

## AGENDA

### CITY OF GUADALUPE PLANNING COMMISSION

Wednesday, February 17, 2010

Special Meeting 6:00 p.m.

City Hall, Council Chambers  
918 Obispo Street, Guadalupe, CA 93434

*In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting or other services offered by this City, please contact the City Clerk's office, (805) 356-3891. Notification of at least 72 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.*

*If you wish to speak concerning any item on the agenda, please complete the Request to Speak form that is provided at the rear of the Council Chambers prior to the completion of the staff report and hand the form to the City Clerk. **Note:** Staff Reports for this agenda, as well as any materials related to items on this agenda submitted after distribution of the agenda packet, are available for inspection at the office of the City Administrator, City Hall, 918 Obispo Street, Guadalupe, California during regular business hours, 8:00 a.m. to 12:00 pm. and 1:00 p.m. to 5:00 p.m., Monday through Friday; telephone (805) 356-3891.*

**MEMBERS OF THE PLANNING COMMISSION:** Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.

1. **CALL TO ORDER.**
2. **PLEDGE OF ALLEGIANCE.**
3. **ROLL CALL.** Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.
  - a. Minutes of the Planning Commission meeting of September 15, 2009 to be ordered filed.

5. **COMMUNITY PARTICIPATION FORUM.**

*Each person will be limited to a discussion of 3 minutes. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may direct Staff to investigate and/or schedule certain matters for consideration at a future Planning Commission meeting.*

6. **AHUMADA ADDITION AND REMODEL ( CASE # 2009-018-CUP, 4645 SEVENTH STREET).** That the Planning Commission: 1) Receive a presentation from staff; 2) Conduct a public hearing on the request; 3) Adopt PC Resolution No. 2010-01 approving Conditional Use Permit (Case #2009-018-CUP) for a residential addition 4645 Seventh Street.

- a. Written Staff Report (Rob Mullane)
- b. Conduct Public Hearing:
  - i. those in favor of the proposed project
  - ii. those in opposition to the proposed project
  - iii. rebuttals
- c. Planning Commission discussion and consideration.
- d. It is recommended that the Planning Commission 1). Adopt PC Resolution No. 2010-01 approving Conditional Use Permit (Case #2009-018-CUP) for a residential addition at 4645 Seventh Street.

7. **MEDICAL MARIJUANA DISPENSARY ORDINANCE.** That the Planning Commission: 1). Receive a presentation from staff; 2) Conduct a public hearing on the proposed Ordinance; 3) Adopt PC Resolution No. 2010-02 recommending that the City Council approve the proposed Medical Marijuana Dispensary Ordinance.

- a. Written Staff Report (Dave Fleishman, City Attorney)
- b. Conduct Public Hearing:
  - i. those in favor of the proposed ordinance
  - ii. those in opposition to the proposed ordinance
  - iii. rebuttals
- c. Planning Commission discussion and consideration.
- e. It is recommended that the Planning Commission 1). Adopt PC Resolution No. 2010-02 recommending that the City Council approve the proposed Medical Marijuana Dispensary Ordinance.

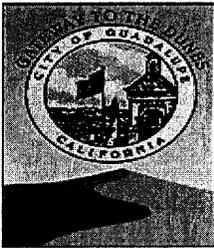
8. **PLANNING COMMISSION WORKSHOP: BROWN ACT REVIEW.** That the Planning Commission receive the presentation from staff.

- a. Written Staff Report (Dave Fleishman)
- b. Planning Commission discussion and consideration.
- c. It is recommended that the Planning Commission receive the presentation from staff.

9. **PLANNING COMMISSION WORKSHOP: ROLE AND PURVIEW OF THE COMMISSION IN CONSIDERING DISCRETIONARY APPLICATIONS.** That the Planning Commission receive the presentation from staff.
  - a. Written Staff Report (Rob Mullane)
  - b. Planning Commission discussion and consideration.
  - c. It is recommended that the Planning Commission receive the presentation from staff.
  
10. **PLANNING COMMISSION WORKSHOP: POTENTIAL LOCATIONS FOR A SKATEPARK.** That the Planning Commission receive the presentation from staff.
  - a. Written Staff Report (Rob Mullane)
  - b. Planning Commission discussion and consideration.
  - c. It is recommended that the Planning Commission receive the presentation from staff.
  
11. **PLANNING DIRECTOR’S REPORT.**
  
12. **FUTURE AGENDA ITEMS.**
  
13. **ANNOUNCEMENTS.**
  
14. **ADJOURNMENT.**

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing Agenda was posted at the City Hall display case, the Water Department, the City Clerk’s office, and Rabobank not less than 72 hours prior to the meeting. Dated this 17<sup>th</sup> day of February 2010.

By: \_\_\_\_\_  
Regan Candelario, Deputy City Clerk



## Draft MINUTES

### CITY OF GUADALUPE PLANNING COMMISSION

Tuesday, September 15, 2009

Regular Meeting 6:00 p.m.

City Hall, Council Chambers  
918 Obispo Street, Guadalupe, CA 93434

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**MEMBERS OF THE PLANNING COMMISSION:** Commissioners Monika Huntley, Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer.

Staff present: Rob Fitzroy, Associate Planner, and Richard Daulton, Contract Planning Director.

1. **CALL TO ORDER.** 6:01 by Chair Kraemer
2. **PLEDGE OF ALLEGIANCE.** Conducted.
3. **ROLL CALL.** Commissioners Alejandro Ahumada, Kenneth Chamness, Vice-Chair Jesse Ramirez, and Chair Carl Kraemer present. Commission Monica Huntley, absent.
4. **CONSENT CALENDAR.** The following routine items are presented for Planning Commission approval without discussion as a single agenda item in order to expedite the meeting. Should a Commissioner wish to discuss or disapprove an item, it must be dropped from the blanket motion of approval and considered as a separate item.
  - a. Minutes of the Planning Commission meeting of August 18, 2009 to be ordered filed.

**Motion:** Ahumada/Ramirez moved to approve the consent agenda.

**VOTE:**       **Ayes: 4**  
                  **Noes: 0**  
                  **Absent:1**  
                  **Motion passed**

**5. COMMUNITY PARTICIPATION FORUM.**

*Each person will be limited to a discussion of 3 minutes. Pursuant to provisions of the Brown Act, no action may be taken on these matters unless they are listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may direct Staff to investigate and/or schedule certain matters for consideration at a future Planning Commission meeting.*

6:05. Speaker #1 George Alvarez - Expressed concern with the term Farmworkers as used in the Housing Element.

6:08. Speaker #2 John Perry - Expressed that the historic character of old building within the City capture the eye of tourists. Expressed concerns that new development is not consistent with the character of the City. Provided the Vernon Hotel as an example which installed unsightly metal materials.

**6. CONSIDER DESIGN REVIEW PERMIT FOR REMODEL AND SCEOND-STORY ADDITION AT 813 GUADALUPE STREET.** That the Planning

Commission:

- 1) Receive a presentation from staff,
- 2) Provide an opportunity for the applicant to present the proposed project,
- 3) Receive any comments from the public, and
- 4) Take action on the request for a Design Review Permit.

Mr. Fitzroy gave a brief staff report that provided an overview of the DRP request for a remodel and second-story addition to an existing commercial building located at 813 Guadalupe Street.

Speaker #1 Gustavo Alvarez

Provided more information and history of the request. He stated that his family has owned the structure since 1974 and the structure is in need of retrofit to meet current building standards. He noted that the addition of units would help offset the mortgage. He noted that the project would be a major improvement to the aesthetics of Guadalupe Street.

Speaker #2, George Alvarez

Noted that a ground compaction study and engineering report needs to be performed. Chair Kraemer noted that the intention of the Planning Commission meeting is for design review. Engineering is within the purview of the Building and Fire Department and the

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**Regular Meeting – September 15, 2009**  
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City Engineer. The applicant also commented that he has hired a professional engineer to handle such issues.

Speaker #3, John Perry

Expressed approval of the project. He asked who will ensure that the project follows plans as approved by the Planning Commission. Chair Kraemer noted that building inspectors have the responsibility of ensuring that the plan set is accurately followed.

Commissioner Chamness asked who was responsible for a soil compaction study. Requested that planning staff follow up and verify that a soil compaction study has been completed.

Commissar Chamness asked staff whether emergency exits and fire safety have been addressed. Staff noted that these issues are within the purview of the Building and Fire Department. Chair Kraemer also noted that Planning Commission review in this instance is limited to design review.

Chair Kraemer asked whether the dividing petition between units would be sufficient such that noise would not be an issue. Gustavo Alvarez confirmed that the materials to be used are designed to minimize noise.

Commissioner Chamness asked the applicant how long the project would take. Gustavo Alvarez stated that it would take approximately 5 to 6 months.

Commissioner Chamness requested that Rincon determine the number of structures that are currently being retrofitted. He also requested that the City Engineer is present at the next Planning Commission meeting to further discuss this.

**Motion: Ahumada/Ramirez** moved to approve Planning Application #2009-013-DRP with the ability to make the required design review findings.

**VOTE:       Ayes: 4**  
**Noes: 0**  
**Absent:1**  
**Motion passed**

**9.       PLANNING DIRECTORS REPORT.**

No report.

**10.      FUTURE AGENDA ITEMS.**

None.

**11.      ANNOUNCEMENTS.**

Chair Kraemer reminded the audience to be kind to animals including wildlife and to please spay and neuter your dog.

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**12. ADJOURNMENT.**

Meeting adjourned by Chair Kraemer at 7:28 pm.

Submitted by:

Affirmed by:

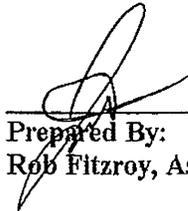
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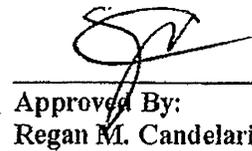
Robert A. Mullane, City Planner  
Planning Commission Secretary

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Carl Kraemer, Chair

REPORT TO THE PLANNING COMMISSION  
February 17, 2010

  
Prepared By:  
Rob Fitzroy, Associate Planner

  
Approved By:  
Regan M. Candelario

SUBJECT:

Minor Condition Use Permit for the Ahumada Addition,  
4645 Seventh Street  
(Planning Application #2009-018-CUP)

EXECUTIVE SUMMARY:

The City first received site plans for the addition/remodel of the Ahumada residence located at 4645 Seventh Street on November 25, 2009. Additional application materials were received in January and early February 2010, and the application was deemed complete for processing on February 2, 2010. The project would increase the existing 2,488-square foot residence by 888 square feet and remodel the exterior of the structure with new stucco and architectural column facades. The proposed project involves the alteration and expansion of an existing non-conforming structure, an action which requires a Condition Use Permit (CUP) pursuant to Section 18.68.030. At tonight's meeting, the Planning Commission can approve or deny the request.

