

# **Gig Harbor City Council Meeting**

**July 25, 2011  
5:30 p.m.**



**AMENDED AGENDA FOR  
GIG HARBOR CITY COUNCIL MEETING  
Monday, July 25, 2011 – 5:30 p.m.**

**CALL TO ORDER:**

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meeting of July 11, 2011.
2. Liquor License Action: a) Renewals: Morso; JW Restaurant; Gig Harbor Yacht Club; Mizu Japanese Steakhouse; The Wine Studio; Bartell Drug; and Galaxy Uptown; b) Tanglewood – Added Privilege; and c) Liquor Store Manager Recruitment Letter.
3. Receive and File: a) 2011 2nd Quarter Financial Statements; b) Park & Street Donation Program; and c) Finance / Safety Committee Minutes July 20, 2011.
4. McCormick Creek Project Quit Claim Deed – Harbor Hill LLC.
5. Resolution – Surplus Equipment.
6. Assigned Counsel Contract Amendment.
7. Approval of Payment of Bills for July 25, 2011: Checks #67422 through #67526 in the amount of \$379,167.08.

**PRESENTATIONS:** Update from Senator Kilmer.

**OLD BUSINESS:**

1. Second Reading of Ordinance – 2011 Comprehensive Plan Amendments.
2. Second Reading of Ordinance – Electric Vehicle Infrastructure Zoning Regulations.
3. Second Reading of Ordinance – Amendments to Special Events Permit.
4. Donkey Creek Project: Austin / N. Harborview Drive Road Alignment.

**NEW BUSINESS:**

1. ~~Donkey Creek Restoration / Transportation Project Design, Permitting, Bid Documents and Construction Management Services/Consultant Services Contract.~~
2. Public Hearing and Resolution - Development Agreement for Chapel Hill Church's Westside Expansion.
3. Public Hearing and Adoption of Ordinance - Medical Cannabis Collective Gardens Interim Regulations.
4. Eddon Boat Park Design – Consultant Services Contract/Anchor QEA, LLC.
5. Resolution in Opposition of Reducing the Number of County Councilmembers.

**STAFF REPORT:**

**PUBLIC COMMENT:**

**MAYOR'S REPORT / COUNCIL COMMENTS:**

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Intergovernmental Affairs Committee Special Meeting: Tue. Jul 26th at 3:30 p.m.
2. Planning and Building Committee Special Meeting: Mon. Aug 1st at 5:15 p.m.
3. Lodging Tax Advisory Committee: Wed. Aug. 3rd at 8:30 a.m.
4. No City Council Meetings on August 8th or 22nd.
5. Operations Committee: Thu. Aug. 18th **CANCELLED.**
6. Special Council Meeting: Mon. Aug. 29<sup>th</sup> at 5:30 p.m. – Bid Awards.

**ADJOURN:**

**MINUTES OF GIG HARBOR CITY COUNCIL MEETING – July 11, 2011**

**PRESENT:** Councilmembers Ekberg, Young, Franich, Conan, Malich, Payne, Kadzik and Mayor Hunter.

**CALL TO ORDER:** 5:31 p.m.

**PLEDGE OF ALLEGIANCE:**

**CONSENT AGENDA:**

1. Approval of the Minutes of City Council Meeting of June 27, 2011.
2. Liquor License Action: a) New Application: Red Rooster Restaurant; b) Added privilege: Tides Tavern.
3. Summer Sounds - Amendment to Contract.
4. Expenditure Approval Related to Storm Structure Void Detection.
5. 2011 Pavement Maintenance and Repair Project – Escrow Agreement for Retainage - Looker & Associates.
6. Crescent Creek Property Hazmat Assessment – Consultant Services Contract/Parametrix.
7. City-wide Travel Demand Model Update, Annual Capacity Availability Report and On-Call Services for Concurrency Testing – Amendment No. 1 to Consultant Services.
8. Resolution No. 863 – Surplus Property.
9. Sewage Lift Station 4 Replacement – Design, Permitting, and Construction Management Services - Consultant Services Contracts.
10. WWTP Improvement Project – Final Deductive Change Order.
11. Austin Estuary Development Contract.
12. Approval of Payment of Bills for July 11, 2011: Checks #67313 through #67421 in the amount of \$1,454,106.94.
13. Approval of Payroll for the month of June: Checks #6261 through #6272, check #6281 through #6289 and direct deposits in the amount of \$313,914.01.

