



CITY OF BUELLTON

CITY COUNCIL AGENDA

**Regular Meeting of January 12, 2017 – 6:00 p.m.
City Council Chambers, 140 West Highway 246
Buellton, California**

Copies of staff reports or other written documentation relating to each item of business referred to on this Agenda are on file in the office of the City Clerk and are available for public inspection

CALL TO ORDER

Mayor Holly Sierra

PLEDGE OF ALLEGIANCE

ROLL CALL

Council Members Dan Baumann, John Connolly, Foster Reif, Vice Mayor Ed Andrisek, and Mayor Holly Sierra

REORDERING OF AGENDA

PUBLIC COMMENTS

Speaker Slip to be completed and turned in to the City Clerk prior to commencement of meeting. Any person may address the Council on any subject pertaining to City business, including all items on the agenda not listed as a Public Hearing, including the Consent Agenda and Closed Session. Limited to three (3) minutes per speaker. By law, no action may be taken at this meeting on matters raised during Public Comments not included on this agenda.

CONSENT CALENDAR

(ACTION)

The following items are considered routine and non-controversial and are scheduled for consideration as a group. Any Council Member, the City Attorney, or the City Manager may request that an item be withdrawn from the Consent Agenda to allow for full discussion. Members of the Public may speak on Consent Agenda items during the Public Comment period.

- 1. Minutes of December 8, 2016 Special City Council Meeting**
- 2. Minutes of December 8, 2016 Regular City Council Meeting**
- 3. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2016-17**

PRESENTATIONS

PUBLIC HEARINGS

COUNCIL MEMBER COMMENTS

COUNCIL ITEMS

WRITTEN COMMUNICATIONS

Written communications are included in the agenda packets. Any Council Member, the City Manager or City Attorney may request that a written communication be read into the record.

COMMITTEE REPORTS

This Agenda listing is the opportunity for Council Members to give verbal Committee Reports on any meetings recently held for which the Council Members are the City representatives thereto.

BUSINESS ITEMS

(POSSIBLE ACTION)

- 4. **Direction Regarding Draft Avenue of Flags Specific Plan**
❖ (Staff Contact: Contract City Planner Irma Tucker)
- 5. **Urgency Ordinance No. 17-01 – “An Urgency Ordinance of the City Council of the City of Buellton, California, Under Government Code Section 65858(a), Establishing a 45-day Moratorium on Non-Medical Marijuana Facilities and Marijuana Cultivation, Except for Private Indoor Cultivation of Six Marijuana Plants or Less, Which Shall be Subject to Reasonable Regulations”**
❖ (Staff Contact: City Attorney Steve McEwen)
- 6. **Discussion and Direction Regarding Amendments to Marijuana Regulations Following Proposition 64**
❖ (Staff Contact: City Attorney Steve McEwen)
- 7. **Discussion Regarding Two-Year Budget Proposal Beginning with Fiscal Years 2017-18 and 2018-19**
❖ (Staff Contact: Finance Director Carolyn Galloway-Cooper)

CITY MANAGER’S REPORT

ADJOURNMENT

The next meeting of the City Council will be held on Thursday, January 26, 2017 at 6:00 p.m.

CITY OF BUELLTON

CITY COUNCIL MEETING MINUTES
Special Meeting of December 8, 2016
City Council Chambers, 140 West Highway 246
Buellton, California

CALL TO ORDER

Mayor Ed Andrisek called the special meeting to order at 6:45 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Council Members John Connolly, Leo Elovitz, Holly Sierra, Vice Mayor Dan Baumann, and Mayor Ed Andrisek

Excused Absence: Council Member Foster Reif

Staff: City Manager Marc Bierdzinski, Finance Director Carolyn Galloway-Cooper, Public Works Director Rose Hess, City Attorney Steve McEwen, Station Commander Lt. Shawn O'Grady, and City Clerk Linda Reid

REORDERING OF AGENDA

None

PUBLIC COMMENTS

None

CONSENT CALENDAR

- 1. Resolution No. 16-25 – “A Resolution of the City Council of the City of Buellton, California, Declaring and Certifying the Result of the General Municipal Election Held on November 8, 2016”**

MOTION:

Motion by Council Member Elovitz, seconded by Vice Mayor Baumann approving Consent Calendar Item 1 as listed.

VOTE:

Motion passed by a roll call vote of 5-0.

Council Member Connolly – Yes

Council Member Elovitz – Yes

Council Member Sierra – Yes

Vice Mayor Baumann - Yes

Mayor Andrisek – Yes

PRESENTATIONS

None

PUBLIC HEARINGS

None

COUNCIL ITEMS**2. Council Reorganization****A. Oath of Office for Newly Elected Officials**

- **Mayor Holly Sierra**
- **Council Member Foster Reif (Excused Absence - Oath Given Previously)**

City Clerk Reid issued the Oath of Office to Buellton's first elected Mayor Holly Sierra. City Clerk Reid previously issued the Oath of Office to Council Member Foster Reif.

B. Presentation to Outgoing Mayor Andrisek and Council Member Elovitz

Mayor Sierra thanked outgoing Mayor Andrisek for his service and presented him with a gift. Mayor Sierra thanked outgoing Council Member Elovitz for his service on the Council and presented him with a plaque.

Council Member Elovitz thanked his fellow Council Members and staff and spoke about his tenure on the City Council.

Mr. Elovitz left the dais at 6:50 p.m.

C. Appointment of Vice Mayor**NOMINATION:**

Council Member Connolly nominated Council Member Andrisek as Vice Mayor. The Council agreed by consensus to this nomination.

BUSINESS ITEMS

3. Consideration of Appointments to the Planning Commission

- A. Interviews of Applicants**
- B. Consideration of Appointments**

RECOMMENDATION:

That the City Council make appointments to the Planning Commission with the terms of office expiring December 2020.

STAFF REPORT:

City Manager Bierdzinski presented the staff report.

DOCUMENTS:

Staff report with attachments as listed in the staff report.

DISCUSSION:

The Council thanked Dan Heedy and Morgen McLaughlin for their desire to serve on the Planning Commission.

DIRECTION:

The City Council agreed by consensus to appoint Dan Heedy and Morgen McLaughlin to the Planning Commission with terms of office expiring December 2020

4. Appointments to Boards, Commissions, and Committees

- A. Central Coast Water Authority (CCWA)**
- B. Library Advisory Committee**
- C. Santa Barbara County Association of Governments (SBCAG)**
- D. Air Pollution Control District (APCD)**
- E. California Joint Powers Insurance Authority (CJPIA)**
- F. League of California Cities (LOCC) – Voting Delegate**
- G. Buellton Chamber of Commerce Board of Directors (Ex Officio Member)**
- H. Multi-Jurisdictional Solid Waste Task Group**
- I. Economic Development Task Force**
- J. City/School District Joint Use Committee**
- K. Public Visioning Steering Committee**
- L. Central Coast Collaborative on Homelessness**
- M. Association of California Water Agencies/Joint Powers Insurance Authority**

The City Council nominated the following Council Members to the following Boards, Commissions, and Committees for 2017:

- A. Central Coast Water Authority (CCWA)**
 - Council Member Ed Andrisek**
 - Council Member Foster Reif (Alternate)**

- B. County Library Advisory Commission
Council Member Dan Baumann
Mayor Holly Sierra (Alternate)**
- C. Santa Barbara County Association of Governments (SBCAG)
Mayor Holly Sierra
Council Member Ed Andrisek (Alternate)**
- D. Air Pollution Control District (APCD)
Mayor Holly Sierra
Council Member Ed Andrisek (Alternate)**
- E. California Joint Powers Insurance Authority (CJPIA)
Council Member Ed Andrisek
Council Member John Connolly (Alternate)**
- F. League of California Cities (LOCC)
Mayor Sierra (Voting Delegate-Annual Conference)
Council Member Andrisek (Alternate Voting Delegate-Annual Conference)**
- G. Chamber of Commerce Board of Directors (Ex Officio Member)
Council Member Foster Reif**
- H. Multi-Jurisdictional Solid Waste Task Group
Council Member Ed Andrisek
Council Member Foster Reif**
- I. Economic Development Task Force
Mayor Holly Sierra
Council Member Dan Baumann**
- J. City/School District Joint Use Committee
Council Member John Connolly**
- K. Public Visioning Steering Committee
Council Member Dan Baumann
Council Member Foster Reif**
- L. Central Coast Collaborative on Homelessness
Mayor Holly Sierra**
- M. Association of California Water Agencies/Joint Power Insurance Authority
Council Member Ed Andrisek**

DIRECTION:

The City Council agreed by consensus to appoint the Council Members as listed above to the respective Boards, Commissions, and Committees for 2017.

ADJOURNMENT

Mayor Sierra adjourned the regular meeting at 7:05 p.m. The next regular meeting of the City Council will be held on Thursday, January 12, 2017 at 6:00 p.m.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

CITY OF BUELLTON

CITY COUNCIL MEETING MINUTES
Regular Meeting of December 8, 2016
City Council Chambers, 140 West Highway 246
Buellton, California

CALL TO ORDER

Mayor Ed Andrisek called the meeting to order at 6:00 p.m.

PLEDGE OF ALLEGIANCE

ROLL CALL

Present: Council Members John Connolly, Leo Elovitz, Holly Sierra, Vice Mayor Dan Baumann, and Mayor Ed Andrisek

Staff: City Manager Marc Bierdzinski, Finance Director Carolyn Galloway-Cooper, Public Works Director Rose Hess, City Attorney Steve McEwen, Station Commander Lt. Shawn O'Grady, and City Clerk Linda Reid

REORDERING OF AGENDA

None

PUBLIC COMMENTS

Matt Loudon, Los Olivos, discussed the water rate increase in Buellton and how it will adversely affect his wife's laundromat business.

CONSENT CALENDAR

Council Member Sierra requested that Item 5 be pulled for discussion.

- 1. Minutes of November 10, 2016 Regular City Council Meeting**
- 2. List of Claims to be Approved and Ratified for Payment to Date for Fiscal Year 2016-17**
- 3. Year 2017 Proposed Calendar of City Council Meetings**

- 4. **Revenue and Expenditure Reports through November 30, 2016**
- 6. **Quarterly Report for Third Quarter of 2016 from Visit Santa Ynez Valley**
- 7. **Growth Mitigation Annual Compliance Report for Fiscal Year 2015-16**
- 8. **Filing of an Amended 2015-16 Claim with the Santa Barbara County Association of Governments (SBCAG) for State Transit Assistance (STA) Fund 2015-16 Apportionments**

MOTION:

Motion by Vice Mayor Baumann, seconded by Council Member Sierra approving Consent Calendar Items 1 through 8, except for Item 5.

VOTE:

Motion passed by a roll call vote of 5-0.
 Council Member Connolly – Yes
 Council Member Elovitz – Yes
 Council Member Sierra – Yes
 Vice Mayor Baumann - Yes
 Mayor Andrisek – Yes

- 5. **Acceptance of Landscape Maintenance Easements and Amendment of Landscape Maintenance Budget**

Council Member Sierra questioned the cost of maintaining the landscaping along Highway 246 at Oak Tree Way. Public Works Director Hess announced that the landscape cost for this area was revised to \$140 per month.

MOTION:

Motion by Council Member Sierra, seconded by Vice Mayor Baumann approving Consent Calendar Item 5.

VOTE:

Motion passed by a roll call vote of 5-0.
 Council Member Connolly – Yes
 Council Member Elovitz – Yes
 Council Member Sierra – Yes
 Vice Mayor Baumann - Yes
 Mayor Andrisek – Yes

PRESENTATIONS

None

PUBLIC HEARINGS

None

COUNCIL MEMBER COMMENTS/ITEMS

Council Member Elovitz outlined several goals that he would like the City Council to consider moving forward, including, economic development policies, construction and funding the river trail, and protecting and funding the Buellton Senior Center.

Vice Mayor Baumann thanked the Buellton Chamber of Commerce and the Buellton Recreation Department for hosting the Winterfest activities last weekend.

Mayor Andrisek announced that he, Council Member Connolly, Council Member Sierra, newly elected Council Member Reif and some staff members attended the Channel Counties League of California Cities dinner in Ventura on December 2.

Council Member Sierra requested that staff look into relocating the signage at River View Park regarding no cycling and skateboarding at the basketball court. Ms. Sierra questioned the difference between a City Manager and a City Administrator and the City Attorney addressed the question. Ms. Sierra requested that staff provide the vision plan to all Council Members.

Council Member Elovitz requested consideration of adding members to the Economic Development Task Force.

WRITTEN COMMUNICATIONS

None

COMMITTEE REPORTS

Council Member Sierra announced she attended the Santa Barbara County Association of Governments (SBCAG) meeting and provided an oral report regarding the meeting.

BUSINESS ITEMS

9. Discussion and Possible Award of Contracts Regarding Engineering Services

RECOMMENDATION:

That the City Council approve the City Engineering Services Contract with MNS Engineers and the Development Plancheck and Inspection Services Contract with Tetra Tech, and authorizing the City Manager to execute the contracts.

STAFF REPORT:

Public Works Director Hess presented the staff report.

SPEAKERS/DISCUSSION:

City Attorney McEwen proposed revisions to Section 14 (confidentially) of the contracts.

DOCUMENTS:

Staff report with attachments as listed in the staff report.

MOTION:

Motion by Council Member Sierra, seconded by Council Member Connolly approving the City Engineering Services Contract with MNS Engineers and the Development Plancheck and Inspection Services Contract with Tetra Tech, authorizing the City Manager to execute the contracts with revised changes to Section 14, and directing staff to implement the transition of services.

VOTE:

Motion passed by a roll call vote of 5-0.

Council Member Connolly - Yes

Council Member Elovitz - Yes

Council Member Sierra – Yes

Vice Mayor Baumann - Yes

Mayor Andrisek – Yes

CITY MANAGER’S REPORT

City Manager Bierdzinski provided an informational report to the City Council.

ADJOURNMENT

Mayor Andrisek adjourned the regular meeting at 6:42 p.m. The next regular meeting of the City Council will be held on Thursday, January 12, 2017 at 6:00 p.m.

Ed Andrisek
Mayor

ATTEST:

Linda Reid
City Clerk

BACK-UP/SUPPORT DATA IS AVAILABLE FOR COUNCIL REVIEW IN CITY HALL

The following is a list of claims to be ratified and approved for payment by the City Council at the
January 12, 2017 Council Meeting.

Listed below is a brief summary of the attached claims:

EXHIBIT A *	A/P Packet #APPKT00410	76,346.53 (2 pages)
	A/P Packet #APPKT00408	238,454.64 (2 pages)
	A/P Packet #APPKT00404	153,199.20 (2 pages)
	A/P Packet # APPKT00403	26,267.89 (2 pages)
	A/P Packet #APPKT00399	103,161.18 (3 pages)
	Utility Packet #UBPKT00482	245.72 (1 page)

Total Packets:	<u>\$597,675.16</u>
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EXHIBIT B	<u>\$23,439.52</u>
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Staff Payroll	12/9/2016	42,263.13
Council Payroll	12/21/2016	2,197.71
Staff Payroll	12/22/2016	41,559.25

TOTAL AMOUNT OF CLAIMS:	Total Payroll:	<u>\$86,020.09</u>
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	<u>\$707,134.77</u>
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* The A/P Packets above will be approved on Council Agenda date of 01/12/2017
 Checks to be signed on 01/12/17 tie to A/P Packet #APPKT00410
 Checks previously signed by staff to avoid late fees relate to:
 A/P Packets #APPKT00399, APPKT00404 and APPKT00408
 Utility Packet #UBPKT00482

Payments via Electronic Fund Transfer (EFT):
From 11/30/2016 through 12/30/2016

Bank Fees	11/30/2016	103.10
The Hartford	11/30/2016	472.72
Bank Fees	11/30/2016	15.00
Hasler	12/2/2016	900.00
Bank Fees	12/9/2016	12.00
Payroll Tax - IRS	12/12/2016	8,465.32
Payroll Tax - EDD	12/12/2016	2,255.22
AFLAC	12/14/2016	609.03
Payroll Tax - EDD	12/27/2016	2,181.80
Payroll Tax - IRS	12/27/2016	8,306.93
Bank Fees	12/29/2016	15.00
Bank Fees	12/30/2016	88.40
Bank Fees	12/30/2016	15.00

Total

23,439.52



By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: General Checking-General Checking						
000303	ART MERCADO	01/03/2017	Regular	0.00	50.00	33960
000035	ASSOC TRANSPORTATION ENGINEEI	01/03/2017	Regular	0.00	8,500.00	33961
000718	AUTOSYS, INC.	01/03/2017	Regular	0.00	4,544.45	33962
000043	BARBARA KNECHT	01/03/2017	Regular	0.00	81.00	33963
000868	BRIAN DUNSTAN	01/03/2017	Regular	0.00	50.00	33964
000065	BURKE, WILLIAMS & SORENSEN, LLF	01/03/2017	Regular	0.00	10,240.89	33965
000105	CITY OF BUELLTON	01/03/2017	Regular	0.00	135.89	33966
000140	DAN HEEDY	01/03/2017	Regular	0.00	50.00	33967
000629	ED ANDRISEK	01/03/2017	Regular	0.00	169.30	33968
000326	MNS ENGINEERS, INC.	01/03/2017	Regular	0.00	51,900.00	33969
	Void	01/03/2017	Regular	0.00	0.00	33970
001113	Morgen McLaughlin	01/03/2017	Regular	0.00	50.00	33971
000379	POSTMASTER	01/03/2017	Regular	0.00	575.00	33972

Bank Code General Checking Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	35	12	0.00	76,346.53
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	35	13	0.00	76,346.53

Fund Summary

Fund	Name	Period	Amount
999	POOLED CASH	1/2017	76,346.53
			<hr/> 76,346.53



By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: General Checking-General Checking						
000063	BUELLTON UNION SCHOOL DISTRICT	12/22/2016	Regular	0.00	150.00	33922
000686	CALIFORNIA CHAMBER OF COMMERCE	12/22/2016	Regular	0.00	50.91	33923
000090	CalPERS LONG-TERM CARE PROGRAM	12/22/2016	Regular	0.00	84.25	33924
011146	CELI RIBET	12/22/2016	Regular	0.00	59.50	33925
000107	CITY OF LOMPOC	12/22/2016	Regular	0.00	1,686.66	33926
000118	COASTAL COPY, INC.	12/22/2016	Regular	0.00	17.92	33927
000121	COC/BBA/VISITORS INFORMATION	12/22/2016	Regular	0.00	33,333.33	33928
011171	DERRICK W. CURTIS	12/22/2016	Regular	0.00	70.00	33929
000193	FIRST NATIONAL BANK OF OMAHA	12/22/2016	Regular	0.00	6,920.76	33930
	Void	12/22/2016	Regular	0.00	0.00	33931
001112	Foster Reif	12/22/2016	Regular	0.00	1,060.88	33932
011236	GARY GENE JOHNSON dba	12/22/2016	Regular	0.00	180.00	33933
011236	GARY GENE JOHNSON dba	12/22/2016	Regular	0.00	663.00	33934
001089	GINA SIGMAN	12/22/2016	Regular	0.00	38.50	33935
011244	HERMILA SANCHEZ	12/22/2016	Regular	0.00	101.50	33936
011300	KAREN PALMER	12/22/2016	Regular	0.00	35.00	33937
011306	KARLIN LADERA	12/22/2016	Regular	0.00	987.00	33938
011308	KAY D. DOMINGUEZ	12/22/2016	Regular	0.00	31.50	33939
000812	KOSMONT & ASSOCIATES, INC. dba	12/22/2016	Regular	0.00	2,787.20	33940
011336	LAURA GARCIA dba	12/22/2016	Regular	0.00	126.00	33941
000280	LEE CENTRAL COAST NEWSPAPERS	12/22/2016	Regular	0.00	156.00	33942
000875	LIBERTY MUTUAL GROUP INC	12/22/2016	Regular	0.00	350.00	33943
011343	MARIANNE MADSEN	12/22/2016	Regular	0.00	360.00	33944
000352	P G & E	12/22/2016	Regular	0.00	23,549.59	33945
000989	SANDEE KESSLER	12/22/2016	Regular	0.00	195.00	33946
000706	SATCOM GLOBAL, INC.	12/22/2016	Regular	0.00	50.19	33947
000450	SB CO SHERIFF'S DEPARTMENT	12/22/2016	Regular	0.00	142,685.01	33948
000988	Solvang Heritage Associates	12/22/2016	Regular	0.00	110.00	33949
000833	SYV BOTANIC GARDEN FOUNDATION	12/22/2016	Regular	0.00	455.00	33950
000979	THADDEUS JECKELL	12/22/2016	Regular	0.00	98.00	33951
000529	TRANSFIRST HEALTH & GOVERNMENT	12/22/2016	Regular	0.00	189.68	33952
000556	VERIZON WIRELESS	12/22/2016	Regular	0.00	918.25	33953
000894	VISITSYV	12/22/2016	Regular	0.00	20,472.20	33954
000782	WAGE WORKS	12/22/2016	Regular	0.00	141.00	33955
001063	Wells Fargo Vendor Fin Serv	12/22/2016	Regular	0.00	340.81	33956

Bank Code General Checking Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	45	34	0.00	238,454.64
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	45	35	0.00	238,454.64

Fund Summary

Fund	Name	Period	Amount
999	POOLED CASH	12/2016	238,454.64
			<u>238,454.64</u>



Check Register

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: General Checking-General Checking						
000028	ARAMARK UNIFORM SERVICES INC	12/14/2016	Regular	0.00	412.89	33886
000047	BETSY ROSS FLAG GIRLS, INC.	12/14/2016	Regular	0.00	1,400.00	33887
000062	BUELLTON MEDICAL CENTER	12/14/2016	Regular	0.00	185.00	33888
000076	CAL-COAST IRRIGATION, INC.	12/14/2016	Regular	0.00	45.28	33889
000850	CASSO & SPARKS, LLP	12/14/2016	Regular	0.00	3,439.80	33890
000088	CCI CENTRAL, INC.	12/14/2016	Regular	0.00	194.75	33891
001110	Clare Barcelona	12/14/2016	Regular	0.00	107.99	33892
000118	COASTAL COPY, INC.	12/14/2016	Regular	0.00	108.71	33893
000679	COURIER SYSTEMS	12/14/2016	Regular	0.00	150.00	33894
000110	CVS PHARMACY INC.	12/14/2016	Regular	0.00	24.94	33895
000598	ENGEL & GRAY, INC.	12/14/2016	Regular	0.00	4,497.19	33896
000965	FASTRAK SOFTWARES, INC	12/14/2016	Regular	0.00	149.00	33897
000649	FLUID RESOURCE MANAGEMENT, IN	12/14/2016	Regular	0.00	870.40	33898
000826	GENUINE PARTS COMPANY INC	12/14/2016	Regular	0.00	2.16	33899
000759	JJACPA, INC.	12/14/2016	Regular	0.00	8,750.00	33900
000395	JOSE RAFAEL RUIZ dba	12/14/2016	Regular	0.00	1,800.00	33901
000954	MICHAEL MacEACHERM	12/14/2016	Regular	0.00	28,924.43	33902
000326	MNS ENGINEERS, INC.	12/14/2016	Regular	0.00	54,630.00	33903
	Void	12/14/2016	Regular	0.00	0.00	33904
000059	MOTOR PRODUCTS INC. dba	12/14/2016	Regular	0.00	41.07	33905
000669	O'CONNOR & SONS dba	12/14/2016	Regular	0.00	105.00	33906
000350	OLIVERA'S REPAIR, INC	12/14/2016	Regular	0.00	227.53	33907
001109	PETER D FOURNIER	12/14/2016	Regular	0.00	1,226.47	33908
000032	READY REFRESH BY NESTLE	12/14/2016	Regular	0.00	116.56	33909
000438	SANTA YNEZ VALLEY HARDWARE	12/14/2016	Regular	0.00	110.43	33910
000706	SATCOM GLOBAL, INC.	12/14/2016	Regular	0.00	50.19	33911
000450	SB CO SHERIFF'S DEPARTMENT	12/14/2016	Regular	0.00	810.59	33912
000465	SP MAINTENANCE SERVICES, INC.	12/14/2016	Regular	0.00	2,821.00	33913
000161	STATE OF CALIFORNIA - DOJ	12/14/2016	Regular	0.00	32.00	33914
000488	SWRCB	12/14/2016	Regular	0.00	19,079.00	33915
001071	Tractor Supply Co	12/14/2016	Regular	0.00	13.10	33916
000904	US BANK EQUIPMENT FINANCE	12/14/2016	Regular	0.00	483.45	33917
000765	VICTOR RODRIGUEZ dba	12/14/2016	Regular	0.00	65.00	33918
000582	VINTAGE WALK, LLC OWNERS ASSO	12/14/2016	Regular	0.00	104.00	33919
000677	WALLACE GROUP	12/14/2016	Regular	0.00	20,429.62	33920
000768	WEX BANK	12/14/2016	Regular	0.00	1,791.65	33921

Bank Code General Checking Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	62	35	0.00	153,199.20
Manual Checks	0	0	0.00	0.00
Voided Checks	0	1	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	62	36	0.00	153,199.20

Fund Summary

Fund	Name	Period	Amount
999	POOLED CASH	12/2016	153,199.20
			<u>153,199.20</u>



City of Buellton, CA

Check Register

Packet: APPKT00403 - 2016-12-13 Special Run (Vreeland Ford)
PAYMENT

By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
000252	JIM VREELAND FORD	12/13/2016	Regular	0.00	26,267.89	33885

Bank Code General Checking Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	1	1	0.00	26,267.89
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	1	1	0.00	26,267.89

Fund Summary

Fund	Name	Period	Amount
999	POOLED CASH	12/2016	26,267.89
			<u>26,267.89</u>



By Check Number

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Bank Code: General Checking-General Checking						
000005	ABALONE COAST ANALYTICAL, INC.	12/09/2016	Regular	0.00	1,467.70	33840
000820	ACWA/JPIA	12/09/2016	Regular	0.00	2,366.53	33841
000509	ALAN NEEDHAM dba	12/09/2016	Regular	0.00	23,882.75	33842
000387	ALBERTSONS, LLC.	12/09/2016	Regular	0.00	63.36	33843
000839	A-OK POWER EQUIPMENT INC. dba	12/09/2016	Regular	0.00	85.03	33844
000027	AQUA BEN CORPORATION	12/09/2016	Regular	0.00	2,311.43	33845
000718	AUTOSYS, INC.	12/09/2016	Regular	0.00	1,847.73	33846
000090	CaIPERS LONG-TERM CARE PROGRA	12/09/2016	Regular	0.00	84.25	33847
000655	COAST NETWORK, INC.	12/09/2016	Regular	0.00	482.91	33848
000118	COASTAL COPY, INC.	12/09/2016	Regular	0.00	297.32	33849
000122	COMCAST CABLE	12/09/2016	Regular	0.00	238.44	33850
000122	COMCAST CABLE	12/09/2016	Regular	0.00	236.05	33851
000122	COMCAST CABLE	12/09/2016	Regular	0.00	171.40	33852
000138	D.L. ELECTRIC, INC.	12/09/2016	Regular	0.00	864.00	33853
000142	DANIEL FITZGERALD dba	12/09/2016	Regular	0.00	960.00	33854
000172	ECHO COMMUNICATIONS	12/09/2016	Regular	0.00	65.40	33855
000629	ED ANDRISEK	12/09/2016	Regular	0.00	649.70	33856
000598	ENGEL & GRAY, INC.	12/09/2016	Regular	0.00	4,421.09	33857
000176	EXCLUSIVE ALARMS INC	12/09/2016	Regular	0.00	222.00	33858
000187	FARM SUPPLY COMPANY	12/09/2016	Regular	0.00	29.33	33859
000191	FERGUSON ENTERPRISES, INC #135	12/09/2016	Regular	0.00	12,756.46	33860
001040	FRONTIER COMMUNICATIONS	12/09/2016	Regular	0.00	1,932.18	33861
000653	FRUIT GROWERS LABORATORY, INC.	12/09/2016	Regular	0.00	463.00	33862
001107	HdL Coren & Cone	12/09/2016	Regular	0.00	1,750.00	33863
001028	Hinderliter de Llamas & Associates (12/09/2016	Regular	0.00	3,747.67	33864
000813	HOME DEPOT CREDIT SERVICES	12/09/2016	Regular	0.00	110.28	33865
000237	IRON MOUNTAIN	12/09/2016	Regular	0.00	47.37	33866
000779	LASH CONSTRUCTION, INC.	12/09/2016	Regular	0.00	3,832.28	33867
000280	LEE CENTRAL COAST NEWSPAPERS	12/09/2016	Regular	0.00	508.68	33868
000835	METRO VENTURES LTD	12/09/2016	Regular	0.00	6,760.00	33869
000350	OLIVERA'S REPAIR, INC	12/09/2016	Regular	0.00	345.77	33870
000861	POLYDYNE INC.	12/09/2016	Regular	0.00	573.48	33871
000379	POSTMASTER	12/09/2016	Regular	0.00	575.00	33872
000380	PRAXAIR DISTRIBUTION, INC.	12/09/2016	Regular	0.00	144.41	33873
000382	PROCARE JANITORIAL SUPPLY, INC.	12/09/2016	Regular	0.00	794.11	33874
001108	Rick Bradley	12/09/2016	Regular	0.00	500.00	33875
000430	SB CO ALCOHOL,DRUG, MH SVCS	12/09/2016	Regular	0.00	2,754.00	33876
000978	Staples Credit Plan	12/09/2016	Regular	0.00	541.05	33877
000489	STEVE'S WHEEL & TIRE	12/09/2016	Regular	0.00	858.14	33878
000507	THE GAS COMPANY	12/09/2016	Regular	0.00	14.30	33879
000521	TODD PIPE & SUPPLY	12/09/2016	Regular	0.00	38.98	33880
000535	UNDERGROUND SERVICE ALERT	12/09/2016	Regular	0.00	16.50	33881
000543	USA BLUEBOOK INC	12/09/2016	Regular	0.00	190.80	33882
000677	WALLACE GROUP	12/09/2016	Regular	0.00	23,010.18	33883

Check Register

Packet: APPKT00399-2016--12-7 Special Run - PAYABLE

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
001063	Wells Fargo Vendor Fin Serv	12/09/2016	Regular	0.00	150.12	33884

Bank Code General Checking Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	68	45	0.00	103,161.18
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	68	45	0.00	103,161.18

Fund Summary

Fund	Name	Period	Amount
999	POOLED CASH	12/2016	103,161.18
			<u>103,161.18</u>



UBPKT00482 - Refunds 01 UBPKT00481 Regular

Account	Name	Date	Check #	Amount	Code	Receipt	Amount	Type
03-10200-010	STRIBLING, ASHLEY	1/3/2017	33957	81.68			81.68	Generated From Billing
04-13000-003	STAUFFER, CHERYL	1/3/2017	33958	64.04			64.04	Generated From Billing
06-06500-005	WITTE, STEFAN DE	1/3/2017	33959	100.00			100.00	Generated From Billing
Total Refunds: 3				Total Refunded Amount:	245.72			

Revenue Code Summary

Revenue Code	Amount
996 - UNAPPLIED CREDITS	245.72
Revenue Total:	245.72

General Ledger Distribution

Posting Date: 01/03/2017

Fund:	Account Number	Account Name	Posting Amount	IFT
020 - WATER FUND	020-10000	Claim On Pooled Cash	-245.72	Yes
	020-22420	Unapplied Credits	245.72	
	020 Total:		0.00	
999 - POOLED CASH	999-10001	Pooled Cash - General Checking	-245.72	
	999-27000	Due To Other Funds	245.72	Yes
	999 Total:		0.00	
Distribution Total:			0.00	

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 4

To: The Honorable Mayor and City Council Members

From: Irma Tucker, Contract City Planner

Meeting Date: January 12, 2017

Subject: Direction Regarding Draft Avenue of Flags Specific Plan

BACKGROUND

The purpose of this item is to receive final City Council direction on completing the Draft Avenue of Flags Specific Plan (Specific Plan). This report will also provide a summary of changes made since the last workshops held in July 2016. The Specific Plan contains many of the changes requested by the City Council, Planning Commission, and general public. Staff believes the Specific Plan before the City Council best meets the needs of the City, its residents, its business owners, and the travelling public. A “Specific Plan at a Glance” is included as (**Attachment 1**) and is a very basic overview and summary of the chapters of the Specific Plan.