RECOMMENDATION:

- 1) Receive a presentation from staff
- 2) Conduct the Public Hearing
- 3) Consider Resolution # PC 2010-\_\_\_, recommending that the City Council approve a Resolution granting the Minor Condition Use Permit request

BACKGROUND:

The City first received site plans and a request for a Zoning Clearance for the addition/remodel of the Ahumada residence on November 25, 2009, and has since undergone three rounds of review by planning staff. Upon review of the initial submittal, planning staff learned the original structure, a single-family residence, was constructed in the 1930s and that the residential structure previously underwent a previous remodel and second-story addition in the early 1980s. A building permit for the previous addition was obtained, and the City has this building permit on file. However, the existing structure was built prior to the currently adopted Zoning Code, and it does not conform to current Zoning requirements with respect to required building setbacks. As such, the existing

structure is defined by the Zoning Code as legal non-conforming, and any expansion of use or addition requires a CUP per the City's Zoning Code.

The applicant was notified in the December 10, 2009 memo that the existing structure is legal non-conforming and that therefore, a Minor CUP is required per Section 18.68.030, which states that a conditional use permit is required for the enlargement, extension, reconstruction or alteration of a non-conforming structure. The applicant submitted an application for a CUP on January 13, 2010. The CUP application underwent two rounds of review and was deemed complete for processing on February 2, 2010.

**DISCUSSION:**

The proposed project would increase the square footage of the residence from 2,488 square feet to 3,376 square feet, a total increase of 888 square feet. The project would expand the existing living room by 131 square feet, convert an existing balcony on the second floor into a 389-square foot master bathroom, expand the garage on the first floor by 115 square feet, which would double as a 115-square foot walk-in closet on the second floor, and add a 294-square foot carport, as shown on A1 of the plan set.

The 131-square foot expansion of the living room would also include a new hearth gas fire place and associated chimney. The existing balcony that would be converted into a new master bathroom would include a double-sink, toilet and bathtub. The new 115-square foot storage area would be an expansion of the existing garage. The area above the 115-square foot expansion would be used as a walk-in closet within the master bedroom on the second floor.

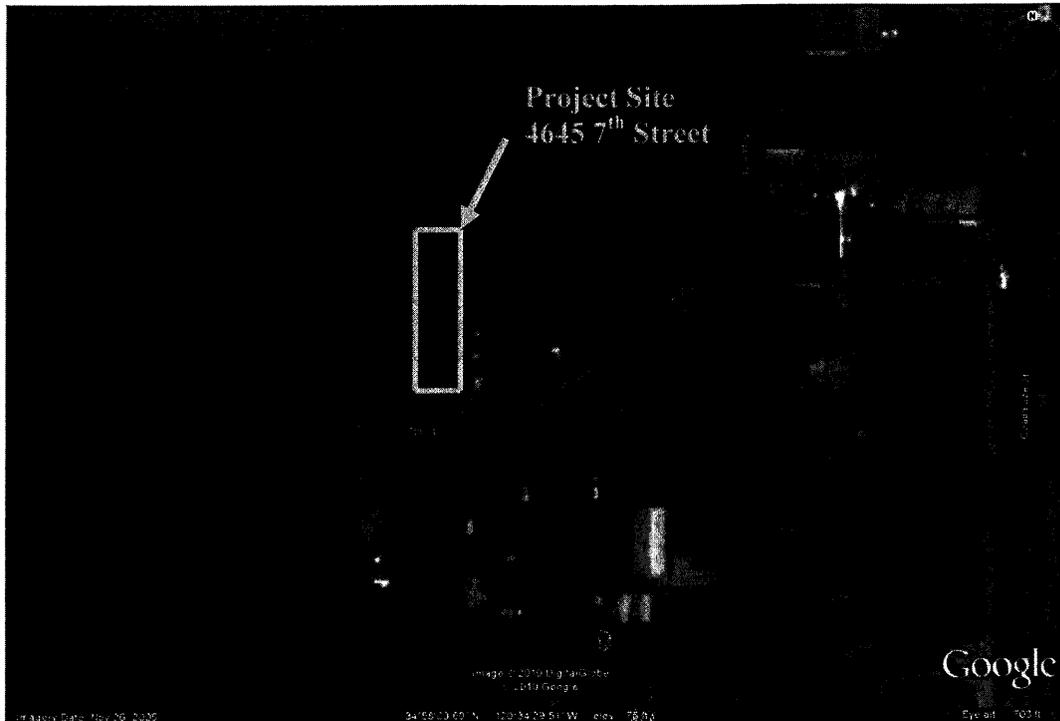
The exterior of the residence would be remodeled to include a new stucco finish as well as architectural column facades on the south elevation, as shown on Sheet A4 of the plan set. Existing windows throughout the house would be replaced with new windows.

The project site information is discussed below.

**Site Information**

LOCATION	4645 Seventh Street
APN	115-121-004
ZONING	R-1, Single Family Residential
LOT SIZE	~5,200 sq ft
PRESENT USE	Single Family Residence
SURROUNDING USES AND ZONING	North: R-1, Single Family Residential East: R-1, Single Family Residential South: R-1-M, Single Family Residential Medium Density West: R-1, Single Family Residential

The property consists of an approximately 5,227-square foot lot with an existing 2,448 square foot, single-story residential structure. The surrounding uses are noted in the above table. A vicinity maps is shown below.



### **Zoning Conformity**

Staff has reviewed the request's conformity to zoning requirements and standards and notes no inconsistencies with the requirements for the alteration or expansion of non-conforming structures. The addition meets other zoning standards such as building setbacks and height limits. A CUP is required per Section 18.68.030, which states that a CUP is required for the enlargement, extension, reconstruction or alteration of a non-conforming structure.

### **CEQA Review**

The project is exempt from CEQA pursuant to CEQA Guidelines Section 15301(e)(1). This section notes as categorically exempt from CEQA:

*Additions to existing structures provided that the addition will not result in an increase of more than 50 percent of the floor area of the structures before the addition, or 2,500 square feet, whichever is less;*

The proposed project would result in the addition of 888 square feet. This would be an addition of approximately 36% of the existing building's size. The lot is completely developed with the structure, driveway, parking, and landscaping, and the addition would

be contained within the existing developed area. The proposed addition would be similar to the architectural style of the existing building without substantial or inharmonious changes to the exterior of the structure. Design of the addition would be considered by the Planning Commission in their review of the CUP request to ensure that significant aesthetic impacts do not result. No other significant environmental impacts are expected to result from the addition/ remodel or the associated CUP.

### **Planning Commission Consideration**

The CUP process is set forth in Chapter 18.72 of the City's Zoning Code.

In considering a CUP, the Planning Commission may approve as submitted with conditions of approval as recommended by Planning Staff, approve with additional conditions of approval as requested by the Planning Commission, provide direction to the applicant on recommended changes and continue the item to a future meeting of the Commission, or deny the request.

Notices of the requested CUP and Planning Commission public hearing were published in the Santa Maria Times and mailed to all property owners within a 300-foot radius as required by Section 18.12.040.

### **Next Steps**

A resolution to approve the CUP has been prepared (Attachment 1), and staff recommends approval of this resolution. Should the Commission approve the CUP, staff would issue the associated Zoning Clearance once any prior to issuance conditions have been met and once the 10-day appeal period has run. Should the Planning Commission opt for an alternative action, staff should be directed accordingly.

### **ATTACHMENTS:**

1. Resolution PC 2010-01 (With Conditions of Approval as Exhibit 1)
2. Project Plan Set

**AGENDA ITEM: 6**

**ATTACHMENT 1**

**Planning Commission Resolution**

## RESOLUTION PC. NO. 2010-01

### A Resolution of the Planning Commission of the City of Guadalupe Approving a Conditional Use Permit for the Ahumada Addition.

**WHEREAS**, Albert Ahumada (the "Applicant") has submitted a Conditional Use Permit (CUP) application (Planning Application 2009-018-CUP) to the City of Guadalupe for an addition/remodel to an existing non-conforming residential structure, located at 4645 Seventh Street (Assessor's Parcel Number 115-121-004); and

**WHEREAS**, the Planning Commission held a duly-noticed public meeting on February 17, 2010 at which all interested persons were given the opportunity to be heard; and

**WHEREAS**, the Planning Commission has reviewed Planning Application 2009-018-CUP along with the findings required for approval; and,

**WHEREAS**, the Planning Commission finds that the project is exempt from review of the California Environmental Quality Act pursuant to Section 15301(e)(1) as a minor addition to an existing structure;

**NOW, THEREFORE, BE IT RESOLVED** by the Planning Commission of the City of Guadalupe, California as follows:

The Planning Commission does hereby:

1. make the following **FINDINGS FOR APPROVAL OF THE CUP**:
  - a. That the use *will be consistent with the General Plan*. The proposed use involves a relatively minor addition to an existing residential use where the addition would increase the size of the structure by approximately 36%. The existing use and proposed addition/remodel would be consistent with the existing land use designation (R-1 Single Family Residential) and the existing zoning (R-1 Single Family Residential). The project requires a Conditional Use Permit because it would alter and expand an existing non-conforming structure. The proposed additions meet setback and other zoning standards and requirements, and the aesthetics of the project have been considered. For these reasons the use is determined to be consistent with the General Plan.
  - b. That the use *will not be detrimental to the health, safety, morals, comfort, and general welfare of the persons residing or working in the neighborhood of such proposed use, or whether it will be injurious or detrimental to property and improvements in the neighborhood or to the general welfare of the city*. The project would increase habitable space of an existing residence in a residential area and increase the aesthetics of the residence. Such a project would not be injurious or detrimental to property or the neighborhood or general welfare of the City.
  - c. That the additions to the existing non-conforming structure conform to the currently adopted zoning requirements; and
  - d. That the project is exempt from the California Environmental Quality Act pursuant to Section 15301(e)(1) as a minor addition to an existing structure.

2. approves Case # 2009-018-CUP for the Ahumada Addition project.

UPON MOTION of Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, the foregoing Resolution is hereby approved and adopted the 17<sup>th</sup> day of February 2010, by the following roll call vote:

**AYES:**

**NOES:**

**ABSTAIN:**

**ABSENT:**

I, **Robert A. Mullane**, Planning Commission Secretary of the City of Guadalupe, **DO HEREBY CERTIFY** that the foregoing Resolution, being **P.C. Resolution No. 2010-01**, has been duly signed by the Planning Commission Chair at a meeting of the Planning Commission, held February 17, 2010, and that same was approved and adopted.

