challenge can be brought against the City.

Summary of Changes

The material changes are as follows:

- The introductory recitals have been modified to include the addition of one related to possible contamination of marijuana, and a reference to the continued illegality of the sale of marijuana under both state and federal law;

- The definition of "medical marijuana collective" in Section 45.19.6.1 now includes a numerical minimum of qualified members. We recommend, and inserted, "four or more," rather than "three or more," requested by your PLUM Committee, because the latter could encompass two parents or guardians and a child, triggering the ordinance's regulatory provisions. However, cultivation of such limited scope is not contemplated by the draft ordinance. An additional phrase, "member engaged in the management," has been added and defined in Section 45.19.6.1;

- Pursuant to PLUM Committee instruction to identify an alternative registration body other than the City Clerk, the registration body has been changed to the Office of Finance in Section 45.19.6.2. Insofar as the PLUM Committee did not specify the desired registration body, we selected the Office of Finance with the understanding that the Council, or your Public Safety Committee, may instruct that a different City department be substituted;

- Pursuant to PLUM Committee instruction, the language stating that the failure of any member of the collective to sign the registration form shall result in refusal to accept the registration form, in Section 45.19.6.2, has been removed;

- A collective must provide, within five (5) days after a request for preinspection, written notice of specified information to the appropriate City Council member and the Certified Neighborhood Council representing the area of the collective (Sec. 45.19.6.2 C);

- Pursuant to PLUM Committee instruction, Section 45.19.6.2, subsection B, has been amended to include a research fee, in addition to a preinspection fee. Also, additional registration provisions have been added, including requirements that the collective provide plans and a radius map of the location to show compliance with Section 45.19.6.3 and that LADBS submit its written preinspection report to the collective and the Office of Finance within 45 days;

- Pursuant to PLUM Committee instructions, the measurement of distance from sensitive uses in Section 45.19.6.3 has been changed, in pertinent part, to "...a straight line from the property line...to the closest property line of the lot on which the collective is located without regard to intervening structures";

- Pursuant to PLUM Committee instruction, a provision that no collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building has been added (Sec. 45.19.6.3 A);

- A provision that a person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and shall not manage or handle the receipts or expenses of the collective has been added (Section 45.19.6.3.14);

- A provision regarding the operative date of the draft ordinance has been added;

- A provision requiring maintenance of documentation of each member's status as a qualified patient, person with identification card, or primary caregiver has been

added to ensure qualification to participate in collective cultivation (Sec. 45.19.6.4 (5)); and

- Pursuant to PLUM Committee instruction, the period of compliance for existing medical marijuana dispensaries which complied with the operation and registration requirements of Interim Control Ordinance No. 179,027 was changed from 90 days to 180 days (Sec. 45.19.6.6).

Additionally, non-substantive changes were made to improve clarity, such as reorganization of the Registration provisions under Section 45.19.6.2 and specification of which department is authorized to enforce particular regulations.

Copies of the revised draft ordinance have been provided, pursuant to Council Rule 38, to the Los Angeles Police Department, Office of Finance, and the Department of Building and Safety, with a request that all comments, if any, be presented directly to your Honorable Body at the time this matter is considered.

If you have any questions regarding this matter, please contact Assistant City Attorney Sharon Siedorf Cardenas at (213) 978-8235 or Deputy City Attorney Heather Aubry at (213) 978-8380. These attorneys or another member of this office will be available when you consider this matter to answer any questions you may have.

Sincerely,

CARMEN A. TRUTANICH, City Attorney

By

WILLIAM W. CARTER
Chief Deputy City Attorney

WWC:SSC:HA:aa
Transmittal

ORDINANCE NO. _____

An ordinance adding Article 5.1 to Chapter IV to the Los Angeles Municipal Code and amending Section 91.107.3.2 of the Los Angeles Municipal Code to implement the Compassionate Use Act and the Medical Marijuana Program Act consistent with the provisions of the Acts but without violating state or federal law.

WHEREAS, although the possession and sale of marijuana remain illegal under both state and federal law, California voters approved the Compassionate Use Act ("CUA") in 1996 to exempt seriously ill patients and their primary caregivers from criminal liability for possession and cultivation of marijuana for medical purposes; and

WHEREAS, the Medical Marijuana Program Act of 2003 ("MMPA") provides for the association of primary caregivers and qualified patients to cultivate marijuana for specified medical purposes and also authorizes local governing bodies to adopt and enforce laws consistent with its provisions; and

WHEREAS, the City of Los Angeles enacted an Interim Control Ordinance in 2007 for the temporary regulation of medical marijuana facilities through a registration program, which resulted in the unintended proliferation of storefront medical marijuana dispensaries to a number currently estimated to exceed 500 such locations, presenting a substantial risk of unlawful cultivation, sale, and the illegal diversion of marijuana for non-medical uses; and

WHEREAS, there have been recent reports from the Los Angeles Police Department and the media of an increase in and escalation of violent crime at the location of medical marijuana dispensaries in the City of Los Angeles, and the California Police Chiefs Association has compiled an extensive report detailing the negative secondary effects associated with medical marijuana dispensaries; and

WHEREAS, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because, unlike all other ingestibles, marijuana is not regulated, inspected, or analyzed for contamination by state or federal government and may, as with samples recently tested by a U.S. Food and Drug Administration laboratory, contain harmful chemicals that could further endanger the health of persons who are already seriously ill and have impaired or reduced immunities; and

WHEREAS, the City of Los Angeles has a compelling interest in ensuring that marijuana is not distributed in an illicit manner, in protecting the public health, safety and welfare of its residents and businesses, in preserving the peace and quiet of the neighborhoods in which medical marijuana collectives operate, and in providing compassionate access to medical marijuana to its seriously ill residents.