A third round of public workshops to receive comments on the Specific Plan was held on the following dates: at a community workshop on Saturday morning, July 16, 2016, and at the Planning Commission meeting on Thursday evening, July 21, 2016. In general, the Specific Plan was well received. The Planning Commission suggested clarification of a few key topics to be addressed in the Specific Plan.

In a follow-up staff report at the August 4, 2016, Planning Commission meeting, Staff presented information and clarification of topics in the general categories summarized below; the complete staff report dated August 4, 2016, is attached as (**Attachment 2**). Clarification items along with additional comments and suggestions from the Planning Commissions have been incorporated into the Specific Plan being presented to the City Council on January 12, 2017.

Clarification Topics

1. Adequate capacity of water, sewer and drainage infrastructure to serve future development in the Specific Plan area
 - *The City’s General Plan has taken into consideration build-out within the city (including the Avenue of Flags Specific Plan Area) and made the*

determination that there was sufficient water and sewer treatment capacity for build-out. Based on current groundwater conditions, there is enough capacity to accommodate development over the time frame of Specific Plan implementation. As each project actually moves forward, infrastructure requirements are evaluated more closely.

- *Existing storm drain infrastructure within the project area will require upgrading; all future development projects, including those completed by the City on the medians, are subject to stormwater requirements to retain and treat stormwater. Infrastructure such as this is required for every project as part of the City's stormwater ordinance.*
2. Baseline development versus potential incentive projects
 - *Clarified in Attachment A to Planning Commission Staff Report*
 - *Information is incorporated into Specific Plan Chapter 3, Section G.1.*
 3. Allowable land uses, density and heights
 - *Set forth in Specific Plan Chapter 3, Section D.1-6 and G.1*
 4. Form-based code versus traditional zoning – a simple explanation
 - *Specific Plan Chapter 3 includes introductory sections on “How to Use the Development Code” and “Form-Base Code Overview”*
 5. Pros and cons of retaining the small “mini-median” along west-side of Avenue of Flags in District 5
 - *Retention of the mini-median is included in the Specific Plan at the request of current property/business owners who are concerned about losing several parking spaces if the mini-median is removed.*
 - *At the direction of City Council, removal of the mini-median may be considered in the future, once additional parking spaces are installed along the Avenue of Flags.*
 6. Outreach to property and business owners
 - *Series of meetings were organized by the City in cooperation with the Chamber of Commerce. All property and business owners along the Avenue of Flags were invited to the meetings; outreach was via e-mail to property owners and hand delivery of notices to businesses. Overall, approximately 50% of the existing property/business owners along the Avenue of Flags attended the meetings.*
 7. Design and Architectural Styles
 - *Some Planning Commissioners requested fewer architectural styles, and eliminating the Art Deco style.*
 - *Specific Plan has been revised to allow minimum use of the “50's Diner/Art Deco” style in one or two locations only.*

- *At the direction of City Council, fewer architectural styles may be considered as an option.*
8. Programming: Retention of Flags and Preservation of Buellton History
- *Flag themes are incorporated into Specific Plan design elements*
 - *A public building has been proposed on Median 3 that would provide space for uses that include a historic museum.*
9. Circulation and Parking: Minimize traffic/parking spillover into adjacent residential neighborhoods and minimize disruption to existing businesses during construction.
- *The City will make every effort possible to work closely with the community, and to minimize impacts (to the extent feasible) upon traffic, parking, residents, businesses, and developers. This would have to occur whether or not a specific plan is adopted. Any development would have to address this issue.*
 - *As the Avenue of Flags progresses with its revitalization objectives, the City will undertake parking/traffic management strategies that may include periodic reviews of neighborhood parking/traffic impacts, establishment of parking restrictions, evaluation of signage, community and motorist education, and increased monitoring in affected areas should the need occur*
10. Phasing of infrastructure improvements by City
- *Upon approval of the Specific Plan, will the City proposed to undertake the following top priority “baby steps” to make an immediate impact on infrastructure improvement along The Avenue:*
 - a. *Sidewalks*
 - b. *Parking*
 - c. *Median 2 – paving for flex space and install shade structures*
 - *The Specific Plan document will be reviewed and revised as applicable to ensure consistency of phasing terms and concepts throughout the document*

Attached is a copy of the presentation (**Attachment 3**) that will be made at the City Council meeting; the presentation highlights key features of the Specific Plan. The complete text of the Specific Plan is available on-line for viewing (**Attachment 4**), and hard copies are available for review at the Planning Department.

We have three potential projects already moving forward within the Specific Plan area. All three applicants are willing to work with the City to implement some design elements contained in the Specific Plan even before the plan is officially adopted.

Next Steps

Comments and suggestions received from the City Council will be incorporated into the Specific Plan document. Subsequent to City Council direction, the Project Team will proceed with preparation of the final Draft Avenue of Flags Specific Plan, accompanied by preparation of required environmental studies and CEQA review.

A final round of public hearings will be conducted on the formal Draft Specific Plan and CEQA documents by both the Planning Commission and City Council; these public hearings are anticipated to occur in spring of 2017. The timeline may be revised depending on comments received during the review process and any related changes that may be required to the draft documents.

RECOMMENDATION

That the City Council provide comments and direction to staff to proceed with preparation of a final Draft Avenue of Flags Specific Plan and required environmental studies / CEQA review.

ATTACHMENTS

- Attachment 1 – Specific Plan at a Glance
- Attachment 2 – Staff Report to Planning Commission dated August 4, 2016
- Attachment 3 – PowerPoint Presentation (copy) of The Avenue of Flags – Draft Specific Plan
- Attachment 4 – (via link to City website) Draft Avenue of Flags Specific Plan (complete text) – Specific Plan Appendices

AVENUE OF FLAGS SPECIFIC PLAN AT-A-GLANCE



AVENUE OF FLAGS SPECIFIC PLAN AT-A-GLANCE

Chapter 1: Introduction and Policy Framework

The Avenue of Flags can be transformed into a vibrant downtown that serves the community. The Avenue of Flags Specific Plan provides the necessary framework to achieve this goal by providing the appropriate development tools that encourage development on the Avenue that meets the needs of the community. The Specific Plan guides development along the Avenue of Flags corridor by defining land uses, creating an integrated circulation system, providing development standards and infrastructure needs, and identifying funding sources and economic development tools.

The Specific Plan has been developed with the following guiding principles:

- The Plan must be economically and visually attractive
- The Plan must be realistic, flexible, and implementable
- The Plan must be community oriented
- The Plan must be environmentally sustainable
- The Plan must promote public safety

For the purpose of this Specific Plan, the area has been divided into six Districts (listed from north to south):

- #1 - Gateway North
- #2 - Public Event & Mixed Use
- #3 - Civic Junction
- #4 - Civic Gallery
- #5 - Gateway South
- #6 - Zaca Corridor

Chapter 1 also discusses the regulatory framework of the specific plan (i.e., applicable laws, relationship to general plan and zoning ordinance).

Chapter 2: Form and Character

The fundamental strategy in revitalizing downtown Buellton is the transformation of the Avenue of Flags corridor from an aging automobile-oriented thorough-fare to a vibrant, pedestrian friendly “main street”, with a welcoming village atmosphere that preserves Buellton’s history and captures the character of the community. The changes to AOF in this Specific Plan are being implemented in a sensitive manner and, while the roadway may no longer function as it once did, the contemporary users

would experience a pedestrian friendly roadway system that maintains convenient access to existing and future business along with ample parking.

AOF's current 'pass-through' traffic status will be changed to a condition of being a major destination for community residents and travelers alike. This is accomplished by: activating the medians, calming traffic, enhancing safety for pedestrian via crosswalks and pathways, strategic building massing, providing park-like improvements, and creating destination places on the medians and along the adjacent roadway frontages. The intersection of AOF and 2nd Street is designated as the main town plaza area. The flag theme along AOF will be continued and enhanced.

Parking is addressed through new and reconfigured on-street parking as well as strategically located future parking lot(s). In order to meet future parking demand, strategies such as creation of a parking district, construction of City parking lots/structures, shared private lots, secondary parking behind businesses, and combination parking structure/private development (with allowable uses) will be considered.

The Specific Plan is broken down into six district planning areas, six median planning areas to be used as public spaces, and several private development opportunity site areas. The private development opportunity areas are sites that have development or redevelopment potential.

The following is a brief description of the six district planning areas.

District 1 – Gateway North: This is the travelers' service district, with an existing mix of auto-oriented commercial services and lodging. The Plan envisions preserving the travel-oriented nature of this area by encouraging visitor serving uses, vehicle support services, and providing parking spaces for a variety of vehicle types (automobiles, RVs and trucks). Median 1 in this district would provide landscaping and parking.

District 2 – Public Events and Mixed Use: This district is primarily for mixed use development and the location of multi-purpose parking and event spaces. It contains existing (Vintage Walk) and approved (Chumash) mixed use buildings along with the Buellton Apartments project. The Plan envisions continuing the use of the area as the primary mixed use district along the Avenue. Median 2 is designated for an events center/barn, angled parking and flexible open space for holding events such as farmer's markets and car shows.

District 3 – Civic Junction: This one of two districts that are the center of the Specific Plan and where retail and civic functions are envisioned. This district, along with the Civic Gallery District, would be the primary gathering place for residents and visitors alike. Uses surrounding this district would be retail and mixed use oriented. Median 3 would have open space and a park-like atmosphere, with an amphitheater, public bathrooms, and the "Junction" building, and the "Crossing" town plaza.

District 4 – Civic Gallery: This second district at the center of the Specific Plan is where additional retail and civic functions are envisioned. This district, along with the Civic Junction District, would be the primary gathering place for residents and visitors alike. Uses surrounding this district would be retail and mixed use oriented. Median 4 would have an arts and food village cluster character, with opportunities for outdoor dining and with possible small scale buildings. Angled parking would be provided. The existing flags, public art, veterans’ memorial, and the monument honoring a fallen Buellton resident would be part of the final design of the median.

District 5 – Gateway South: This district is a travelers’ service district, with various existing retail and restaurant uses, anchored by Pea Soup Andersen’s restaurant and Andersen’s Inn Motel. The Plan envisions preserving the travel-oriented nature of this area by encouraging visitor serving uses, along with opportunities for large vehicle parking (trucks/RVs), public parking lot(s), and secondary access and circulation. Median 5 would continue to provide for open space, landscaping, and signage.

District 6 – Zaca Corridor: This district south of Highway 246 has the potential for additional retail growth to support the existing anchor restaurants of Ellen’s Pancake House and Taco Roco. This district is envisioned to provide services to both residents and visitors alike and will be a primary draw from persons staying at Flying Flags RV Park. No upgrades to Median 6 are proposed.

Design styles and architecture for the Avenue include the following:

- Agrarian
- Craftsman
- Art Deco/50s Diner (limited usage)
- Ranch
- Traditional Downtown

Chapter 3: The Development Code

Chapter 3 provides the form based code regulations, parking requirements, architecture, signage standards, and allowable land uses for the Specific Plan area.

Unlike conventional zoning which focuses on land use that tends to create homogenous zoning areas, form based code encourages diversity through a mixture of uses, form, architectural styles, and scale. A mixture of building types and uses is encouraged: residential above commercial, a live-work unit, and offices above mercantile can all be next to each other on the same street, block, or even parcel of land. Through the use of allowable building types, architectural styles, façade width requirements and maximum building heights, a diverse pedestrian friendly downtown is created.

The five main elements of a form based code are:

- A regulating plan that notes where different building types and forms apply
- Development and building standards controlling the features, configurations, functions, and architectural design, guidelines for building forms that define and shape the public realm, includes additional requirements such as landscaping, hardscaping, signage, and lighting standards
- Public infrastructure standards for sidewalks, travel lanes, parking, street trees, and street furniture
- How the code is administrated through the project review process
- A full glossary of technical terms

The form based code in Chapter 3 is broken down into the six planning districts along with the six median design concepts.

The five architectural styles (Agrarian, Craftsman, Art Deco/50s Diner (limited usage), Ranch, and Traditional Downtown) are defined in this Chapter.

Building types and massing for the different buildings and median improvements are provided.

Chapter 4: Infrastructure

Chapter 4 describes the existing and planned infrastructure, including circulation, parking open space, and utilities. Costs estimates are also included for various infrastructure improvements.

Regional access is provided by US Highway 101 and State Route 246. Local access to the Specific Plan area is provided by Avenue of Flags, State Route 246, Damassa Road, Second Street, and Central Avenue. Santa Ynez Valley Transit provides bus service within the plan area.

The circulation goal is to create a downtown village along The Avenue that facilitates multiple modes of circulation, including vehicles, transit riders, pedestrians and bicyclists. Traffic-calming and safety measures along the AOF roadways will be implemented in order to accommodate local traffic, deliveries, pedestrians, and bicyclists, including slowing traffic exiting US 101 to a speed appropriate for a downtown district.

New street design standards are provided that provide one travel lane in each direction with angled parking in different locations along the Avenue along with traffic calming measures. Cross sections of the AOF are included in Chapter 4.

Other infrastructure improvements discussed in this Chapter include pedestrian and bikeway improvements and the Zaca Creek Trail, and parks and open space within the medians.

Additional parking is being proposed along with various parking strategies including a parking district. Based on the plan, 185 public parking spaces exist along the Avenue. With implementation of the Specific Plan, an additional 201 public parking spaces can be realized.

Phasing of the median improvements is detailed in this Chapter. However, the phasing is proposed as a guide as developers may use the DOR incentive program to install improvements outlined in later phases. The initial City funded improvements include parking and pavement within the medians as a start to future improvements.

Chapter 5: Implementation

Chapter 5 describes the marketing, financing, incentives, and fiscal impacts of the Specific Plan.

Marketing and outreach would be used to actively engage the private sector. This section will be used by City planning and economic development staff, Visitors Bureau and Chamber of Commerce personnel, and other active community stakeholders as a guide for targeted marketing, outreach, and project implementation. This would include:

- Target retailers and developers by distributing marketing material to promote Opportunity Sites and refining the targeted list of retailers and developers for outreach
- Leverage community strengths to attract quality retail tenants to identified Opportunity Sites within City to capture spending in current void categories, including casual restaurants, household furnishings, home improvement, clothing/apparel, discount department stores, dollar stores, and others
- Brand the “Avenue” in concert with Visitors Bureau/Chamber of Commerce efforts
- The City will continue to evaluate post-Redevelopment funding sources, financing mechanisms, incentives, and other economic development tools and take advantage of initial opportunities for application of zoning tools (e.g. AOF Specific Plan and Development Opportunity Reserve), existing real estate assets (e.g. AOF medians), and creation of special districts (e.g. parking districts, enhanced infrastructure financing districts)

Financing, funding, and incentives are provided for funding sources, financing mechanisms, and other economic development tools to facilitate development on a project-specific and area-wide basis. This section will be used by planning, public works, and economic development staff as a roadmap for funding and financing key infrastructure and public improvements, as well as incentivizing desired private development. This section would also serve as a reference for landowners, potential developers, and related private sector stakeholders, exhibiting the various economic development tools that City has enabled in pursuit of its communitywide objectives for the Avenue. The potential primary funding sources include:

- Use of City-Owned Medians

- Community events to stimulate indirect economic activity and corresponding fiscal impacts (e.g. sales tax, TOT) for existing nearby businesses; allow use
 - Offer space on the medians for private entity uses to provide opportunity for direct lease revenue to the City
 - Parking on and along the medians should be made available for use by adjacent private businesses in order to stimulate economic activity in those businesses, while also offering potential for greater land use intensity (e.g. density) for new private development on nearby parcels. Available parking can be offered to local businesses via a parking district/authority in order to generate revenue for the City
- Land Use and Zoning – Specific Plan & Development Opportunity Reserve (DOR)
 - AOF Specific Plan will streamline the entitlement and environmental analysis process for future private development
 - The DOR program created by this Specific Plan would be applied on project-specific basis to incentivize new development in financially significant ways (e.g. density bonus, parking reduction) in exchange for support of community objectives (e.g. median/parking improvements, public restrooms)
- Special Districts – Parking District, Community Facilities District (CFD), Enhanced Infrastructure Financing District (EIFD)
 - A parking district/parking authority can be established to manage/improve public parking on and along the medians and generate revenue for the City
 - A CFD and/or EIFD can additionally be established to leverage increased property tax (tax increment financing, or “TIF”) from new development for necessary infrastructure improvements and/or maintenance/services. An EIFD should be evaluated in greater detail in order to estimate tax increment funding capacity, potential partnership and governance structures (e.g. with County of Santa Barbara), and capacity to elevate the City’s eligibility for grants and other funding sources
- Grants/State/Federal Programs – SBA/EDA/CDBG
 - SBA programs should be promoted for existing and new businesses along the Avenue for initiation or expansion of operations
 - The City can pursue EDA Public Works and Economic Adjustment grant funding and/or an increased CDBG allotment for public infrastructure improvements

The fiscal impacts and economic benefits are analyzed for the potential fiscal and economic impacts from successful implementation of the Specific Plan. This section demonstrates the financial and economic return on the City’s investment in the preparation and implementation of this Specific Plan. The information in this section would be used by City administrative and finance staff, as well as by local elected officials, when considering future policy and project decisions related to the implementation of

this Specific Plan. A preliminary high-level analysis of potential fiscal revenue impacts and economic benefits illustrates the potential “return” on the City’s investment:

- Based on Specific Plan estimates for potential new commercial and residential improvements on the Avenue, potential combined property tax and sales tax revenues may be in the range of \$1.0 million on an annual basis and approximately \$47.0 million on a 30-year nominal basis upon build-out and stabilization.
- Based on conservative estimates for employment density of two employees per 1,000 square feet of new commercial space (500 SF per employee), new commercial development can support approximately 594 new full-time equivalent (FTE) jobs on the Avenue.

Chapter 6: Administration

Chapter 6 explains how projects are processed as part of the Specific Plan, and how the Specific Plan may be amended in the future to reflect changes in policy and direction that may occur.

CITY OF BUELLTON
Planning Commission Agenda Staff Report

Planning Director Review: _____
Planning Commission Agenda Item No.: 3

To: The Honorable Chair and Commission Members
From: Irma Tucker, Contract City Planner
Meeting Date: August 4, 2016
Subject: Draft Avenue of Flags Specific Plan;
Clarification of Items Discussed July 21, 2016
at Planning Commission Workshop #3

BACKGROUND

A third round of public workshops to receive comments on The Avenue of Flags Draft Specific Plan was recently held on two separate dates: at a community workshop on Saturday morning, July 16, as well as at the Planning Commission meeting on Thursday evening, July 21, 2016.

In general, the Draft Specific Plan was well received. The Planning Commission suggested clarification of a few key topics to be addressed in the Specific Plan. Follow-up information and clarification of these topics/questions are presented below; applicable information will be incorporated into the subsequent revised draft Specific Plan that will be presented to the City Council during a workshop to be scheduled (tentatively) in September 2016.

TOPICS

1. WATER / SEWER / DRAINAGE
 - a. Do we have enough capacity to serve future development on the Avenue? How will this be determined?
 - b. Is there enough water, sewer and drainage capacity to serve incentivized projects – higher density beyond General Plan capacity – in the AOF Specific Plan area?

The City's General Plan, originally adopted in 2007, has taken consideration of build-out within the city (including the Ave of Flags Specific Plan Area) and during that review made the determination that there was sufficient water and sewer treatment capacity for build-out. Since that time, we continue to regularly assess the availability of water and future needs of the city through our Annual Water Reports. Based on current groundwater conditions, there is enough capacity to accommodate this development. As each project actually moves forward, water requirements are evaluated more closely.

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

In addition, the city has already realized reduction in water use/needs over the past decade due to water conservation and upgrades of plumbing fixtures. Water production has reduced, particularly during the past few years. The data from the past couple of years can mostly be attributed to required conservation due to the drought (2006/1230 AF – 2015/1072 AF). However, in review of pre-drought period (2006/1230 AF -2013/1271 AF), water use was relatively consistent.

Water demands of future development will be evaluated in the context of recent Citywide water conservation efforts. The CEQA review for the Specific Plan will evaluate this issue on more detail. A key consideration in that evaluation will be the extent to which increased development potential on the Avenue would be offset by reduced per capita water demand because of the success of ongoing conservation efforts, such that overall long-term water use would remain within the parameters of what was anticipated under the current General Plan.

Wastewater influent has also been reduced (2006/475,000 gpd – 2015/400,000 gpd). The wastewater treatment plant's capacity is 650,000 gpd. There is sufficient capacity for anticipated flows. Further analysis will be required as each project develops to ensure that the strength and quantity of the waste is acceptable. Each new development will still be required to pay connection fees that would contribute to our facility costs.

Existing storm drain infrastructure is minimal within the specific plan, however, all projects, including those completed by the City on the medians are subject to stormwater requirements to retain and treat stormwater. Infrastructure such as this is required for every project as part of the City's stormwater ordinance.

Much of the east side of the Ave of Flags Specific Plan area is within the floodplain. Developments within the floodplain will be subject to design requirements such as floodproofing and minimum base floor elevations that conform to the City's floodplain requirements.

2. BASELINE DEVELOPMENT VS. INCENTIVIZED POTENTIAL;
OTHER ECONOMIC DEVELOPMENT ITEMS

a. How does the Specific Plan determine what is "baseline" development potential?

We begin with the existing General Plan zoning as a baseline. This was chosen as an alternative to simply up-zoning existing properties. Benefits from increased development potential (including implied residual land value) is reserved for developers who actually implement projects that support the City's prioritized community objectives. This does not preclude an existing land owner from development of their property and realization of benefits of increased development potential, but it serves to avoid rewarding passive land ownership.

Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan

Attachment A hereto sets forth revised narrative and table 2-1 to be inserted into Avenue of Flags Specific Plan Chapter 2 - Form & Character, Section D – Land Use & Development.

- b. When does incentivization begin?

Incentivization begins with the first project on the Avenue that desires to access the menu of potential incentives, such as increased mixed-use residential density or reduced on-site parking potential, or other deviation from existing baseline General Plan zoning. As soon as a project proposes to deviate from the baseline existing General Plan zoning, the project developer would need to work with planning staff to identify corresponding community priorities / objectives (e.g. funding of median improvement, construction of public restrooms) to be contributed by the developer / project in exchange for the desired incentives via the Development Opportunity Reserve program.

- c. Can the SP phasing identify the most crucial initial required infrastructure within each phase?

Yes, the Specific Plan will identify priority initial infrastructure improvements, and the City should prioritize improvements that would be most catalytic to private development (e.g. median improvements, parking, sidewalks). Timing and phasing of infrastructure should additionally be commensurate with “vertical” improvements.

- d. Can early developers be incentivized to a greater extent than later developers as a means of encouraging development?

Yes, the City should continue to evaluate potential incentives on an ongoing basis, and awarding of incentives should be allotted via the Development Opportunity Reserve based on community benefits / objectives in need at each phase. For example, it may be the case that the City would allot a greater increase in mixed-use residential density in early stages of Specific Plan implementation, in return for priority infrastructure improvements such as sidewalks and public restrooms. Think "early bird gets the worm."

- e. Has the City considered privatization of the medians? For example: Sale, Lease, Leveraging.

Yes, the City / Consultant team considered various methods of privatization of the medians, including:

- i. Leasing by the city on a building-by-building (or kiosk-by-kiosk) basis to private businesses - result is on-going fiscal revenues*
- ii. Master ground lease of the medians to a private entity that would manage site-specific leasing on the medians - result is on-going fiscal revenues*

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

- iii. *Lease / lease-back financing, whereby the median is utilized as collateral for a debt issuance based on future lease payment revenues - result is up front capital in flow*
- iv. *Parking on the medians could be managed by a Parking District / Parking Authority and offered to businesses along the Avenue in exchange for fee revenue*

- f. How will City insure that infrastructure construction is commensurate with level of private development?

The Development Opportunity Reserve enables the City flexibility to prioritize both the incentives it is willing to grant and the community benefits it receives from private developers (e.g. funding for median improvements), based on the stage of Specific Plan build-out and the corresponding level of private development occurring / planned at that time. The City should leverage this flexibility on a case-by-basis to prioritize improvements that would be most catalytic to private development and to be commensurate with “vertical” improvements.

3. LAND USES / DENSITY / HEIGHT ALLOWED

- a. Is it possible to build a housing-only project on the Avenue or anywhere in the specific plan area under the SP?