**ATTEST:**

\_\_\_\_\_  
Robert A. Mullane, Planning  
Commission Secretary

\_\_\_\_\_  
Carl Kraemer, Chair

**EXHIBIT 1**  
**CONDITIONS OF APPROVAL**  
**AHUMADA ADDITION**  
**4645 7<sup>TH</sup> STREET**  
**CASE NO. 2009-018-CUP**

GENERAL CONDITIONS

1. Subject to the conditions set forth below, this permit authorizes the improvements and uses requested by Case No. 2009-018-CUP and shown in the project plans on file with the City of Guadalupe. Any deviations from the project description in the staff report, exhibits or conditions must be reviewed and approved by the City of Guadalupe for conformity with this approval. Deviations may require changes to the permit to be approved and/or further environmental review. Deviations without the above-described approval will constitute a violation of the permit approval.
2. Approval of this Conditional Use Permit is not valid until the property owner signs this list of conditions agreeing to the terms and Conditions of Approval.
3. The Applicant agrees, as a condition of approval of this resolution, to indemnify, defend and hold harmless, at Applicant's expense, City and City's agents, officers, and employees from and against any claim, action or proceeding to attack, review, set aside, void or annul the approval of this permit or to determine the reasonableness, legality or validity of any condition attach hereto. City shall promptly notify Applicant of any such claim, action or proceeding to which City receives notice, and city will cooperate fully with Applicant in the defense thereof. Applicant shall reimburse the City for any court costs and attorney's fees that the City may be required to pay as a result of any such claim, action or proceeding. City may, in its sole discretion, participate in the defense of any such claim, action or proceeding, but such participation shall not relieve Applicant of the obligation of this condition. Applicant's acceptance of this permit approval or commencement of construction or operations under the approval shall be deemed to be acceptance of all conditions of approval.
4. In the event that any condition imposing a fee, exaction, dedication or other mitigation measure is challenged by the project sponsors in an action filed in a court of law or threaten to be filed therein which action is brought within the time period provided for by law, this approval shall be suspended pending dismissal of such action, the expiration of the limitation period applicable to such action, or final resolution of such action. If any condition is invalidated by a court of law, the entire project shall be reviewed by the City and substitute conditions may be imposed.
5. In accordance with Section 18.72.130 of the City Municipal Code, this Conditional Use Permit approval shall expire one (1) year from the date of approval, unless a building permit for the proposed improvements has been obtained, or an extension has been granted as provided for in Section 18.72.130.

PLANNING DEPARTMENT CONDITIONS

6. Prior to Zoning Clearance, the applicant shall pay all applicable permit processing fees in full.
7. The residential use of the property shall remain single-family residential. The addition shall not facilitate the establishment of a second residential rental unit.

PUBLIC WORKS DEPARTMENT CONDITIONS

8. Prior to approval of the Building Permit, Building Plans shall show water service lines to the house.
9. To prevent backflow related to the additional plumbing fixtures, a check valve to the upper lines shall be installed. This shall be shown on the Building Plans prior to Building Permit approval.
10. To ensure proper functioning of the sewer lines, a clean-out and check valve for the sewer lateral shall be installed near the sidewalk. This shall be shown on the Building Plans prior to Building Permit approval.

FIRE DEPARTMENT CONDITIONS

None.

CITY ENGINEER CONDITIONS

None.

**Applicant's Consent to Abide by the above Conditions of Approval**

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Printed Name, Title

# **ATTACHMENT 2**

## **Plan Set**







REVISIONS:  
 1. CITY CORRECTIONS: 12/20/03  
 2. CITY CORRECTIONS: 01/29/04

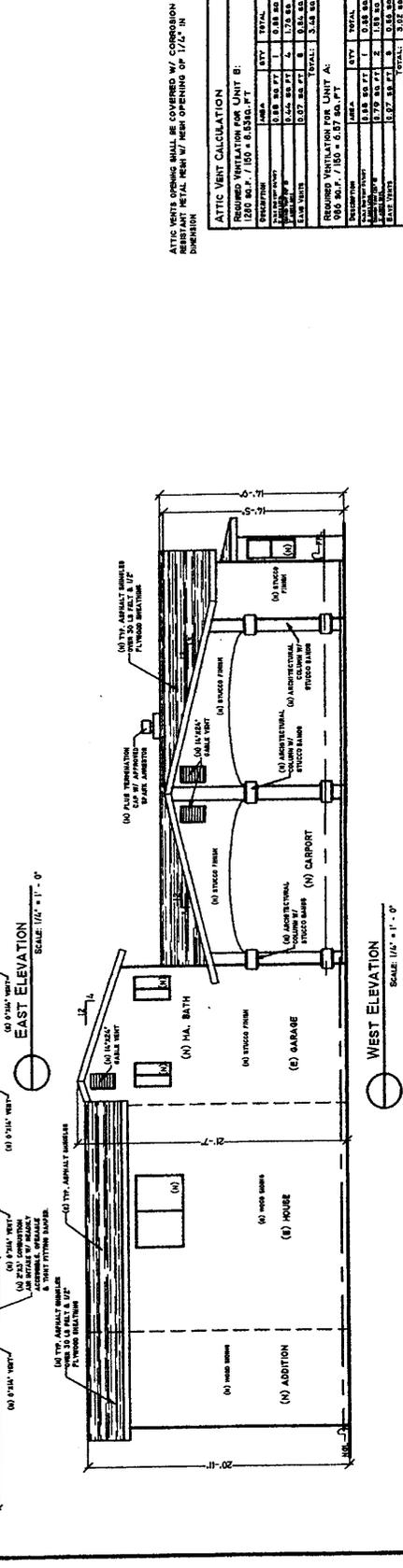
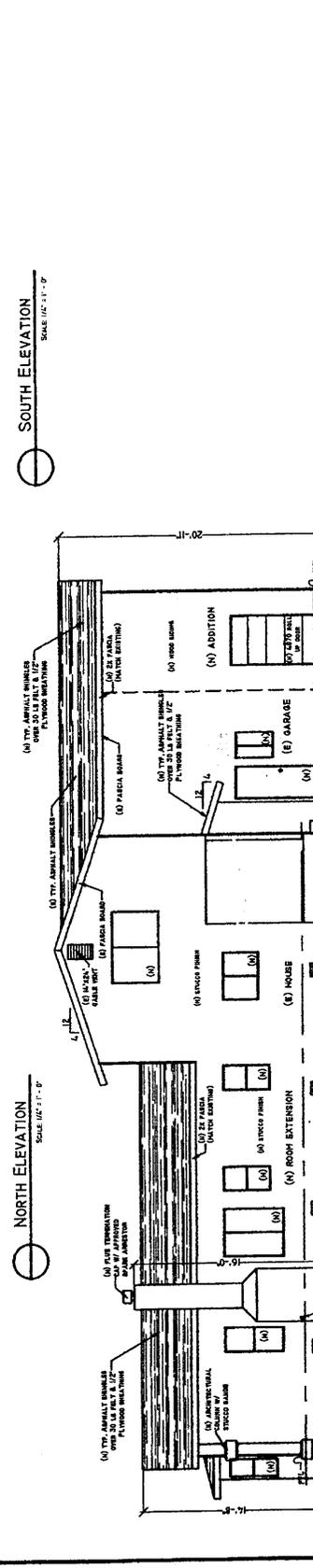
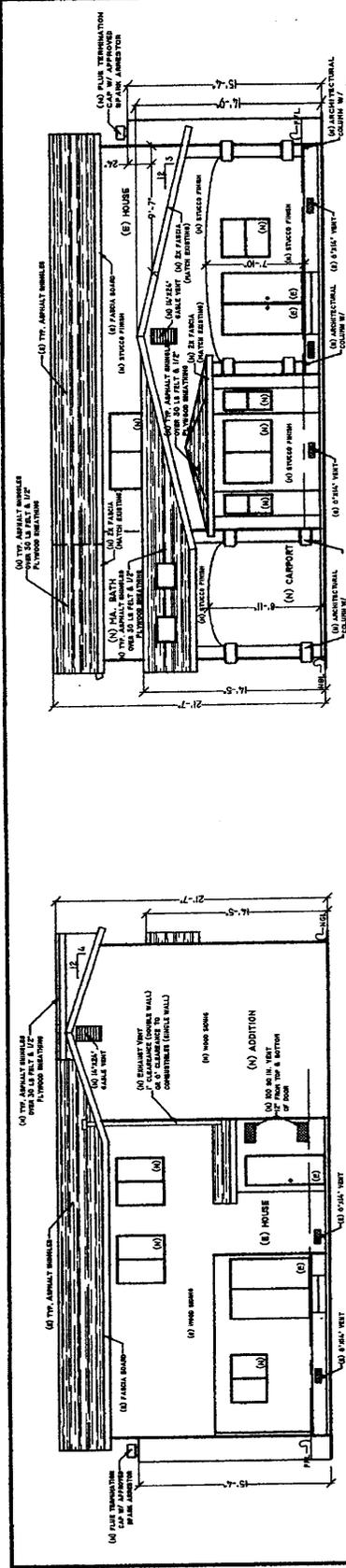
**Worradia**  
 Drafting Services  
 ROSEL HONOLULU  
 805 KATHALA ST.  
 SHILOH TERRACE  
 968 264-2701

SCOPE OF WORK:  
 1. PREPARE VENT BOON DRAWINGS  
 2. PREPARE SET DRAWINGS AT THE  
 3. PREPARE CONTRACT AT THE  
 4. PREPARE CONTRACT AT THE  
 5. PREPARE CONTRACT AT THE  
 6. PREPARE CONTRACT AT THE  
 7. PREPARE CONTRACT AT THE  
 8. PREPARE CONTRACT AT THE  
 9. PREPARE CONTRACT AT THE  
 10. PREPARE CONTRACT AT THE

SHEET CONTENT:  
 1. NORTH ELEVATION  
 2. SOUTH ELEVATION  
 3. WEST ELEVATION  
 4. EAST ELEVATION

OWNER:  
 MR & MRS A. AHUJADA  
 4665 7TH ST.  
 GUALADUPE, CA  
 TEL: 805 343-1082

DATE: 10/10/09  
 DRAWING NO: 2009-21  
 SHEET NO. A4



ATTIC VENT CALCULATION FOR UNIT B:  
 (280 SQ.F. / 150 = 1.87 SQ.F.T.)