NOW, THEREFORE,

THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:

Section 1. A new Article 5.1 is added to Chapter IV of the Los Angeles Municipal Code to read:

ARTICLE 5.1.

MEDICAL MARIJUANA COLLECTIVE

SEC. 45.19.6. PURPOSES AND INTENT.

It is the purpose and intent of this article to regulate the collective cultivation of medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. The regulations in this article, in compliance with the Compassionate Use Act and the Medical Marijuana Program Act, California Health and Safety Code Sections 11362.5, *et seq.*, ("State Law") do not interfere with a patient's right to use medical marijuana as authorized under State Law, nor do they criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, as authorized under State Law. Under State Law, only qualified patients, persons with identification cards, and primary caregivers may cultivate medical marijuana collectively. Medical marijuana collectives shall comply with all provisions of the Los Angeles Municipal Code ("Code"), State Law, and all other applicable local and state laws. Nothing in this article purports to permit activities that are otherwise illegal under federal, state, or local law.

SEC. 45.19.6.1. DEFINITIONS.

A. The following phrases, when used in this article, shall be construed as defined in California Health and Safety Code Sections 11006.5, 11018, 11362.5 and 11362.7:

"Attending physician;"
"Concentrated Cannabis;"
"Identification card;"
"Marijuana;"
"Person with an identification card;"
"Primary caregiver;" and
"Qualified patient."

B. The following phrases, when used in this article, shall be construed as defined below. Words and phrases not defined here shall be construed as defined in Sections 11.01, 12.03, 45.19.5, 45.21, and 56.45 of this Code.

"Medical marijuana." Marijuana used for medical purposes in accordance with California Health and Safety Code Section 11362.5

"Medical marijuana collective ("collective")." An incorporated or unincorporated association, composed solely of four or more qualified patients, persons with identification cards, and designated primary caregivers of qualified patients and persons with identification cards (collectively referred to as "members") who associate at a particular location ("location" or "property") to collectively or cooperatively cultivate marijuana for medical purposes, in strict accordance with California Health and Safety Code Sections 11362.5, *et seq.*

"Member engaged in the management." A member with responsibility for the establishment, organization, registration, supervision, or oversight of the operation of a collective, including but not limited to members who perform the functions of president, vice president, director, operating officer, financial officer, secretary, treasurer, or manager of the collective.

SEC. 45.19.6.2. REGISTRATION.

A. Registration Required. No collective shall operate until after it has filed a registration form in accordance with the provisions of this article and the registration has been accepted as complete by the Office of Finance.

B. Preinspection Required. Prior to filing a registration form with the Office of Finance, a collective shall provide plans of the collective location including details of any proposed alterations and a radius map signed by an architect or civil engineer licensed in the State of California to show compliance with the standards set forth in Section 45.19.6.3 A of this article. A collective shall obtain a written preinspection report from the Department of Building and Safety after the Department verifies the accuracy of the plans and radius map submitted and performs all required research (planning/zoning records). A preinspection fee pursuant to Section 91.107.3.2 of this Code, plus a research fee for a minimum of two hours of time pursuant to Section 98.0415 (f) of this Code, shall be paid to the Department of Building and Safety at the time of a request for preinspection. The Department of Building and Safety shall submit its written preinspection report to the collective and to the Office of Finance within 45 days thereafter. If the preinspection report verifies noncompliance with the standards set forth in Section 45.19.6.3 A of this article, a subsequent preinspection may be requested by the collective, for which an additional preinspection fee shall be paid.

C. Notice of Preinspection. Within 5 days after a request for preinspection, the collective shall provide written notice to the City Council member and the Certified Neighborhood Council representing the area in which the collective is located of: the preinspection request, the property address of the collective, a telephone number at the property, the name, telephone number, and address of a person authorized to accept service of process for the collective, and the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective.

D. Registration Form. Upon receipt of a Department of Building and Safety preinspection report verifying compliance with the standards set forth in Section 45.19.6.3 A of this article, the collective shall file a registration form with the Office of Finance. The registration form shall require the following accurate and truthful information: the names of all persons who are members of the collective; the address and physical description (i.e., one-story commercial building, etc.) of the property at and upon which the collective is located; a telephone number at the property; the name, telephone number, and address of a person authorized to accept service of process for the collective; the name(s), telephone number(s), and address(es) of each member engaged in the management of the collective; and any other information reasonably required to show that the collective complies with this article. The collective shall file an amended registration form quarterly with any changes in the information provided in the initial registration form or any change in status of compliance with the regulations set forth in Section 45.19.6.3. A change of property location cannot be accomplished by an amended registration form but shall instead require a new registration. Each and every member who is engaged in the management of the collective shall print his or her name and sign the initial registration form and any subsequent amended registration form, under penalty of perjury certifying that all information contained in the registration form is true and correct.

E. Additional Registration Documents. As attachments to the original and any subsequently amended registration form, the collective shall provide to the Office of Finance (1) written proof that the property owner, and landlord if applicable, was given notice that the collective intends to file the registration form and that the owner, and landlord if applicable, has received a copy of the information contained in the registration form, (2) for each member engaged in the management of the collective, a fully legible copy of one government-issued form of identification, such as a social security card, a state driver's license or identification card, or a passport, and (3) written proof that notice of preinspection was given to the applicable City Council member and Certified Neighborhood Council.