As a general rule of thumb, allowable land uses on ground floors that face the Avenue of Flags and Highway 246 shall be non-residential and shall not include parking, garages, or similar uses. Housing-only projects may be possible within certain areas, subject to any development restrictions indicated in the Form Based Code that relate to the identified opportunity sites. For example, larger opportunity sites may be appropriate for different kinds of mixed use projects, including “horizontal” mixed use, where commercial uses might front along the Avenue, and housing might be in the rear of the site away from the Avenue frontage. It’s possible that the commercial and residential portions of such a project are built independent of one another. In this case, the housing portion might be considered a “housing-only” project, although in reality, it would be coordinated with other commercial development on the Avenue.

- b. Is it possible to develop on the Avenue with something not on the list of Land Use Possibilities? If so, under what conditions?

The list of land use possibilities is intended to provide guidance, and not be overly restrictive. For example, it describes a variety of related, and generally low intensity service and retail commercial uses. The Specific Plan could include other uses that are consistent with these concepts, especially given the evolving nature and innovations inherent in the commercial industry. Similarly, residential, recreational, and civic uses described are intended to implement the Vision for the Avenue. Other related uses not explicitly on the list could be

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

included at the discretion of the City, provided they are consistent with the Vision as articulated in the Specific Plan.

- c. Does the SP limit the kind of development that could occur on one Opportunity Site versus another?

The Specific Plan defines an intended concept for each opportunity site, based on its size and location. Larger sites may be more appropriate for more complex mixed use projects than some of the small parcels along the Avenue, especially on its west side. In this sense, this idea is something like conventional zoning, except each opportunity site concept is much more flexible, and intended to take advantage of any unforeseen development opportunities that may arise that are consistent with the intent of the Specific Plan.

- d. How can we show and make it clear as to what can be built on the lots.

What can be built on lots within the Specific Plan area is a combination of three things: 1) the list of Land Use Possibilities (which is somewhat flexible, as described above); 2) the overall development concept set forth for each Opportunity Site (as described above); and 3) the physical design parameters of buildings and outdoor spaces as set forth in the Form Based Code development regulations. Collectively, these provide a much more flexible and implementable set of standards that achieve the intent of the existing General Plan mixed use regulations.

- e. Will every project be negotiated on a case-by-case basis? Developers need some certainty in advance re: what land uses are allowed on specific sites, before they spend money to draw up plans.

The Specific Plan is intended to provide a comprehensive and implementable framework for future development on the Avenue. One of the big advantages of the Specific Plan is that CEQA review for future projects on the Avenue will already be addressed as part of the adoption of the Specific Plan. Unless a project intends to propose a major deviation from the intent of the Specific Plan, CEQA review will be greatly simplified for new development projects on the Avenue, and in most cases, such projects will likely be exempt from further review.

The Specific Plan set forth benchmarks for development projects related to incentives and public amenities. The Plan describes situations where developers would be able to build above baseline allowable densities in exchange for providing various public amenities that are identified in the Plan. Developers are encouraged to work with the Planning Department early on to better define these potential tradeoffs during the pre-application process. This apparent “uncertainty” is better described as “flexibility”, a key consideration that would allow projects to be approved that might not otherwise have been under the pre-Specific Plan regulatory framework.

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- f. Is there a minimum requirement for height and density

There are no established minimum building heights or densities. However, developers will need to ensure that their projects are profitable, which sets a market-driven lower limit on building heights and development density. This "limit" will be flexible over time in response to changing economic conditions.

- g. In District 1, which is characterized as the Traveler's Service District in the Specific Plan, is it possible to have a 2nd gas station?

In the revised draft Specific Plan presented to City Council, a list of optional regulations will be submitted for consideration. The options list will include "service station" as a possible land use in District 1, requiring a Major Conditional Use Permit.

4. FORM BASED CODE vs. ZONING

- a. Please explain in simple terms how form based code works compared to regular zoning.

Cities use various methods to help create and implement a desired built environment. Among these methods are zoning maps and form based codes.

While zoning is based on the concept of dividing land into large areas, where allowable land uses are established with development standards that apply anywhere within that zone, a form based code takes a very different approach. It does not establish allowable land uses by "zone", but instead establishes (and illustrates) physical design standards that apply to buildings and spaces. It does not restrict allowable land uses to certain areas, but instead explicitly allows any use that would be considered acceptable within the overall plan area, provided that it can be constructed within the physical parameters laid out in the form based code. In that way, mixed uses are explicitly encouraged, and in fact would be made inherently compatible through the design standards included in the form based code.

Unlike conventional zoning which focuses on land use that tends to create homogenous zoning areas, form based code encourages diversity through a mixture of uses, form, architectural styles, and scale. A mixture of building types and uses is encouraged: residential above commercial, a live-work unit, and offices above mercantile can all be next to each other on the same street, block, or even parcel of land. Through the use of allowable building types, architectural styles, façade width requirements and maximum building heights, a diverse pedestrian friendly downtown is planned and allows us a hand in materiality, quality and feel of the built environment. To help develop a human scale, landscape design requirements can be included, as well as signage standards

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

regulating materiality, location, size and illumination. Typically, form based codes are used in conjunction with zoning maps and apply to overlay zones that allow for either vertical or horizontal mixed uses. This is the case with the Avenue of Flags Specific Plan, which functions as an “overlay” zone where its form based code standards take precedence to allow the desired development flexibility.

5. MEDIAN 5

- a. Why aren't we now getting rid of the small “mini-median” in District 5, along the west side of the Avenue of Flags?

A meeting in June 2016 between the City and a group of approximately 10 property/business owners in the affected area resulted with retention of the mini-median in front of Mother Hubbards-Gino's Pizza building block. This modification was made in response to the request of business owners, who were concerned about loss of parking spaces if the mini-median is removed, which would require a reconfigured vehicle circulation pattern.

Removal of the mini-median was evaluated and will be included in the Specific Plan as a potential future option to be considered, once additional parking spaces are installed along the Avenue of Flags.

6. OUTREACH TO PROPERTY & BUSINESS OWNERS

- a. How much outreach specifically to the property owners and businesses was done (when and how)? Where/what is the property owner/businesses input considered?

- i. All property owners were notified by e-mail, and businesses notified via flyers delivered to property, of Avenue of Flags (AOF) Specific Plan public workshops held on 6/25/15, 10/21/15 and 7/16/16.*
- ii. On 2/25/16 and 7/25/16, Dave Dennee (owner of property at southeast corner of 2nd Street and AOF) met with the City Manager and Planning Staff to review the Specific Plan and potential development options for the property.*
- iii. On 3/02/16, the owner/operator of Mother Hubbards met with the City Manager and Planning Staff to review Specific Plan conceptual design plan. Concerned about maintaining adequate parking and minimum disruption to businesses.*
- iv. On 6/08/16, a group of approx. 10 property and business owners along the east and west sides of the AOF, between Highway 246 and 2nd street (District 5), attended a meeting at City Planning Department to review and discuss the specific plan. This meeting resulted with retention of the mini-median in front of Mother Hubbards-Gino's Pizza building block, at the request of business owners, who were concerned about loss of parking spaces if median is*

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reconfigured. Other items discussed: minimum disruption to businesses during construction, provision of RV parking close to District 5, potential large vehicle parking in back-lot of Pea Soup Andersen’s.

- v. *On 7/14/16, Kerry Moriarty (property owner) met with City Manager and Planning Staff to discuss the specific plan and potential development concept for west side of AOF, just north of 2nd Street.*
- vi. *Outreach is in progress to arrange meetings with property/business owners on east side of AOF, north of 2nd Street, as well as on both sides of AOF south of Highway 246.*

7. DESIGN & ARCHITECTURAL STYLES;

- a. Can we more clearly label the R, M, C, etc. potential building types to minimize confusion with common Zoning designations?

A revised legend has been inserted to the Urban Design Concept plan title (Figures 2-1 and 4-2) as follows:

Potential Building Types:
*LR – Live-Work/Residential *M –Mercantile *C – Courtyard *A –Approved/Under Construction

- b. Can we reduce the number of architectural styles? Lose the Art Deco?

In the revised draft Specific Plan presented to City Council, a list of optional regulations will be submitted for consideration. The options list will include “50’s diner/art deco” architecture as a possible design style allowed in one or two locations only.

8. PROGRAMMING

- a. Where are the flags?

The Avenue of Flags will retain the “flag theme” which has a strong connection to the character and history of the Buellton community. The existing flags (or similar replacements) currently on the tall flag poles will be relocated to suitable locations in the Medians, and the existing flag monuments on both north and south ends of Median 4 will be retained in their current locations to the extent feasible.

The City will coordinate with applicable organizations to pursue potential enhancement of the “flag theme”, and investigate programming options such as creating a “walk of flags” or a historic/educational exhibit regarding flags.

- b. Can we involve the historical society and preserve Buellton’s history

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

Upon approval of the Specific Plan and in preparation for development of the Medians, coordination and programming meetings will be held with the local historical society as well as representatives of the art/artisan, music, food and beverage, and special events industries to insure that any proposed development of the Medians is responsive to their user needs.

On the Medians, specific buildings/structures have been proposed to provide space for uses such as: public events, outdoor performances, historic museum, community gathering space, artisans and galleries, pop-up retail, food vendors/trucks, and others.

9. CIRCULATION & PARKING

- a. How will the City address spillover parking and traffic into the adjacent residential neighborhoods?

As the Avenue of Flags progresses with its revitalization objectives, it is important that surrounding residents are not burdened by spillover parking or traffic problems. Each project is reviewed for required parking on-site or supplemented through the incentives program for spaces on the Ave. Spillover parking is not anticipated into the residential neighborhoods for normal operating and business conditions. However, the Specific Plan will incorporate parking/traffic management strategies that may include periodic reviews of neighborhood parking/traffic impacts, establishment of parking restrictions (time limits, permit programs, etc.), evaluation of signage, community and motorist education, and increased monitoring in affected areas should the need occur.

- b. How will infrastructure construction be phased so as to minimize disruption to businesses and vehicle circulation? (i.e. Central Ave)

The City will make every effort possible to work closely with the community, and to minimize impacts (to the extent feasible) upon traffic, parking, residents, businesses, and developers.

10. PHASING

- a. Upon approval of the Specific Plan, what “baby steps” will the City take to make an immediate impact on The Avenue?

The following infrastructure improvements have been identified as top priority:

- i. Sidewalks*
- ii. Parking*
- iii. Median 2 Development – paving for flex space and install shade structures*

- b. *The Specific Plan document will be reviewed and revised as applicable to ensure consistency of phasing terms and concepts throughout the document.*

*Follow-up Information re: Planning Commission Workshop #3
The Avenue of Flags Draft Specific Plan*

NEXT STEPS

The clarification items set forth above and in Attachment A hereto, along with additional comments and suggestions from the Planning Commission will be incorporated into a revised draft specific plan, to be presented to City Council at a workshop to be scheduled (tentatively) in September 2016. Subsequent to Council direction, the Project Team will proceed with preparation of the formal draft of the Specific Plan, accompanied by preparation of required environmental studies and CEQA reviews.

A final round of public hearings will be conducted on the final Draft Specific Plan and CEQA documents by both the Planning Commission and City Council; these public hearings are anticipated to occur in the latter part of 2016 or early 2017, with City Council adoption tentatively projected for the 1st Quarter of 2017. The timeline may be revised depending on comments received during the review process and any related changes that may be required to the draft documents.

RECOMMENDATION

That, as part of the draft Avenue of Flags Specific Plan, the Planning Commission forward the clarification items set forth herein to the City Council for review and discussion during a Workshop to be scheduled (tentatively) in September 2016.

This is an information and comment item; no formal action is required.

ATTACHMENTS

Attachment A – Avenue of Flags Draft Specific Plan, Chapter 2, Section D. Land Use & Development; Revised Narrative & Table 2-1

AVENUE OF FLAGS – DRAFT SPECIFIC PLAN

CHAPTER 2 – FORM & CHARACTER

D. LAND USE & DEVELOPMENT

This section establishes the land use framework for the Specific Plan area, including allowable land uses and development intensities. An analysis of potential buildout projections and related parking needs are also set forth.

1. SPECIFIC PLAN LAND USE FRAMEWORK

As of 2016 (prior to Specific Plan adoption), all of the properties in the Plan Area are designated as General Commercial under the General Plan, with a corresponding CR (General Commercial) Zoning.

Within CR there are several allowed uses intended to serve community retail business and commercial needs including stores, shops, and offices on individual lots and in shopping centers, supplying commodities or performing services for the residents of the entire community. Mixed use projects with a residential and/or industrial component are permitted subject to the regulations contained in Municipal Code Chapter 19.18

In order to support the vision and goals of the AOF Plan Area, allowable land uses, development standards and intensities are further defined by the Specific Plan, and where there are potential conflicts, replace those included in the pre-adoption land use and zoning standards.

a. AOF Specific Plan Land Use Types & Intensities

Table 2-1 summarizes and compares the general types and intensities of land uses permitted by the existing (pre-Specific Plan adoption, “baseline”) General Plan and by the AOF Specific Plan within the Plan area. Development is required within the density range, both maximum and minimum. The appropriate maximum densities were developed based on the AOF Vision, the type of development and overall character that would result from such a density, and current economic realities. Existing land uses that are not consistent with the Specific Plan land use framework are permitted to continue as legal nonconforming uses.

The intent of the Specific Plan is to include development standards that replace those included in the General Plan and zoning that were in place prior to Specific Plan adoption. It is important to note that the Specific Plan is not intended to fundamentally alter the future land use pattern envisioned under the General Plan, but to provide further flexibility and a better framework for realizing the mixed uses along a commercially-oriented corridor as described in both the General Plan and Vision. The following table illustrates in general terms how the General Plan development standards are re-organized under the Specific Plan, particularly in the context of the Form Based Code included herein. It also illustrates how planned residential densities under the Specific Plan are greater than under the General Plan prior to Specific Plan adoption.

Table 2 – 1. Comparison of General Plan and Specific Plan Development Standards

	LAND USE / ZONING DESIGNATION			
	BASELINE GENERAL PLAN (Prior to SP Adoption)		AOF SPECIFIC PLAN	
	CR (General Commercial)		CR (General Commercial) with Specific Plan Form Based Code overlay that supersedes key development standards as shown below	
Standards for development types shown below	DU or FAR / Acre	Typically Allowed Development Types	DU or FAR / Acre (via DOR Incentives)	Typically Allowed Development Types
Non-Residential	No max. FAR; setbacks required	Per Zoning Ordinance	FAR Per Form Based Code	Per Specific Plan
Mixed-Use (commercial and residential)	15 du/ac*, 60% FAR (net site area)	Per Zoning Ordinance	25 – 40 du/ac**	Per Specific Plan, with higher densities allowed in exchange for public amenities
Residential	Residential-only projects not allowed	Not allowed	25 – 40 du/ac**	Per Specific Plan, where consistent with Opportunity site concepts
Height	35 foot maximum		50 foot maximum, as per Form-Based Code regulations and DOR incentives	

* Adjusted for number of bedrooms per Municipal Code Sec. 19.02.220 (Mixed-Use). Section 19.18.018 describes standards that are potentially more restrictive for allowed mixed use densities on the Avenue.

** Residential densities are stated as the number of dwelling units per gross acre. Specific number of dwelling units per project will be determined during development review process and per DOR incentive program.

b. Allowable Land Uses,

The general types of land uses that fulfill the vision of the AOF Specific Plan are set forth in Figure 2-X "Land Use Possibilities". This list is not intended to be exhaustive, but rather, it will serve as a guideline in evaluating potential uses and development proposals. This list, however, differs somewhat from what uses are described in the included in the General Commercial zoning that governed the area prior to Specific Plan adoption. The allowable uses ("Land Use Possibilities") included in the Specific Plan document are intended to provide guidance and greater flexibility for future development within the Plan Area, and replace the list included under General Commercial zoning.



The VISION Becomes a PLAN for

“The AVENUE”

Avenue of Flags - DRAFT Specific Plan

Workshop Presentation

THURSDAY - January 12, 2017 - City Council



Specific Plan Overall Goal

“Create a vibrant downtown core with a thriving mix of land uses and public activity.”

Vision Statement for The Avenue of Flags

Goal 5: Create a Vibrant Downtown Based on The Avenue (Buellton Vision Plan 2012)

An architecturally distinctive and economically robust downtown district that integrates commercial, mixed-use and high-density residential units fostering an attractive, vibrant and pedestrian-friendly downtown village environment.

Featuring a central plaza, refined traffic pattern, ample parking, and walking paths/bikeways, Buellton [The Avenue] provides a "signature destination experience" and promotes a "village style" commercial/residential district offering an exciting place to live, work, [play], and attract tourists.

Downtown & Avenue of Flags

Transform Avenue of Flags (AOF or "The Avenue"):

- From: aging automobile-oriented thorough-fare with pass-through traffic
- To: vibrant, pedestrian friendly "main street", with destination places for community residents, visitors and travelers

HOW?

- Create welcoming village atmosphere
- Preserve Buellton's history and community character
- activating the medians,
- calming traffic,
- enhancing safety for pedestrian via crosswalks and pathways
- strategic building massing,
- providing park-like improvements,

Guiding Principles

- The Plan Must be Economically and Visually Attractive
 - The Plan Must be Realistic, Flexible and Implementable
 - The Plan Must be Community-Oriented
 - The Plan Must be Environmentally Sustainable
 - The Plan Must Promote Public Safety
-

KEY PLANNING ELEMENTS

- Economic Feasibility = key underlying principle
 - Form Based Code
 - Development standards provide land use flexibility
 - Emphasizes function and form
 - Encourages mixed use
 - Specific Plan Districts to facilitate implementation
 - Development incentives and community benefits through Development Opportunity Reserve (DOR)
-

WHY PREPARE A SPECIFIC PLAN?

- Provides Focused Standards and Development Regulations
 - Provides Certainty to Developers and Property Owners
 - Provides Development Mechanisms and Incentives not Otherwise Available Via Existing Zoning
 - DOR incentive concept
 - Example: Parking
-

PARKING WITHOUT SPECIFIC PLAN

Potential "Baseline" Development of Opportunity Sites

- Would Require 1067 New Parking Spaces (estimated)
 - Each Development Would be Required to Provide Parking on their Own Property
 - No Mechanisms in Place to have Shared Parking, Create Public Lots, or Create Parking Districts
-

PARKING WITH SPECIFIC PLAN

Public Parking Along Medians & AOF Frontages (per the Specific Plan)

- 185 Existing Spaces
- 201 New Spaces (after reconfiguration of AOF)
- 386 Total Non-Exclusive Parking Spaces

Opportunity Sites Still Require 1067 Spaces

- Not All Parking Has to be Onsite
- Use AOF Parking Spaces to Serve New Development
- Creation of Parking Districts and Public Parking Lots
- Use of Development Opportunity Reserve
 - Public Parking Lot
 - Reduced Onsite Parking Incentives
- Onsite Spaces with Tuck Under Parking per Form Based Code

Urban Design Vision



AVENUE OF FLAGS

Design Objectives

Urban Form

- Plan must reflect Vision for the Avenue
 - Pedestrian-Friendly
 - Attractive Streetscape
 - Connect with Surrounding Neighborhoods
 - Use the Creek as an Amenity
 - Create Gateways at Key Intersections
-

Design Objectives (cont'd)

Development Pattern

- Variety of Housing Types and Densities
- Centrally located plaza
- Mixed Use Development
- Public and Quasi-Public Uses

Circulation and Parking

- Encourage Multi-Modal Transportation (cars, bikes, peds)
 - Encourage shared parking facilities and on-street parking
-

Specific Plan Districts & Planning Units

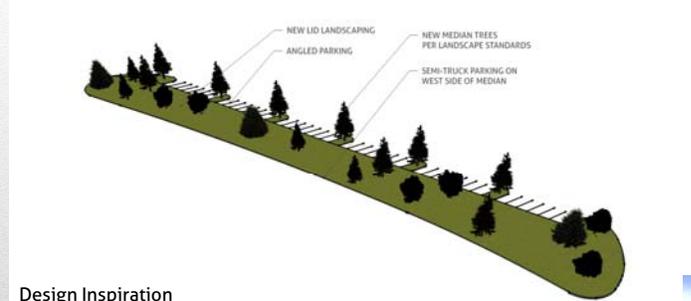


Opportunity Site Areas & Median Planning Areas



District 1 – Gateway North

Travelers's Service District & Parking



Design Inspiration



District 2 – Public Events & Mixed Use

Event Barn & Outdoor Event Space



Design Inspiration



District 2 Rendering



Rendering – Event Barn and Outdoor Activities

District 3 – Civic Junction

Junction Building, Crossing (Town Plaza), Amphitheater, Restrooms,



Design Inspiration



District 3 - Rendering



Rendering

District 4 – Civic Gallery

Art & Food Village, Exhibit & Boutique Space, Parking



Design Inspiration



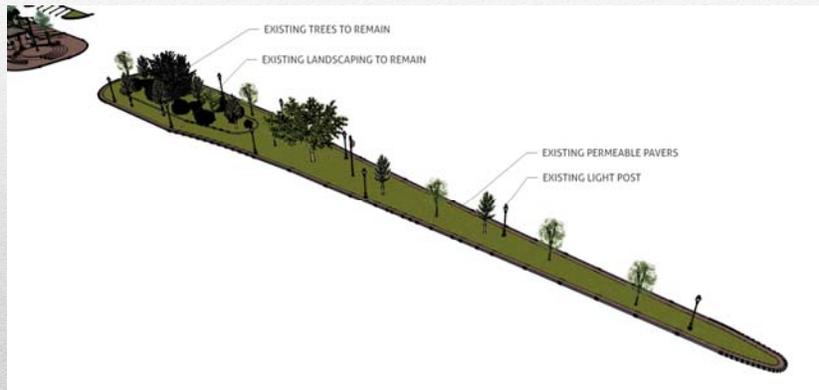
District 4 - Rendering



Rendering

District 5 – Gateway South

Travel and Visitor-Oriented Uses, Dining, Parking



District 6 – Zaca Corridor

Visitor & Resident Services, Retail/Commercial Uses



Development Code

Development Code Standards / Regulations

- Derive Authority from General Plan
- Underlying Zoning District Remain CR (General Commercial)
- New Development Regulations - Governed Via Form-Based Code Standards

How To Use the Development Code

- Determine Location & District of Project
- Determine Specific Plan's Character for Development in District
- Identify Suitable Land Uses and Permitting Requirements
- Determine Appropriate Architecture and Building Form
- Determine Baseline Densities, Height, On-Site Parking, etc
- Identify Potential Mixed-Use and DOR Incentives/Benefits

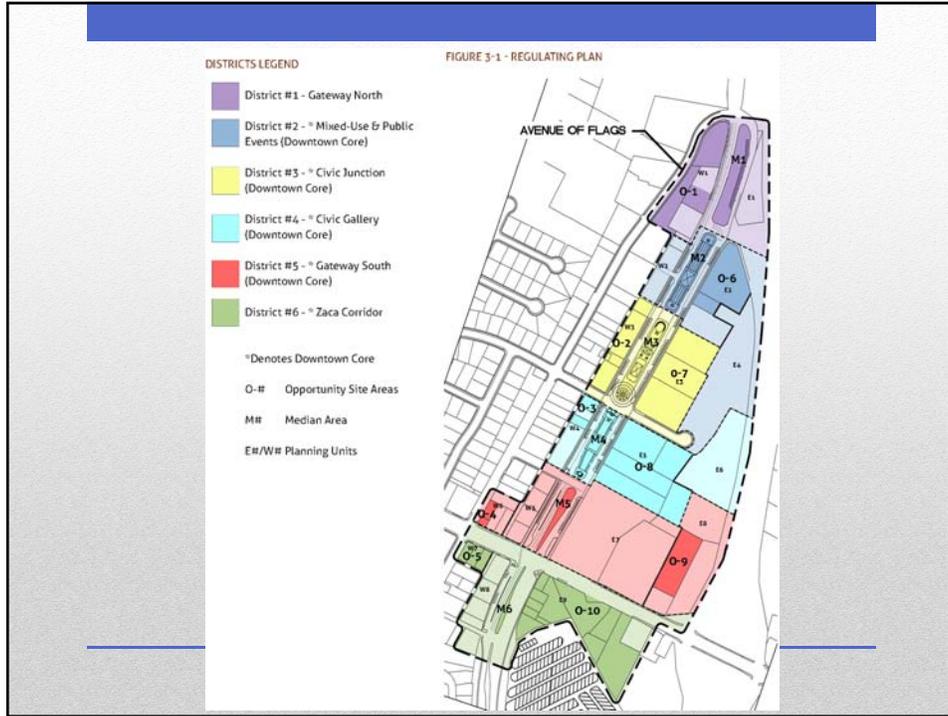


TABLE 3-3

DISTRICT 3 - CIVIC JUNCTION & TOWN PLAZA (Downtown Core)

COMPLEMENTARY LAND USES	
Non-Residential, Mixed-Use	<ul style="list-style-type: none"> Retail, Office, Personal Service Mixed-Use, Live-Work Food/Beverage, Lodging Recreation, Education, Public Assembly Civic/Community
SITING OF LAND USES	
Ground Floor	Non-Residential to apply to first 150 feet of building depth on frontages that face the Avenue of Flags and Highway 246, and shall not include parking, garages, or similar uses
Upper Floors	Non-Residential or Residential
BUILDING TYPES, SITING & MASSING	
Allowable Building Types	<ul style="list-style-type: none"> Mercantile Live-Work / Mixed Use Courtyard Corner Courtyard (Town Plaza Overlay)
Siting, Setbacks, & Massing	Standards for Lot Size, Setbacks, Building Form, and Placement of Lots are set forth for each building type in Section E
Design Styles	Architectural design styles set forth in Chapter 3 are required
BUILDING HEIGHT	
Allowable Heights	<ul style="list-style-type: none"> 16 feet minimum 35 feet maximum (without DOR incentives) 50 feet maximum (with DOR incentives)
DENSITY (Mixed-Use / Residential)	
Baseline	12-16 du/acre
Incentivized Projects	25-40 du/acre maximum (with DOR incentives)
PARKING	
On-Site Parking Requirement (Baseline)	Per Parking Requirements, Section C
Reduced On-Site Parking Requirement	Varies by Project, per DOR incentive program
OPPORTUNITY SITES	
Opportunity Site #02	<ul style="list-style-type: none"> 1.13 acres total, multiple parcels Suitable for retail, mixed-use, or civic buildings
Opportunity Site #07	<ul style="list-style-type: none"> 3.08 acres total, multiple parcels Suitable for signature courtyard/plaza building(s) with general commercial and mixed-use, including potential civic uses

Development & Building Standards by District (typical)

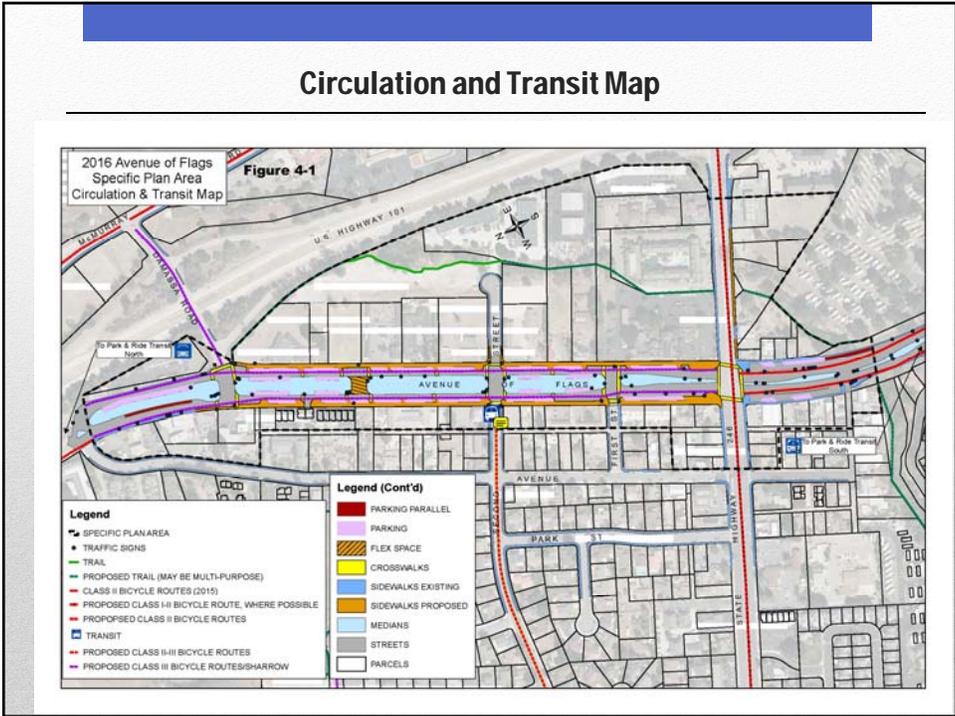
Land Use Comparisons - General Plan vs. Specific Plan