DESCRIPTION	AREA	CFM	CFM/100
GLASS FRONT	1.87	1.87	0.67
GLASS SIDE	1.87	1.87	0.67
GLASS REAR	1.87	1.87	0.67
GLASS TOTAL	5.61	5.61	1.99
REQUIRED VENTILATION FOR UNIT A: (985 SQ.F. / 150 = 6.57 SQ.F.T.)			
DESCRIPTION	AREA	CFM	CFM/100
GLASS FRONT	6.57	6.57	2.29
GLASS SIDE	6.57	6.57	2.29
GLASS REAR	6.57	6.57	2.29
GLASS TOTAL	19.71	19.71	6.87

ATTIC VENT OPENING SHALL BE COVERED W/ CORROSION RESISTANT METAL Mesh W/ MESH OPENING OF 1/2" IN MINIMUM

**REVISION:**

NO.	DATE	DESCRIPTION
1.		CITY CORRECTIONS (2/24/09)

**OWNER:** MR & MRS AL AHMADA  
4665 7TH ST.  
GUADALUPE, CA  
TEL: 805 343-1082

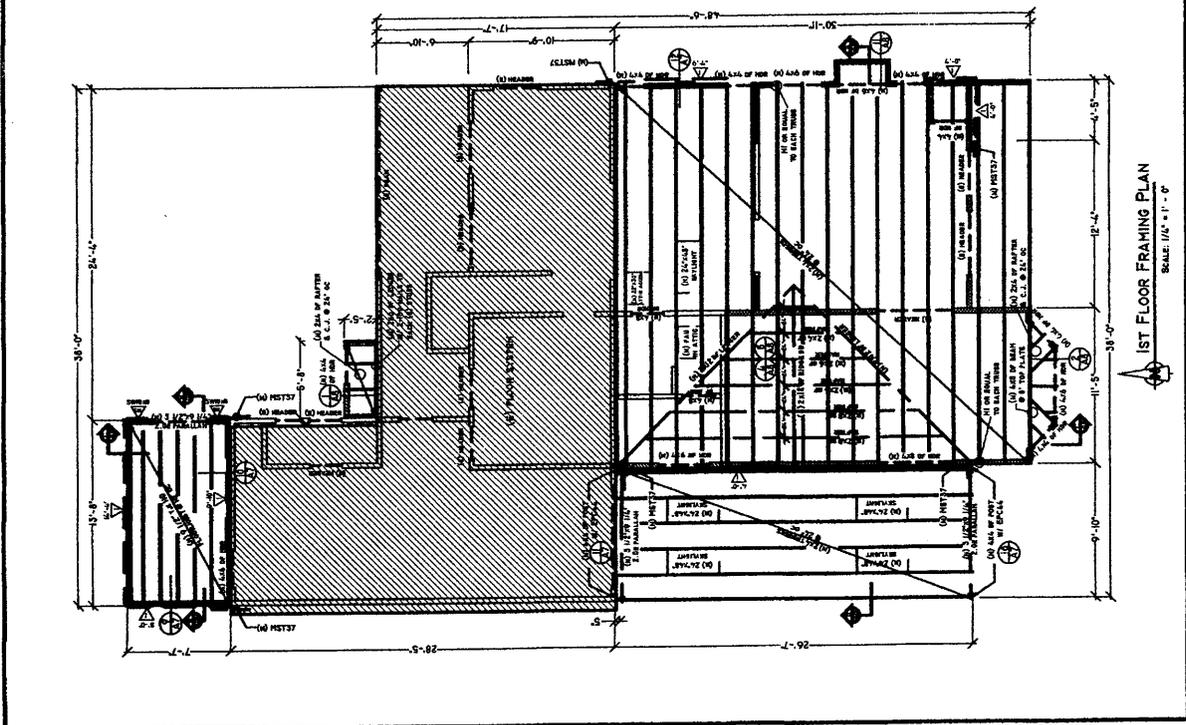
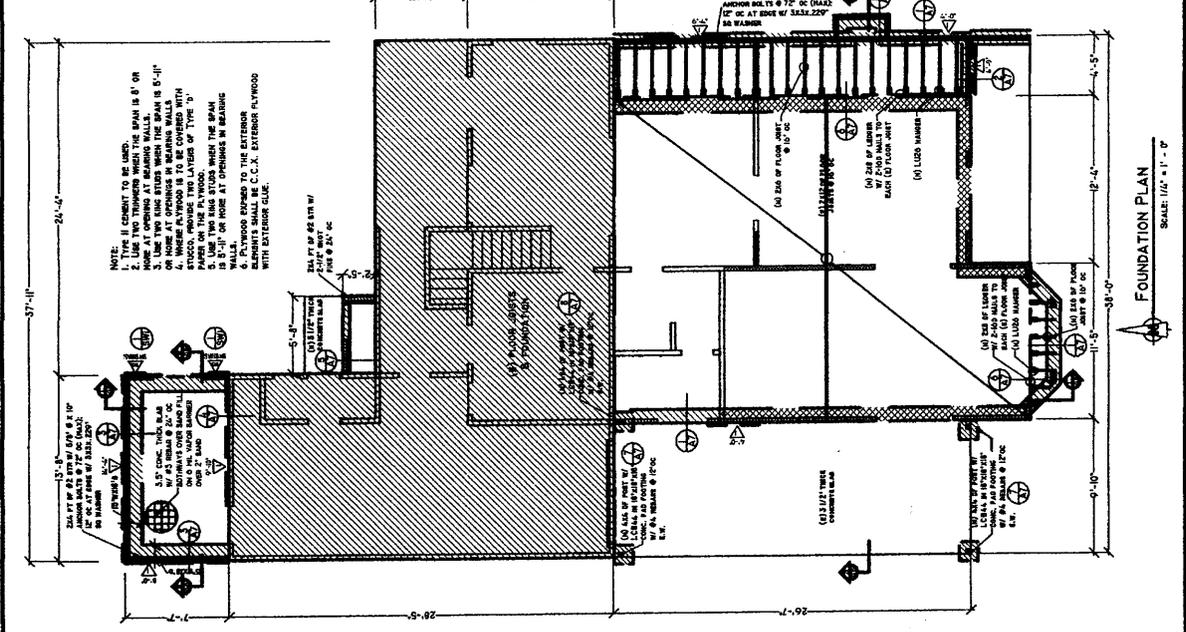
**DESIGNER:** RODEL  
DATE: 10/10/09  
JOB NO.: 2009-21  
SHEET NO.: A5

**SCOPE OF WORK:**

1. FOUNDATION FRAMING PLAN
2. 1ST FLOOR FRAMING PLAN

**Contractor:** *Florida*  
RODEL HORVATH  
803 TARRANT LANE  
SANTA ANNA, CA  
805 264-2700

BRACE WALL SCHEDULE	DESCRIPTION
AW1	1. 12" X 12" BRACING WALL WITH 2" X 4" STUDS @ 16" O.C. AND 2" X 4" BRACING WALL WITH 2" X 4" STUDS @ 16" O.C.
AW2	2. 12" X 12" BRACING WALL WITH 2" X 4" STUDS @ 16" O.C. AND 2" X 4" BRACING WALL WITH 2" X 4" STUDS @ 16" O.C.









REVISION:  
1. CITY CONNECTIONS 12/14/09

**Florida**  
Engineering Services  
805 TARPETA LANE  
SANTA ANITA, CA  
905 264-2701

SCOPE OF WORK:  
PROVIDE MECHANICAL DESIGN AND CALCULATIONS FOR THE FOLLOWING:  
1. MECHANICAL SYSTEMS DESIGN  
2. MECHANICAL SYSTEMS CALCULATIONS  
3. MECHANICAL SYSTEMS SPECIFICATIONS  
4. MECHANICAL SYSTEMS SCHEDULES  
5. MECHANICAL SYSTEMS DRAWINGS

SHEET CONTENT:  
I. TITLE 24: ENERGY CALCULATION

OWNER:  
MR & MRS AL AHMADA  
6645 7TH ST.  
GUALTERRE, CA  
TEL: 805 343-1082

DATE: 10/10/09  
JOB NO: 2009-21

PROJECT NO:  
T-24

Conditions of Compliance - Residential - Part 1 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 2 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 3 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 4 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 5 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

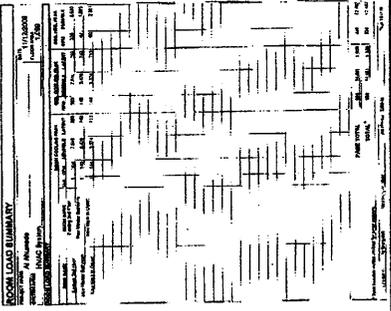
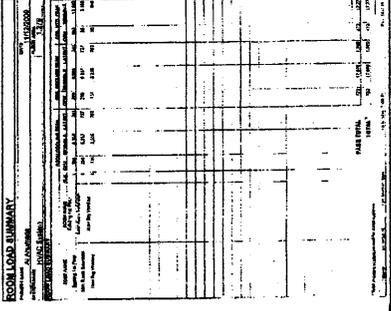
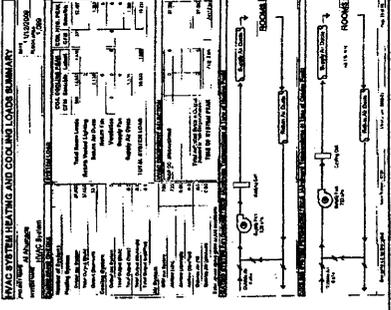
Conditions of Compliance - Residential - Part 1 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 2 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 3 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 4 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.

Conditions of Compliance - Residential - Part 5 of 3 - CE-18  
11/13/2008  
Table with columns for Item, Description, and Status. Includes sections for Mechanical, Electrical, and Plumbing.





## PLANNING COMMISSION AGENDA REPORT

**SUBJECT/TITLE:**

**PROPOSED AMENDMENT TO ZONING CODE TO PROHIBIT MEDICAL MARIJUANA DISPENSARIES IN ANY ZONE OF THE CITY**

**RECOMMENDATION:**

**1. ADOPT RESOLUTION NO. PC-2010-\_\_\_\_\_ RECOMMENDING TO THE CITY COUNCIL THAT IT ADOPT AN ORDINANCE PROHIBITING MEDICAL MARIJUANA DISPENSARIES IN ANY ZONE OF THE CITY**

**EXECUTIVE SUMMARY:**

The Compassionate Use Act of 1996 was adopted as Proposition 215 by the voters of the state. Under that proposition, the use of marijuana for medical purposes is legal under California law provided specific prerequisites are met. The use of marijuana is still illegal under federal law, however. In many cities throughout California, medical marijuana dispensaries have opened without any regulation of their location, operation or other matters within the police powers of cities. There are currently no regulations governing the establishment of medical marijuana dispensaries within the City of Guadalupe.

In 2009, the City Council adopted an urgency ordinance prohibiting the establishment of such dispensaries in any zone of the City, pending consideration of a permanent ordinance by the planning commission. Under Section 18.76.020 of the City's municipal code, zoning code amendments proposed by the City Council must be commenced through the adoption of a resolution of intent to adopt an ordinance amending the zoning code. This resolution of intent was passed by the City Council on May 12, 2009, directing the Planning Commission to report back to the City Council on the proposed ordinance.

Staff recommends that the Planning Commission adopt Planning Commission Resolution No. 2010-\_\_\_\_\_, recommending to the City Council the adoption of an ordinance to prohibit the establishment of medical marijuana dispensaries within the City.