F. Completed Registration. The Office of Finance shall mail proof of a completed registration and any subsequent amended registration to the person authorized to accept service of process on behalf of the collective.

G. Registration Non-Transferable. A registration accepted as complete under this article shall become null and void upon the cessation of the collective, upon the relocation of the collective to a different property, or upon a violation by the collective or any of its members of a provision of this article.

SEC. 45.19.6.3. REGULATIONS.

The property at or upon which a collective cultivates and provides medical marijuana to its members must meet the following requirements:

A. Preinspection Requirements.

1. The property shall comply with the provisions of Chapters I and IX of the Code as they pertain to the agricultural use. Permits for any alterations to the building shall be obtained from the Department of Building and Safety;

2. No collective shall abut or be located across the street or alley from or have a common corner with a property improved with an exclusively residential building;

3. No collective shall be located within a 1,000-foot radius of a school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s). The distance specified in this subdivision shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, hospital, medical facility, substance abuse rehabilitation center, or other medical marijuana collective(s), to the closest property line of the lot on which the collective is located without regard to intervening structures;

4. Exterior building lighting and parking area lighting for the property must be in compliance with Sections 93.0104, 93.0107 and 93.0117 of the Code. In addition, the property shall be equipped with lighting fixtures of sufficient intensity to illuminate all interior areas of the lot with an illumination of not less than 1.5 foot-candles evenly distributed as measured at floor level;

5. Any exterior signs and any interior signs visible from the exterior shall be unlighted; and

6. Windows and roof hatches of the property shall be secured with bars so as to prevent unauthorized entry, and be equipped with latches that may be released quickly from the inside to allow exit in the event of emergency in compliance with all applicable building code provisions.

B. Conditions of Operation.

1. The property shall be monitored at all times by web-based closed-circuit television for security purposes. The camera and recording system must be of adequate quality, color rendition and resolution to allow the ready identification of any individual committing a crime anywhere on or adjacent to the property. The recordings shall be maintained for a period of not less than ninety (90) days and shall be made available by the collective to the Police Department upon request. Consent is given by the collective under this article to the provision of said recordings to the Police Department without requirement for a search warrant, subpoena or court order;

2. The property shall have a centrally-monitored fire and burglar alarm system;

3. No cultivation of medical marijuana on the property shall be visible with the naked eye from any public or other private property, nor shall cultivated marijuana or dried marijuana be visible from the building exterior. No cultivation shall occur at the property unless the area devoted to the cultivation is secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;

4. No manufacture of concentrated cannabis in violation of California Health and Safety Code section 11379.6 is allowed;

5. No collective shall be open to or provide medical marijuana to its members between the hours of 8:00 p.m. and 10:00 a.m. This prohibition shall not apply to a qualified patient whose permanent legal residence is the property;

6. No sale of marijuana or of edible products containing marijuana shall be allowed, nor shall the manufacturing of these products for sale be permitted;

7. No persons under the age of eighteen shall be allowed on the property, unless that minor is a qualified patient or person with an identification card and accompanied by his or her licensed attending physician, parent or documented legal guardian;

8. No medical marijuana collective shall possess more than 5 pounds of dried marijuana or more than 100 plants of any size on the property. No collective shall possess marijuana that was not cultivated by the collective either on the property or at its predecessor location fully registered in accordance with Section 45.19.6.2 of this article;

9. A sign shall be posted in a conspicuous location inside the structure on the property advising: "The diversion of marijuana for non-medical purposes is a violation of State law. The use of marijuana may impair a person's ability to drive a motor vehicle or operate heavy machinery. Loitering at the location of a medical marijuana collective for an illegal purpose is prohibited by California Penal Code Section 647(h)";

10. No collective may provide medical marijuana to any persons other than its members who participate in the collective cultivation of marijuana at or upon the property of that collective. No medical marijuana provided to a primary caregiver may be supplied to any person(s) other than the primary caregiver's qualified patient(s) or person(s) with an identification card;

11. No collective shall cause or permit the sale, dispensing, or consumption of alcoholic beverages on the property or in the parking area of the property;

12. No dried medical marijuana shall be stored in buildings that are not completely enclosed, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical marijuana be stored in a safe or vault that is not bolted to the floor or structure of the facility;

13. Medical marijuana may not be inhaled, smoked, eaten, ingested, or otherwise consumed on the property, in the parking areas of the property, or in those areas restricted under the provisions of California Health and Safety Code Section 11362.79. This prohibition shall not apply to a qualified patient's use of marijuana for his or her own medical purposes if the qualified patient's permanent legal residence is the property; and

14. A person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance, shall not be engaged directly or indirectly in the management of the collective and, further, shall not manage or handle the receipts and expenses of the collective.

SEC. 45.19.6.4. MAINTENANCE OF RECORDS.