	LAND USE / ZONING DESIGNATION			
	BASELINE GENERAL PLAN (Prior to SP Adoption)		AOF SPECIFIC PLAN	
	CR (General Commercial)		CR (General Commercial) with Specific Plan Form Based Code overlay that supersedes key development standards as shown below	
Standards for development types shown below	DU or FAR / Acre	Typically Allowed Development Types	DU or FAR / Acre (via DOR Incentives)	Typically Allowed Development Types
Non-Residential	No max. FAR; setbacks required	Per Zoning Ordinance	FAR Per Form Based Code	Per Specific Plan
Mixed-Use (commercial and residential)	15 du/ac ^o , 60% FAR (net site area)	Per Zoning Ordinance	25 – 40 du/ac ^o	Per Specific Plan, with higher densities allowed in exchange for public amenities
Residential	Residential-only projects not allowed	Not allowed	25 – 40 du/ac ^o	Per Specific Plan, where consistent with Opportunity site concepts
Height	35 foot maximum		50 foot maximum, as per Form-Based Code regulations and DOR incentives	

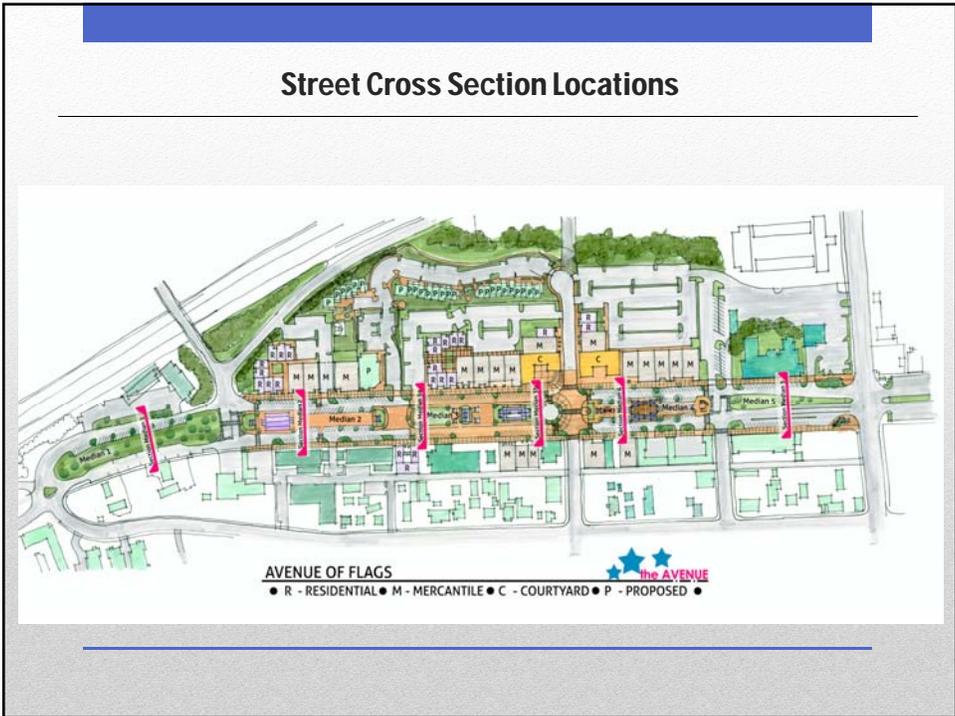
Land Use Guidelines

<p>Agricultural, Resource and Open Space</p> <ul style="list-style-type: none"> Plant Nurseries Public Open Space, Town Plaza <p>Light Industrial</p> <ul style="list-style-type: none"> Art Studios Handicraft Industries Small-Scale Manufacturing <p>Other Uses</p> <ul style="list-style-type: none"> Civic Center (Library, Post Office, City Hall, Police) Live-Work / Work-Live Units Mixed-Use <p>Recreation, Education, Public Assembly</p> <ul style="list-style-type: none"> Churches Community Centers Museums Membership Organization Facilities Outdoor Commercial Recreation Parks and Playgrounds Recreation and Fitness Centers Schools — Specialized Education and Training Sport Facilities and Outdoor Public Assembly Temporary Events Theaters and Meeting Halls <p>Residential</p> <ul style="list-style-type: none"> Emergency Shelters Farm Employee Housing Home Occupations Multi-Family Dwellings (Apartments / Condominiums) Residential Accessory Uses Residential Care Homes, 6 or Fewer Clients Shared Living Arrangements Single-Room Occupancies (SRO) Transitional and Special Needs Housing 	<p>Retail Trade</p> <ul style="list-style-type: none"> Antiques, Collectibles, and Memorabilia Art Galleries and Gifts Auto Parts Sales Certified Farmers' Markets Consignment Boutiques and Vintage Items Furniture, Furnishings and Equipment Stores Grocery / Liquor Stores, and Indoor/Outdoor Farmers Markets Restaurants and Bars Retail Stores, General Merchandise, Parking Lot Sales Shopping Centers <p>Service Uses</p> <ul style="list-style-type: none"> Banks and Financial Services Business Support Services Child Day Care Centers Hotels and Motels Laundries and Dry Cleaning Medical Clinics and Laboratories Veterinary Clinics and Hospitals Offices Personal Services Public Safety and Utility Facilities Repair / Maintenance - Accessory to Sales Repair / Maintenance - Consumer Products Storage, Accessory Storage, Petroleum Products for Onsite Use <p>Transportation and Communications</p> <ul style="list-style-type: none"> Antennas, Communication Facilities Broadcasting Studios Transit Stations and Terminals <p>Additional Possibilities</p> <ul style="list-style-type: none">
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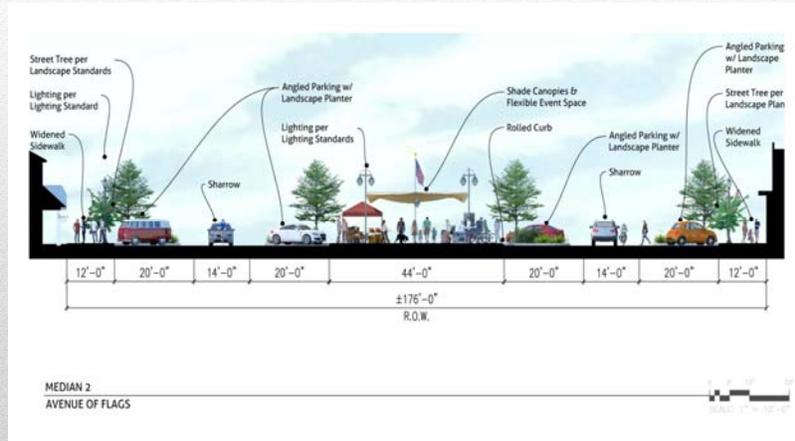
Circulation and Transit Map



Street Cross Section Locations

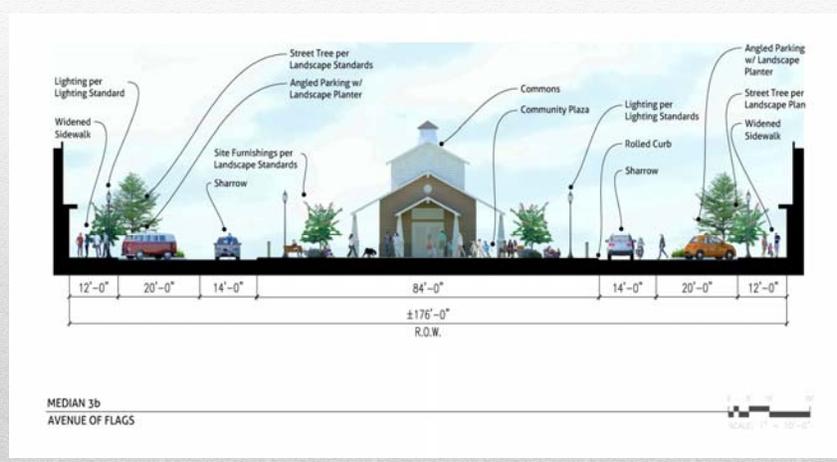


Median 2 Street Cross Section



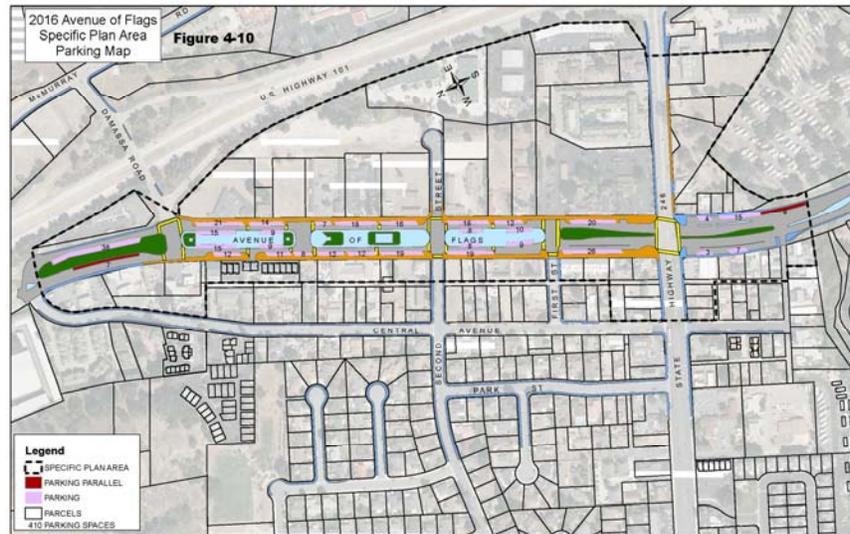
MEDIAN 2
AVENUE OF FLAGS

Median 3b Street Cross Section



MEDIAN 3b
AVENUE OF FLAGS

Parking Map



Phase 1 Improvements

- Traffic Calming & Safety
- Sidewalk construction along AOF frontages
- Water & sewer infrastructure upgrades to medians
- Median 1 / 2
 - Initiate Caltrans process re: roundabout at Highway 101 southbound off-ramp onto Avenue of Flags
- Median 2
 - construct parking, paseo areas & flex space
- Median 3
 - plan and design improvements
- Identify funding mechanisms for safety measures, infrastructure and civic improvements

Phase 2 Improvements

- Median 3
 - Programming (involve user groups, property owners/tenants)
 - Acquire funding (City and private investment)
 - Construction of Median 3 improvements and frontage including site work/grading and installation of The Junction building, Town Plaza, amphitheater, bandstand, shade structures and restrooms
- Median 4
 - Design interim improvements
 - Acquire funding (City and private investment)
 - Construction of Median 4 interim improvements
- Zaca Creek Trail Improvements
 - Completion of multi-purpose trail along Zaca Creek north to Damassa Road and south through the Pea Soup Andersen's property to State Route 246

Phase 3 Improvements

- Median 1
 - Programming (involve user groups, property owners/tenants)
 - Acquire funding (City and private investment)
 - Site work/grading for, and installation of drought tolerant landscaping, open space, truck/RV spaces along west side and diagonal passenger vehicle spaces along east side. [Note: may include potential shade canopies with solar features]
- Median 4
 - Consider alternative concepts
- Median 5
 - Programming (involve user groups, property owners/tenants)
 - (If needed) Acquire funding (City and private investment)
 - (If needed) Site work/grading for, and installation of various improvements approved during the design phase

Future Phases

- Highway 101/Avenue of Flags southbound off-ramp improvements, including potential roundabout; contingent upon Caltrans planning process and approval of design
- State Route 246 upgrades
- Off-site parking, including potential City parking lots
- Secondary circulation and access improvements
- Projects resulting from DOR incentives and public/private sector partnerships

Infrastructure Cost Summary

Potential City Funded Public Improvements = Publicly owned construction improvements Privately Incentivized Public Improvements = Public improvements, such as buildings, the City plans to have constructed by Private Developers along the Avenue due to incentives offered by the City.				ENGINEER'S ESTIMATE	
PROJECT BASE COSTS				ENGINEER'S ESTIMATE	
ITEM	ITEM DESCRIPTION	UNIT	EST QTY	UNIT PRICE	ITEM TOTAL
1	Environmental Research, Reports, Permits, Mitigation, etc.	LS	1	\$250,000.00	\$250,000.00
2	Permitting: Dept. Fish & Game, RWQCB, etc.	LS	1	\$50,000.00	\$50,000.00
BASE SUBTOTAL :					\$300,000.00
PHASE COSTS					
1	Phase 1 (Design, Traffic Calming, and Median 2)	SUBTOTAL :			\$7,117,625.90
	Privately Incentivized Public Improvements	SUBTOTAL :			\$1,721,250.00
2	Phase 2 (Median 3 & Median 4 Interim Project)	SUBTOTAL :			\$4,264,064.44
	Privately Incentivized Public Improvements	SUBTOTAL :			\$2,691,225.00
3	Phase 3 (Medians 1, 4 & 5)	SUBTOTAL :			\$2,362,405.50
	Privately Incentivized Public Improvements	SUBTOTAL :			\$1,460,970.00
POTENTIAL CITY COST SUBTOTAL :					\$13,744,095.84
POTENTIAL PRIVATE DEVELOPMENT SUBTOTAL :					\$5,873,445.00
ALL PHASES SUBTOTAL :					\$19,617,540.84
TOTAL ESTIMATE:					\$19,917,540.84

Implementation/Economics

- A “hands on” approach to actively engage the private sector, including business attraction and retention strategies as well as community engagement and programming
- A summary of available funding sources, financing mechanisms, and other economic development tools to facilitate development on a project-specific and area-wide basis
- A high-level analysis of potential fiscal and economic impacts from successful implementation of the Specific Plan

Post RDA Economic Development Tools



Economic Tools for the Avenue

- Real Estate and Property – City-Owned Medians
- Land Use and Zoning = Specific Plan & Development Opportunity Reserve (DOR)
- Special Districts:
 - Parking Districts
 - Community Facilities District (CFD)
 - Enhanced Infrastructure Financing District (EIFD)
- Tax and Revenue-Based Financing – Site Specific Tax Revenue (SSTR) Pledge / Reimbursement
- P3 Infrastructure Delivery
- Grants / State / Federal Programs – SBA / EDA / CDBG

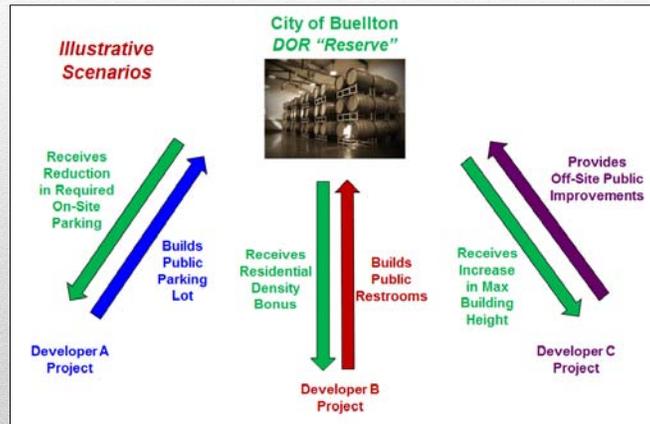
Funding Strategies

Financial Sources and Uses

Potential Sources	Potential Uses
<ul style="list-style-type: none"> • Developer impact fees (traffic improvement fee, park fee) • Developer contributions via DOR program in exchange for development incentives • Parking district revenues from participating businesses • Lease revenues from private business operators on the median • CFD taxes and/or EIFD property tax increment • Grant sources (e.g. EDA, CDBG) • General fund via SSTR (e.g. sales tax) generated by new development 	<ul style="list-style-type: none"> • Median grading, clearing, grubbing • Streets, lighting, signage improvements • Crosswalks, curb, sidewalk improvements • Median and/or off-site public parking • Water, sewer, other utility improvements • Landscaping, benches, bike racks • Junction, restroom buildings, kiosks, amphitheater • Water features, event barn • Infrastructure maintenance • Resolution of financial feasibility gaps for development on a project-specific basis
<ul style="list-style-type: none"> • Developer contributions via DOR program • General fund via SSTR • Grant sources (e.g. CDBG) • SBA funding 	<ul style="list-style-type: none"> • Initiation of new business, expansion of existing businesses on the Avenue

How a DOR Works

Illustrative DOR Scenarios



DOR Program

DOR Program Community Benefits and Incentives

Priority Community Benefits/Objectives	Potential Incentives
<ul style="list-style-type: none"> • Funding / construction of restrooms • Funding / construction of off-site public parking lot • Payment into, or creation of, a parking district • Funding / construction of off-site public improvements (curb, gutter, sidewalk, street widening) • Payment of an off-site trail fee • Payment of off-site water/wastewater fees • Funding / installation of public art • Payment of a library fee • Adding additional green building features 	<ul style="list-style-type: none"> • Increase building heights up to 50 feet • Reduce on-site parking requirements • Increase mixed-use residential density up to 25-40 units per acre • Reduced rear yard setbacks • Allow land uses not allowed in the CR zone, such as 100% industrial • Reduced application fees • Reduced traffic fees if off-site public improvements are provided

Potential Incentives

Types of Incentives for Different Types of Development

Type of Incentive	Commercial Development	Mixed-Use Development
Increase potential operating revenues (i.e. rental income)	<ul style="list-style-type: none"> • Reduce on-site parking requirements • Reduced rear yard setbacks • Allow land uses not allowed in the CR zone, such as 100% industrial 	<ul style="list-style-type: none"> • Increase building heights up to 50 feet • Increase mixed-use residential density from up to 25-40 DU/AC • Reduce on-site parking requirements • Reduced rear yard setbacks • Allow land uses not allowed in the CR zone, such as 100% industrial
Decrease project costs	<ul style="list-style-type: none"> • Reduced application fees • Reduced traffic fees of off-site public improvements are provided 	<ul style="list-style-type: none"> • Reduced application fees • Reduced traffic fees of off-site public improvements are provided

Potential Economic Scenario

- Assuming buildout of 300,000 square feet of commercial and 134 new residential units
 - Property Tax
 - \$113,000 per year
 - 30-year present value = \$1.9 million
 - Sales Tax
 - \$891,00 per year
 - 30-year present value = \$17.1 million
 - Employment
 - 594 employees

Next Steps

- City Council – provides direction on completing the final draft specific plan document
 - Staff / consultants perform required environmental review (CEQA)
 - Planning Commission and City Council public hearings on CEQA document and adoption of final specific plan – *targeted for Spring 2017*
-



Thank You!

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 5

To: The Honorable Mayor and City Council

From: Stephen A. McEwen, City Attorney

Meeting Date: January 12, 2017

Subject: Urgency Ordinance No. 17-01 - “An Urgency Ordinance of the City Council of the City of Buellton, California, Under Government Code Section 65858(a), Establishing a 45-day Moratorium on Non-Medical Marijuana Facilities and Marijuana Cultivation, Except for Private Indoor Cultivation of Six Marijuana Plants or Less, Which Shall be Subject to Reasonable Regulations”

BACKGROUND

The proposed urgency ordinance would impose a 45-day moratorium on non-medical marijuana facilities and private marijuana cultivation activities within the City.

On November 8, 2016, California voters approved Proposition 64, known as the “Control, Regulate and Tax Adult Use of Marijuana Act.” Proposition 64 allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. An individual may possess up to 28.5 grams of non-concentrated marijuana or 8 grams of marijuana in a concentrated form (e.g., marijuana edibles). In addition, an individual may cultivate up to six marijuana plants at his or her private residence provided that no more than six plants are being cultivated on the property at one time. Proposition 64 also establishes a regulatory system for commercial businesses that is very similar to the medical marijuana regulatory system that the state legislature created last year. Under Proposition 64, recreational marijuana cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license to operate and comply with local ordinances.

Proposition 64 does not limit local police power authority over commercial marijuana business and land uses. Cities may prohibit such businesses completely if they so choose. With regard to private cultivation, however, there is one important limitation on local police power. Cities may ban private outdoor marijuana cultivation, but they may not completely ban private indoor cultivation of six marijuana plants or less. Proposition 64 provides that private indoor cultivation of six marijuana plants or less is lawful under both state and local law and is only subject to “reasonable” local regulations.

The California Department of Consumer Affairs, Department of Food and Agriculture, and Department of Public Health are responsible under Proposition 64 for issuing state licenses to commercial recreational marijuana businesses. No marijuana business can operate without a state license from one of these agencies, which are currently drafting regulations that will govern their respective areas of responsibility. Based on the latest information we have from the state, these agencies will not be ready to issue any state marijuana licenses until January 2018.

Despite that lengthy timeframe for state marijuana licenses, there is a need for urgent action by the City Council. Municipal Code section 9.08.010 currently prohibits all medical marijuana dispensaries in the City, but the Municipal Code does not expressly address recreational marijuana businesses. Staff anticipates that Proposition 64 will encourage the establishment of various recreational marijuana businesses in the City. While unlicensed marijuana businesses would be unlawful under state law and therefore prohibited under the City's general public nuisance standards, express regulations will make enforcement easier and minimize the potential for confusion regarding the City's marijuana policies. This will, in turn, decrease the potential for unnecessary nuisance abatement litigation. This is significant because many California cities have experienced negative secondary effects from medical marijuana businesses, including dispensaries, cultivation facilities, and delivery services, as demonstrated by the attached 2009 white paper from the California Police Chiefs Association (Attachment A), the 2014 memorandum from the Santa Clara County District Attorney (Attachment B), and various news stories from throughout the country (Attachment C).

In addition, express Municipal Code regulations are necessary to provide clear guidance to the public regarding the scope of permissible private cultivation. Proposition 64 took effect immediately upon voter approval. Staff anticipates that many individuals will now begin to cultivate marijuana at their private residences. Such unregulated conduct could have significant adverse impacts for the City. As demonstrated in the attachments to this staff report, indoor marijuana cultivation sites are often associated with illegal construction, haphazard and unsafe electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, and excessive water use.

Permanent regulations will take time. During the time it takes to complete this process, the City could experience significant adverse impacts from unlicensed recreational marijuana businesses and unregulated private marijuana cultivation. For this reason, an interim urgency ordinance is appropriate. Government Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time. Here, an interim urgency ordinance will allow the City to protect public health, safety and welfare while the City Council evaluates its options for permanent marijuana regulations. The proposed interim urgency ordinance imposes the following three temporary restrictions:

- All commercial non-medical marijuana businesses that require a license under Proposition 64 will be prohibited while the interim urgency ordinance is in effect. This temporary prohibition will apply to recreational marijuana cultivation, manufacturing, distribution, testing, and retail sales.
- All private marijuana cultivation will be prohibited except that an individual may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Title 17 of the municipal code, there is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3). Health and Safety Code section 11362.2(a)(3) provides that no more than six marijuana plants may be cultivated at or upon the grounds of a private residence at one time.
- Non-medical marijuana businesses, including nonprofit businesses, are prohibited from delivering marijuana to people in the City.

If approved by a four-fifths vote, the interim urgency ordinance will be effective for 45 days. After providing notice and holding a public hearing, the City Council, upon a four-fifths vote, may extend the interim urgency ordinance for 10 months and 15 days. The City Council may subsequently extend the interim urgency ordinance for an additional year. While the interim urgency ordinance is in effect, the City will undertake a comprehensive review of its policies and potential regulations regarding marijuana businesses and marijuana cultivation in light of Proposition 64.

ENVIRONMENTAL REVIEW

The proposed urgency ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

FISCAL IMPACT

The proposed interim urgency ordinance represents a continuation of existing enforcement policies regarding marijuana facilities, so there would be no change in the fiscal impact for the City.

RECOMMENDATION

That the City Council consider adoption, by a 4/5 vote, of Urgency Ordinance No. 17-01-
“An Urgency Ordinance of the City Council of the City of Buellton, California, Under Government Code Section 65858(a), Establishing a 45-day Moratorium on Non-Medical Marijuana Facilities and Marijuana Cultivation, Except for Private Indoor Cultivation of Six Marijuana Plants or Less, Which Shall be Subject to Reasonable Regulations”

ATTACHMENTS

Urgency Ordinance No. 17-01
Attachment 1 - 2009 California Police Chiefs Association White Paper
Attachment 2 - 2014 Santa Clara County District Attorney Memorandum
Attachment 3 - Various News Stories

URGENCY ORDINANCE NO. 17-01

AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BUELLTON, CALIFORNIA, UNDER GOVERNMENT CODE SECTION 65858(a), ESTABLISHING A 45-DAY MORATORIUM ON NON-MEDICAL MARIJUANA FACILITIES AND MARIJUANA CULTIVATION, EXCEPT FOR PRIVATE INDOOR CULTIVATION OF SIX MARIJUANA PLANTS OR LESS, WHICH SHALL BE SUBJECT TO REASONABLE REGULATIONS

THE CITY COUNCIL OF THE CITY OF BUELLTON DOES ORDAIN AS FOLLOWS:

SECTION 1. Findings.

- A. As set forth in Municipal Code section 9.08.010(A), the City of Buellton prohibits all medical marijuana dispensaries throughout the City. The term “medical marijuana dispensary” includes any facility, site, cooperative, location, use, or mobile vending vehicle where medical marijuana cultivation occurs.
- B. On November 8, 2016, the voters of the State of California approved Proposition 64, entitled the “Control, Regulate and Tax Adult Use of Marijuana Act.”
- C. Proposition 64 legalizes and regulates recreational marijuana in California. Proposition 64 requires recreational marijuana businesses, including cultivators, manufacturers, distributors, retailers, and testing laboratories, to obtain a state license in order to operate lawfully. The state will not issue licenses if the proposed recreational marijuana business violates a local ordinance. The state anticipates that it will begin issuing licenses for recreational marijuana businesses on or about January 1, 2018.
- D. Business and Professions Code section 26200, which is part of Proposition 64, expressly recognizes the ability of cities to completely prohibit all recreational marijuana businesses or to regulate such businesses.
- E. Under Proposition 64, individuals may possess and use specified amounts of marijuana and may cultivate up to six marijuana plants per private residence. Under Health and Safety Code section 11362.2(b), cities may prohibit private outdoor marijuana cultivation, but may not prohibit completely private indoor cultivation of six marijuana plants or less. Cities, however, may reasonably regulate private indoor cultivation of six marijuana plants or less.
- F. It is imperative that the City maintain local control over all marijuana land uses to the fullest extent allowed by law. The City anticipates that Proposition 64 may encourage the establishment of various marijuana businesses within the City. The Municipal Code does not currently address recreational marijuana businesses. While no such business can operate in the City lawfully without a state license, express Municipal Code regulations regarding recreational marijuana dispensaries, cultivation facilities, manufacturing sites,

transporters, distributors, testing laboratories, and microbusinesses are necessary to provide clear guidelines regarding the scope of prohibited conduct and minimize the potential for confusion regarding the City's policies.

- G. Express Municipal Code regulations are also necessary to provide clear guidance regarding the scope of permissible private cultivation. The City anticipates that many individuals will begin to cultivate marijuana at their private residences following the passage of Proposition 64.
- H. The adoption of a comprehensive marijuana ordinance that addresses both private cultivation and commercial recreational marijuana businesses will take time and careful consideration and will require input from various community stakeholders and the general public. Until that process is complete, an interim urgency ordinance under Government Code section 65858(a) is necessary to protect the public health, safety, and welfare.
- I. Marijuana establishments and activities often present health, welfare, and public safety issues for cities. Several California cities and counties have experienced serious adverse impacts associated with and resulting from marijuana dispensaries, delivery services, and cultivation sites. According to these communities and according to news stories widely reported, marijuana land uses have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, and illegal sales and use of marijuana in the areas immediately surrounding such marijuana activities. There have also been large numbers of complaints of odors related to marijuana cultivation and storage. Marijuana cultivation sites are often associated with illegal construction, unsafe electrical wiring, excessive water use, and fire hazards.
- J. A California Police Chiefs Association compilation of police reports, news stories, and statistical research regarding crimes involving medical marijuana businesses and their secondary impacts on the community is contained in a 2009 white paper report which is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. The report details numerous violent crimes that occurred throughout the state in and around medical marijuana establishments.
- K. The Santa Clara County District Attorney's Office issued a May 2014 memorandum entitled "Issues Surrounding Marijuana in Santa Clara County," which outlined many of the negative secondary effects resulting from marijuana cultivation; a copy of this memorandum is attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. According to the memorandum, marijuana cultivation sites were often associated with illegal construction, haphazard electrical wiring, electricity theft, fires, mold and fungus problems, diversion of public water, pollution of waterways, firearm violations, crimes, and organized crime and street gang involvement.