**ATTACHMENTS:**

1. City Attorney memorandum with attachments
2. Proposed Planning Commission Resolution No. 2010-\_\_\_\_
3. Proposed Ordinance
4. White Paper from California Police Chiefs Association

Prepared by: David Fleishman, City Attorney

Meeting Date: 17 February 2010

City Administrator Approval: \_\_\_\_\_

Agenda Item: 7

**ATTACHMENT 1a**

**City Attorney Memorandum**



## MEMORANDUM

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**TO: MAYOR ALVAREZ AND MEMBERS OF THE CITY COUNCIL**  
**FROM: DAVID FLEISHMAN, CITY ATTORNEY**  
**RE: MEDICAL MARIJUANA DISPENSARIES**  
**DATE: MAY 5, 2009**

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The Compassionate Use Act of 1996 was adopted as Proposition 215 by the voters of the state. Under that proposition, the use of marijuana for medical purposes is legal under California law provided specific prerequisites are met. Specifically, Health & Safety Code Section 11362.5 states, in relevant part, that:

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

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

“(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

“(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.”

Notwithstanding the passage of Proposition 215, the use of marijuana is still illegal under federal law. The United States Supreme Court addressed the distribution of marijuana through a medical marijuana dispensary in *United States v. Oakland Cannabis Buyers' Cooperative and Jeffery Jones*, 532 U.S. 483. This case decided in May of 2001 held that distribution of medical marijuana is illegal under the federal Controlled Substances Act and there is no medical necessity defense allowed under federal law. Furthermore, in *Ashcroft v. Raich*, 545 U.S. 1

(2005), the Supreme Court held that Congress had the power to ban the use of marijuana even where states had authorized its use for medical purposes.

In spite of the federal prohibition on the distribution of marijuana, in many cities throughout California, medical marijuana dispensaries have opened without any regulation of their location, operation or other matters within the police powers of cities. There are currently no regulations governing the establishment of medical marijuana dispensaries within the City of Guadalupe. As such, at the present time, a medical marijuana dispensary could potentially locate in any zone of the City in which such a use is not prohibited. The absence of any regulations on the topic leaves the City potentially vulnerable to a request to open such an establishment within the City.

While medical marijuana dispensaries are not as commonplace in Santa Barbara County as in some more urban counties, there are probably dozens of such establishments across the state. Adverse secondary effects of these dispensaries have been noted by a number of sources. Attached to this memorandum are several documents that discuss the negative secondary effects of medical marijuana dispensaries in other cities. There is no reason to believe that the impacts of such establishments would vary significantly from community to community in the absence of regulations governing their operation, so it is probably safe to assume that if a medical marijuana dispensary were located in Guadalupe, there would be some of the same secondary effects as have been noted in those communities where they already exist.

It is important to keep in mind that the proposed ordinance is a zoning ordinance, not an ordinance prohibiting use, possession, or cultivation of medical marijuana by any individual. The City has the police power to adopt zoning ordinances to protect the public health, safety and welfare. The proposed ordinance addresses the topic of medical marijuana dispensaries as a land use issue.

I will be happy to respond to any questions the City Council may have at the Council meeting.

**ATTACHMENT 1b**

**City of Davis Staff Report**

## Staff Report

August 27, 2004

TO: City Council

FROM: Steven Pierce, Captain

SUBJECT: Report on Medical Marijuana Dispensaries Moratorium

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### **Recommendation**

1. Hold Public Hearing.
2. Request direction to staff.
3. Adopt attached Urgency Ordinance extending the moratorium for an additional 10 months and 15 days (to 12:00 am, August 1, 2005).

### **Fiscal Impact**

This report is provided for informational purposes and therefore does not result in any immediate fiscal impact. However, the issues presented in this report may lead to future Council action with potentially minor/major fiscal impact.

### **Background and Analysis**

The voters of the State of California approved Proposition 215, codified as Health and Safety Code section 11362.5 et seq. and entitled "The Compassionate Use Act of 1996" (the "Compassionate Use Act"). The purpose of this Act was to allow patients suffering from a number of serious illnesses an opportunity to find relief through the use of doctor recommended marijuana.

Additionally, in January 2004 the State enacted SB 420 to clarify the scope of the Compassionate Use Act and allows cities to adopt and enforce rules and regulations consistent with SB 420. This includes controlling sites where medical marijuana is dispensed to primary caregivers and patients. Other provisions of SB 420 include:

- Recognizes the right of patients and caregivers to associate collectively or cooperatively to cultivate medical marijuana.
- Requires the State Department of Health, working with county health departments, to set up a voluntary statewide identification program to protect qualified patients and their primary caregiver from arrest and prosecution of certain marijuana related crimes.
- Disallows marijuana smoking in no smoking zones, within 1000 feet of a school or youth center except in private residences, on school buses, in a motor vehicle that is being operated, or while operating a boat..
- Protects patients and caregivers from arrest for transportation and other miscellaneous charges not covered in 215.

- Allows probationers, parolees, and prisoners to apply for permission to use medical marijuana; however, such permission may be refused at the discretion of the authorities.
- Makes it a crime to fraudulently provide misinformation to obtain a card, to steal or misuse the card of another, to counterfeit a card, or to breach the confidentiality of patient records in the card program.

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits. This report represents that research.

There are three possible approaches to this issue: 1) do nothing, 2) ban them outright, or 3) allow dispensaries, but develop a variety of regulations controlling them.

#### **Option #1 - Do nothing**

The existing City zoning regulations do not provide for the location and/or regulation of medical marijuana dispensaries and such uses might be permissible in any zone that allows retail uses, drug stores, or medical uses. Since there are no current regulations specifically dealing with medical marijuana dispensaries, if medical marijuana dispensaries were allowed to be established without appropriate regulation, such uses might be established in areas that would conflict with the requirements of the General Plan, be inconsistent with surrounding uses, or be detrimental to the public health, safety and welfare; and if such uses were allowed to proceed as allowed under the current zoning, such uses could conflict with, and defeat the purpose of, the proposal to study and adopt new regulations regarding medical marijuana dispensaries.

#### **Option #2 - Banning**

There is still an ongoing legal controversy between those states which permit medical use of marijuana and the federal government, as a result of the federal law which still prohibits the use and/or possession of marijuana for any purpose. It is the position of, for example, the Rocklin City Attorney that a city can prohibit the operation of such an enterprise for a variety of reasons, not the least of which is that it violates federal laws. Medical marijuana dispensaries violate federal law. For that reason, the City of Rocklin has moved to ban the facilities in the community. If you wish to deny a permit to such enterprises, it would be easier to defend if ordinances are already in place and justification is articulated.

#### **Option #3 - Regulation**

The City of Davis could move to regulate dispensaries. For example, the City could, by establishing clear zoning requirements and a new ordinance, regulate location, hours of operation, on site activities (e.g., no alcohol sales), age of people allowed on site, and the registering of employees and background checks on those employees. Additionally, regulating the enterprise gives the City a process by which a facility's permit can be discontinued or modified if it becomes a public nuisance. It also gives the operator a process to appeal the denial or cancellation of a permit.

### **Other Jurisdictions' Experiences**

Police departments who have had dispensaries in their jurisdiction for some time were polled. The following are the comments received from those agencies:

#### City of Arcata

- There are two dispensaries in town that share a building.
- The two dispensaries have an ongoing disagreement with each other that has resulted in numerous calls for police services to settle disputes.
- The facilities do not have the correct electrical support and continuously blow out the electricity in the area. They have not complied with upgrading their electrical systems or responded to fire department concerns regarding proper exits and signage.
- There have been numerous instances where people have purchased marijuana at the dispensary and then resold it at a nearby park.
- A doctor has come to the dispensaries and, for a fee, will provide a medicinal marijuana recommendation for just about any complaint the patient makes.

#### City of Roseville:

- They currently have one dispensary in town. This dispensary was established prior to their current regulations and was grandfathered in.
- Street level dealers are trying to sell to those going to the dispensary at a lower price.
- People are smoking marijuana in public around the facility.
- People are coming to the community from out of town and out of state to obtain marijuana (Nevada State and San Joaquin County, etc).
- Marijuana DUI by people who have obtained marijuana from dispensary.
- There has been at least one burglary attempt into the dispensary building.

#### City of Oakland

- They had more than 15 in Oakland, now limited to four by ordinance but control is not very strong. The fines are too small to control a lucrative business.
- Large criminal element drawn to the dispensary location.
- Marijuana dealers who have a doctor's recommendation are purchasing from the dispensary and then conducting illegal street sales to those who do not have the recommendation.
- Street criminals in search of the drugs are robbing medical marijuana use patients of their marijuana as they leave the dispensary.
- Thefts and robberies around the location are occurring to support the illegal and legal (by State law) drug commerce.
- The Police Chief mentioned that a shoe repair business next door to a dispensary has been severely impacted because of the concentration of criminals associated with the dispensary. The shoe repair business owner is considering shutting down his business.
- Most of the crime goes unreported because the users do not want to bring negative publicity to the dispensary.
- The dispensaries have an underground culture associated with them.

- At least one of the dispensaries had a doctor on the premises giving recommendations on site for a fee.
- One location was a combination coffee shop and dispensary and marijuana was sold in baked goods and for smoking.
- Dispensary management has told police that they cannot keep the criminal element out.

#### City of Hayward:

- Hayward has three dispensaries, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries.
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases.
- They have problems with user recommendation cards – not uniform, anyone can get them.
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made.
- They have received complaints that other illegal drugs are being sold inside the dispensaries.
- The dispensaries are purchasing marijuana from growers that they will not disclose.
- The Police Chief believes the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around.
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries.
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006.

#### Lake County:

- Lake County has one marijuana dispensary in Upper Lake.
- The biggest problem is the doctor close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175.
- Many “patients” come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor.
- Upper Lake has been impacted by the type of people coming from the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users (“dopers”).
- One quilt shop owner has told the Sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in a very small town.
- They also have a notorious marijuana grower who beat prosecution for cultivation by make a medical claim. Law enforcement has taken a hands-off approach even though he is blatantly violating the law.
- The marijuana grower has recently claimed to be a church to avoid paying taxes.

#### City of Fairfax:

- Fairfax has one marijuana dispensary.

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

Berkeley

- Has four facilities operating in the City currently (last 3-4 years).
- There have been several take over robberies of the dispensaries.
- There have been arrests where legitimate purchasers have resold marijuana on the street to well individuals.
- Obvious young people entering and purchasing marijuana from the dispensary.
- Recommended that if we did not currently have the dispensaries, we should not allow them.
- Police department has been given explicit instructions by their City Council not to take any kind of enforcement action against the dispensaries or people going in or out of the facility.
- Facilities will accept any Health Department cards, even those obviously forged or faked.

Below is a list of other California cities that do not have dispensaries and what they have or have not done on the issue.