**MOTION:** Move to adopt the Consent Agenda as presented.  
**Ekberg / Payne** – unanimously approved.

**PRESENTATIONS:**

Pierce Transit Update on System Redesign. Lind Simonsen, Community Outreach Coordinator, reported on the reduction in bus service going into effect in October of this year.

**OLD BUSINESS:**

1. Second Reading of Ordinance – Adopting a New Commute Trip Reduction Plan. City Clerk Molly Towslee introduced and recommended approval of this ordinance adopting a Commute Trip Reduction Plan as required by state law.

**MOTION:** Move to adopt Ordinance No. 1215 as presented.

**Kadzik / Payne** – unanimously approved.

2. Second Reading of Ordinance - Downtown Limited Parking. City Administrator Rob Karlinsey presented updated information on the number and location of the proposed limited parking stalls.

**MOTION:** Move to adopt Ordinance No. 1216 as presented.  
**Kadzik / Payne** –

Bill Fogerty – 3614 Butler Drive. Mr. Fogerty commended the city for efforts to address the parking issues downtown. He spoke in favor of the flexibility to change the configuration if these don't work as well as anticipated.

Mr. Karlinsey explained that there will be a trial period to evaluate unforeseen problems; flexibility will allow staff to adjust the plan accordingly. He said that he presented the plan during a city-wide update to local realtors; a handful voiced opposition.

Councilmember Franich said this was too broad for him to support. Councilmember Young suggested postponing adoption of the ordinance to a third reading to allow further public comment. Councilmember Payne commented that there had been plenty of time to consider this ordinance.

**MOTION:** Move to table this to the next meeting.  
**Young / Malich** – two voted in favor. Councilmembers Ekberg, Franich, Conan, Payne and Kadzik voted no. The motion failed.

**ORIGINAL MOTION:** Move to adopt Ordinance No. 1216 as presented.  
**Kadzik / Payne** – six voted in favor. Councilmember Franich voted no.

3. Second Reading of Ordinance – Accepting Monetary Donations and Resolution Adopting a Monetary Donation Policy. Rob Karlinsey presented the second reading of an ordinance to provide a mechanism to receive and track monetary donations and recommended adoption of both the ordinance and resolution.

**MOTION:** Move to adopt Ordinance No. 1217 as presented.  
**Malich / Conan** – unanimously approved.

**MOTION:** Move to adopt Resolution No. 864 as presented.  
**Conan / Malich** – unanimously approved.

**NEW BUSINESS:**

1. Public Hearing and First Reading of Ordinance – 2011 Comprehensive Plan Amendments. Senior Planner Jennifer Kester presented information on two proposed comprehensive plan amendments: Electric Vehicle Infrastructure Policies and Gig Harbor Bay UGA Expansion.

Mayor Hunter opened the public hearing at 6:12 p.m. No one came forward to speak and the public hearing closed. This will return for a second reading at the next meeting.

2. Public Hearing and First Reading of Ordinance – Electric Vehicle Infrastructure Zoning Regulations. Ms. Kester explained that this ordinance to allow electric vehicle infrastructure including battery charging and battery exchange stations is to ensure consistency throughout the region and provide for some local control.

Mayor Hunter opened the public hearing at 6:16 p.m. No one came forward to speak and the public hearing closed. This will return for a second reading at the next meeting.

3. First Reading of Ordinance – Amendments to Special Events Permit. Marketing Director Laureen Lund gave an overview of this ordinance that would allow for certain commercially organized special events. This will return for a second reading at the next meeting.

**STAFF REPORT:**

Donkey Creek Update. City Administrator Rob Karlinsey explained that after the presentation tonight he would ask for Council direction on what options to present at community at the meeting on July 14<sup>th</sup>. On July 25<sup>th</sup>, Council would be asked to decide whether or not to close N. Harborview Drive.