A medical marijuana collective shall maintain records on the property accurately and truthfully documenting: (1) the full name, address, and telephone number(s) of the owner, landlord and/or lessee of the property; (2) the full name, address, and telephone number(s) of all members who are engaged in the management of the collective and the exact nature of each member's participation in the management of the collective; (3) the full name, address, and telephone number(s) of all members who participate in the collective cultivation, the date they joined the collective and the exact nature of each member's participation; (4) the full name, address, and telephone number(s) of members to whom the collective provides medical marijuana; (5) each member's status as a qualified patient, person with an identification card, or designated primary caregiver; (6) all contributions, whether in cash or in kind, by the members to the collective and all expenditures incurred by the collective for the cultivation of medical marijuana; (7) an inventory record documenting the dates and amounts of marijuana cultivated on the property, including the amounts of marijuana stored on the property at any given time; and (8) proof of registration with the Office of Finance in conformance with Section 45.19.6.2 of this article, including evidence of an accepted registration form. These records shall be maintained by the collective for a period of five years and made available by the collective to the Police Department upon request. Consent is given by the collective under this article to the provision of said records to the Police Department without requirement for a search warrant, subpoena or court order.

SEC. 45.19.6.5. INSPECTION AUTHORITY.

The Department of Building and Safety may enter and inspect the property of every collective between the hours of 10:00 a.m. and 8:00 p.m. or at any reasonable time to ensure compliance with and enforce the provisions Section 45.19.6.3 A of this article. In addition, the Police Department may enter and inspect the property of every collective and the records maintained pursuant to Section 45.19.6.5 of this article between the hours of 10:00 a.m. and 8:00 p.m., or at any reasonable time to ensure compliance with Section 45.19.6.2, 45.19.6.3 B, and 45.19.6.4 of this article. It is unlawful for any owner, landlord, lessee, member (including but not limited to a member engaged in the management), or any other person having any responsibility over the operation of the collective to refuse to allow, impede, obstruct or interfere with an inspection, review or copying of records and closed-circuit monitoring authorized and required under this article, including but not limited to, the concealment, destruction, and falsification of any records or monitoring.

SEC. 45.19.6.6. EXISTING MEDICAL MARIJUANA OPERATIONS.

Any existing medical marijuana collective, dispensary, operator, establishment, or provider that does not comply with the requirements of this article must immediately cease operation until such time, if any, when it complies fully with the requirements of this article; except that any medical marijuana collective, dispensary, operator, establishment, or provider not in compliance with the requirements of this article that (1) was established and operating at its current location prior to September 14, 2007, and (2) registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, shall have 180 days from the effective date of this article during which to fully comply with the requirements of this article or to cease operation. No medical marijuana collective, dispensary, operator, establishment, or provider that existed prior to the enactment of this article shall be deemed to be a legally established use under the provisions of this article, and such medical marijuana collective, dispensary, operator, establishment, or provider shall not be entitled to claim legal nonconforming status.

SEC. 45.19.6.7. COMPLIANCE WITH THIS ARTICLE AND STATE LAW.

A. It is unlawful for any person to cause, permit or engage in the cultivation, possession, distribution or giving away of marijuana for medical purposes except as provided in this article, and pursuant to any and all other applicable local and state law.

B. It is unlawful for any person to cause, permit or engage in any activity related to medical marijuana except as provided in Health and Safety Code Sections 11362.5 *et seq.*, and pursuant to any and all other applicable local and state law.

C. It is unlawful for any person to knowingly make any false, misleading or inaccurate statements or representations in any forms, records, filings or documentation required to be maintained, filed or provided to the City under this article, or to any other

local, state or federal government agency having jurisdiction over any of the activities of collectives.

SEC. 45.19.6.8. VIOLATION AND ENFORCEMENT.

Any violation of this article shall be subject to all remedies and enforcement measures authorized by Section 11.00 of this Code. Additionally, as a nuisance per se, any violation of this article shall be subject to injunctive relief, revocation of the certificate of occupancy for the property, disgorgement and payment to the City of any and all monies unlawfully obtained, costs of abatement, costs of investigation, attorney fees, and any other relief or remedy available at law or equity. The City may also pursue any and all remedies and actions available and applicable under local and state law for any violations committed by the collectives and persons related or associated with the collective.

Notwithstanding an initial verification of compliance by the collective with the preinspection requirements set forth in Section 45.19.6.3 A of this article prior to the filing of the registration form, any collective later found to be in violation of any of the preinspection requirements at any time is subject to the enforcement provisions provided in this section.

Sec. 2. Section 91.107.3.2 of the Los Angeles Municipal Code is amended by adding a new item 5 to read:

5. **Medical Marijuana Collective Preinspection.** A preinspection fee shall be collected by the Department to verify compliance with Section 49.19.6.3 A of the Los Angeles Municipal Code. The preinspection fee shall be in addition to any other fee that the Department determines is necessary due to the nature of the work involved.

Sec. 3. **Operative Date.** No preinspection pursuant to Section 45.19.6.2 B of the Los Angeles Municipal Code shall be conducted by the Department of Building and Safety, nor shall a registration form pursuant to Section 45.19.6.2 A of the Los Angeles Municipal Code be accepted by the Office of Finance for a period of 180 days from the effective date of this ordinance; except that any medical marijuana collective, dispensary, operator, establishment, or provider that (1) was established and operating at its current location prior to September 14, 2007, and (2) was registered pursuant to Interim Control Ordinance No. 179,027 with the City Clerk's office before November 12, 2007, may have a preinspection done by the Department of Building and Safety and may file a registration form with the Office of Finance during this 180 day period.