- L. Manufacturing of cannabis products can involve the use of chemicals and solvents, and as a result, the manufacture of hash oil concentrate, often added to edibles, drink and liquids, carries a significant risk of explosion due to the distillation process utilized to extract tetrahydrocannabinol. Major burn treatment centers at two hospitals in Northern California reported in 2015 that nearly 10 percent of severe burn cases were attributed to butane hash oil explosions, which was more than burn cases from car accidents and house fires combined.
- M. News stories regarding adverse impacts of marijuana businesses, including dispensaries, cultivation sites, and delivery services, are attached to the staff report presented to the City Council with this ordinance and on file with the City Clerk. As detailed in these stories, marijuana establishments and cultivation sites are frequent targets of violent crimes, including robberies and assaults, in part because banking institutions will not accept credit card payments for illegal drugs under federal law, forcing such businesses to be cash-only. There is also significant evidence that marijuana delivery services are targets of violent crime and pose a danger to the public.
- N. Marijuana processing has led to explosions across the country because the processing of marijuana-related products, such as cannabis oils, often involves the use of butane gas flames.
- O. In 2015, there were at least five-marijuana-related wildfires linked to marijuana growing operations.
- P. In 2016, a New York firefighter died in an explosion at a residential marijuana cultivation site.
- Q. It is reasonable to conclude that marijuana businesses and private cultivation under Proposition 64 would cause similar adverse impacts on the public health, safety, and welfare in Buellton.
- R. In order to protect the public health, safety, and welfare, the City Council desires to amend the Buellton Zoning Code to address, in express terms, recreational marijuana businesses, marijuana deliveries, and private marijuana cultivation. The City Council hereby determines that the Municipal Code is in need of further review and possible revision to protect the public against potential negative health, safety, and welfare impacts and to address private marijuana cultivation and the new marijuana business models recognized under Proposition 64.
- S. An initial period of 45 days will permit City staff to undertake an initial investigation of these matters and recommend a course of action to the City Council, while avoiding the potential adverse impacts of non-medical marijuana facilities, private marijuana cultivation, and non-medical marijuana deliveries that may arise as the City develops permanent regulations.

- T. Government Code section 65858 authorizes the adoption of an interim urgency ordinance to protect the public health, safety, and welfare, and to prohibit land uses that may conflict with land use regulations that a city's legislative bodies are considering, studying, or intending to study within a reasonable time.
- U. Failure to adopt this moratorium would impair the orderly and effective implementation of contemplated amendments to the Municipal Code.
- V. The City Council further finds that this moratorium is a matter of local and City-wide importance and is not directed towards any particular person or entity that seeks to cultivate marijuana in Buellton.

SECTION 2. Environmental Findings. The City Council exercises its independent judgment and finds that this ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections: 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment); 15060(c)(3) (the activity is not a project as defined in Section 15378); and 15061(b)(3), because the activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The proposed ordinance maintains the status quo and prevents changes in the environment pending the completion of the contemplated municipal code review. Because there is no possibility that this ordinance may have a significant adverse effect on the environment, the adoption of this ordinance is exempt from CEQA.

SECTION 3. Imposition of Moratorium. In accordance with Government Code section 65858(a), and pursuant to the findings stated herein, the City Council hereby: (1) finds that there exists a current and immediate threat to the public health, safety, and welfare requiring this interim Urgency Ordinance; (2) finds that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety as set forth herein; and (3) declares and imposes a temporary moratorium for the immediate preservation of the public health, safety and welfare as set forth below:

- A. For a period of 45 days from January 12, 2017:
 - 1. Non-medical marijuana facilities are prohibited in all zoning districts in the City and may not be established or operated anywhere in the City.
 - 2. No person or entity may cultivate marijuana at any location in the City, except that a person may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Title 17 of this code, there is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for

purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3).

3. A non-medical marijuana facility may not deliver marijuana from any fixed or mobile location, either inside or outside the city, to any person in the City.

B. For purposes of this ordinance, the following definitions apply:

“Cultivate” means to plant, grow, harvest, dry, cure, grade, and/or trim marijuana.

“Cultivation” means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of marijuana.

“Marijuana” shall have the meaning set forth in Health and Safety Code section 11018.

“Non-medical marijuana facility” means any building, property, business, establishment, or location where any person or entity establishes, commences, engages in, conducts, or carries on, or permits another person or entity to establish, commence, engage in, conduct, or carry on, any activity that requires a state license or nonprofit license under Business and Professions Code sections 26000 and following, including but not limited to marijuana cultivation, marijuana distribution, marijuana transportation, marijuana storage, manufacturing of marijuana products, marijuana processing, the sale of any marijuana or marijuana products, and the operation of a marijuana microbusiness.

- C. City staff is directed to study appropriate modifications to the City's ordinances regarding non-medical marijuana facilities and marijuana cultivation.
- D. Pending the completion of such studies and the adoption of an ordinance to establish appropriate operational and zoning regulations, it is necessary for the immediate preservation of the public health, safety and welfare that this ordinance takes effect immediately. In the absence of immediate effectiveness, such uses in the City may conflict with existing regulations or requirements.
- E. This ordinance will take effect immediately upon adoption by a four-fifths vote of the City Council.
- F. A violation of this ordinance is a public nuisance per se, enforceable through any civil, criminal, or equitable remedy, including, but not limited to, civil actions, injunctions, administrative citations, or criminal penalties.

SECTION 4. Severability. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council declares that it would have passed this ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 5. Effective Date and Duration. This ordinance is an urgency ordinance enacted under Government Code section 65858(a). This urgency ordinance is effective January 12, 2017 and will extend for a period of 45 days at which time it will automatically expire unless extended by the City Council under Government Code section 65858.

SECTION 6. Publication. The City Clerk is directed to certify this ordinance and cause it to be published in the manner required by law.

SECTION 7. Study. Staff is directed to study and analyze issues related to the establishment or operation of recreational marijuana businesses and private marijuana cultivation within the City, including but not limited to, evaluating conflicts in state and federal law concerning the validity of the legislation, the potential impacts of such facilities or activities on public health, safety and welfare of the community, the desirability of such facilities or activities in various zones, and the extent of regulatory controls, if any, to impose on such facilities or activities.

SECTION 8. Report. Staff is directed to provide a written report to the City Council at least ten days prior to the expiration of this ordinance, describing the study conducted of the conditions that led to the adoption of this ordinance, in accordance with state law.

PASSED, APPROVED, AND ADOPTED this _____ day of January, 2017.

Holly Sierra
Mayor

ATTEST:

Linda Reid
City Clerk

ATTACHMENT 1

ATTACHMENT 1

WHITE PAPER ON MARIJUANA DISPENSARIES

by

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

ACKNOWLEDGMENTS

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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 unhealthful 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 9th 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.¹ 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.”²

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.³ “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.”⁴ (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.⁵ 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.⁶

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.⁷ 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 . . .”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ 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.¹⁵ 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.¹⁶

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*.¹⁷ 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.¹⁸ 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.¹⁹ (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."²⁰ 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.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² 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.²³ 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.²⁴ 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.²⁵ 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.²⁶ 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.”²⁷ 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.²⁸ 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.²⁹

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.”³⁰ 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.**”³¹ 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 SIMILARLY 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.³² 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."³³

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.³⁴ 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.³⁵ He did not survive.³⁶

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 2005.³⁷

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.³⁸ 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.³⁹

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

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or "pot clubs" are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise's storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a "gift," and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . ."⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year . . ."⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10’) in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

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

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

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

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

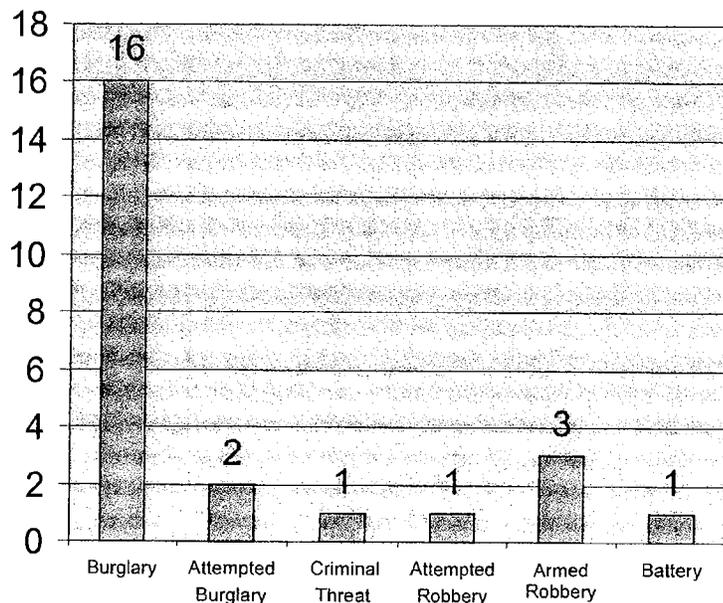
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

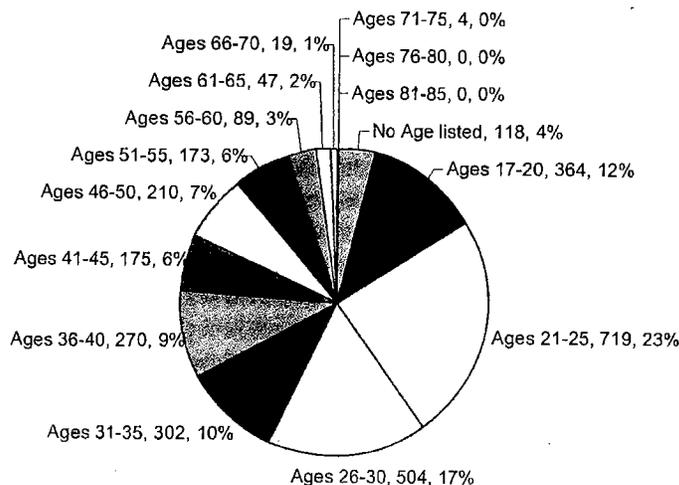
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

- example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.
- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
 - State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
 - Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation **exploded** with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, 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 under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. Federal Law

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

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

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

- ¹ U.S. Const., art. VI, cl. 2.
- ² U.S. Const., art. I, sec. 8, cl. 3.
- ³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- ⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- ⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- ⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19.0.4987571.story>
- ⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- ⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- ⁹ H&S Code sec. 11362.5(a).
- ¹⁰ H&S Code sec. 11362.7 *et. seq.*
- ¹¹ H&S Code sec. 11362.7.
- ¹² H&S Code secs. 11362.71–11362.76.
- ¹³ H&S Code sec. 11362.77.
- ¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
- ¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
- ¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- ¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
- ¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- ¹⁹ *Id.* Emphasis added.
- ²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- ²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- ²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- ²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- ²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.
- ²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- ²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
- ²⁷ Israel Packel, 4-5. Italics added.
- ²⁸ H&S Code sec. 11362.7(d)(1).
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ATTACHMENT 2

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Jeffrey F. Rosen
District Attorney

Issues Surrounding Marijuana in Santa Clara County

By Patrick Vanier, Supervisor of Narcotics Prosecution Team

Business Practices that Epitomize the Problems with the Proliferation of Marijuana Dispensaries

In 2014, the Santa Clara County District Attorney's Office prosecuted a case involving the transportation and possession for sale of six pounds of dried marijuana and twelve pounds of concentrated cannabis. The defendant told investigators he was delivering marijuana from a vendor on behalf of his San Jose-based marijuana club.

During trial, the director of the marijuana club, described as a "marijuana dispensary," testified to the business practice and organization of the club. The club consists of approximately 14,000 members between 2 "stores" in San Jose. 50 "vendors" throughout California sourced this "dispensary" with marijuana. Within the marijuana industry, the term "vendor" refers to a person who supplies marijuana to dispensaries and receives compensation for the product. The director identified the 50 vendors as persons who have marijuana cultivation sites which he has neither visited nor inspected. This particular dispensary does not pay city or state sales tax, or any income tax.

The club generates approximately \$1 million a year in annual sales involving approximately 100 pounds of dried marijuana bud, 30-40 pounds of wax (a form of concentrated cannabis) and varying quantities of cannabis products in other forms. The concentrated cannabis products are primarily manufactured using butane or other chemical solvents. This method of manufacturing is a crime under California Health and Safety Code section 11379.6 because of the hazards associated with production.

The business practices and organization of this club epitomize the many problems resulting from the proliferation of marijuana clubs in Santa Clara County. Illegal marijuana cultivation operations generate a significant number of collateral crimes on the supply side. For example, marijuana clubs and dispensaries self-monitor in the absence of government oversight. Therefore, there is no way to be sure how and from whom the clubs are acquiring their inventory of cannabis products. Law enforcement agencies have gathered valuable intelligence that some clubs are selling marijuana harvested by illegal cultivation operations. This intelligence has been documented through arrested individuals, "vendor" membership agreements or Prop 215 notices referencing local dispensaries, and subpoenaed club records.

Marijuana Case Trends

The District Attorney's Office observed the following trends based on recent cases prosecuted by the Office. The following statistics include only issued cases, not pending investigations. Between 2011 and 2013, the Office issued criminal charges against 172 illegal marijuana growing operations. Of these cases, 118 were

identified as “indoor grows” and 54 were classified as “outdoor grows.” Once again, these numbers only reflect a representative sample of cultivation operations within Santa Clara County.

Indoor Grow Operations

While indoor marijuana grow operations can be found in a variety of settings, including warehouses, barns, and back rooms of business establishments, the most common locations were single family homes in residential neighborhoods. These are locations where entire rental properties or vacant foreclosed homes are converted into clandestine greenhouses. The interior rooms for these homes are typically modified without construction permits, without permission from the banks (usually involving squatters) or knowledge of the rental property owners. With no regard to safety, structural integrity or value to the property, these former residences are generally ransacked.

Often times the electricity to homes where cultivation operations are present have been haphazardly rewired or compromised in other forms to accommodate the equipment – e.g. grow lights, fans, irrigation pumps, timers. Electrical circuit boxes are modified to bypass electricity from the power company’s meters (usually PG&E) resulting in the theft of millions of dollars in energy. House fires associated to residential marijuana gardens are frequently caused by the theft of power. Investigators also report tremendous amounts of moisture and standing water inside these indoor grows from leaking water sources, as well as humidity associated with the indoor process. Standing water is a breeding ground for caustic spores, black mold and fungus. Puddles of water combined with extension cords and exposed wiring create electrical hazards. First responders typically wear protective gear and respirators to avoid these dangers.

Of 118 indoor marijuana grows over the last three years:

- 76 involved converted homes,
- 2 involved converted warehouses, and
- 41 of these locations were identified as rental properties.

In at least 61 of these cases, electrical bypasses were observed where theft of power was deemed present and there were 5 house fires associated to indoor cultivations. The victim homeowners for these vandalized properties are by and large burdened with hundreds of thousands of dollars in clean up costs from indoor grows.

Outdoor Grow Operations

The other source of harvested marijuana comes from outdoor marijuana gardens. A large number of outdoor cultivation operations reviewed by the District Attorney’s Office were investigated by the Santa Clara County Marijuana Eradication Team (MET). Over the last three years, the MET team reported the removal of 355,005 marijuana plants and the seizure of 1,838 pounds of processed marijuana bud derived mostly from outdoor grow locations. These outdoor grow sites were typically discovered by detectives in remote areas of unincorporated Santa Clara County – eastern foothills of Milpitas and San Jose, Gilroy and Morgan Hill foothills, the base of the Santa Cruz mountains and the eastern foothills of Los Gatos, Los Altos and Saratoga. Marijuana gardens have been found on public lands (e.g. Henry Coe State Park and Midpeninsula Regional Open Space District) and private property in varying sizes. These grows can have a few hundred plants over a small plot of land or tens of thousands of marijuana bushes spread over many acres.

The number of marijuana plants will determine the yield potential for an operation. Most law enforcement experts conservatively estimate that a single marijuana plant can produce about 1 to 2 pounds of marijuana valued at \$1,500 to \$3,000 per pound (wholesale pricing). During harvesting periods for outdoor cultivations, May through October, the number of individual harvests for a single location can also impact

the profitability of the enterprise. Experienced growers can get two or three harvests on a single plot of land each year. The same is true for indoor marijuana locations, however, such locations can obviously grow year round.

The level of sophistication of these outdoor grows can vary as well. Some outdoor operations have only one or two experienced cultivators, while others have teams of migrant farm workers tending to the crop. The single most important variable for any outdoor grow is a nearby water source. Many outdoor operations are set up near creeks, rivers or reservoirs. Water is diverted without regulatory permits or permission from landowners. There have been numerous instances of water diverted to illegal marijuana grows from nearby legitimate farms. Illegal outdoor marijuana cultivators pollute waterways with pesticides, rodent poisons, human feces, trash, and soil erosion. Wardens with the California Department of Fish and Wildlife assist MET detectives with these investigations and recommend the charging of environmental crimes associated with marijuana cultivation. Of the 54 outdoor marijuana gardens charged between 2011-2013, at least 24 of the grow sites were on private land and 11 were on public property/open space. Environmental crimes were charged in 21 of these cases.

Other Associated Crimes

In addition to the crimes and social impacts unique to the two styles of marijuana cultivation, other alarming trends have been noted. Within the sample size of the 172 cases referenced above, firearms were located in 36 investigations. Other controlled substances, e.g. methamphetamine, were found in 25 cultivation sites. Children were reported present in 10 instances. Serious or violent felony crimes, e.g. burglary, robbery or assaults using deadly weapons, were reported in 8 investigations. In 2012, one investigation of an outdoor marijuana garden resulted in an officer involved shooting when one of the marijuana growers pointed a loaded .22 caliber semi-automatic rifle at a Fish and Wildlife Warden.

Organized Crime

Probably one of the least talked about issues involving marijuana grows has been the influence of organized crime. Law enforcement has documented numerous instances of organized crime controlling the cultivation of marijuana. Conservatively, at least 8 documented instances of Mexican National Drug Cartels and/or criminal street gangs have been tied to marijuana grows. At one outdoor marijuana operation, investigators found written references to the Sinaloa Drug Cartel and a drawing of "Jesus Malverde," the patron saint of drug traffickers. At another indoor-marijuana grow, officers found a "Santa Muerte" statute, a Mexican cult figure associated with violence, criminality, and the illegal drug trade.

Within the last five years, the U.S. Drug Enforcement Administration (DEA) and the Santa Clara County Sheriff's Office Multi-Jurisdictional Methamphetamine Enforcement Team (CAL-MMET) have identified multiple cartel drug trafficking cells operating within the county. These organizations are poly drug traffickers distributing methamphetamine, cocaine, heroin and marijuana. Through a variety of investigative techniques, DEA and CAL-MMET have learned that both indoor and outdoor marijuana cultivation is just one of many lucrative businesses operated by cartels to supplement the trafficking of methamphetamine and cocaine from Mexico. Mexican drug distributors will engage in human trafficking to bring farm workers up from the territorial regions the cartels control – Sinaloa or Michoacan – to tend to the cultivations. DEA and CAL-MMET investigations have resulted in the arrest of several high ranking drug distributors who have described to investigators firsthand how marijuana cultivation is a significant component to their overall business.

Law enforcement has also seen the rise of multiple Vietnamese criminal street gangs distributing marijuana within Santa Clara County. In 2010, California Department of Justice, Bureau of Narcotics Enforcement, investigated the Insane Viet Thugs (IVT), a documented street gang distributing marijuana and other

narcotics, as well as firearms. Agents learned through the investigation that IVT was managing a network of grow houses and distributing drugs throughout the Bay Area – San Jose to Vallejo. The investigation of IVT resulted in the service of 22 search warrants throughout the Bay Area and the prosecution of 22 validated or associate gang members, the seizure of approximately 1,500 marijuana plants from 5 indoor grow houses (a total of 7 grow houses were identified during the investigation) over 71 lbs of harvested marijuana, 16 firearms (including 3 assault weapons), over \$110,000 in U.S. Currency and various quantities of heroin, cocaine, methamphetamine and ecstasy.

The information provided in this narrative demonstrates how the lack of any significant regulatory schemes to control the supply of marijuana to dispensaries is impacting public safety and quality of life within the county. DA Jeff Rosen supports Santa Clara County's efforts to establish comprehensive guidelines designed to prevent the dangerous and illegal activities from illegal cultivation and distribution of marijuana.

ATTACHMENT 3

ATTACHMENT 3

Fire that destroyed dozens of homes sparked by an illegal marijuana operation, officials say



Engineer David Irvine rests next to a fire-ravaged hillside along Water Trough Road in Lake County south of Clearlake on Aug. 5, 2015. (Genaro Molina / Los Angeles Times)

By **Associated Press**

AUGUST 17, 2016, 5:30 PM

A fire that destroyed 43 homes last year in a largely rural area north of San Francisco was sparked by an illegal marijuana-growing operation, officials said Wednesday, but the two suspects fled the country before they could be questioned.

The Rocky fire burned about 108 square miles in Lake, Yolo and Colusa counties, destroying 43 homes and 53 outbuildings before it was contained.

It began near where firefighters are now battling an unrelated fire that investigators say was caused by a serial arsonist.

Last year's fire was started by a faulty water heater near where about 100 marijuana plants were being grown east of Clearlake, said California Department of Forestry and Fire Protection spokeswoman Janet Upton.

"It was strapped to a tree. Quite inventive, and why it was not very safe," she said.

The fire was the second-most destructive in the Lake County area last year, behind the Valley fire that destroyed more than 1,300 homes. The cause of a third nearby fire that burned six houses remains under investigation.

In the current fire, Damin Pashilk, 40, of Clearlake, is charged with 17 counts of arson including setting the fire that has now burned a portion of the town of Lower Lake. But officials say he is not a suspect in any of last year's three big fires.

The Rocky fire was one of at least five marijuana-related wildfires in Northern California last year, with four more reported so far this year. Southern California's climate isn't as favorable for growing marijuana at the lower elevations overseen by CalFire, Upton noted.

Officials could not say whether the nine recent fires are an increase. But it's concerning enough that the department is considering breaking out such fires into a separate category when it revises its reporting system in 2018, Upton said.

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Man allegedly sets fire to protect marijuana plants from Jerusalem blaze



The fire is burning near the massive Rocky Fire.

By **Veronica Rocha**

AUGUST 11, 2015, 7:08 AM

On Sunday evening, firefighters were battling more than a dozen fires across Northern California, including a new one called the Jerusalem fire that was exploding north of Napa in Lake County.

Then they received reports of another fire nearby. Officials quickly determined this fire had been set intentionally by a man allegedly trying to protect his marijuana-growing operation.

Juan Ramos Silva, 49, of Lower Lake was taken into custody on suspicion of arson and setting a backfire, according to the California Department of Forestry and Fire Protection.

Silva started the large backfire at 5:43 p.m. Sunday, a couple of miles away from the Jerusalem fire in a rural, sparse area northeast of Middletown, said Lt. Steve Brooks of the Lake County Sheriff's Office.

Silva told deputies he started the blaze to prevent the Jerusalem fire from reaching his home. But officials concluded he set the fire behind the marijuana grow to "protect his plants, not his residence," Brooks said.

Silva told deputies he was a firefighter in Mexico years ago and “had attempted to conduct a controlled burn on the back of his property to protect it.”

As some firefighters dealt with that blaze, a much larger force was evacuating residents and trying to control the Jerusalem fire, which burned 5,000 acres in less than a day, fueled by drought conditions and winds.

More than 10,000 firefighters are battling 18 fires in California. More than 50 fire engines from Arizona, Nevada and New Mexico were sent to California to bolster the army.

Silva is the fifth person arrested on suspicion of arson in the last two weeks, according to CalFire.

“Especially now with the dry conditions from the drought, we will absolutely not tolerate arson of any type and will track down those suspected of causing harm to our communities,” CalFire Chief Ken Pimlott said in a statement.

CalFire spokeswoman Amy Head said 95% of all fires are started by people.

“If you live in California, you need to be prepared,” she said.

Because of the drought, firefighters are experiencing unprecedented fire activity that is aggressive and explosive, Head said. Fires are usually fanned by winds. But that’s not the case this year. Bone-dry woodlands are driving flames, and fires are becoming unpredictable.

The Jerusalem fire, she said, is the latest example of how dry brush and rugged terrain could be explosive.

Residents in Lake County are now dealing with two large wildfires consuming thousands of acres of woodlands north of Napa: the Jerusalem fire and the Rocky fire. The causes of the fires are under investigation.

The Jerusalem fire, named for its proximity to Jerusalem Road, came days after firefighters began to gain ground on the massive Rocky fire. The Jerusalem fire started at 3:42 p.m. Sunday, CalFire officials said.

Firefighters battled the blaze as flames moved northeast in dense brush and steep terrain, toward nearby communities. Crews and additional resources were pulled away from the Rocky fire to help several miles south in the firefight.

Residents living in the Jerusalem Valley area east of Spruce Grove Road are under mandatory evacuation orders.

Firefighters were still battling the 69,636-acre Rocky fire, which was 85% contained. The erratic blaze that burned across three counties destroyed 43 homes and 53 outbuildings; eight structures were damaged.

The Rocky fire is the largest burning in California.

Strong winds are expected across northeastern California and parts of the northern Sierra Nevada. Parts of Del Norte, Humboldt, Siskiyou and Trinity counties will be under a red flag warning and fire weather watch starting Monday afternoon because of gusty winds and possible dry lightning.

Veronica.rocha@latimes.com

Twitter: @VeronicaRochaLA

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UPDATE

7 a.m., Aug. 11: This article was updated throughout.

1:52 p.m., Aug. 10: This story has been updated throughout with new details, including an arrest being made.

This story was originally published at 8:17 a.m.

This article is related to: Crime, Arson, Droughts and Heat Waves, Weather

Recordnet.com

News worth sharing *online*

Arrest made in cannabis robbery

Monday Posted

Oct 24, 2016 at 6:52 PM

Updated Oct 24, 2016 at 6:52 PM

By **Joe Goldeen**

Record Staff Writer

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SAN ANDREAS — Calaveras County sheriff's deputies arrested a man over the weekend wanted for a marijuana robbery and shooting that took place earlier last week.

Kevin Louis Cucuk was arrested about 7:45 p.m. Saturday hiding out in a residence on Pine Cone Lane in West Point. He was charged with suspicion of attempted homicide, robbery, kidnapping, false imprisonment, assault with a deadly weapon and being a felon in possession of a firearm, according to the Sheriff's Office.

Last Tuesday, Calaveras deputies responded to Bummerville Road near West Point on the report of a marijuana robbery at 2:50 a.m. A victim told the deputies that as he was trimming marijuana plants, a suspect appeared and pointed a gun at the victim's face, ordering him not to move.

The assailant ordered the victim to walk a short distance and sit down while he placed a large amount of marijuana onto a tarp. He then ordered the victim to bring him a motorcycle. The assailant then took the motorcycle, valued at \$2,500, and the marijuana, valued at \$5,000, according to the report.

At one point, the victim reportedly heard the assailant and an unknown person talking, but he could not see that other person.

Within one minute after the robbery, the owner of the marijuana arrived. He and the victim walked to the edge of the property where they saw someone on the motorcycle. Shots were fired from two different types of firearms in their direction, the Sheriff's Office reported.

One of the victims identified Cucuk as the robbery suspect as well as linked him to other crimes related to this case and investigation, according to the report.

The Sheriff's Office believes Cucuk has been involved in other robberies of marijuana in the area. If anyone has been the victim of a similar crime, contact the Investigations Division at (209) 754-6564 or (209) 754-6500.

*— Contact reporter Joe Goldeen at (209) 546-8278 or jgoldeen@recordnet.com.
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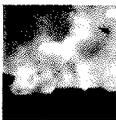
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Explosion unveils marijuana extraction lab in Murrieta (UPDATE)

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By ANNE MILLERBERND / STAFF WRITER

Published: Aug. 26, 2016 Updated: Aug. 27, 2016 6:16 p.m.



Updates with arrest, details

A honey oil lab exploded inside a Murrieta home on Friday, Aug. 26, damaging a home but causing no injuries.

possession of marijuana for sale and arson, according to a news release from the Murrieta Police Department.

A shotgun was recovered, the release said, and the Police Department will ask that Delvecchio be charged with being a felon in possession of a firearm.