Jim Dugan, Senior Consultant at Parametrix, explained that he had been tasked with preparing graphic tools to determine roadway alignment and park tree impact to help Council make their decision. He presented 3-D views illustrating the roadway design option that would remove trees and two options that shift the roadway and retain the park trees. The presentation included the estimated cost and level of service for five alignment options.

After discussion, Council agreed with staff's recommendation to present the one-way option keeping N. Harborview open and the two two-way options that retain the trees. Staff was asked to include parking net gain/loss, other city roundabout configurations, and Finholm signage options at the community meeting.

Councilmember Payne asked that information be passed to the Public Works Department regarding thinning of the maples at Donkey Creek Park.

**PUBLIC COMMENT:** None.

**MAYOR'S REPORT / COUNCIL COMMENTS:**

Mayor Hunter reported that at the Chamber meeting last week he was presented with an American Flag that had flown over Iraq on July 4<sup>th</sup> in recognition of Gig Harbor's support of the military. The flag and accompanying letter of explanation will be placed in a display case at the Civic Center until a permanent place can be found.

Councilmember Ekberg voiced appreciation to Councilmember Kadzik for watering the downtown flower baskets saying they add a lot to the town.

Councilmember Payne mentioned the value of the Public Affairs Forum on Thursdays mornings at 7:00 a.m. and encouraged other Councilmembers to attend.

**ANNOUNCEMENT OF OTHER MEETINGS:**

1. Wastewater Treatment Plant Ribbon Cutting: Tue. July 12th at 11:30 a.m.
2. Donkey Creek Project Community Meeting: Thu. July 14<sup>th</sup> at 6:30 p.m. at Harbor Ridge Middle School.
3. Operations Committee: Thu. July 21<sup>st</sup> at 3:00 p.m.
4. No City Council Meetings on August 8th or 22nd.
5. Special Council Meeting: Mon. Aug. 29<sup>th</sup> at 5:30 p.m. – Maritime Pier Construction Bid Award.

**EXECUTIVE SESSION:** For the purpose of discussing potential litigation per RCW 42.30.110(1)(i).

**MOTION:** Move to adjourn to Executive Session at 7: 16 p.m. for approximately ten minutes to discuss potential litigation per RCW 42.30.110(1)(i).  
**Payne / Franich** – unanimously approved.

**MOTION:** Move to return to regular session at 7:30 p.m.  
**Payne / Malich** – unanimously approved.

**MOTION:** Move to adopt Ordinance No. 1218 (The title was read into the record by City Attorney: *An ordinance of the City of Gig Harbor relating to land use zoning; adopting interim zoning code amendments relating to medical cannabis collective gardens; amending Section 17.14.020 GHMC; setting a public hearing for July 25th, 2011 in order to take public testimony regarding the interim zoning code amendments; adopting a Planning Commission work plan; providing for severability; declaring an emergency and establishing an immediate effective date.*)  
**Malich / Payne** –

**AMENDMENT:** Motion to add the following language to the ordinance: Section 4 – Interim Zoning; add ED as the designated zone; Section B – Separation Requirements, insert “500 feet”; Section D – Applications, insert “500 feet” in subsection viii, and “750 feet in subsection vix.  
**Ekberg / Malich** – unanimously approved.

Councilmember Franich said the ordinance eliminates an effective way for those who use medical marijuana to obtain it. Legal Counsel Angela Belbeck responded that this ordinance is about collective gardens, and people are still allowed to grow medical cannabis.

Councilmember Young said that he will vote in favor of the ordinance, but it needs more work. He added that most people don't have the knowledge to grow their own and thus the need for community gardens.

**ADJOURN:**

**MOTION:** Move to adjourn at 7:35p.m.  
**Kadzik / Payne** – unanimously approved.

CD recorder utilized: Tracks 1002 – 1020

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Charles L. Hunter, Mayor

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Molly Towslee, City Clerk

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 07/08/2011

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR  
 (BY ZIP CODE) FOR EXPIRATION DATE OF 20111031