<b>MEDICAL MARIJUANA</b>			
<b>City</b>	<b>Approach</b>	<b>Action</b>	<b>Follow-up/Details</b>
<b>Chico</b>	Have a marijuana dispensary that is trying to establish itself	Town researched and found no legal precedent for such operation and plans to shut down establishment	
<b>Chowchilla</b>	Have not been approached		
<b>Clovis</b>	Have not been approached		Will probably adopt an ordinance banning facilities similar to Rocklin's
<b>Dixon</b>	Have not had any formal application, but did have telephone inquiries	As a result of the phone calls, Town adopted an emergency ordinance similar to Roseville	
<b>El Cerrito</b>	Two groups (who were kicked out by Oakland) requested info about process of opening clinics	Town had no formal guidelines in book, so they passed a 45-day emergency ordinance	Chief plans to push a total ban with Council; does realize he has to be open for required study to take place

<b>Gridley</b>	A Grow & Distribution Center approached city	After approach, PD department contacted cities about possible ordinances	City decided to use Placerville's ordinance as a model
<b>Jackson</b>	Was approached about clinics	Has an ordinance regulating clubs	
<b>Los Gatos</b>	Telephone inquiries	Surveying cities to discuss issue with Council	
<b>Palo Alto</b>	Received 2 calls	Actually had an emergency ordinance adopted a few years ago	Plan to prevent establishments through zoning ordinances
<b>Paso Robles</b>	Have not been approached		Plan to implement an ordinance to prevent establishment of clinics
<b>Oroville</b>	Have not been approached		No immediate plans to do anything on the issue. Will wait until inquiries are made.
<b>Placerville</b>	Received 4 inquiries and one formal application for a clinic	Application was denied due to zoning and security issues.	Town's ordinance has been in place since June 22, 2004
<b>Redding</b>	Have not had any inquiries		City is considering taking some preventative actions
<b>Rocklin</b>	Was approached about clinics	Enacted urgency ordinance July of 2004 banning clubs	
<b>Sacramento</b>	Several inquiries, but no effort to actually open one		City Attorney is reviewing the law to advise the City
<b>San Luis Obispo</b>	Have not been approached	Considering taking some action, but no idea what that will be	
<b>West Sacramento</b>	Had one application in last month	Denied application based on federal law violation, no ordinance enacted	
<b>Woodland</b>	Was approached by parties during the same time as other cities	In response, city enacted an emergency ordinance setting zoning and CUP regulations for any possible club	

In summary, the experiences of other cities that already have dispensaries are bad. Dispensaries have experienced robberies themselves; legitimate patients have been robbed of their marijuana as they leave the facility; people purchasing marijuana at the dispensaries have been caught reselling the marijuana nearby; street level dealers have begun selling marijuana and other drugs nearby in an effort to undersell the dispensary; some dispensaries have doctors present in their

facility who will recommend marijuana as a course of treatment for just about any patient complaint; and many dispensaries do not take serious steps to ensure they are selling only to legitimate patients or their caregivers. When asked, many of the police departments that already have facilities in their cities said that if Davis did not already have a dispensary, we should take steps to prohibit one from opening in the city.

#### **Yolo District Attorney's Opinion**

The District Attorney for Yolo County feels dispensaries violate federal law. He is unwilling to enter into any discussion about regulating dispensaries. As they are illegal, discussions about regulation give the impression that the DA's office endorses violating federal law.

#### **Yolo County Health Department**

SB420 requires the State of California Department of Health to work with the counties to develop a statewide voluntary identification system for patients and their caregivers. According to the Yolo County Health Department, the State has not made contact with the counties to resolve this issue. Yolo County is waiting for the State. They have no plans on creating their own identification system as some counties have already done.

#### **Patients' Rights Groups**

Two patients' rights advocacy groups were contacted in developing this staff report: Americans for Safe Access and Compassionate Friends. Both groups applaud the City's consideration of this issue. They feel that marijuana provides a unique relief that other medications cannot. They are supportive of providing reasonable regulations on the business and the owners/employees.

Representatives stated that patients who receive recommendations from physicians to use marijuana to relieve pain and suffering fall into two categories. There are those who will be unable or unwilling to purchase marijuana because there is no dispensary near them to purchase it legally. And, there are those who will take other measures to get marijuana despite the lack of a readily available dispensary.

Those who will seek out marijuana without a legal dispensary nearby have several choices. First, the patient or their caregivers will drive long distances to a legal dispensary. This can be problematic since the patient may be suffering in a way that may prohibit driving long distances. Second, they may attempt to purchase marijuana from level dealers. With this decision comes the danger inherent with any street purchase, specifically, physical danger from the dealer or his/her cohorts and not knowing the quality of the product purchased. Finally, the patient/caregiver may attempt to grow the marijuana themselves. Again, the patient may not be well enough to grow their own. Also, there are inherent fire dangers with some of the grow lights. Furthermore, many renters run into disputes with their landlords when they grow medicinal marijuana in a rented house/apartment. For these reasons patients' rights advocates feel it is important to have a safe, credible and legal dispensary nearby for patients and their caregivers.

When asked if a patients' rights group would be willing to open and operate a dispensary, both groups said they knew their group would not be willing to and they doubted any legitimate advocacy agencies would. As long as the federal government is willing to prosecute dispensary

owners, patients' rights groups would not run a dispensary. They feel that if they are in prison they would be unable to do their primary function, advocate for the sick.

**Moratorium Extension**

On August 2, 2004, City Council approved a moratorium on medical marijuana dispensaries in the City of Davis. The moratorium allowed staff and Council an opportunity to research and review the options and impacts of allowing a dispensary somewhere within the city limits.

Staff has outlined various options for Council's consideration. The current moratorium is due to expire on September 17, 2004. That timeline does not leave Council sufficient time to take any action on this item. Therefore, staff is recommending an extension of the moratorium for an additional 10 months and 15 days (to 12:00 am, August 1, 2005), which is allowed under state law. The City Council may repeal the moratorium ordinance prior to its expiration. See the attachment for Ordinance language.

**ATTACHMENT 1c**

**Oakland Tribune Article**

Oakland Tribune

July 1, 2004

## Big Dispute In City Pot Bust

By Paul T. Rosynsky, Staff Writer

Oakland -- A routine traffic stop Wednesday afternoon for an illegal turn resulted in the discovery of what could be the largest pot-growing operation ever found by police in the city.

But what the California Highway Patrol described as "a major criminal grow" is being claimed by medical marijuana advocates as a legitimate business operation for one of three city-approved medical marijuana clubs.

The dueling descriptions coupled with the past criminal history of the building's owner and the involvement of a federal drug enforcement agency turned what appeared to be a simple drug bust into a possible test of the city's medical marijuana laws. The CHP said it is turning the case over to the DEA, which doesn't recognize the state's medical marijuana law.

"That place is so medical. It is so medical," said Angel McClary Raich, a medical marijuana advocate and user who worked on the Oakland law. "The people that were involved in that were basically getting the blessing of the city. The California Highway Patrol should not have just busted through the door."

The Highway Patrol did just that shortly after 2 p.m. following a traffic stop two hours earlier -- and three blocks away -- that resulted in an officer finding 88 marijuana plants in the back of what was described as a U-Haul truck.

The officer stopped the truck after its driver made an illegal turn, police said. As he walked up to the truck, the officer smelled marijuana, conducted a search and found the plants and "documentation" that led officers to the warehouse at 2638 Market St., police said.

Once there, officers saw three people run from the building. They caught all three, went inside to search for more suspects and found almost 2,000 plants worth "several millions of dollars," police said.

"Our officers noticed the smell as soon as they arrived," said Lt. Rob Patrick. "This is a major criminal grow."

Patrick said the four arrested, the driver and three people found at the warehouse, all were born in the mid-1970s and live in San Leandro, Richmond, Santa Clara and Oakland.

Bob Berry, owner of Berry Bros. Towing, which owns a lot and a warehouse next to the growing operation, said his employees began smelling the drug last week.

"One of my guys said it smelled like marijuana to him," Berry said. "They told us they were contractors fixing up homes in West Oakland and using the warehouse as offices."

Also being investigated is the building's owner, Thomas Grossi, a pawnbroker arrested several years ago on two counts of transporting narcotics for sale and distribution, police said.

That charge resulted in the city of Oakland revoking Grossi's pawnbroker permit.

Contacted by the Oakland Tribune, Grossi denied knowledge of the growing operation and said he leased the building to others, whom he refused to identify.

"Holy mackerel, Holy Jesus," he said. "This is such a shock, I didn't know anything about this."

In September 2003, Grossi, then owner of a medical marijuana club in Oakland, told the Tribune the clubs were helping sick people and businesses in the city's Uptown neighborhood.

"I can't emphasize that enough," he said at the time. "If you sit there on a daily basis, you will see people who are definitely ill and seeking comfort and solace and relief."

Grossi, however, refused to discuss his past Wednesday, including the prior criminal charges, which he said were misdemeanors.

The connections between the growing operation, the city's medical marijuana laws and the Highway Patrol's decision to call in federal agents troubled medical marijuana advocates.

They questioned why the city's police department was not called and said it is too much of a coincidence that a traffic stop blocks away led to the bust.

By having federal agents involved, federal drug charges could be used to prosecute the growers, setting up another challenge between federal, local and state medical marijuana laws, advocates said.

Raich, whose fight against the federal government over the legalization of medical marijuana is blazing a path through the country's legal system, said the Highway Patrol broke the law when it entered the warehouse.

In addition, she said the federal government should have never been called to investigate because the plants were being grown legally under city laws.

Raich sued the federal government in 2002 for violating California's medical marijuana law when federal agents began raiding medical marijuana clubs. That suit resulted in a court battle, which the U.S. Supreme Court on Monday agreed to hear.

A federal appeal court ruled in Raich's favor last December and she has been given permission to use marijuana for medical purposes.

Jeff Jones, director of the Oakland Cannabis Buyers Cooperative, also said the plants were being grown legally under city laws.

"There will be a medical claim," he said. "It is tied to one of the three clubs in the city."

City officials could not be reached for comment Wednesday night.

Highway Patrol Spokesman Wayne Ziese rejected the medical marijuana claims.

"Why would the suspects run if they are operating a legitimate business?" he said. "The grow is so sizable and sophisticated, this is not a minor mom and pop type grow."

Staff writers Kristin Bender, Robert Gammon, Laura Counts and correspondent Alicia Wittmeyer contributed to this report. --  
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**ATTACHMENT 1d**

**City of Rocklin Memorandum**



# CITY OF ROCKLIN

## MEMORANDUM

DATE: July 13, 2004

TO: Honorable Mayor and Members of the City Council

FROM: Mark Siemens, Chief of Police

RE: Medical Marijuana Dispensaries

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### **SUMMARY AND RECOMMENDATION:**

California voters approved Proposition 215, which codified into the California Health and Safety Code the "The Compassionate Use Act of 1996". The intent of Proposition 215 was to enable people in need of marijuana for medical purposes the ability to obtain and use it without fear of criminal prosecution under limited, specific circumstances.