Sec. 4. **Severability.** Pursuant to the provisions of Los Angeles Municipal Code Section 11.00 (k), if any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect the remaining provisions of this ordinance which can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

Sec. 5. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

_____
Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By _____
SHARON SIEDORF CARDENAS
Assistant City Attorney

Date OCT 2 0 2009

File No. CF 08-0923

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CITY OF SANTA BARBARA

INTEROFFICE MEMORANDUM

TO: Mayor and City Council
James L. Armstrong, City Administrator
Camerino Sanchez, Chief of Police
Paul Casey, Community Development Director

FROM: Stephen P. Wiley, City Attorney

DATE: November 12, 2009

SUBJECT: Recent Legal Developments Regarding Medical Marijuana Dispensaries – Council Agenda Item - November 17, 2009 Council Meeting

A. Introduction.

This memo is to provide the City Council with some background information regarding recent legal developments concerning the "Compassionate Use Act of 1996" (hereinafter "Prop 215.") It is apparent to us that these developments could impact the dispensing and availability of medical marijuana within California in the future, particularly with respect to whether the over-the-counter "dispensary" model of providing medical marijuana to "qualified patients" will continue to be allowed by federal, state, and local law enforcement agencies.

Attached hereto are two newspaper articles about efforts in the city of Los Angeles to possibly move away from permitting the "dispensary" model as a permitted land use to that of only recognizing the legality of the "cooperative" (or "collective") model for the shared cultivation and access to medical marijuana among members of such a cooperative or collective. These efforts appear to be a result of the August 2008 Compassionate Use Act of 1996 Guidelines issued by the Attorney General for the state of California. (copy attached.) This "cooperative/collective" model would involve a group of individuals who jointly cultivate marijuana on a fairly small scale and local basis and then provide it on a non-cash basis only to fellow cooperative/collective members who are either "qualified patients" or a properly designated "primary caregiver" for such a patient.

This possible shift to the "cooperative/collective" approach is apparently a result of several recent court decisions concerning Prop 215 which rely heavily on the Attorney General's Guidelines and their detailed analysis of the intent of Prop 215 [including the state statutes enacted in 2003 implementing Prop 215 commonly known as "SB 420," (Health & Safety Code sections 11362.7 through 11362.9.)] Two very recent California Court of Appeal decisions, in particular, *People v. Hochanadel* 98 Cal.Rptr.3d 347 (decided August 18, 2009) and *City of Claremont v. Kruse* 100 Cal.Rptr.3d 1 (decided August 27, 2009), indicate that the retail over-the-counter mode of dispensing medical marijuana is not permitted by state law or Prop 215 and

that nothing in Prop 215 or SB 420 requires a city to permit dispensaries. Consequently, as these newspaper articles mention, several law enforcement agencies in California, particularly within Los Angeles County (such as the LAPD, the LA County District Attorney, and the Los Angeles City Attorney), appear poised to prosecute dispensary operators who retail medical marijuana, particularly those who are doing so on a for-profit basis. According to the attached New York Times article, the San Diego County District Attorney is also considering such criminal prosecutions.

The following is a summary of the Attorney General Guidelines, especially concerning how the Attorney General's office views the dispensary model versus the "collective/cooperative" model of providing medical marijuana to those persons who are "qualified patients."

B. The SB 420 Implementation Statutes and the August 2008 State Attorney General Guidelines.

As mentioned, in August 2008, the California Attorney General's office issued guidelines to explain how Prop 215 and SB 420 should be interpreted and implemented – hereinafter referred to as the "Attorney General Guidelines" – copy attached. As stated in the Guidelines, their main purpose is to "help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law." However, a secondary purpose of the Guidelines is also to "help law enforcement agencies perform their duties effectively and in accordance with California law."

Among other things, the Attorney General's Guidelines focus on a key portion of the SB 420 legislation - Health & Safety Code Section 11362.765. This section provides generally for an immunity from criminal prosecution to any "qualified patient" or any "primary caregiver" who possesses or uses medical marijuana in accordance with Prop 215 and SB 420. However, significantly, the Guidelines also refer specifically to and emphasize the language of subparagraph (a) of section 11362.765 which provides as follows:

> "However, nothing in this section shall authorize the individual to smoke or otherwise consume marijuana unless otherwise authorized by this article (i.e., SB 420), **nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.**" (emphasis added.)

In addition, in explaining the SB 420 distinction between permissible ways to "cultivate" and "distribute" medical marijuana and the criminal distribution of marijuana, the Attorney General Guidelines also stress the importance of subparagraph (c) of Health & Safety Code section 11362.765 which allows a "primary caregiver" to recoup only his or her expenses. This provision reads as follows:

> "(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this

> article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment …"

Furthermore, in explaining the intentionally narrow definition of a "primary caregiver" under Prop 215, the Guidelines point out that, in order to be truly a "primary caregiver" under the law, a person must be expressly designated in writing as such **and** must be a medical professional or must consistently provide for the health, safety, or housing of a "qualified patient." Thus, the Attorney General Guidelines pointedly note that "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" as is expressly required by SB 420. This point appears directed particularly at those dispensary operators who commonly allow a qualified patient to designate that operator as their "primary caregiver" merely by checking a box on a form used in connection with the sale (apparently) of medical marijuana at a retail storefront dispensary.

Finally, the Attorney General Guidelines explain the corporate legal forms of association known as "cooperatives" and "collectives" and express their view, under Prop 215 and SB 420, that a cooperative/collective model for distributing medical marijuana is probably the only method of acquiring and dispensing marijuana which does not constitute a criminal operation. And, they further indicate that, for a group of patients and caregivers to form a "cooperative" or "collective," the individuals involved "… must file articles of incorporation with the State and conduct its business for the mutual benefit of its members" and must "be properly organized and registered as such a corporation under the Corporations or Food and Agriculture Code."