Detectives said they found 226 grams of marijuana wax (honey oil) with a street value of at least \$9,040.

Detectives also located 7,389 grams of marijuana with a street value of at least \$184,725.

Cannabis oil, also called honey oil, is a name for the concentrated liquid extracted from marijuana. It tends to be a goldish yellow color. The process for making it -- using a butane gas flame -- can be dangerous. The fumes can ignite or explode, especially if the process is done indoors where the fumes collect instead of dissipate.

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Anyone with information on this incident is asked to call the watch commander at 951-696-3615. Witnesses may also provide information anonymously through We Tip at 800-782-7463.

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In this case, detectives determined that the explosion occurred as a result of the honey oil being placed in the refrigerator for the purposes of cooling it, which is part of the manufacturing process. Traces of butane gas remain with the honey oil even after the process is completed.

Butane gas is heavier than air and will settle at the lowest point, police said. Before the explosion Friday, the butane gas emitted from the honey oil settled at the bottom of the refrigerator near the compressor. Once the compressor was activated, the butane gas reacted to this ignition source, which resulted in an explosion.

Anyone with information on this incident is asked to call the watch commander at 951-696-3615. Witnesses may also provide information anonymously through We Tip at 800-782-7463.

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Frightening Alleged Robbery of Marijuana Shop Ends Like 'Dumbest Criminals Video'

by [Chris White](#) | 12:11 pm, August 9th, 2016

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What began as a very dangerous armed robbery at a marijuana shop near Seattle on Sunday ended more like a scene from *America's Dumbest Criminals*.

According to *KOMONews.com*, police say two men, one of whom was armed, forced their way into [the Have a Heart marijuana dispensary](#)



[on Sunday night and tied up the store employees](#) at gunpoint.

As the alleged robbery was in progress, store manager **Damon Martinez** said he happened to be monitoring a live feed of the store's surveillance

camera system. Martinez said he immediately called the police and was able to provide the dispatcher with crucial details about the alleged perpetrators.

Martinez told *KOMONews.com*, "When I saw them open the door, they immediately put a gun on one of the staff's face, put them on the ground, and I immediately called 911."

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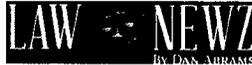
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progress, police were able to set a secure perimeter around the building, according to Seattle police detective **Mark Jamieson**.

Meanwhile, the alleged robbers reportedly continued to go through the store, stuffing marijuana and cash into two duffle bags.

According to Jamieson, the two masked men eventually exited the building, only getting a few steps from the door before being told to stop by responding officers. The two suspects were immediately taken into custody without incident and booked into the King County Jail. Police say they recovered a handgun and two duffle bags from the alleged suspects.

"It was almost like the dumbest criminals videos," Martinez told the news station, speaking about how the incident ended.

The store employees were reportedly able to free themselves, and although still somewhat shaken up by the incident, none suffered any physical injuries.

Marijuana dispensaries in the Seattle area have seen an increase in attempted robberies lately, according to the report. Seattle area Congressman **Denny Heck** told the news station the increase in robbery attempts is a result of the fact that marijuana dispensaries are cash-only businesses. Banking institutions, essentially, do not want to run afoul of federal law by accepting credit card payments for marijuana, which, under federal law, is still considered to be an illegal drug.

"All cash. That is a magnet for crime," Congressman Heck told the reporter. "And we ought to do away with it and provide these legally constituted businesses access to banks."

Ryan Hunkel, a co-owner of Have A Heart, also said he fears marijuana shops will remain a target until the banking laws change.

Although, he added, thieves seem to have the wrong idea about how much cash the dispensaries actually keep in the stores.

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Hash oil burns a growing problem for California hospitals

By - Associated Press - Sunday, June 7, 2015

SACRAMENTO, Calif. (AP) - Tracey Clark's two teenage sons landed in intensive care, enveloped in gauze and their faces raw and red from burns over 40 to 60 percent of their bodies suffered in a fire, which prosecutors say was caused by an illegal hash-oil lab at their uncle's duplex.

"I was scared they were going to die," said Clark.

Similar scenes have played out throughout California in recent years as intense fires from the illegal manufacture of butane hash oil - cheap and easy to make but extremely volatile - have exploded, the Sacramento Bee reported Sunday (<http://bit.ly/1lvDmbj>).

At two of Northern California's major burn treatment centers - UC Davis Medical Center in Sacramento and Shriners Hospitals for Children, Northern California - injuries from butane hash-oil explosions account for 8 to 10 percent of severe burn cases, a larger percentage than from car wrecks and house fires combined, said Dr. David Greenhalgh, chief burn surgeon at both hospitals.

"It's kind of an epidemic for us," Greenhalgh said. There have been times when half of the 12 beds in UC Davis' burn unit were filled with patients injured in hash-oil explosions, he said.

Between 2007 and 2014, 101 patients with suspected or confirmed burns from butane fires were admitted to the two hospitals, most of them in the past three years, according to Greenhalgh. Most were adults, but six of the admitted patients were under 18.

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Statewide, illegal manufacturing of hash oil has become a public health menace on a par with illegal methamphetamine labs in prior decades. While federal and state statistics on butane hash-oil explosions are not readily available, there are numerous reports of arrests and fires at the local level.

In Butte County, for instance, prosecutors said 31 illegal hash-oil operations were uncovered in 2014. "We're already on track to exceed that this year," District Attorney Michael Ramsey said. The numbers are similar to the annual count of meth labs the county was breaking up in the 1980s and '90s, he said.

Butane hash oil, a highly concentrated form of cannabis, is illegal to manufacture but is legal to sell under California's medical marijuana law, meaning dispensaries must get their supply from illicit operations, according to law enforcement officials.

Hash oil, made from discarded marijuana trimmings and used to make cookies and candies, sells for \$800 to \$1,300 per pound wholesale and can have a retail street value of \$22,000 per pound.

The lucrative market is helping to drive hash-oil production, while the wide availability of online videos and inexpensive supplies is compounding the number of tragic fires, said law enforcement and medical professionals.

Lawmakers are looking at ways to regulate the sale of butane. A bill introduced in February would prohibit any individual from buying more than 400 milliliters of butane in a month and impose reporting requirements on retailers.

Similar limits on the cold medicine pseudoephedrine, a key ingredient of methamphetamine, are credited with curbing meth production in California in recent years.

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Marijuana labs spawn lethal explosions across the country



Firefighters and other emergency personnel at the scene of a house explosion in the Bronx borough of New York. Authorities believe that the house was the site of an indoor marijuana growing operation. (Mary Altaffer / Associated Press)

By **Verena Dobnik**

OCTOBER 1, 2016, 12:45 PM | REPORTING FROM NEW YORK

An explosion that destroyed a New York City home and killed a veteran firefighter has drawn attention to marijuana-making methods that are legal in many states — but can also be lethal.

A New York fire battalion chief died responding to the blast Tuesday in a Bronx home that authorities say had been converted into an indoor marijuana farm. They're investigating whether the alleged growers tampered with gas lines and mishandled other materials in ways that caused the explosion.

Indoor marijuana farmers can create potential fire hazards by using natural gas, propane or butane to power carbon dioxide generators that make the plants grow. In recent years across the country, similar methods used to produce more potent marijuana extracts have resulted in explosions and other catastrophes.

Indoor gas use "is a standard way to grow marijuana," says Michael O'Hare, a professor at UC Berkeley who is an expert in cannabis cultivation. "If you raise the CO₂ level, it'll grow faster."

Some growers rely on tanks of propane or butane gas because using large amounts of metered gas from a utility could draw the attention of authorities, O'Hare said. In those conditions, a gas leak could spell disaster, he said.

An hour before the explosion at about 7:30 a.m. on Tuesday in the Bronx, dozens of nearby residents said they could smell gas wafting over the neighborhood. The house had already been evacuated and fire personnel were on the scene when the blast sent debris flying, killing Chief Michael Fahy, a 17-year fire department veteran and father of three. His funeral was held Saturday.

Two suspects, Garivaldi Castillo and Julio Salcedo, were arrested and are being held on drug charges while authorities try to determine whether there is evidence that could result in more serious counts related to Fahy's death.

Prosecutors said in court this week that the two-story Bronx property was full of combustible items related to the pot operation, including grow lamps and vats of liquid fertilizer. Windows were sealed and other areas covered with extra insulation to retain heat. Plants the size of "small trees" were growing in bedrooms on the upper floor, prosecutors said.

Given that only about half of U.S. states have legalized marijuana, either for medical or recreational use, it's impossible to estimate how many such growth labs exist, O'Hare said.

In marijuana production-related accidents, more than 30 people were injured last year in Colorado from butane explosions involving hash oil — a concentrated form of marijuana extracted from the plant's leaves and flowers.

Last year, a marijuana dispensary in Santa Fe, N.M., was engulfed in flames after a blast that injured two workers. Fire department investigators said a butane leak met with an ignition source, causing an explosion powerful enough to separate the roof from the wall and melt fluorescent lights.

And in Washington state, federal prosecutors have brought charges in five cases involving explosions during hash oil production. The former mayor of Bellevue died while trying to escape a fire linked to such activity.

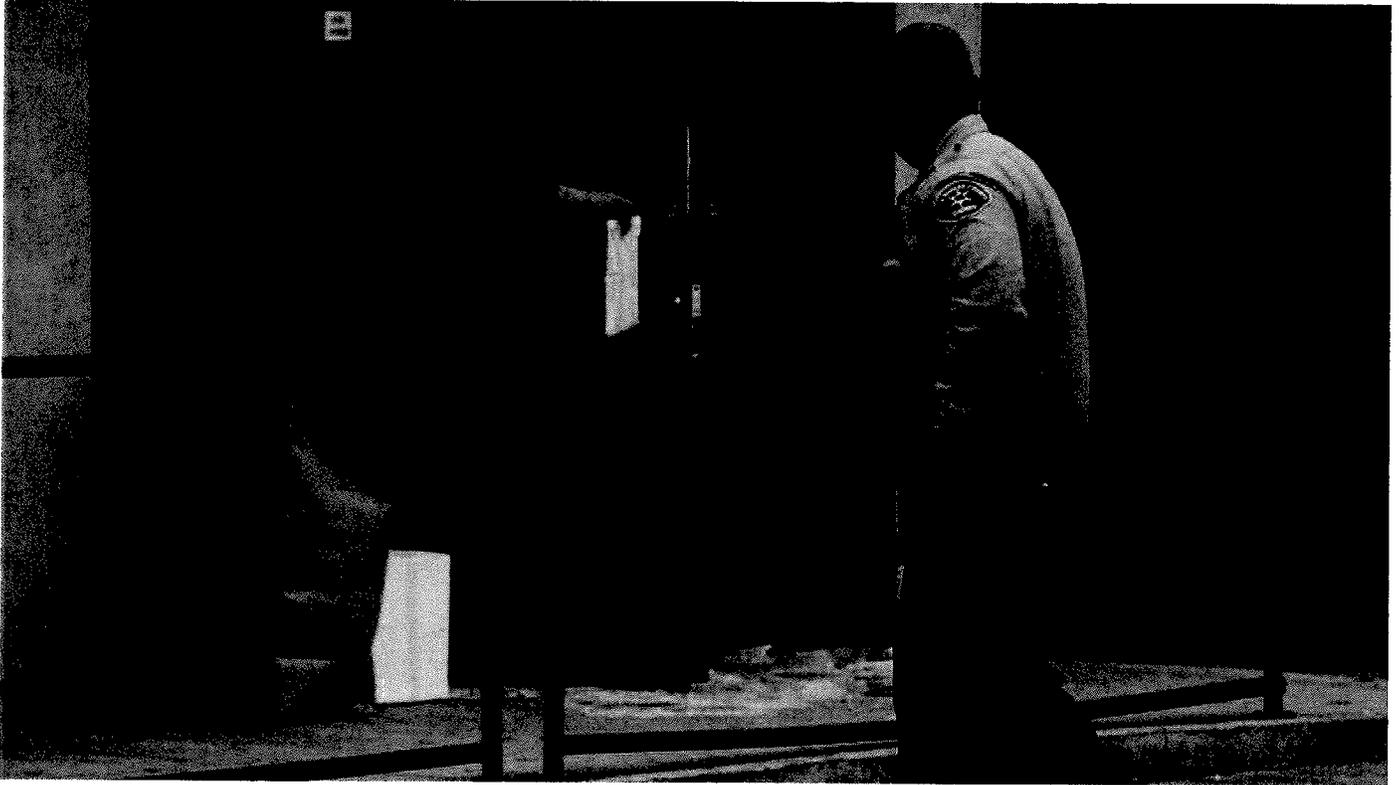
In the past year or so, an especially strong concentrate is appearing — "shatter," a form of cannabis wax derived from butane hash oil that is about five times more potent and faster-acting than unrefined smoked cannabis. It's legal for recreational use in states such as Colorado and Washington, and sold in medical marijuana dispensaries in other states.

Dobnik writes for Associated Press.

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This article is related to: Homicide, Crime

Most pot dispensaries are forced to be cash-only. Now they're prime targets for violent robberies



Members of the Los Angeles County Sheriff's Department collect evidence at a marijuana dispensary in Walnut Park in June. The shop's owner shot and wounded two men trying to rob the store, authorities said. (Mark Boster / Los Angeles Times)

By **Rick Anderson**

JULY 11, 2016, 3:00 AM

The recent killing of a marijuana store security guard in Colorado and the wounding of another guard in San Bernardino are the latest examples of the crime lure posed by cash-only pot dispensaries, industry observers say.

But while those armed robbery attempts and a pot store shootout in Walnut Park in Los Angeles County were unfolding last month, Democratic-sponsored legislation that could have led to more dispensaries offering plastic and electronic payments in lieu of cash was blocked by House Republicans.

“Moments such as this,” said security expert Michael Jerome of Blue Line Protection Group, referring to the recent killing of 24-year-old Colorado pot store guard Travis Mason, “remind us that the cash-based nature of the legal cannabis industry here in Colorado makes these dispensaries and cultivation facilities prime targets.”

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A former Marine with a wife and three children, Mason was shot in the head on June 19 by two armed robbers at the Green Heart pot dispensary in Aurora, a Denver suburb. It was his second week on the job.

The would-be robbers, who fled without any money, are still being sought. Rewards totaling \$12,000 have been offered for their capture.

"This incredibly sad situation underscores the public safety risk faced by our industry due to the fact that we don't have access to banking," Michael Elliott, executive director of the Marijuana Industry Group, told the Aurora Sentinel.

That risk was underscored on June 8 when a Walnut Park medical marijuana dispensary owner survived a shootout with two would-be robbers. On his security camera, the owner spotted the two men arriving with masks and armored vests, according to a Los Angeles County sheriff's spokesman. One was carrying an assault rifle. The owner drew his own gun and wounded the two as they entered. The owner escaped unharmed.

Santa Ana police recently announced a \$100,000 reward for information leading to the arrest of a suspect in the shooting of another marijuana dispensary owner, Derek Worden, 48, who survived two bullet wounds outside his store in November.

Police said anonymous donors provided the reward money after the investigation stalled. Worden's dispensary had been open for just four months. The shooter ran off without any money, officials said.

Crime statistics concerning legal dispensaries are hard to come by as the industry expands, and, understandably, operators are reluctant to talk about how much cash they can have on hand. But in a late-night Seattle dispensary break-in last year, for example, thieves got away with \$100,000 in cash, police said.

Recreational use of marijuana is dominated by Western states – it's legal in Colorado, Washington, Oregon, Alaska and Washington, D.C. Altogether, 25 states and the District of Columbia allow some form of recreational or medical marijuana use.

California, Nevada and six other states could make marijuana legal in a majority of U.S. states in November when they vote on legalization measures. Marijuana Business Daily reports that potential ballot measures loom in another six states, and predicts that legal pot could become an \$8-billion industry in the U.S. by 2018.

But marijuana use remains illegal under federal law, causing most banks to steer clear of the industry. As a result, most dispensaries must deal in cash.

The Senate recently approved legislation to protect banks against repercussions if they do business with marijuana dispensaries, but a Republican-controlled committee blocked a similar amendment in the House.

One of the co-sponsors, Rep. Dennis Heck (D-Wash.), mentioned slain Colorado pot store guard Travis Mason after the GOP action. Heck told the National Journal that “every single member who opposed allowing this amendment ought to have that young man’s name tattooed on their body to remind them.”

More banks are opening their vaults to pot entrepreneurs, the Associated Press reports. In March, 300 financial institutions were working with marijuana companies, based on federal data. That compares to 51 in March 2014.

But cash-only remains a business hazard. Four days after Mason’s killing in Colorado, a 35-year-old San Bernardino medical marijuana dispensary guard was shot in the head. He survived but remains in critical condition. Three armed robbers got away with a haul of cash.

That was similar to a robbery last year at a San Bernardino dispensary, except in that case, the guard, Anthony Victor Pineda, 25, died from his wounds, police said. The robbers fled with the cash.

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Criminals target medical marijuana

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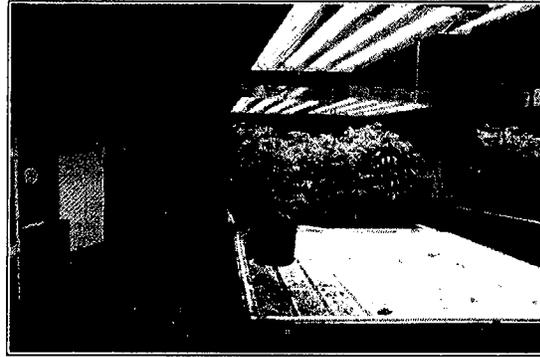
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 Wash. shootout involving activist highlights risk to growers

AP Associated Press
 updated 3/18/2010 9:05:04 PM ET

SAN FRANCISCO — Patients, growers and clinics in some of the 14 states that allow medical marijuana are falling victim to robberies, home invasions, shootings and even murders at the hands of pot thieves.

There have been dozens of cases in recent months alone. The issue received more attention this week after a prominent medical marijuana activist in Washington state nearly killed a robber in a shootout — the eighth time thieves had targeted his pot-growing operation.

Critics say the heists and holdups prove that marijuana and crime are inseparable, though marijuana advocates contend that further legalization is the answer. News of crimes related to medical marijuana comes at an awkward time for California and Washington advocates who are pushing to pass ballot measures to allow all adults, not just the seriously ill, to possess the drug.



Steve Sarich stands in a room used to grow medical marijuana in his home in Kirkland, Wash. Poi investigated a shootout between Sarich and a robber in his home on Monday. Sarich says he uses

"Whenever you are dealing with drugs and money, there is going to be crime. If people think otherwise, they are very naive," said Scott Kirkland, the police chief in El Cerrito, Calif., and a vocal critic of his state's voter-approved medical marijuana law.

"People think if we decriminalize it, the Mexican cartels and Asian gangs are going to walk away. That's not the world I live in," Kirkland said.

Unwanted attention

Activists and law enforcement officials say it is difficult to get an accurate picture of crimes linked to medical marijuana because many drug users don't report the crimes to police for fear of arousing unwanted attention from the authorities. But the California Police Chiefs Association used press clippings to compile 52 medical marijuana-related crimes — including seven homicides — from April 2008 to March 2009.

There also is plenty of anecdotal evidence:

- A man in Washington state was beaten to death last week with what is believed to be a crowbar after confronting an intruder on the rural property where he was growing cannabis to treat painful back problems.
- Medical marijuana activist Steve Sarich exchanged gunfire with intruders in his Kirkland, Wash., home near Seattle on Monday, shooting and critically injuring one of them.
- In California, a boy was shot to death while allegedly trying to steal a cancer patient's pot plants from his home garden.
- A respected magazine editor was killed in 2007 by robbers who targeted his Northern California home for marijuana and money after hearing that his teenage son was growing pot with a doctor's approval.
- Robbers killed a security guard at a Los Angeles medical marijuana dispensary in 2008.

Police and marijuana opponents say the violence is further proof that the proliferation of medical marijuana is a problem that will worsen if the drug is legalized or decriminalized.

Pot activists say the opposite: that prohibition breeds crime and legalization would solve the problem. They also say the robberies have exposed the need for more regulation of medical marijuana laws in states like California, Washington and Colorado.

"The potential for people to get ripped off and for people to use guns to have to defend themselves against robbers is very real," said Keith Stroup, founder and chief legal counsel for the National Organization for the Reform of Marijuana Laws. "But it's nothing to do with medical marijuana. It is to do with the failure of states to regulate this."

Marijuana advocates say there is adequate regulation in New Mexico, where officials say there have been no violent medical marijuana robberies.

Medical cannabis is primarily grown by a small number of regularly inspected nonprofits in New Mexico, and the state keeps their names and locations confidential. The law includes extensive requirements covering security, quality control, staff training and education about the use of the drug.

Vague rules

Most medical marijuana states have only vague rules for caregivers or dispensaries participating in a business with products that can fetch \$600 an ounce. Some states, including California and Colorado, can only guess how many pot dispensaries they have because the businesses don't have to register with the state.

"This is ridiculous, in my opinion, to have medical marijuana and no regulation," Stroup said. "A jewelry store wouldn't open without security, and if it did, a scuzzy person's going to break in and steal all their diamonds."

Stephen Gutwillig, California director of the pro-pot Drug Policy Alliance, said that while the robberies are disturbing, there is no way to conclude that legalized marijuana breeds any more crime than convenience stores, banks or homes stocked with expensive jewelry and electronics.

In fact, Denver police said the 25 robberies and burglaries targeting medical marijuana in the city in the last half of 2009 amounted to a lower crime rate than what banks or liquor stores there suffered.

"I think what we are seeing is a spate of crime that reflects the novelty of medical marijuana cultivation and distribution through unregulated means," Gutwillig said.

Marijuana is still illegal under federal law, but the Obama administration loosened its guidelines for prosecutions of medical pot last year. The Justice Department told federal prosecutors that targeting people who use or provide medical marijuana in strict compliance with state laws was not a good use of their time.

The decision energized the medical marijuana movement and came as Washington state and California are trying to get pot legalization measures on the ballot. Activists are still gathering signatures, and it's not yet known if the measures will qualify for the ballot.

Meanwhile, California cities have been trying to rein in the drug in response to a medical marijuana law that is the nation's most liberal.

Detective Robert Palacios of the Los Angeles Police Department said he has investigated a half-dozen dispensary robberies in the last year, but he has seen the number of such crimes drop in recent weeks after the City Council moved to close many stores.

In all the cases he's investigated, armed robbers have stolen marijuana, cash and other items. They often resell the drug on the street.

"They are going into a business and using a threat of force," Palacios said. "Even though they are in an establishment that itself is questionably legal, it's our duty to investigate."

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\$1,000 and one pound of pot missing

by *Shoshana Walter* — May 28, 2010, 12:08 a.m. 0

A San Francisco State student who delivers medical marijuana door-to-door was robbed at gunpoint just after midnight Thursday in Richmond. The assailants took \$1,000 in cash and a pound of pot.

Aaron Chandler, 33, runs Alternative Rx Solutions, a business he describes as a mobile medical marijuana dispensary catering to lower-income, ill and disabled patients.

Chandler, reached later by telephone, said he received a delivery order through his website around 9 p.m. Wednesday for a pound of marijuana from a Richmond man. He traveled from San Francisco to an address on the 4800 block of Cutting Boulevard to deliver it. When he arrived at about 12:15 a.m., police say he and two friends were robbed at gunpoint of the product and their cash.

To become a member of Chandler's collective, a patient must register using a medical marijuana identification number or upload a scan of a doctor's recommendation. Chandler said he also asks for proof of identification upon delivery.

He said he never got that opportunity.

Chandler said he usually closes shop at about 7 p.m., but when he talked to the man on the phone, his story seemed credible.

"He claimed to have his own collective and said he had patients that were disabled and that he wanted to try to see me, but he had his daughter with him and his daughter was asleep and he had to leave early in the morning to meet a sick patient," Chandler recalled. "He sounded really sincere, like a really good guy. I didn't think it would be a problem to go help him out."

Chandler said he, his girlfriend and a friend hopped into Chandler's truck with the pound of marijuana the man had requested.

About the Author



Shoshana Walter
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stole money from Chandler's girlfriend and the friend, Chandler said the man rifled through his pockets and told him he wouldn't be able to find him because the medical marijuana ID number he'd used to place the order was stolen.

"And then they kind of surrounded me. They were just like, 'Welcome to Richmond,' and somebody hit me one more time across the back of my head and they took off running across the street."

Having written about conducting safe transactions on his blog, Chandler said the robbery hurt his sense of trust more than his business.

Richmond police said the incident could have been avoided with common sense.

"We would dissuade people from trying to do these types of transactions, even if they're legal," said Lt. Mark Gagan of the Richmond Police Department.

"At face value, it's a very serious crime that these people are victims of. But if this was any type of transaction on eBay, you wouldn't be buying an antique at midnight under a carport."

Gagan said robberies at storefront dispensaries are not uncommon, but mobile dispensaries are particularly vulnerable to crime.

Chandler said he won't make the same mistake again. "I really like to help people and I kind of get blinded by that sometimes."

The San Francisco State student has already outlined new security measures.

"There are some places we just won't go. Don't do anything after dark unless you're already familiar with the patient in your collective and only deal with patients in your collective," he said.

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Places with More Marijuana Dispensaries Have More Marijuana-Related Hospitalizations

PITTSBURGH, Aug. 10, 2015 – People who live in areas of California with a higher density of marijuana dispensaries experience a greater number of hospitalizations involving marijuana abuse and dependence, a University of Pittsburgh Graduate School of Public Health analysis discovered.

The National Institutes of Health-funded research, published online and scheduled for the Sept. 1 issue of the scientific journal *Drug and Alcohol Dependence*, could be informative as more states consider legalizing marijuana for medical and recreational use. It is the first analysis of the statewide impact of marijuana dispensaries on abuse and dependence, as well as the first look at population characteristics associated with marijuana-related hospitalization rates.

"As marijuana is approved for medical or recreational use, we need to carefully consider where we allow dispensaries to be placed," said lead author Christina Mair, Ph.D., assistant professor in Pitt Public Health's Department of Behavioral and Community Health Sciences. "Our study indicates that there are real problems associated with a higher density of marijuana dispensaries in neighborhoods. More study and monitoring, coupled with thoughtful legislation and community discussion, will be prudent to ensure that marijuana laws have the fewest negative consequences for vulnerable populations."

In 1996, California was the first state to legalize medical marijuana, allowing physicians to prescribe the drug for medical purposes. Since then, 22 states and Washington, D.C., have enacted similar laws, and four of those states also have legalized recreational use. Pennsylvania doesn't allow either, though it is considering permitting medical marijuana.

Dr. Mair and her team looked at data on California hospital discharges that had either a primary or secondary medical code for marijuana dependence or abuse with at least one overnight hospital stay. The research covered 2001 through 2012, the most recent years for which consistent data were available.

Hospitalizations with marijuana abuse or dependence codes increased from 17,469 in 2001 to 68,408 in 2012. More than 85

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percent of marijuana-related hospitalizations were coded as abuse, rather than dependence, and 99.2 percent were secondary codes, meaning the person was primarily hospitalized for something other than marijuana.

When the research team mapped the location of marijuana dispensaries and cross-referenced it with the ZIP code of each patient's home, they found that each additional dispensary per square mile in a ZIP code was associated with a 6.8 percent increase in the number of hospitalizations linked to marijuana abuse and dependence.

In addition, Dr. Mair and her team found that marijuana dispensaries and hospitalizations were more likely to be located in areas with lower household incomes and lower educational attainment.

"It's unclear if the marijuana dispensaries are simply locating in neighborhoods that tend to be more disadvantaged and already have underlying problems with marijuana abuse, or if the presence of the dispensaries is causing an increase in abuse and hospitalizations," said Dr. Mair. "It could be a combination of both factors."

Dr. Mair noted that research on the location of marijuana dispensaries has a parallel precedent in the location of liquor stores. This gives policymakers and public health practitioners the opportunity to learn from previous studies on the health effects of density and location of liquor stores in order to design studies that can provide similar data on marijuana dispensaries.

"Once dispensaries open, it is much harder to go back and create regulations to guide their location and density," said Dr. Mair. "Passage of laws permitting marijuana use and sale is likely to continue, so it is critical that we continue to research the impact of dispensaries on the health of local communities to provide guidance on regulations and public health outreach to prevent abuse."