Some entrepreneurial types have used the situation to spawn commercial endeavors to distribute marijuana to those who qualify under "The Compassionate Use Act of 1996". Unfortunately, the proposition is unclear about the details of doctor recommendation and how the substance is distributed. The act was specifically developed far enough away from traditional prescriptive drug distribution systems and activities to be distinguishable from them. This was done purposefully as prescription medicines are controlled by the Federal Food and Drug Administration and in Federal law the use, possession, transportation and distribution of marijuana is specifically illegal. At any rate, the use of marijuana under "The Compassionate Use Act of 1996" is not the issue before the Commission. At issue here is the location of commercial distribution of marijuana businesses and the potential impacts to the public health, safety and welfare of our community.

**RECOMMENDATION:** The City of Rocklin is now addressing how the issue of commercial marijuana distribution under the guise of Proposition 215 will be allowed to impact our community. Staff has given the Council three options as discussed in the Planning Department Staff Report for consideration. As the Police Chief, I recommend the change to zoning law, specifically the approval of the Ordinance adding Section 17.04.348 and adding Subpart D to Section 17.64.030 of the Rocklin Municipal Code regarding medical marijuana dispensaries to avoid the impacts experienced in other communities.

## **DISCUSSION:**

The City of Rocklin has not experienced the impacts of medical marijuana dispensaries but other communities have. I contacted some of the law enforcement leaders where marijuana dispensaries were located and learned the following:

I spoke with Joel Neves, Chief of Police of Roseville, about the impacts from the dispensary there. Chief Neves related the following impact based on his observations and discussions with involved parties including the owner/operator of the marijuana dispensary.

### **CITY OF ROSEVILLE IMPACTS:**

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

I also spoke with Rich Word, the Chief of Police for the City of Oakland about the impacts of Marijuana Dispensaries in his city. Chief Word has extensive experience with marijuana dispensaries.

### **CITY OF OAKLAND IMPACTS:**

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

- Dispensary management has told the police that they cannot keep the criminal element out.

During early July, I was also able to contact several other law enforcement agencies that had experience with marijuana dispensaries. I received the following information:

#### CITY OF HAYWARD IMPACTS:

In conversation with Acting Chief Lloyd Lowe, I learned the following:

- Hayward has three dispensaries total, two legal under local ordinance and one illegal.
- They have had robberies outside the dispensaries
- They have noticed more and more people hanging around the park next to one of the dispensaries and learned that they were users in between purchases
- They have problems with user recommendation cards – not uniform, anyone can get them
- One illegal dispensary sold coffee, marijuana and hashish – DA would prosecute the hashish sales and possession violations after arrests were made
- They have received complaints that other illegal drugs are being sold inside of dispensaries
- The dispensaries are purchasing marijuana from growers that they will not disclose
- Chief Lowe believes that the dispensaries do not report problems or illicit drug dealers around their establishments because they do not want the police around
- Hayward Police arrested a parolee attempting to sell three pounds of marijuana to one of the dispensaries
- Hayward has recently passed an ordinance that will make marijuana dispensaries illegal under zoning law in 2006

#### LAKE COUNTY IMPACTS

In conversation with Sheriff Rod Mitchell, I learned the following:

- Lake County has one marijuana dispensary in Upper Lake
- The biggest problem is the doctor, close by the dispensary who is known across the state for being liberal in his recommendations to use marijuana for a fee of \$175
- Many “patients” come from hours away and even out of state, Oregon specifically, to get a marijuana recommendation from the doctor
- Upper Lake has been impacted by the type of people coming for the marijuana doctor and dispensary. Citizens report to the Sheriff that the people coming to Upper Lake for marijuana look like drug users (“dopers”).
- One quilt shop owner has told the sheriff that she does not feel safe anymore because of the type of people drawn to the marijuana doctor and the dispensary, which are located close together in the very small town.

February 4, 2005

Page 4

- They also have a notorious marijuana grower who beat prosecution for cultivation by making a medical claim. Law enforcement has taken a hands off approach even though he is blatantly violating the law.
- The Marijuana grower has recently claimed to be a church to avoid paying taxes.

#### CITY OF FAIRFAX IMPACTS:

In conversations with Chief of Police Ken Hughes, I learned the following:

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

In all of these communities, law enforcement leaders were concerned with the impacts to the public health, safety and welfare by the commercial marijuana dispensing enterprise. All wished that they did not exist in their community. The trouble seems to occur when a large number of marijuana users, legal (under State law) and illegal gather at one location making them easy targets for illegal drug dealers, those freelance illegal drug dealers who are trying to recruit individuals with a doctors recommendation to legitimize (under State law) their sales and possession, and those who wish to prey upon the ill to steal their marijuana. All of these impacts are avoidable if the commercial marijuana dispensing business were not allowed to locate in the community.

**ATTACHMENT 1e**

**City of Concord Police Department Memorandum**



I certify that this is a true copy of  
document on file in this office.

*Naig Rose Sherman*  
City Clerk  
City of Concord, California

SEAL

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Concord Police Department

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Date: August 29, 2005

To: Mayor and Council Members

From: David Livingston, Chief of Police

Subject: *Medical Marijuana Dispensaries - Potential Secondary Impacts*

The purpose of this memorandum is to provide a summary of additional background information regarding the proposed ordinance which would prohibit the establishment of medical marijuana dispensaries within the City of Concord. Police Department staff believes it is important to identify some of the potential secondary effects on public safety by the operation of marijuana dispensaries.

In researching this issue, Captain Crain reviewed a memorandum from Rocklin Police Chief Mark Siemens dated July 13, 2004, which addressed the secondary effects as observed by Rocklin police staff. The memorandum was in reference to pending consideration by the Rocklin City Council of a proposed ordinance to regulate the establishment of medical marijuana dispensaries in the City of Rocklin. In his memorandum, Chief Siemens addressed a variety of community safety concerns that had been expressed by a number of agencies throughout Northern California. While the City of Rocklin had no experience with dispensaries, other nearby communities did. The agencies he polled were Roseville, Oakland, Hayward and Fairfax police departments as well as the Lake County Sheriff's Office. All five agencies expressed similar concerns or experiences. Those concerns included, but were not limited to:

- > Street level dealers attempting to sell to people entering the business
- > Smoking of marijuana in public areas
- > Increased "driving while under the influence of marijuana" violations
- > Attempted burglaries of marijuana establishments
- > Robberies of clients as they left businesses with their purchase
- > Adverse impact on neighboring businesses
- > Presence of a physician on the premises issuing prescriptions for use, which drew numerous people from out of the area
- > Lack of effort on the part of dispensary owners/employees to control unlawful or nuisance behavior in and around the business
- > Increased loitering and associated nuisances
- > Complaints that other illegal drugs were sold from the dispensaries

- Trading of marijuana purchased at a dispensary to a minor for sex
- Purchasers congregating and smoking marijuana in areas frequented by children
- Sales of marijuana to persons not holding the appropriate certificate

The representatives of each of the agencies polled by Chief Siemens expressed regret that the dispensaries existed in their respective communities. Each was struggling with the immediate impacts and developing a method by which to regulate such businesses.

## DISCUSSION

There are two medical marijuana dispensaries currently operating in the City of Concord. One is located at 2155 Colfax Street, and the other is located at 1120 Contra Costa Blvd. While the Police Department has no record of any complaints related to the business on Colfax Street, the department has responded to a citizen's complaint regarding activity associated with the business on Contra Costa Blvd.

That complaint was referred to the Police Department by the City Attorney's Office, on July 26, 2005. A representative of a neighboring business called to report that a "bad element" was loitering near the dispensary and "harassing" female customers of the complaining business. Officer Ken Carlson investigated the complaint and found no such activity at the time of his contact; however, Officer Carlson has continued to monitor the activity near the dispensary and is prepared to take the appropriate action against any criminal violations or nuisance issues.

While the City of Concord has responded to only the one complaint to date, it is likely that the city would experience an increase in complaints similar to those reported by the agencies referenced in this memorandum if additional dispensaries were authorized. The chance of such activity will also likely increase as word spreads about the existence of the two dispensaries currently operating in the City of Concord.

In addition to facts provided in Chief Siemens' memorandum, there have been two recent events of particular note in our region. The first incident was a recent robbery of a dispensary and homicide in unincorporated San Leandro and the second was a revocation of operating authorization for a dispensary by the City of Modesto.

### *San Leandro - Unincorporated Area*

On August 19, 2005, a number of subjects concealed themselves near the entrance to the facility prior to the opening of the business. The subjects then confronted arriving employees at gunpoint and forced them into the building where they committed a "take over" robbery of marijuana and cash. An employee retrieved a firearm that was kept at the business for protection and exchanged gunfire with the robbers. One of the suspected robbers later died from wounds received in the shootout.

A representative of the Alameda County Sheriff's Office advised Concord staff that not unlike Concord's experience, the Sheriff's Office had also received very few complaints relative to the operation of the medical marijuana dispensaries in the unincorporated area. In fact, most criminal investigations did not involve the actual operation of the dispensary but instead the robberies of individuals after they left the facility. The victims were targeted for the marijuana they had just purchased.

In July of 2005, the Alameda County Board of Supervisors passed an ordinance regulating the existence of medical marijuana dispensaries. The ordinance calls for a three-part, comprehensive inspection. First, the Sheriff's Office is also now authorized to conduct thorough background investigations on all dispensary operators. The other two components are a facility inspection by the County Health Department and a code inspection by the County Building Department. Alameda County limits the number of dispensaries to a total of three in the unincorporated area, based on total population of those areas.

*City of Modesto*

The City of Modesto had adopted an ordinance that allowed marijuana dispensaries but required regulation of those dispensaries. Their ordinance also included provisions for the revocation of a previously issued permit, however, there was very little enforcement. The ordinance was vaguely written allowing a dispensary to open as long as the owner/operator complied with some very general provisions. In fact, two dispensaries set up operation without knowledge of the Police Department and with no real description of the true purpose of the businesses. One of the two eventually ceased doing business in the city.

The city began to reexamine its ordinance and the City Council ultimately enacted an emergency ordinance placing a moratorium on all such operations. The city then used the time period of the moratorium to proceed with a full prohibition on such businesses. The one remaining marijuana dispensary was granted a grace period in which to prepare for permanent closure. A Modesto Police Department representative reported that other than the potential for secondary public safety impacts, there were no issues of concern relative to either of the dispensaries. The actions by the City Council to enact a prohibition against such establishments were prompted by the June 6, 2005, U.S. Supreme Court decision in *Gonzales v. Raich*.