However, probably the most telling indication in the Attorney General Guidelines which distinguishes the day-to-day operation of a proper and legal medical marijuana cooperative/collective from the currently ubiquitous medical marijuana retail "dispensary" model are the Attorney General Guidelines numbered 4, 5, and 6. These guidelines provide the following:

> "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 medial 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."

C. Conclusion.

It is apparent that, with several years now of interpreting and applying the SB 420 statutes intended to implement Prop 215, the State judicial system, with some recent assistance from the State Attorney General's Office, is in the process of definitively interpreting and applying Prop 215 and SB 420. This is resulting in published court decisions which set binding legal precedents. These decisions will undoubtedly have the effect of furthering our understanding of what was intended by Prop 215 and how it can actually allow "qualified patients" to obtain marijuana locally for their medical needs from a "primary caregiver" and to do so in a manner that does not violate state and federal criminal laws.

At this point, it appears that the retail "dispensary" model may not withstand legal scrutiny and may result in criminal prosecutions of dispensary owners and operators. For this reason, the City Council may want to clearly understand and discuss the potential significance of these legal developments in connection with the Council's desire to re-consider the parameters of the City's April 2008 zoning ordinance which established a City zoning permit process for medical marijuana dispensaries.

Please contact the City Attorney's office if you have any questions concerning this background information or if you need anything further from the City Attorney's office regarding this subject.

Attachments:
1. Los Angeles Times article dated October 9, 2009
2. New York Times article dated October 18, 2009
3. Attorney General's Guidelines (August 2009)

latimes.com/news/local/la-me-medical-marijuana9-2009oct09,0,5210895.story

latimes.com

Los Angeles County D.A. prepares to crack down on pot outlets

Cooley says the vast majority of medical marijuana dispensaries in the county are operating illegally.

By John Hoeffel

October 9, 2009

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Los Angeles County Dist. Atty. Steve Cooley said Thursday he will prosecute medical marijuana dispensaries for over-the-counter sales, targeting a practice that has become commonplace under an initiative approved by California voters more than a decade ago.

"The vast, vast, vast majority, about 100%, of dispensaries in Los Angeles County and the city are operating illegally, they are dealing marijuana illegally, according to our theory," he said. "The time is right to deal with this problem."

Cooley and Los Angeles City Atty. Carmen Trutanich recently concluded that state law bars sales of medical marijuana, an opinion that could spark a renewed effort by law enforcement across the state to rein in the use of marijuana. It comes as polls show a majority of state voters back legalization of marijuana, and supporters are working to place the issue on the ballot next year.

The district attorney's office is investigating about a dozen dispensaries, following police raids, and is considering filing felony charges against one that straddles the Los Angeles-Culver City line.

"We have our strategy and we think we are on good legal ground," Cooley said.

Medical marijuana advocates say the prosecutors are misinterpreting the law.

"I'm confident that they are not right," said Joe Elford, chief counsel for Americans for Safe Access. "If they are right, it would mean that thousands of seriously ill Californians for whom the Compassionate Use Act was intended to help would not be able to get the medicine that they need."

Law enforcement officials have been frustrated by the explosion in the number of dispensaries in Southern California, arguing that most are for-profit enterprises that violate the 1996 voter initiative legalizing medical marijuana and the 2003 state law permitting collective cultivation. Cooley's announcement, coming at a news conference that followed a training session he and Trutanich conducted for narcotics officers, dramatically raises the stakes.

In the city of Los Angeles, some estimates put the number of dispensaries as high as 800. The city allowed 186 to remain open under its 2007 moratorium, but hundreds of others opened in violation of the ban while the city did nothing to shut them down.

In August, Cooley and Sheriff Lee Baca sent a letter to all mayors and police chiefs in the county, saying that they believed over-the-counter sales were illegal and encouraging cities to adopt permanent bans on dispensaries.

Mark Kleiman, a professor of public policy at UCLA and an expert on drug policy, was not surprised that local prosecutors had decided to attack the rapid proliferation of marijuana stores.

"I think it's a natural response to the rather flagrant marketing practices of a bunch of the dispensaries. The medical veneer has been wearing thinner and thinner," he said. "I've always wondered why those things were legal when they didn't look legal to me."

Cooley said he believes that under state law, collectives must raise their own marijuana and can only recoup their costs. "That's absolutely legal," he said. "We're going to respect that."

But he said none of them currently do that.

The district attorney's warning could make the situation more chaotic in Los Angeles, where the City Council has struggled for two years to devise an ordinance to control the distribution of medical marijuana.

In addition to prosecuting dispensaries, Cooley said he would consider going after doctors who write medical marijuana recommendations for healthy people. Medical marijuana critics argue that some doctors freely recommend the drug to people who are not ill.

Medical marijuana advocates celebrated a brief thaw in the enforcement climate after the Obama administration signaled earlier this year that it would not prosecute collectives that followed state law. That spurred many entrepreneurs to open dispensaries in Los Angeles. As stores popped up near schools and parks, neighborhood activists reacted with outrage and police took notice.

Councilman Dennis Zine, a key player on the issue at L.A. City Hall, welcomed Cooley's decision to prosecute dispensaries. "There are many that are operating illegally and it's not a secret," he said, adding that he believes "a few" collectives in the city are operating legally.

Anticipating that police departments will ramp up raids on dispensaries, medical marijuana advocates reacted with dismay to Cooley's announcement.