Additional researchers on this project include senior author Bridget Freisthler, Ph.D., of UCLA's Luskin School of Public Affairs. Co-authors are Andrew Gaidus, M.E.M., and William R. Ponicki, M.A., of the Prevention Research Center in Oakland, California.

This research was funded by the NIH's National Institute on Drug Abuse grant R01-DA-032715.

<http://www.upmc.com/media/NewsReleases/2015/Pages/mair-marijuana.aspx>

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Regulating marijuana delivery services — not just dispensaries — could help address recreational use

Banning medical marijuana dispensaries or regulating their number and density in a given city may not be sufficient to lower marijuana use if delivery services open in their place, according to UCLA research.

The new study, led by UCLA social welfare professor Bridget Freisthler and co-authored by Paul Gruenewald of the Pacific Institute for Research and Evaluation, compares self-reported marijuana use by almost 9,000 people in 50 California cities where medical marijuana is available through storefront dispensaries and delivery services. The study's authors say the results can help lawmakers understand how regulatory practices affect marijuana use across cities.

A key finding from the study was that people in cities with greater availability of medical marijuana — as measured by the density of dispensaries and delivery services — reported more current marijuana use and more frequent use. In addition, the number of storefront dispensaries in a community was more closely related to frequency of marijuana use than the availability of delivery services was. California allows marijuana use for medicinal purposes but gives regulatory control of dispensaries to local jurisdictions. But, Freisthler said, despite heightened interest from public health

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researchers and an emerging understanding of statewide policies, little is known about how access to marijuana through dispensaries corresponds to patterns of use on a city-by-city basis — and whether marijuana legalization is actually leading to greater use.

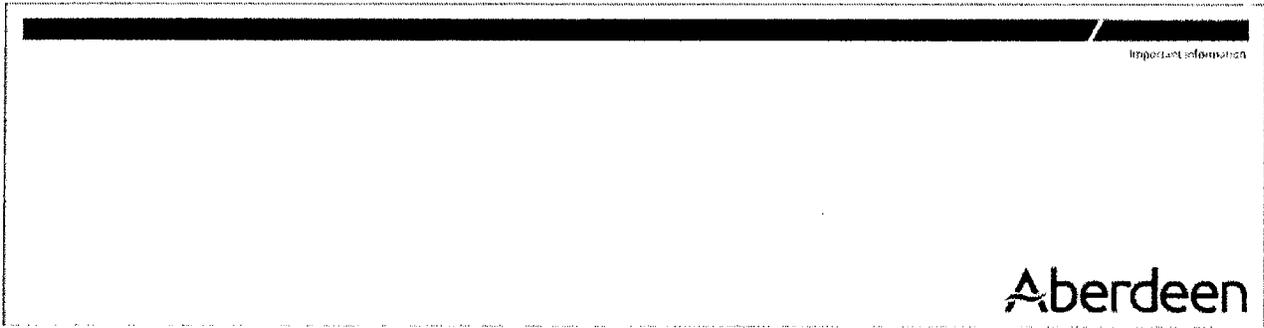
“The relationship between the physical availability of marijuana and the number of medical and recreational users could suggest a supply-and-demand relationship in which dispensaries and delivery services are opening in locations with higher demand,” said Freisthler, a faculty member at the UCLA Luskin School of Public Affairs.

“In terms of future policy, this could mean that banning storefront dispensaries or regulating the number and density of dispensaries may not be sufficient ways to reduce marijuana use if delivery services open in their place,” she said. “The implication is that regulating delivery services needs to occur along with the regulation of storefront dispensaries.”

Researchers also found that 18- to 29-year-olds were more likely to use marijuana currently and frequently than any other age group, which suggests that that concerns about young people’s access to marijuana may be warranted.

The study was published Sept. 2 in *Drug and Alcohol Dependence*. It was funded by the National Institute on Drug Abuse.

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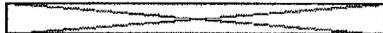
[REPORT: Children 51 times more likely to have identity stolen](#)

Medical Marijuana Deliveryman Robbed by Baton-Wielding 'Ninja Warriors'

Submitted by IWB, on March 26th, 2012

WEST COVINA (CBS) — A medical marijuana deliveryman was still shaken up on Monday after what he described as a robbery by two men allegedly dressed as ninja warriors.

KNX 1070's John Brook reports the robbers used the martial arts getup to conceal their identity as they got away with a big bag of marijuana.



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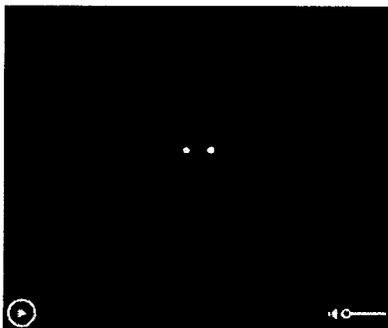
The assailants were reported dressed in all black with masks over their faces and wielded martial arts batons — known as *tong fa* — to intimidate the deliveryman around 10 p.m. last Friday at an apartment house along the 800 block of South Sunset Avenue in West Covina, police said.

"After he made his delivery, he was walking back to his vehicle and was approached by two males in their 20s wearing ninja costumes and holding white batons," said Sgt. Travis Tibbets.

The victim dropped the bag of marijuana and fled the scene, said Tibbets.

The deliveryman was not hurt in the reported robbery, which took place just a short distance from the police station.

Police said the suspects are in their 20s, approximately 5'8" in height, and thin in stature. Anyone with information on the robbery is asked to call West Covina police at (626) 939-8557.



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Marijuana-deliveryman-robbed-in-Santa-Maria

January 17, 2013



A man robbed a medical marijuana delivery man at gunpoint Wednesday evening in Santa Maria. [Noozhawk]

An employee of the Go Green Compassionate Care Collective was delivering medical marijuana to a patient when the robber approached him with a handgun in the 500 block of East Cook Street around 7:30 p.m.

"The suspect demanded two cases full of marijuana products the victim was attempting to deliver to a patient," said Santa Maria

Police Sgt. Russ Mengel.

No injuries occurred. The suspect, who was in his early 20s, fled by foot and remained at large.



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01/17/2013 at 3:00 pm

CommonSenseMama

says: The robber must have either known the patient, or the delivery driver. How else would he know what was in the cases? Either that or he has a skunky sense of smell.

5 Total Votes - 5 up - 0 down

01/17/2013 at 1:22 pm

bummerforu

says: Now let me get this straight? In the previous article a man working for a collective gets arrested after being pulled over while delivng? Then in this article the police ar elooking for a robber who stole probably the same amount of herb from the cops took from Chance at Ebotanica. What a crock of shit I tell you!! Crock of Shit this world!!

9 Total Votes - 9 up - 0 down

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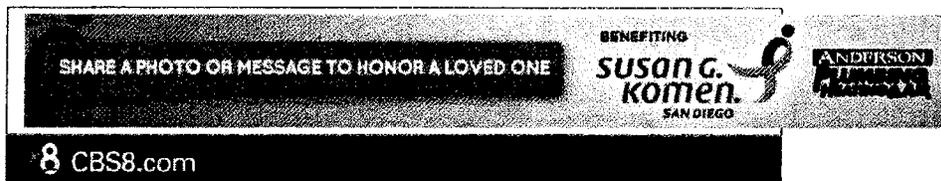
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Search for 2 men who robbed medical marijuana delivery drivers

Posted: Jan 22, 2013 9:34 AM PST
Updated: Jan 22, 2013 2:09 PM PST

IMPERIAL BEACH (CNS) - Authorities were on the hunt Tuesday for two men who robbed medical marijuana delivery drivers at gunpoint in Imperial Beach.

The drivers were attempting to deliver medical marijuana at 371 Caspian Way just before 5 p.m. Monday when two men approached on foot, according to San Diego County sheriff's Sgt. Joel Stranger. One of the men threatened the drivers with a black semi-automatic handgun and took a backpack containing eight ounces of marijuana, the sergeant said in a statement.

The suspects then fled on foot, leaving the drivers unharmed, Stranger said.

Authorities described one of the suspects as black, 5 feet 10 and 150 pounds, with a thin mustache and goatee. He said his name was "Aaron" and he wore a baggy gray San Diego State sweatshirt, baggy blue jeans and a black baseball cap, according to the sergeant.

His accomplice was described as black, 6 feet tall and 220 pounds, last seen wearing a red T-shirt and dark jeans.

Anyone with information on the robbers was asked to call the Sheriff's Department's Imperial Beach substation at (619) 498-2400.

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Medical marijuana delivery person held up in High Desert robbery

By Beatriz E. Valenzuela, Staff Writer

Posted: 04/12/13, 12:01 AM PDT |

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HESPERIA -- A man suspected of holding up a medical marijuana delivery man Thursday night in Hesperia is behind bars today.

Christopher Street, 27, of Montrose is being held at the Victor Valley Jail on suspicion of robbery, according to San Bernardino County Sheriff's booking information.

Deputies received a 911 call from a man who said he had just been robbed at gunpoint by a man, later identified as Street, at a home in the 14700 block of Live Oak Street around 6:30 p.m., according to sheriff's officials.

Initial dispatch reports indicate the man was delivering medical marijuana to the Live Oak Street home.

The man reported he was invited into the home to make the delivery when Street reportedly pulled a rifle out and pointed at him, officials said.

Frightened, the delivery man dropped the marijuana and managed to escape through a bedroom window then called deputies. The man was not injured in the incident.

Deputies went to the home and were able to identify Street, according to Sue Rose, spokeswoman for the Hesperia station. Investigators also managed to locate the rifle and the marijuana dropped by the delivery man.

Street was arrested without incident.

Street is scheduled to be in Victorville Superior court on Monday.



One Dead After Failed Robbery At San Diego Medical Marijuana Dispensary

Friday, April 25, 2014

By City News Service

An attempted holdup at a North Park medical marijuana dispensary erupted in gunfire Friday, leaving a security guard wounded and a suspected robber dead, authorities reported.

The shootout at the shop near the intersection of 30th Street and University Avenue occurred shortly before 12:30 p.m., according to San Diego police.

One of three suspected thieves died at the scene, a dispatcher said. The other two ran off and sped out of the area in a white sedan.

Medics took the wounded security officer to Scripps Mercy Hospital, SDPD public-affairs Officer Mark Herring said. The victim's condition was not immediately available.

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JeanMarc | April 25, 2014 at 3:14 p.m. — 1 year, 6 months ago

Thank you security guard, get well soon. Only guns can stop armed thugs who decide to take things from other people instead of working and earning them on their own.



muckapool1 | April 26, 2014 at 11:26 a.m. — 1 year, 6 months ago

Congratulation on the kill shot. Get well soon.



sdreefer21 | April 26, 2014 at 11:53 a.m. — 1 year, 6 months ago

For some weed really.....Some people need to be cleansed from the earth.



muckapool1 | April 26, 2014 at 12:53 p.m. — 1 year, 6 months ago

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LOCAL / L.A. Now

1 killed in botched robbery at medical marijuana shop near LAX



Ruben Vives · Contact Reporter

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Attempted robbery at medical pot shop near LAX leaves 1 man dead; another sought by police

JUNE 25, 2014, 3:20 PM

One man was killed and another was being sought Wednesday after an attempted robbery of a medical marijuana dispensary near Los Angeles International Airport.

The two men entered the Nature's Cure Inc. dispensary at 5300 W. Century Blvd. about 12:18 p.m. and were involved in an exchange of gunfire with the security guard, according to the Los Angeles Police Department.

One of the men was struck in the stomach during the incident and was later pronounced dead, police said.

The second man, wearing a beige shirt, green pants and a brown baseball cap, fled in a black BMW, according to authorities. Police were searching for him.

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2 killed in robbery of California marijuana grow

AP August 8, 2014 12:06 AM



FRESNO, Calif. (AP) — The robbery of a Central California house with a marijuana-growing operation triggered a fierce gunbattle in which two suspects were killed and a 15-year-old girl was used as a human shield by fleeing robbers, authorities said Thursday.



Two suspects were arrested and three remained at large after the pre-dawn violence south of Fresno, Fresno County Sheriff Margaret Mims said.

"We have several children who were terrorized in their own home," Mims said. "The teenage girl was used as a human shield as the suspects were leaving the residence, and they kidnapped her, putting her in the car."

Seven armed men posed as law enforcement officers and forced their way into the house around 4 a.m., she said. During the home

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invasion, a man in the house was pistol-whipped and the robbers and victims exchanged gunfire.

Deputies who responded to calls of the robbery saw two cars speed away. They were only able to stop one of the vehicles when it pulled up to a hospital with a wounded man in a ski mask. The deputies gave him CPR, but he died a short time later inside the hospital, Mims said.

Two other men in the vehicle were taken into custody.

Suspects in the other car took the girl hostage and took her a dangerous ride topping 100 mph before dropping her off unharmed near downtown Fresno. Investigators found several shotguns and handguns tossed out of the getaway vehicles, Mims said.

Another robber found near the house later died of gunshot wounds.

The house had three marijuana plots and 150 plants, Mims said.

Investigators were trying to determine whether the homeowner had medical-marijuana permits.

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Sheriff: 2 Injured In Medical Marijuana Shop Robbery Shooting occurred on Campo Road in Spring Valley

Tuesday, December 9, 2014

By City News Service

A holdup at an unlicensed East County medical marijuana shop erupted in gunfire Tuesday, wounding a good Samaritan and an alleged robber, who later was arrested along with a suspected accomplice.

The shooting in the 9000 block of Campo Road in Spring Valley was reported about 11 a.m., according to sheriff's officials. Deputies arrived to find a 32-year-old man suffering from a gunshot wound to the leg, Lt. Chris May said.

The victim, a worker at a smoke shop next door, was shot while coming to the aid of the people being robbed, May said.

A short time later, a deputy pulled over two suspects on a nearby street. The passenger, identified as 29-year-old James Crutcher, jumped out and escaped on foot, despite having been shot several times during the robbery, May said.

The driver, 30-year-old Frank Daley, resisted arrest, according to Mays, but was eventually taken into custody after the patrolman sicced a service dog on him.

Deputies eventually caught up with Crutcher in the 4100 block of Camino Paz and took him into custody. Both suspects were taken to a hospital.

Sheriff's officials did not immediately disclose who fired the shots that wounded Crutcher and the smoke-shop employee.

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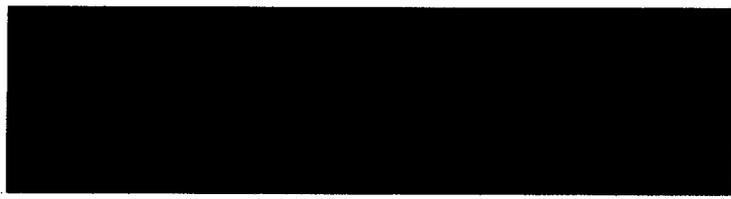
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Posted: Jan 28, 2015 8:49 AM PST Updated: Jan 28, 2015 7:59 PM PST

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SAN DIEGO (CNS) - A security guard feared for his life when he fatally shot one of two robbers during an armed holdup at a North Park marijuana dispensary, a San Diego police detective testified Wednesday.

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Deadly shootout as pot shop robbery goes bad

Detective Jana Beard said guard Henry Smith told her that he shot the alleged robber, identified as 18-year-old Marlon Thomas, after Thomas and another robber threatened to kill him and the dispensary owner during the armed holdup.

"He (the guard) thought he was going to die," Beard testified during a preliminary hearing for suspects Kurese Bell and Atiim

Smith. "He was scared ... petrified." The security guard was shot in his pelvis and survived.

Bell, 18, is charged with first-degree murder, attempted murder and robbery in the holdup and fatal shooting that occurred about 12:30 p.m. April 25, 2014, in the 3800 block of Ray Street.

Smith, 22, is charged with attempted murder and felony robbery. His fingerprints were found in a car impounded by police after the robbery, a latent print examiner testified.

Another person, 21-year-old Jonathan Vincent Collins, pleaded guilty to a robbery charge with a gang allegation.

Bell -- who was 17 at the time -- is also charged in the robbery of a smoke shop on El Cajon Boulevard four days before the dispensary robbery.

He was arrested in May at a Los Angeles-area motel and charged as an adult in the case.

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Updated: Nov 10, 2015 6:40 AM PST



The gusty wind and rain affecting parts of San Diego County Tuesday morning are expected to ease up later in the afternoon ahead of a warming trend that will extend into the upcoming weekend.

Family asks for help in finding missing Orange County teen

Updated: Nov 10, 2015 6:37 AM PST



A 16-year-old girl is missing and her family fears she may have been abducted into the sex trade. Alexuz Contreras, who also goes by Lexi, was last spotted at the corner of Mission Boulevard and Garnett Avenue in Pacific Beach reportedly with two older men about 22 days ago.

D.A.: Shooting of mentally ill homeless man justified

Updated: Nov 10, 2015 6:33 AM PST

A San Diego police officer...

Following the conclusion of the preliminary hearing tomorrow, Judge Jay Bloom will decide if enough evidence was presented for Bell and Smith to stand trial.

 A San Diego police officer was legally justified in fatally shooting a mentally ill homeless man who advanced toward him with what he thought was a knife, San Diego County District Attorney Bonnie Dumanis announced Monday.

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Updated: Nov 09, 2015 11:21 PM PST
 For the second time in just six months a widow's home in Encinitas was targeted by burglars.

One killed in San Marcos car crash

Updated: Nov 09, 2015 6:34 PM PST
 A compact SUV and a pickup truck collided on a two-lane North County road Monday afternoon, killing one motorist and sending the other to a hospital with non-life-threatening injuries.

Federal agents arrest two with large meth stash

Updated: Nov 09, 2015 6:13 PM PST
 Two suspected drug dealers were arrested near the U.S. - Mexico border, San Marcos police said.

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BY STEPHEN WALL / CONTRIBUTING WRITER
Published: Jan. 31, 2015 Updated: 7:03 p.m.

Armed suspects robbed an Upland marijuana dispensary Friday night, Jan. 30, and barricaded themselves inside an apartment before surrendering to police about 12 hours later, officials said.

Officers got a call about 11 p.m. Friday of a robbery at a medical marijuana dispensary in the 700 block of Mountain Avenue, said Upland police Lt. Cliff Mathews.

Two adults and two teens – three of them armed with handguns – approached three male employees in the parking lot of the business and shot one of the workers in the leg, he said.

The suspects forced the employees inside the dispensary at gunpoint. They tied up their hands and feet, then stole marijuana, cash and a car belonging to one of the workers, Mathews said.

They fled in a dark gray Lexus, which was later recovered. A victim managed to untie himself and call police.

Officers received information leading them to an apartment in the 1300 block of Randy Street less than a mile away.

They arrived about 4:40 a.m. and determined the men had barricaded themselves inside the apartment. They gave commands but were unsuccessful in getting them to come out, Mathews said.

A San Bernardino County sheriff's SWAT team responded and continued communicating with the suspects. At about 11 a.m., the three men walked out and were taken into custody. They were unarmed when they left the apartment, Mathews said.

About an hour later, Upland police learned that a fourth suspect was hiding in an upstairs apartment next door. Officers entered and took the man out in handcuffs at 12:15 p.m.



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No one was injured in the standoff. The man who was shot in the leg was taken to a hospital. His injuries are not considered life threatening, Mathews said.

Police arrested Christopher Baca, 30, of Covina, and Diego Sanchez, 19, of Upland. Two 15-year-old boys were taken to a San Bernardino County juvenile detention facility, Mathews said.

Baca and Sanchez face charges of robbery, assault with a deadly weapon and kidnapping, he said.

Mathews said he didn't know if any guns, marijuana or cash was recovered.

Police has earlier evacuated residents near the crime scene to a shelter set up by the American Red Cross at Magnolia Recreation Center in Upland. They were allowed to return to their homes about 12:30 p.m.

Stephanie Monroy, 13, lives in an apartment next to where the three suspects barricaded themselves. She said she was asleep when she heard officers order them to come out.

Police arrived and told her family to go out the back door, Monroy said.

"I felt so scared," she said. "Society is crazy today. Thank God nobody got hurt."

Monroy said a man who lived in the apartment next door seemed like a friendly person.

Police say they don't know if the suspects lived in the apartment.

Upland prohibits medical marijuana dispensaries, and the business where the robbery occurred will be shut down, Mathews said.

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IE SWAT Standoff Ends in Arrests After Marijuana Dispensary Ambush Robbery: Police

Three people were zip-tied during the robbery ambush and one shot, said police, who tracked some of the suspects to a nearby Upland residence

By [Asher Klein](#) and [Jane Yamamoto](#)

An hours-long standoff ended in the arrests of two men and two boys in the Inland Empire, where a medical marijuana dispensary was robbed. Jane Yamamoto reports for the NBC4 News at 6 p.m. on Saturday, Jan. 31, 2015. (Published Saturday, Jan. 31, 2015)

An hours-long standoff between a SWAT team and men believed to have violently robbed three other men at a nearby Inland Empire medical marijuana dispensary ended in four arrests Saturday morning.

Two men and two boys were arrested after police used a claw device to rip open the facade of the Upland apartment where the suspects were holed up.

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"I saw cops, guns, rifles. I saw guys on the roofs, which I think were the sharpshooters," a witness said.

Three were arrested in that house, while the fourth suspect was found and taken into custody at a nearby apartment complex, Upland police said. The four suspects allegedly had five handguns in their possession.

Earlier, police said five men in hoods took money and a car from the marijuana dispensary, but they later revised that number to four.

The four suspects face charges of robbery, assault with a deadly weapon and kidnapping, police said.

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The suspects are believed to have shot one of three men they tied up at the dispensary, in the 700 block of North Mountain Avenue, at about 10 p.m. Friday. The dispensary was about three miles from the apartment complex where the standoff took place.

The men were able to break free from zip ties and spoke to police.

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A SWAT team arrived at the house in the 1400 block of Randy Street about 4:40 a.m. as police evacuated nearly 75 residents of the neighborhood. The long standoff ended at around 11 a.m.

Diego Sanchez, 19, of Upland, and Christopher Baca, 30, of Covina, were arrested along with two boys who haven't been named because of their ages, police said. It wasn't clear what their relationship was.

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Police responded to Cal Med Express, located at 759 North Mountain Avenue, in Upland, just after 11 p.m. for a robbery call, Lt. Alan Ansara said. They found the three victims who had been tied up by the robbers, Ansara said.

The three men were leaving the medical marijuana dispensary about 10 p.m. Friday, when they were approached by males wearing gloves and hoods over their faces, police said. The victims were forced back into the business and were immediately zip-tied.

One of the victims suffered a non-life threatening gunshot wound to his leg and was later transported to Arrowhead Regional Medical Center, Ansara said. Another victim was pistol whipped during the incident but did not need any medical treatment.

The suspects allegedly took off in one of the victims' 2007 dark grey Lexus IS 250 with cash and marijuana, police said.

The shop was not zoned to sell medical marijuana, police said.

NBC4 editor Oleevia Woo contributed to this report.

Published at 6:12 AM PST on Jan 31, 2015

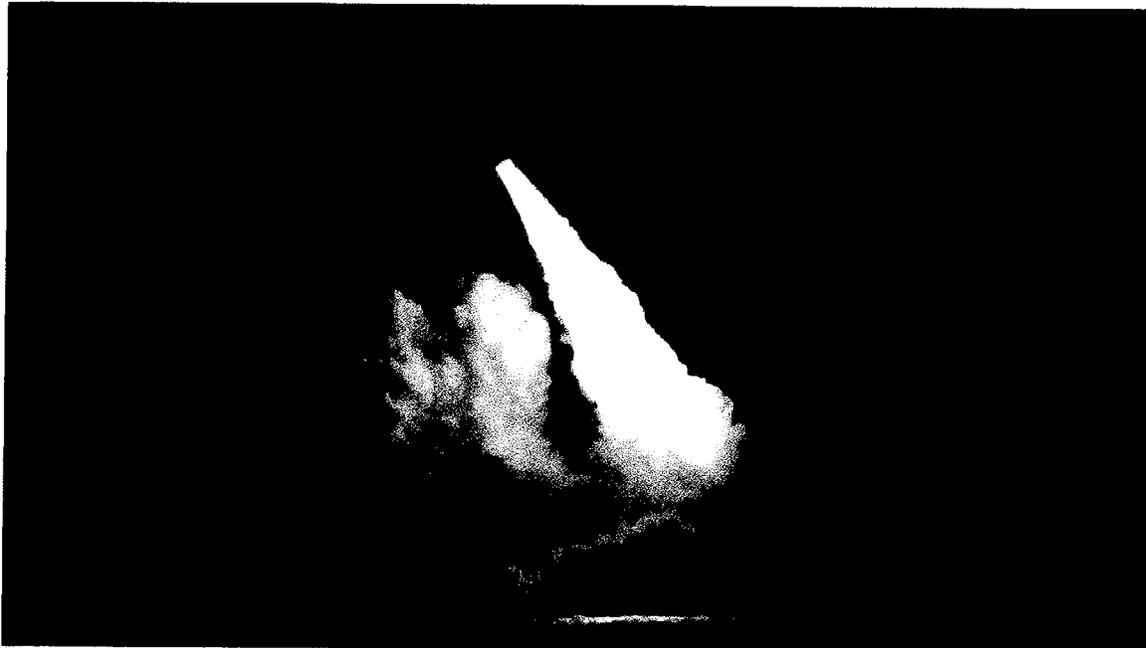
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Security Guard Fatally Shot in California Medical Marijuana Dispensary Robbery



By TJ Baker (<http://www.thedailychronic.net/author/tjbaker/>) | The Daily Chronic
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February 17, 2015 3:52 PM

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SAN BERNADINO, CA — A security guard at a California medical marijuana dispensary was shot and killed Monday night during a botched robbery attempt.

The shooting happened around 10 p.m. at an unnamed pot shop in the Star World Plaza strip mall on the 2800 block of West Rialto Avenue in San Bernadino.

According to witnesses, two men were attempting to rob the dispensary when shots were fired. According to police, one of the men forced his way into a back room and started shooting at the security guard, who returned fire.

The security guard, 25-year-old Anthony Victor Pineda, was pronounced dead at the scene. He may have shot one of the suspects before he died,



25 year old security guard Anthony Victor Pineda was shot and killed during a botched robbery attempt of a medical marijuana dispensary operating illegally in San Bernardino.

according to officials who report a large pool of blood was discovered outside the business.

Police believed the wounded suspect, who remains at large, may have been critically injured. Local hospitals have been alerted to look for someone suffering from a gunshot wound.

According to police, the suspects fled the scene following the shooting. It was not immediately known if the suspects got away with any cash or marijuana from the dispensary.

It's unclear who else was in the building at the time of the

shooting. Police say the employees and owners of the dispensary have not been cooperating with the investigation, and the mortally wounded security guard was locked inside the building after being shot.

"Somebody actually locked the business. We actually had to force entry to get to the victim and check his status," said San Bernardino police Lt. Rich Lawhead.

Police say employees of the business — who described themselves as "volunteers" — have been uncooperative with the investigation.

"We could do our job a lot better if everybody would be cooperative with us and just give us the information," Lawhead said.

Detectives want to access security footage from the dispensary, but store employees are not cooperating.

"We're hoping that the video gives us a lot more information," Lt. Lawhead added. "It's very frustrating. I mean I just think if it was your loved one in there."

Medical marijuana dispensaries are not allowed in San Bernardino, and it was not clear how long the unnamed dispensary had been operating.

Monday's shooting was the second to occur in that strip mall in the past year. A man was fatally shot in the parking lot last July, and police have not made an arrest in that case.



TJ Baker (<http://www.thedailychronic.net/author/tjbaker/>)

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Robbers at a Pot Dispensary Shoot Employee in Leg

The suspects flashed firearms and made off with marijuana, but it's unclear if they stole any money.

Highland Park-Mount Washington, CA

By MIRNA ALFONSO (Patch Staff)
May 25, 2015



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A medical marijuana dispensary employee was shot in the leg as three men robbed the mid-Wilshire area business, police said Sunday, May 24.

At about 7 p.m., the three suspects entered the store in the 5800 block of Pico Boulevard, Los Angeles police Lt. Lonnie Tiano said.

The suspects flashed firearms and made off with marijuana, but it's unclear if they stole any money, Tiano said.

As they left, they fired one shot that struck an employee in a leg, he said. The victim was taken to an area hospital for treatment.

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The suspects were described as black males in their 20s.

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7 Men, 1 Woman Accused of Numerous Graffiti Attacks on Metro



The crew allegedly tagged public conveyances and property all over Los Angeles County.