The Concord Police Department joins in the recommendation that the City Council enact an ordinance prohibiting medical marijuana dispensaries within the City of Concord.

cc. Lydia Du Borg, City Manager  
Craig Labadie, City Attorney

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**ATTACHMENT 2**

**Planning Commission Resolution**

**PLANNING COMMISSION RESOLUTION NO. 2010-\_\_**

**A Resolution of the Planning Commission of the City of Guadalupe recommending approval by the City Council of CC Ordinance No. 2010-\_\_ for amending the City's Zoning Code (Title 18 of the Guadalupe Municipal Code) to prohibit the establishment of medical marijuana dispensaries in any zone of the City.**

**WHEREAS**, under Proposition 215, the use of marijuana for medical purposes is legal under California law provided specific prerequisites are met; and

**WHEREAS**, the use of marijuana is still illegal under federal law, and in many cities throughout California, medical marijuana dispensaries have opened without any regulation of their location, operation or other matters within the police powers of cities; and

**WHEREAS**, there are currently no regulations governing the establishment of medical marijuana dispensaries within the City of Guadalupe; and

**WHEREAS**, on May 12, 2009, the City Council referred a draft ordinance to the Planning Commission that would prohibit the establishment of medical marijuana dispensaries in any zone of the City;

**WHEREAS**, the City Planning Commission conducted a duly noticed Public Hearing for this item on February 17, 2010, and has considered all written and verbal testimony; and

**WHEREAS**, the City Planning Commission has reviewed the draft ordinance at its meeting of February 17, 2010 and finds it consistent with the City's General Plan.

**NOW, THEREFORE, BE IT RESOLVED** that

- 1. The Planning Commission of the City of Guadalupe recommends that the City Council adopt CC Ordinance No. 2010-\_\_ attached hereto.

UPON MOTION of Commissioner \_\_\_\_\_ seconded by Commissioner \_\_\_\_\_ the foregoing Resolution is hereby approved and adopted the 17<sup>th</sup> day of February 2010, by the following roll call vote:

AYES: \_\_\_\_\_  
NOES: \_\_\_\_\_  
ABSTAIN: \_\_\_\_\_  
ABSENT: \_\_\_\_\_

I, **Robert A. Mullane**, Planning Commission Secretary of the City of Guadalupe, **DO HEREBY CERTIFY** that the foregoing Resolution, being **P.C. Resolution No. 2010-\_\_**, has been duly signed by the Chair and attested by the Planning Commission Secretary, all at a meeting of the Planning Commission, held February 17, 2010, and that same was approved and adopted.

**ATTEST:**

\_\_\_\_\_  
Robert A. Mullane  
Planning Commission Secretary

\_\_\_\_\_  
Carl Kraemer, Chairman

**ATTACHMENT 3**

**Ordinance**

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF GUADALUPE PROHIBITING THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES IN ANY ZONE OF THE CITY**

WHEREAS: the City Council of the City of Guadalupe understands that citizen initiative Proposition 215, the Compassionate Use Act of 1996, permits the use of marijuana for medicinal purposes;

WHEREAS: the City Council recognizes the concept of the supremacy of federal law, and that the use and possession of marijuana for any reason is prohibited by federal law, notwithstanding the passage of the Compassionate Use Act of 1996;

WHEREAS: the City Council is aware of the establishment of medical marijuana dispensaries in cities throughout the state, and the adverse impacts on those communities where such dispensaries are established;

WHEREAS: the City Council wishes to make clear that activities prohibited under federal law are not permitted in the City of Guadalupe;

NOW THEREFORE the City Council of the City of Guadalupe does ordain as follows:

**SECTION 1.**

A new section 18.08.245 of the Guadalupe Municipal Code is hereby added to read as follows:

**18.08.245 Medical Marijuana Dispensary**

A facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5. Notwithstanding anything to the contrary in this title, a medical marijuana dispensary shall not be a permitted use in any zone, and no conditional use permit shall issue to permit a medical marijuana dispensary to operate in any zone. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses area is otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility license pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of the Division 2 of the Health and Safety Code, a residential care facility for the elderly licensed pursuant to Chapter 3.2 of the Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable California and federal law.

## **SECTION 2.**

Section 18.08.180 of the Guadalupe Municipal Code is hereby amended to add a new subsection C. as follows:

### **18.08.180 Home occupation.**

"Home occupation" means an occupation conducted on the premises by the occupant of the dwelling, as a secondary use in connection therewith, and where there are no advertising signs, no displays, no stocks of merchandise, commodities or parts bought, sold or stored on the premises, and no employees in connection therewith.

A. Maintenance or repair of automobiles or other vehicles shall not be a home occupation.

B. The provisions of room, board or care of persons or animals shall not be a home occupation.

C. A medical marijuana dispensary shall not be a home occupation.

## **SECTION 3.**

Section 18.16.020 of the Guadalupe Municipal Code is amended to read as follows:

### **18.16.020 Zoning district use restrictions.**

This title lists specific uses of land and buildings which may be allowed within each zoning district, as a permitted use, or as a use permitted subject to obtaining a conditional use permit. Other uses of land are not allowed within the designated districts. Without limitation of the foregoing, the following uses shall not be allowed in any zone, and no conditional use permit shall issue permitting such use:

(a) Medical marijuana dispensaries.

## **SECTION 4.**

This ordinance is consistent with the goals, policies and actions of the General Plan and the Zoning Code, and will not be detrimental to the public interest, health, safety, convenience or welfare of the City. This ordinance is hereby found to be categorically exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

## **SECTION 5.**

This ordinance shall not be interpreted in any manner to conflict with controlling provisions of state or federal law, including, without limitation, the Constitution of the

State of California or of the United States of America. If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. If this ordinance, or any section, subsection or clause of this ordinance shall be deemed unconstitutional or invalid, the validity of the remainder of this ordinance and its sections, subsections and clauses shall not be affected.

**SECTION 6.**

This ordinance shall become effective on the thirtieth day following passage and adoption hereof.

**SECTION 7.**

Within fifteen (15) days after passage, the City Clerk shall cause this ordinance to be posted in three publicly accessible locations in the City.

INTRODUCED at a regular meeting of the City Council held this \_\_\_\_ day of \_\_\_\_\_, 2009 on motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

PASSED AND ADOPTED at a regular meeting of the City Council held this \_\_\_\_ day of \_\_\_\_\_, 2009 on motion of Councilmember \_\_\_\_\_, seconded by Councilmember \_\_\_\_\_, and on the following roll call vote, to wit:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

CITY OF GUADALUPE

BY: \_\_\_\_\_  
Lupe Alvarez, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

David M. Fleishman, City Attorney

**ATTACHMENT 4**

**White Paper  
California Police Chiefs Association**

**WHITE PAPER ON MARIJUANA DISPENSARIES**

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S  
TASK FORCE ON MARIJUANA DISPENSARIES**

## ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice  
Jacob Appelsmith, Office of the California Attorney General  
John Avila, California Narcotics Officers Association  
Phebe Chu, Office of San Bernardino County Counsel  
Scott Collins, Los Angeles County District Attorney's Office  
Cathy Coyne, California State Sheriffs' Association  
Lorrac Craig, Trinity County Sheriff's Department  
Jim Denney, California State Sheriffs' Association  
Thomas Dewey, California State University—Humboldt Police Department  
Dana Filkowski, Contra Costa County District Attorney's Office  
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement  
Craig Gundlach, Modesto Police Department  
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police  
Mike Kanalakis, Monterey County Sheriff's Office  
Bob Kochly, Contra Costa County Office of District Attorney  
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Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
Crystal Spencer, California Department of Justice, Conference Planning Unit  
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Valerie Taylor, ONDCP  
Thomas Toller, California District Attorneys Association  
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

### EXECUTIVE SUMMARY

#### INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

#### FEDERAL LAW

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

## **CALIFORNIA LAW**

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

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

## **LOCAL GOVERNMENTAL RESPONSES**

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

## **LIABILITY**

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

## **ENFORCEMENT OF MARIJUANA LAWS**

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

# WHITE PAPER ON MARIJUANA DISPENSARIES

by

## CALIFORNIA POLICE CHIEFS ASSOCIATION

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### INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

### FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9<sup>th</sup> Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.<sup>1</sup> The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”<sup>2</sup>

*Gonzales v. Raich* addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.<sup>3</sup> “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”<sup>4</sup> (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.<sup>5</sup> California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.<sup>6</sup>

## CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.<sup>7</sup> The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . .”<sup>8</sup> The codified section is known as the Compassionate Use Act of 1996.<sup>9</sup> Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.<sup>10</sup> This act expanded the definitions of “patient” and “primary caregiver”<sup>11</sup> and created guidelines for identification cards.<sup>12</sup> It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.<sup>13</sup> It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,<sup>14</sup> as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

## 1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.<sup>15</sup> If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.<sup>16</sup>

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

## 2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.<sup>17</sup> A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

## 3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.<sup>18</sup> He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.<sup>19</sup> (Emphasis added.)

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

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: “One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party ‘who has consistently assumed responsibility for the housing, health, or safety’ of that purchaser as section 11362.5(e) requires.”)

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as “primary caregivers.” Those included in the list clearly show the Legislature’s intent to restrict the definition to one involving a significant and long-term commitment to the patient’s health, safety, and welfare. The only facilities which the Legislature authorized to serve as “primary caregivers” are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

#### 4. Cooperatives and Collectives

According to the California Attorney General’s recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that “Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions” for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California’s marijuana laws.

Further, the common dictionary definition of “collectives” is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>20</sup> Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

## LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.<sup>21</sup>

## STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.<sup>22</sup> Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.<sup>23</sup> Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.<sup>24</sup> These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.<sup>25</sup> Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.<sup>26</sup> Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”<sup>27</sup> Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.<sup>28</sup> Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

## HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.<sup>29</sup>

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their “primary caregiver” (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the “contribution” will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so “contributions” are made to reimburse the dispensary for its time and care in making “product” available. However, if a calculation is made based on the available evidence, it is clear that these “contributions” can easily add up to millions of dollars per year. That is a very large cash flow for a “non-profit” organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the “primary caregivers” of patients. This is a spurious claim. As discussed above, the term “primary caregiver” has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has “consistently assumed responsibility for the housing, health, or safety of a patient.”<sup>30</sup> The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it “**consistently** had assumed responsibility for [a patient’s] **housing, health, or safety.**”<sup>31</sup> The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health: the responsibility for the patient’s health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business’s relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant “primary caregiver” relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient’s act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

## **ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILIARLY OPERATING COOPERATIVES**

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

### **ANCILLARY CRIMES**

#### **A. ARMED ROBBERIES AND MURDERS**

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.<sup>32</sup> And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”<sup>33</sup>

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.<sup>34</sup> And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.<sup>35</sup> He did not survive.<sup>36</sup>

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.<sup>37</sup>

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.<sup>38</sup> Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.<sup>39</sup>

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of