"What we'll see is a big disruption," said Don Duncan, the California director for Americans for Safe Access. He called Cooley's decision "incredible" and said, "It certainly sounds scary."

Duncan acknowledged that many dispensaries do not follow the law and urged Cooley and Trutanich to focus exclusively on them. "You don't have to cast a net over the entire community, you can target the problem people and not take this extreme adversarial position," he said. "Some good people are going to be caught in the crossfire."

About 100 medical marijuana patients, activists and dispensary owners protested on a sidewalk outside the Montebello Country Club, where about 150 prosecutors and narcotics officers met. Motorists repeatedly honked and shook their fists in support as they rolled by, triggering cheers from the crowd.

Barry Kramer, the operator of California Patients Alliance, a collective on Melrose Avenue, said many dispensaries have responsibly regulated themselves for years in the vacuum left by the City Council's inaction.

"I feel like that gets lost," he said. "It's frustrating to get painted with one brush by the city."

Kramer said he believed that dispensaries would continue to operate. "People have found ways around marijuana laws for as long as there have been marijuana laws," he said.

But he also said that stepped-up prosecutions could resuscitate the criminal market: "Things will go underground. We'll see a lot more crime."

When Californians voted for Proposition 215 in 1996, they made it legal for patients with a doctor's recommendation and their caregivers to possess and raise pot for the patient's medical use.

In 2003, the Legislature allowed patients and caregivers "collectively or cooperatively to cultivate marijuana for medical purposes" but said they could not do it for profit.

Cooley and Trutanich, after reviewing a state Supreme Court decision from last year, have concluded that the law protects collectives from prosecution only in the cultivation of marijuana, not for sales or distribution.

Medical marijuana advocates, however, note that the state currently requires dispensaries to collect sales taxes on marijuana, and that guidelines drawn up by the attorney general conclude that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful."

The guidelines allow collectives to take costs into account but do not deal directly with over-the-counter sales.

Jacob Appelsmith, special assistant attorney general, said Atty. Gen. Jerry Brown talked to Cooley on Thursday. "Our staffs are continuing to meet about these issues," he said.

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Los Angeles Prepares For Clash Over Drug

By SOLOMON MOORE

LOS ANGELES — There are more marijuana stores here than public schools. Signs emblazoned with cannabis plants or green crosses sit next to dry cleaners, gas stations and restaurants.

The dispensaries range from Hollywood-day-spa fabulous to shoddy-looking storefronts with hand-painted billboards. Absolute Herbal Pain Solutions, Grateful Meds, Farmacopeia Organica.

Cannabis advocates claim that more than 800 dispensaries have sprouted here since 2002; some law enforcement officials say it is closer to 1,000. Whatever the real number, everyone agrees it is too high.

And so this, too, is taken for granted: Crackdowns on cannabis clubs will soon come in this city, which has more dispensaries than any other.

For the first time, law enforcement officials in Los Angeles have vowed to prosecute medical marijuana dispensaries that turn a profit, with police officials saying they expect to conduct raids. Their efforts are widely seen as a campaign to sway the City Council into adopting strict regulations after two years of debate.

It appears to be working. Carmen A. Trutanich, the newly elected city attorney, recently persuaded the Council to put aside a proposed ordinance negotiated with medical marijuana supporters for one drafted by his office. The new proposal calls for dispensaries to have renewable permits, submit to criminal record checks, register the names of members with the police and operate on a nonprofit basis. If enacted,

Disagreement over how medical marijuana should be regulated.

t is likely to result in the closing of hundreds of marijuana dispensaries.

Mr. Trutanich argued that state law permits the exchange of marijuana between growers and patients on a nonprofit and noncash basis only. Marijuana advocates say that interpretation would regulate dispensaries out of existence and thwart the will of voters who approved medical cannabis in 1996.

Whatever happens here will be closely watched by law enforcement officials and marijuana advocates across the country who are threading their way through federal laws that still treat marijuana as an illegal drug and state laws that are increasingly allowing medicinal use. Thirteen states have laws supporting medical marijuana, and others are considering new legislation.

No state has gone further than California, often described by drug enforcement agents as a "source nation" because of the vast quantities of marijuana grown here. And no city in the state has gone further than Los Angeles. This has alarmed local officials, who say that dispensary owners here took unfair advantage of vague state laws intended to create exceptions to marijuana prohibitions for a limited number of ill people.

"About 100 percent of dispensaries in Los Angeles County and the city are operating illegally," said Steve Cooley, the Los Angeles County district attorney, who is up for re-election next year. "The time is right to deal with this problem."

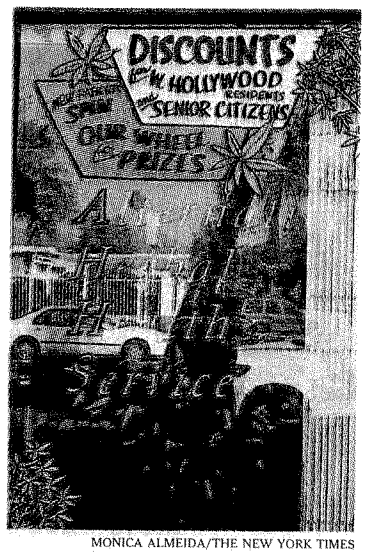
Mr. Cooley, speaking last week at a training luncheon for regional narcotics officers titled "The Eradication of Medical Marijuana Dispensaries in the City of Los Angeles and Los Angeles County," said that state law did not allow dispensaries to be for-profit enterprises.