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
S SQUARED, LLC	MORSO 9014 PEACOCK HILL AVE GIG HARBOR WA 98332 1029	405678	TAVERN - BEER/WINE OFF PREMISES
JW RESTAURANT, LLC	JW RESTAURANT 4107 HARBORVIEW DR GIG HARBOR WA 98332 1080	402061	TAVERN - BEER/WINE TAVERN - BEER/WINE
THE GIG HARBOR YACHT CLUB	GIG HARBOR YACHT CLUB 8209 STINSON AVE GIG HARBOR WA 98335 0000	077100	PRIVATE CLUB - SPIRITS/BEER/WINE
JJ & JU CORPORATION	MIZU JAPANESE STEAKHOUSE 3116 JUDSON ST GIG HARBOR WA 98335 1222	085495	SPIRITS/BR/WN REST LOUNGE +
THE WINE STUDIO LLC	THE WINE STUDIO 3123 56TH ST NW #5 GIG HARBOR WA 98335 1363	080669	TAVERN - WINE OFF PREMISES
THE BARTELL DRUG COMPANY	BARTELL DRUG COMPANY #39 5500 OLYMPIC DR GIG HARBOR WA 98335 1487	077055	GROCERY STORE - BEER/WINE
GALAXY THEATRES, LLC	GALAXY UPTOWN 4649 POINT FOSDICK DR NW GIG HARBOR WA 98335 1707	402683	BEER/WINE REST - BEER/WINE



NOTICE OF LIQUOR LICENSE APPLICATION



RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD  
License Division - 3000 Pacific, P.O. Box 43075  
Olympia, WA 98504-3075  
Customer Service: (360) 664-1600  
Fax: (360) 753-2710  
Website: www.liq.wa.gov

MVG

TO: MOLLY TOWSLEE, CITY CLERK

DATE: 7/07/11

RE: APPLICATION FOR ADDED PRIVILEGE

UBI: 602-308-130-001-0001

APPLICANTS:

License: 082991 - 1U County: 27

Tradename: TANGLEWOOD GRILL

HINDQUARTER II, INC.

Loc Addr: 3222 56TH ST

GIG HARBOR

WA 98335-1359

Mail Addr: 4015 RUSTON WAY

TACOMA

WA 98402-5315

Phone No.: 253-272-4374

Privileges Upon Approval:

SPIRITS/BR/WN REST LOUNGE -  
OFF-PREMISES SALE WINE

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- |   | YES                      | NO                       |
|---|--------------------------|--------------------------|
| 1. Do you approve of applicant ? .....  | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Do you approve of location ? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? .....   | <input type="checkbox"/> | <input type="checkbox"/> |
| (See WAC 314-09-010 for information about this process)   |                          |                          |
| 4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based. |                          |                          |

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



RETAIL DIVISION – P.O. Box 43081, Olympia, WA 98504-3081

July 8, 2011

MAYOR OF GIG HARBOR  
MOLLY TOWSLEE, CITY CLERK  
3510 GRANDVIEW ST  
GIG HARBOR, WA 983350000

Re: Contract Liquor Store Manager Recruitment

MAYOR OF GIG HARBOR:

The Washington State Liquor Control Board is recruiting for 6 new Contract Liquor Store Managers statewide; with particular emphasis in the Eastern Washington area, as well as Thurston, Pierce, King and Snohomish County. This process should take a minimum of 120 days.

The purpose of this notification is to allow you an opportunity to comment on this recruitment, process, and location that may be near your city. Any comments you may have must be sent in writing within 20 days of the date of this letter. If we do not receive feedback from you within that timeframe, we will continue the recruitment under the assumption that you have no objections.

Comments should be sent to the attention of:


Suzanne Lewis, Store Leasing Manager  
WSLCB  
PO Box 43082  
Olympia, WA 98504-3082.  
Fax: 360-704-5045 E-mail: [sm@liq.wa.gov](mailto:sm@liq.wa.gov)

Sincerely,

Chris Liu, Director of Retail  
Washington State Liquor Control Board

cc: Susan Danby, Contract Managers Advisory Committee President  
WSLCB District Managers



**TO: MAYOR HUNTER AND CITY COUNCIL**  
**FROM: DAVID RODENBACH, FINANCE DIRECTOR**   
**SUBJECT: QUARTERLY FINANCE REPORT**  
**DATE: July 25, 2011**

The 2011 second financial reports are attached.