Have You Seen Him? Young Man Missing Since September



Dmitri Andrew Wilson was last seen about 1 p.m. Sept. 12 on Fifth Street south of Grand Avenue.

ORANGE COUNTY REGISTER

Armed men rob closed medical marijuana dispensary in Santa Ana

BY LOUIS CASIANO JR.
2015-07-02 19:17:23

A shuttered medical marijuana dispensary in Santa Ana with two people inside was robbed by two armed men Thursday afternoon, authorities said.

At 2:45 p.m., two men with handguns broke into a building in the 1800 block of East Garry Avenue, where they found two people inside, said Cpl. Anthony Bertagna of the Santa Ana Police Department.

The people inside were tied up with duct tape and the suspects took an undisclosed amount of cash, marijuana, and personal items from the victims.

The suspects fled in a vehicle, and no one was injured.

No description of the suspects was available.

The business that operated in the building was closed in June after undercover police officers purchased marijuana there, Bertagna said.

It was not clear how the suspect got inside the building or if the dispensary was still operating inside, Bertagna said.

"I do know they had marijuana and money at the location, but I don't know if they were operating or not," he said.

In November, voters approved a measure to repeal the ban on medical marijuana dispensaries in the city.

Twenty applicants selected from a public lottery were chosen in February to move on to the next phase in opening a medical marijuana collective. All other facilities in Santa Ana are operating illegally, Bertagna said.

Contact the writer: 714-796-2478 or lcasiano@ocregister.com

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Four wanted in connection with pot shop robbery

By The Bakersfield Californian

WEDNESDAY, AUG 19, 2015 4:24 PM



Ryan J. Humphrey
Experienced
Criminal
Defense

Four people are wanted in connection with the armed robbery of a medical marijuana dispensary Wednesday just south of downtown Bakersfield.

Police said two men armed with handguns entered the CNE Collective at 1206 California Ave. and stole money and marijuana. No injuries were reported.

Two other suspects were in a red Chevrolet extended cab pickup the men entered after the robbery.

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Experienced Criminal Defense Attorneys
Kyle J. Humphrey and Jared M. Thompson are both certified criminal law specialists.
(801) 327-1390
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Four people are wanted in connection with the armed robbery of a medical marijuana dispensary Wednesday just south of downtown Bakersfield.

Police said two men armed with handguns entered the CNE Collective at 1206 California Ave. and stole money and marijuana. No injuries were reported.

Two other suspects were in a red Chevrolet extended cab pickup the men entered after the robbery.

Police said the suspects in the store were each described as black men, one in his early 30s, the other about 25. The suspect in his early 30s is bald, has a beard and was wearing a red and white polo shirt.

The other suspect was wearing a black baseball cap, a black shirt and shorts. The two suspects in the pickup were described only as black males.

Anyone with information regarding this case is asked to call the Bakersfield Police Department at 327-7111.



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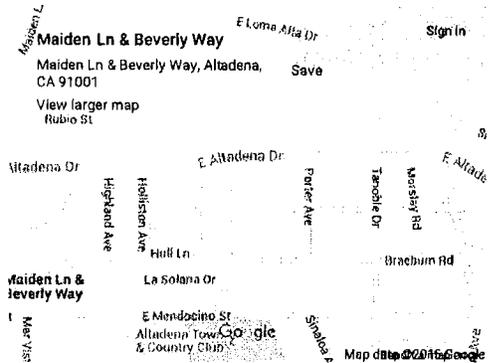
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Marijuana delivery man robbed in Altadena

Posted on September 26, 2015 by Brian Day



ALTADENA >> A man claiming to be delivering medical marijuana for a dispensary was robbed of both cannabis and cash early Thursday in a residential Altadena neighborhood, authorities said.

The crime was reported just before 2 a.m. at Beverly Way and Maiden Lane, Los Angeles County sheriff's Lt. Cruz Solis said.

Deputies first responded to the neighborhood after residents reported a man knocking on doors, apparently in some sort of distress, the lieutenant said.

The victim, a 26-year-old Pasadena man, told police he was delivering for a legal medical marijuana dispensary when a man grabbed him, threatened him and robbed him of marijuana, cash and his car keys, Solis said.

The keys turned up in some nearby bushes the following day, he said.

The amount of money and marijuana stolen was not available. A detailed suspect description was not available.



This entry was posted in 211, Altadena, marijuana by Brian Day. Bookmark the permalink [<http://www.insidesocal.com/sgvcrime/2015/09/26/marijuana-delivery-man-robbed-in-altadena/>].

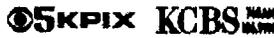
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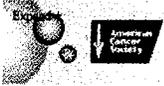


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Police Arrest Suspect In Armed Robbery Of Medical Marijuana Delivery Driver

September 28, 2015 10:19 AM

Filed Under: Armed robbery, Arrest, Delivery Driver, Medical marijuana, Monterey



Medical marijuana and pill bottle pot weed cannabis medicine
Medical marijuana and pill bottle (Getty Images)

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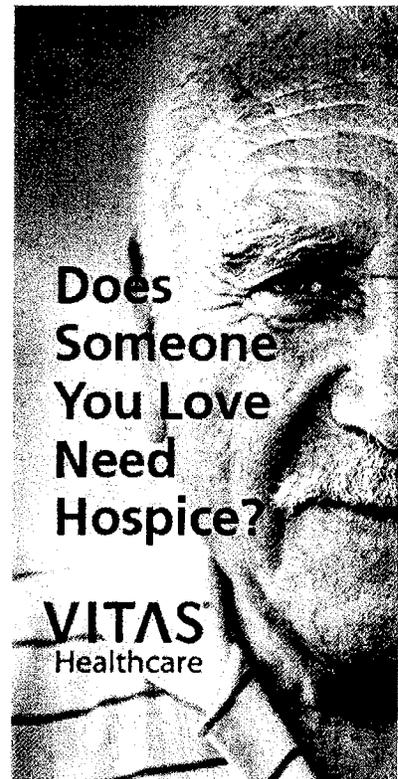
MONTEREY (CBS SF) — A man was arrested Friday on suspicion of robbing a medical marijuana delivery service driver at gunpoint last month in Monterey, according to the Peninsula Regional Violence and Narcotics Team.

Detectives with the regional task force arrested 25-year-old Juan Alvarez when they served a search warrant at a home in the 1400 block of North First Street in Salinas.



Alvarez was arrested on suspicion of armed robbery, possession of a firearm as a prohibited person, possession of marijuana for sale, possession of a firearm while selling drugs and violation of a restraining order, according to the task force.

Officers with the Marina and Carmel police departments assisted task force detectives with the arrest.



Around 5:45 p.m. on Aug. 20, Monterey police had responded to a report of an armed robbery in the 400 block of Del Rosa Avenue. When officers arrived, they learned the suspect had robbed a medical marijuana delivery service driver at gunpoint. The suspect then fled on foot with marijuana and cash, according to the task force.

Alvarez was booked into Monterey County Jail following his arrest Friday and his bail was set at \$40,000.

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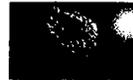
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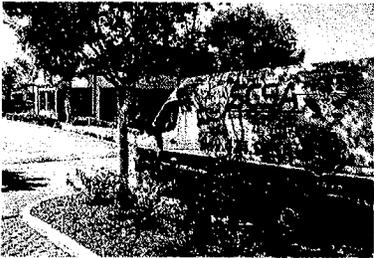
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ORANGE COUNTY REGISTER

Man shot near Santa Ana medical marijuana dispensary

By LOUIS CASIANO Jr.
2015-11-02 16:19:06



A man was hospitalized Monday after he was shot near a medical marijuana dispensary in Santa Ana, police said.

Santa Ana police officers responded at 3:35 p.m. to reports of shots fired in a parking lot of the South Coast Safe Access marijuana dispensary in the 1900 block of East Warner Avenue, Cpl. Anthony Bertagna said.

When they arrived, they found a man in his late 40s with a gunshot wound to his stomach. He was taken to a hospital and is expected to survive.

It is unclear how many times the man was wounded but multiple shots were fired, Bertagna said.

Officers and an Orange County Sheriff's Department helicopter were searching for one suspect. Authorities originally reported they were searching for two suspects.

At the scene, Randall Longwith, an attorney for the dispensary, appeared frustrated by the events. He said there were multiple employees inside the store and one guard who, much to his disappointment, was unarmed.

Safe Coast Safe Access was the first dispensary to open of the 20 that were chosen to apply for licenses from the city.

"Theoretically we anticipated that this was going to happen," Longwith said. He claims to have asked the city to allow the store to have an armed guard but was denied. He believes that the store's inventory and money make it a target.

"This is essentially a cash business ... we have a lot of cash on hand."

He said he plans to approach the city once again to let the store have an armed guard.

The name of victim was not released.

Contact the writer: 714-796-2478 or lcasiano@ocregister.com

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CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 6

To: The Honorable Mayor and City Council

From: Stephen A. McEwen, City Attorney

Meeting Date: January 12, 2017

Subject: Discussion and Direction Regarding Amendments to Marijuana Regulations Following Proposition 64

BACKGROUND

The purpose of this agenda item is to seek direction from the City Council regarding possible amendments to Buellton’s marijuana regulations following the adoption of Proposition 64, known as the “Control, Regulate and Tax Adult Use of Marijuana Act” (the “AUMA”). In order to ensure that the City maintains local control over all marijuana land uses to the fullest extent possible, the City should consider certain amendments to its Municipal Code. These recommended amendments include the following:

- The City should amend the Municipal Code to address recreational marijuana businesses in express terms. Under the AUMA, such businesses do not need a local permit to operate lawfully. Unless a city has clear regulations regarding recreational marijuana businesses, the state could issue a license to an otherwise unwanted establishment. Furthermore, if the City does not have express recreational marijuana business regulations, it may be more difficult for the City to bring enforcement actions against violators.
- The City should amend its regulations regarding marijuana cultivation. While the City’s broad prohibition against all medical marijuana cultivation remains enforceable following the AUMA, the City cannot ban indoor residential cultivation of six marijuana plants or less. The City will need to determine the scope and nature of any indoor cultivation regulations.
- The City should consider adopting express provisions regarding certain medical marijuana businesses. These businesses include marijuana manufacturers, distributors, transporters, and testing laboratories.
- The City should consider express regulations regarding marijuana delivery services.

With these modifications, Buellton's marijuana regulations will be better positioned to address the unique challenges posed by marijuana land uses, which are likely to become more prevalent following the AUMA's passage.

On October 9, 2015, Governor Brown signed Assembly Bills 243 and 266 and Senate Bill 643. Taken together, the three bills create the Medical Cannabis Regulation and Safety Act ("MCRSA")¹, a comprehensive state regulatory and licensing system governing the cultivation, testing, and distribution of medical marijuana, as well as physician recommendations for medical marijuana. MCRSA is intended to govern all commercial cannabis activities, which are defined as "cultivation, possession, manufacture, processing, storing, laboratory testing, labeling, transporting, distribution, or sale of medical cannabis or a medical cannabis product." Under MCRSA, all medical marijuana businesses, or commercial cannabis activities, must have both a state license and local permit, license, or other authorization in order to operate lawfully within California. (Bus. & Prof. Code § 19320(a).)

On November 8, 2016, California voters approved the AUMA, which allows individuals to possess, use, and cultivate recreational marijuana in certain amounts. An individual may possess up to 28.5 grams of non-concentrated marijuana or 8 grams of marijuana in a concentrated form (e.g., marijuana edibles). In addition, an individual may cultivate up to six marijuana plants at his or her private residence provided that no more than six plants are being cultivated on the property at one time. The AUMA also establishes a regulatory system for commercial businesses that is very similar to the medical marijuana regulatory system under MCRSA. Under the AUMA, recreational marijuana cultivators, manufacturers, distributors, retailers, and testing laboratories may operate lawfully if they obtain a state license and comply with local ordinances.

The AUMA does not limit local police power authority over commercial marijuana business and land uses. Cities may prohibit such businesses completely if they so choose. With regard to private cultivation, however, there is one important limitation on local police power. Cities may ban private outdoor marijuana cultivation, but they may not completely ban private indoor cultivation of six marijuana plants or less. The AUMA provides that private indoor cultivation of six marijuana plants or less is lawful under both state and local law and is only subject to "reasonable" local regulations.

Buellton currently prohibits medical marijuana dispensaries, which includes any location where people distribute or cultivate medical marijuana. (Mun. Code § 9.08.010(A).) Buellton's regulations, however, do not address in express terms recreational marijuana businesses, and the language for certain medical marijuana businesses, such as medical marijuana testing laboratories.

¹ Senate Bill 837, signed by Governor Brown on June 27, 2016, changed the name of the Medical Marijuana Regulation and Safety Act to the Medical Cannabis Regulation and Safety Act.

Recommended Actions and Regulatory Options

Business and Professions Code section 26200 provides that cities may “completely prohibit the establishment or operation of one or more types of businesses licensed under” the AUMA. Therefore, as under MCRSA, cities have a wide range of regulatory options under the AUMA to deal with recreational marijuana land uses. These options include an express ban on all or some of the businesses permitted under the AUMA or a regulatory scheme for commercial marijuana businesses. In determining the scope of these express regulations, the City Council should consider three key policy issues.

Issue #1 –Commercial Marijuana Activities

The first task for the City Council is to determine how it wants to address commercial marijuana businesses. With regard to such businesses, the City Council has the following options:

- The City could continue its existing prohibition against medical marijuana dispensaries and commercial cultivation sites and extend it to cover medical marijuana testing laboratories and the recreational marijuana businesses recognized under the AUMA. Under this option, the City would prohibit all commercial marijuana businesses throughout the City.
- The City could allow all or some of the marijuana businesses recognized under MCRSA and/or the AUMA. If the City Council decides to allow marijuana businesses under a regulatory scheme, it should consider the following additional questions:
 - What type of restrictions should apply to marijuana land uses? Locational restrictions may include the designation of certain zoning districts as permissible locations and separation requirements to avoid clustering of medical marijuana land uses. Some cities have limited the number of marijuana establishment permits that they are willing to issue. Operating requirements can be extensive and include the following: the use of licensed security guards, designated hours of operation, prohibition against on-site marijuana consumption, installation of adequate odor control devices and ventilation systems, and limitations on access to minors.
 - What type of permit or permits will be required? Some cities have imposed conditional use permit requirements for marijuana land uses, while others have required annual renewable regulatory permits.
 - How will the City process marijuana land use applications? A city could take a number of approaches for processing applications: (1) first come, first serve; (2) lottery; and/or (3) scoring system. Under a lottery system, pre-qualified applicants are selected through a random lottery to apply for

the required marijuana land use permit. Under a scoring system model, applicants would receive a score based on a review of their applications and, in some instances, an interview. Those applicants who receive the highest scores would then be recommended for approval to the decision making authority. If this selection method is used, it may be preferable to use a neutral outside consultant to review the applications, conduct interviews, and make recommendations.

- What type of local taxes should the City impose? If approved by voters, the City could impose a local marijuana excise tax based on a percentage of gross receipts for retail businesses or the square footage of a cultivation or manufacturing site. In addition, the City could enact a marijuana business regulatory fee to pay for the cost of processing applications, issuing licenses, and performing the necessary inspections.

Issue # 2 – Personal Cultivation

The City Council will need to determine the extent to which it wants to prohibit or allow private marijuana cultivation. Municipal Code section 9.08.010(A) currently prohibits all medical marijuana cultivation in the City. The City Council could choose to continue this policy regarding private marijuana cultivation. However, if the City Council takes this approach, it should amend its existing ban to reflect the AUMA's provision that cities cannot completely ban private indoor cultivation of six marijuana plants or less. The City could address private marijuana cultivation as follows:

“No person or entity may cultivate marijuana at any location in the City, except that a person may cultivate no more than six living marijuana plants inside his or her private residence, or inside an accessory structure to his or her private residence located upon the grounds of that private residence that is fully enclosed and secured against unauthorized entry, provided that the owner of the property provides written consent expressly allowing the marijuana cultivation to occur, the person conducting the marijuana cultivation complies with all applicable Building Code requirements set forth in Title 17 of the Municipal Code, there is no use of gas products (CO₂, butane, propane, natural gas, etc.) on the property for purposes of marijuana cultivation, and the marijuana cultivation complies with Health and Safety Code section 11362.2(a)(3).”

Some cities that have addressed private indoor marijuana cultivation have imposed local permit and safety inspection requirements. So long as such requirements do not effectively ban private indoor cultivation, courts would likely consider them to be reasonable regulations and therefore permissible under the AUMA. The issue is whether city staff members have the time and resources to implement a private marijuana cultivation permit and inspection program. Many cities have decided based on local circumstances that the burden and expense of local permit and inspection requirements for private indoor cultivation outweigh the potential benefits of the added regulations.

Alternatively, the City Council could allow private indoor and/or outdoor marijuana cultivation for either medical or recreational purposes, or both. The City Council could impose various conditions on private cultivations, including security requirements, odor restrictions and control requirements, setback requirements, and restrictions against marijuana plants that are visible from neighboring properties or public rights-of-way.

Issue #3 – Marijuana Deliveries

Finally, the City Council may consider adding express provisions regarding marijuana deliveries. Under both MCRSA and the AUMA, a city retains the police power authority to prohibit marijuana deliveries that begin or end within the city's boundaries. A city, however, cannot prevent a delivery service from using public roads to simply pass through its jurisdiction from a licensed dispensary to a delivery location outside of its boundaries. If the City Council wishes to prohibit marijuana deliveries, it may consider the following language:

“No person and/or entity may deliver or transport marijuana from any fixed or mobile location, either inside or outside the city, to any person in the city.”

If the City Council wants to allow limited deliveries to qualified patients, it could add the following exception to the delivery ban:

“ . . . except that a person may deliver or transport medical marijuana to a qualified patient or person with an identification card, as those terms are defined in Health and Safety Code section 11362.7, for whom he or she is the primary caregiver within the meaning of Health and Safety Code sections 11362.5 and 11362.7(d).”

The City Council could also allow marijuana deliveries, which under state law can only be made by licensed dispensaries or retailers. The state is working on the implementing regulations, which may further explain how medical and recreational marijuana deliveries will occur. It will be up to the Department of Consumer Affairs to determine how much marijuana can be transported during the delivery process. This is an important question because a small amount of marijuana can have a significant street value, making it an attractive criminal target. Any health and safety regulations developed by the state for marijuana deliveries will represent the minimum state-wide standards.

RECOMMENDATION

That the City Council review the regulatory options and provide direction to staff on the amendment of the City's existing marijuana regulations. Based on this direction, City staff will present a proposed ordinance to the Planning Commission before final approval by the City Council.

CITY OF BUELLTON
City Council Agenda Staff Report

City Manager Review: MPB
Council Agenda Item No.: 7

To: The Honorable Mayor and City Council

From: Carolyn Galloway-Cooper, Finance Director

Meeting Date: January 12, 2017

Subject: Discussion Regarding Two-Year Budget Proposal Beginning with Fiscal Years 2017-18 and 2018-19

BACKGROUND

Staff recommends a biennial (two-year) budget starting in fiscal year 2017-18. This would represent a two-year budget, covering the period July 1, 2017 through June 30, 2019. The budget will be proposed as two one-year budgets. Staff concentrates on the first year of the two-year budget and the second year is developed from the first year's funding and revenue levels.

Amendments to this document may be necessary depending on economic circumstances and will be addressed during the Mid-Year Budget review each year, similar to one-year budgeting.

The benefits of a two-year budget plan include:

- Ability to maintain long-range planning efforts
- Ability to focus on developing and budgeting for significant objectives
- Encourage more orderly spending patterns
- Ability to set realistic schedules for completing program objectives
- Save time and resources allocated to preparing annual budgets to allow more time for oversight.

Most cities currently utilize a two-year budget including, Santa Barbara, Goleta, Lompoc, Santa Maria and Arroyo Grande.

FISCAL IMPACT

There is no additional cost in implementing a biennial budget.

RECOMMENDATION

That the City Council approve the Finance Director's proposal for a biennial budget starting 2017-18 through 2018-19.

ATTACHMENT

Attachment 1 – Example of biennial budget

Revenues are budgeted based on expectations in 2017-18. The second year (2018-19) is based on a percentage of the first year's funding levels.

SCHEDULE OF REVENUES Fiscal Year 2017-18 and 2018-19

ATTACHMENT 1

Two-Year Budget Example - for Demonstration Purposes Only

Account Number	Description	2014-15 Actual	2015-16 Actual	2016-17 Adopted	2016-17 Estimated	2017-18 Proposed	2018-19 Proposed
<u>GENERAL FUND</u>							
<u>TAXES</u>							
001-41005	Property Taxes - Secured	1,106,375	2,352,308	1,150,000	1,150,000	1,175,000	1,198,500
001-41010	Property Taxes - Unsecured	39,914	44,225	41,000	41,100	45,000	45,900
001-41015	Homeowners Exemption	6,651	6,620	7,000	7,000	7,000	7,140
001-41020	Franchise Fees	220,140	223,302	220,000	220,000	220,000	224,400
001-41025	Sales & Use Tax	1,426,554	1,911,233	2,250,000	2,300,000	2,300,000	2,346,000
001-41030	Sales Tax Compensation	517,169	132,834	0	0	0	0
001-41035	Transient Occupancy Tax	1,830,275	1,786,997	1,850,000	1,950,000	2,000,000	2,040,000
001-41040	Property Transfer Tax	38,986	32,119	25,000	25,000	25,000	25,500
	TOTAL:	5,186,063	6,489,638	5,543,000	5,693,100	5,772,000	5,887,440
<u>FEES & PERMITS</u>							
001-42011	Oak Tree Mitigation Fee	0	19,800	0	600	1,000	1,020
001-42010	Zoning Clearance	1,759	1,665	1,700	2,000	2,000	2,040
001-42015	Engineering Fees	8,945	40,917	15,000	15,000	15,000	15,300
	TOTAL:	10,704	62,382	16,700	17,600	18,000	18,360
<u>FINES & PENALTIES</u>							
001-45005	Criminal Fines and Penalties	15,694	3,557	2,000	1,545	1,500	1,530
001-45010	Fines & Fees	21,814	39,019	40,000	36,000	35,000	35,700
	TOTAL:	37,508	42,576	42,000	37,545	36,500	37,230
<u>USE OF MONEY & PROPERTY</u>							
001-44105	Interest Income	38,948	39,269	10,000	25,000	20,000	20,400
001-49010	Rent	65,615	83,436	75,000	85,000	85,000	86,700
	TOTAL:	104,563	122,705	85,000	110,000	105,000	107,100

SCHEDULE OF REVENUES

Fiscal Year 2017-18 and 2018-19

Two-Year Budget Example - for Demonstration Purposes Only

Account Number	Description	2014-15 Actual	2015-16 Actual	2016-17 Adopted	2016-17 Estimated	2017-18 Proposed	2018-19 Proposed
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GENERAL FUND

REVENUES FROM OTHER AGENCIES

001-43005	Motor Vehicle In-Lieu	2,005	2,400	2,400	2,400	2,400	2,448
001-43010	MV License Fee Compensation	377,595	402,748	420,000	420,000	420,000	428,400
001-43015	COPS	100,000	100,000	100,000	100,000	100,000	102,000
001-49526	CA Indian Gaming Grant	0	0	0	0	0	0
001-43025	CA Bikeways and Trails Grant	0	0	0	0	0	0
001-43040	Beverage Container Grant	0	5,000	5,000	5,000	5,000	5,100
TOTAL:		479,600	510,148	527,400	527,400	527,400	537,948

CHARGES FOR CURRENT SERVICES/RESERVES FOR CIP

001-44005	Buellton Recreation Program	139,507	183,576	90,000	150,000	140,000	142,800
001-44010	Recreation Program 50/50	26,277	18,807	5,000	10,000	10,000	10,200
001-44015	Buellton Recreation Program-Trips	48,474	46,183	45,000	40,000	35,000	35,700
001-44020	Park Reservation Fees	8,110	7,400	8,000	7,650	7,500	7,650
001-44025	Special Event Fees	1,375	5,028	1,500	1,133	2,000	2,040
001-44250	Miscellaneous	0	46,603	30,000	29,121	30,000	30,600
001-44035	Developer Reimb (expenditure offset)	56,098	0	20,000	20,000	20,000	20,400
001-43050	Staffing Charges - CIPs	0	0	10,000	10,000	10,000	10,200
001-49636	Transfer in from Successor Agency	19,832	25,590	0	0	0	0
001-44040	Transfer in from Reserves (CIP)	19,832	0	575,837	250,000	300,000	350,000
TOTAL:		319,505	333,187	785,337	517,904	554,500	609,590

GENERAL FUND REVENUE *	6,137,943	7,227,449	6,999,437	6,903,548	7,013,400	7,197,668
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DEPARTMENT EXPENDITURES

Two-Year Budget Example - for Demonstration Purposes Only

Proposed expenditures are calculated based on actual for 2017-18. A percentage increase is added for 2018-19.

**WASTEWATER
005-701**

	2013-14 Actual	2014-15 Actual	2015-16 Actual	2016-17 Adopted Budget	2016-17 Estimate	2017-18 Proposed	2018-19 Proposed
<u>EMPLOYEE SERVICES</u>							
50000 Salaries	174,300	163,620	164,500	226,980	226,980	228,000	232,560
50030 Hourly	0	0	0	11,465	0	11,000	11,220
50100 Benefits	60,000	65,000	64,822	86,830	75,000	88,000	89,760
<u>EMPLOYEE SERVICES SUBTOTAL:</u>	234,300	228,620	229,322	325,275	301,980	327,000	333,540

	2013-14 Actual	2014-15 Actual	2015-16 Actual	2016-17 Adopted Budget	2016-17 Estimate	2017-18 Proposed	2018-19 Proposed
<u>OPERATING & MAINTENANCE</u>							
50600 Insurance - Liability	4,669	15,000	19,000	13,000	13,000	13,500	13,770
50610 Insurance - Property	9,800	10,500	10,500	10,500	10,500	10,500	10,710
61130 Office Supplies	1,720	1,890	1,891	2,300	1,905	2,000	2,040
61131 Postage	5,137	4,763	5,840	5,000	3,251	5,000	5,100
60650 Membership & Publications	0	139	230	500	0	500	510
60710 Travel & Training	4,602	1,819	2,049	4,000	3,926	4,000	4,080
61140 Operational Supplies	2,702	3,110	4,745	4,000	3,358	4,000	4,080
61111 Chemicals / Analysis	24,690	23,002	20,774	30,000	28,036	25,000	25,500
61127 Tools	1,872	754	666	1,000	1,209	1,000	1,020
60131 Laundry - Uniforms	865	864	192	800	985	1,100	1,122
61280 Fuel - Vehicles	7,409	6,695	6,255	6,000	5,204	6,000	6,120
60270 Maintenance - Vehicles	3,011	6,950	5,641	8,000	3,583	8,000	8,160
60250 Maintenance / Repair	47,823	29,885	20,198	50,000	23,696	50,000	51,000
67600 Safety Equipment	848	1,919	1,121	2,000	953	2,000	2,040
60211 Data Processing Contract Maintenance	900	900	900	1,300	1,300	1,300	1,326
60210 Computer Maintenance & Software	971	288	754	1,000	1,870	1,650	1,683
67705 Telephone	7,899	6,405	8,114	7,200	10,800	7,200	7,344
61241 Utilities - Electric	103,524	130,042	104,772	100,000	109,900	105,000	107,100
61211 Utilities - Water	22,000	22,000	8,000	23,000	23,000	25,000	25,500
60021 Audit	6,777	9,131	5,836	7,100	7,100	7,100	7,242
68110 Depreciation	170,913	175,933	255,000	170,000	250,000	250,000	255,000
67575 Regulatory Compliance	14,272	13,760	16,028	20,000	17,434	20,000	20,400
69100 Transfer to Other Funds (WW Capital Fund)	445,426	57,000	225,194	250,000	100,000	285,000	290,700
60800 Contract Services	111,558	170,347	153,667	250,000	175,060	250,000	255,000
60830 Contract Services - Engineering	18,810	41,060	37,680	55,000	14,381	55,000	56,100
60900 Miscellaneous/CalPERS Unfunded Liability	982	595	502	12,000	12,000	12,000	12,240
<u>OPERATING & MAINTENANCE SUBTOTAL:</u>	1,019,180	734,751	915,548	1,020,700	822,451	1,151,850	1,174,887

WASTEWATER TOTAL:	1,253,480	963,371	1,144,870	1,345,975	1,124,431	1,478,850	1,508,427
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