Mr. Trutanich, the city attorney, went further, saying dispensaries were prohibited from accepting cash even to reimburse growers for labor and supplies. He said that a recent California Supreme Court decision, People v. Mentch, banned all over-the-counter sales of marijuana; other officials and marijuana advocates disagree.

PHOTOGRAPHS BY JIM WILSON/THE NEW YORK TIMES

Harborside Health Center, a nonprofit medical marijuana dispensary in Oakland, Calif., is looked upon as a model of how others could operate.

A grower in a house in Berkeley, Calif., who said he could grow three crops a year, each worth about $40,000.



MONICA ALMEIDA/THE NEW YORK TIMES

So far, prosecutions of marijuana dispensaries in Los Angeles have been limited to about a dozen in the last year, said Sandi Gibbons, a spokeswoman for Mr. Cooley. But Police Department officials said they were expecting to be called on soon to raid collectives.

"I don't think this is a law that we'll have to enforce 800 times," said one police official, who declined to speak on the record before the marijuana ordinance was completed. "This is just like anything else. You don't have to arrest everyone who is speeding to make people slow down."

Don Duncan, a spokesman for Americans for Safe Access, a leader in the medical marijuana movement, said that over-the-counter cash purchases should be permitted but that dispensaries should be nonprofit organizations. He also said marijuana collectives needed more regulation and a "thinning of the herd."

"I am under no illusions that everyone out there is following the rules," said Mr. Duncan, who runs his own dispensary in West Hollywood. "But just because you accept money to reimburse collectives does not mean you're making profits."

For marijuana advocates, Los Angeles represents a critical juncture — a symbol of the movement's greatest success, but also its vulnerability.

More than 300,000 doctors' referrals for medical cannabis are on file, the bulk of them from Los Angeles, according to Americans for Safe Access. The movement has had a string of successes in the Legislature and at the ballot box. In the city of Garden Grove, marijuana advocates forced the Highway Patrol to return six grams of marijuana it had confiscated from an eligible user. Cannabis dispensaries have opened in more than 20 counties in the state.

But there have also been setbacks. In June, a federal judge sentenced Charles C. Lynch, a dispensary owner north of Santa Barbara, to one year in prison for selling marijuana to a 17-year-old boy whose father had testified that they sought out medical marijuana for his son's chronic pain. The mayor and the chief of police testified on behalf of Mr. Lynch, who was released on bail pending appeal.

And last month, San Diego police officers and sheriff's deputies, along with agents from the Drug Enforcement Administration, raided 14 marijuana dispensaries and arrested 31 people. In an interview, Bonnie Dumanis, the district attorney for San Diego County, said that state laws governing medical marijuana were unclear and that the city had not yet instituted new regulations.

Ms. Dumanis said that she approved of medical marijuana clubs where patients grow and use their own marijuana, but that none of the 60 or so dispensaries in the county operated that way.

"These guys are drug dealers," she said of the 14 that were raided. "I said publicly, if anyone thinks we're casting too big a net and we get a legitimate patient or a lawful collective, then show us your taxes, your business license, your incorporation papers, your filings with the Department of Corporations."

"If they had these things, we wouldn't prosecute," she said.

Marijuana supporters worry that San Diego may provide a glimpse of the near future for Los Angeles if raids here become a reality. But many look to Harborside Health Center in Oakland as a model for how dispensaries could work.

"Our No. 1 task is to show that we are worthy of the public's trust in asking to distribute medical cannabis in a safe and secure manner," said Steve DeAngelo, the pig-tailed proprietor of Harborside, which has been in business for three years.

Harborside is one of four licensed dispensaries in Oakland run as nonprofit organizations. It is the largest, with 74 employees and revenues of about $20 million. Last summer, the Oakland City Council passed an ordinance to collect taxes from the sale of marijuana, a measure that Mr. DeAngelo supported.

Mr. DeAngelo designed Harborside to exude legitimacy, security and comfort. Visitors to the low-slung building are greeted by security guards who check the required physicians' recommendations. Inside, the dispensary looks like a bank, except that the floor is covered with hemp carpeting and the eight tellers stand behind identical displays of marijuana and hashish.

There is a laboratory where technicians determine the potency of the marijuana and label it accordingly. (Harborside says it rejects 80 percent of the marijuana that arrives at its door for insufficient quality.) There is even a bank vault where the day's cash is stored along with reserves of premium cannabis. An armored truck picks up deposits every evening.

City officials routinely audit the dispensary's books. Surplus cash is rolled back into the center to pay for free counseling sessions and yoga for patients. "Oakland issued licenses and regulations, and Los Angeles did nothing and they are still unregulated," Mr. DeAngelo said. "Cannabis is being distributed by inappropriate people."

But even Oakland's regulations fall short of Mr. Trutanich's proposal that Los Angeles ban all cash sales.

"I don't know of any collective that operates in the way that is envisioned by this ordinance," said Mr. Duncan, of Americans for Safe Access.

Christine Gasparac, a spokeswoman for State Attorney General Jerry Brown, said that after Mr. Trutanich's comments in Los Angeles, law enforcement officials and advocates from around the state had called seeking clarity on medical marijuana laws.

Mr. Brown has issued legal guidelines that allow for nonprofit sales of medical marijuana, she said. But, she added, with laws being interpreted differently, "the final answer will eventually come from the courts."

EDMUND G. BROWN JR.
Attorney General

DEPARTMENT OF JUSTICE
State of California

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

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[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*.

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.