Total resources, including all revenues and beginning fund balances, are at 80% (82% in 2010) of the annual budget. Revenues and expenditures, excluding beginning and ending fund balances, are 56% and 45% respectively of the annual budget. This compares with 78% and 69% for the same period in 2010. The 2011 pace reflects closer to normal activity as 2010 was skewed to bond sales.

General Fund revenues (excluding beginning fund balance) are at 50% (48% in 2010, 49% in 2009 and 44% in 2008) of budget. Sales taxes are on pace at 50% of budget, building permit fee revenues are 85% of budget and planning fees are at 40% of budget. Through June we have received \$2.3 million in sales taxes and \$357,000 in permit fees. For the same period last year sales taxes and permit fees were \$2.2 million and \$274,000 respectively. All other significant General Fund revenues are coming in as expected.

General Fund expenditures are at 45% (51% in 2010, 47% in 2009 and 53% in 2008) of budget. All General Fund departments, except for Parks, are tracking on budget through the end of the second quarter.

Street Capital and Street Operating Fund revenues and expenditures have no significant deviations from budget.

Water, Sewer and Storm Sewer revenues are 46%, 50% and 57% of budget; while expenditures for these three funds are at 38%, 50% and 49% of budget. Second quarter 2010 amounts for water, sewer and storm were 49%, 51% and 52% for revenues and 45%, 42% and 23% for expenditures.

At this time cash balances are adequate in all funds. Most of the City's investments are in the State Treasurer's pool.

**CITY OF GIG HARBOR  
CASH AND INVESTMENTS  
YEAR TO DATE ACTIVITY  
AS OF JUNE 30, 2011**

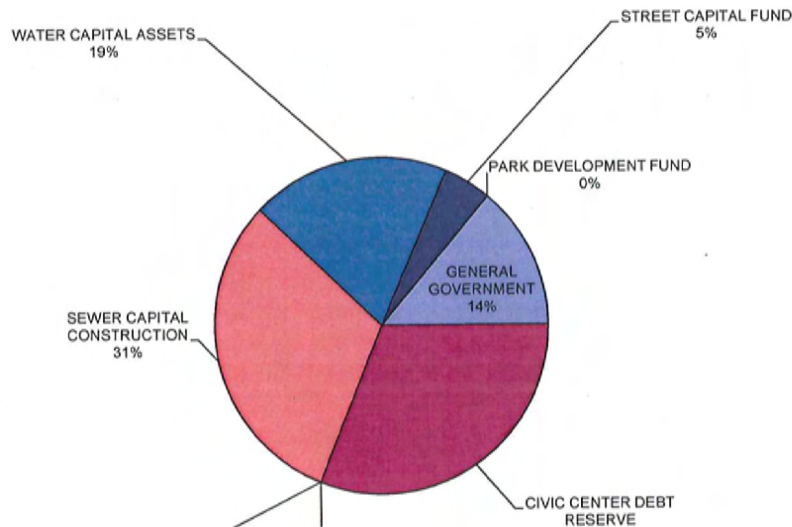
FUND NO.	DESCRIPTION	BEGINNING BALANCE	REVENUES	EXPENDITURES	OTHER CHANGES	ENDING BALANCE
001	GENERAL GOVERNMENT	\$ 1,625,537	\$ 4,812,659	\$ 4,360,339	\$ (159,111)	\$ 1,918,746
101	STREET FUND	432,205	245,402	567,102	(8,304)	102,201
102	STREET CAPITAL FUND	510,149	795,386	127,211	(74,213)	1,104,110
105	DRUG INVESTIGATION FUND	5,897	2,525	271	(150)	8,001
106	DRUG INVESTIGATION FUND	34,075	31	1,758	-	32,348
107	HOTEL-MOTEL FUND	97,817	79,574	78,653	(3,232)	95,505
108	PUBLIC ART CAPITAL PROJECTS	91,787	83	-	-	91,869
109	PARK DEVELOPMENT FUND	492,075	909,602	317,402	(192,227)	892,047
110	CIVIC CENTER DEBT RESERVE	3,983,655	3,198	200,000	-	3,786,854
111	STRATEGIC RESERVE FUND	-	280,252	-	-	280,252
112	EQUIPMENT RESERVE FUND	-	50,045	-	-	50,045
208	LTGO BOND REDEMPTION	41,478	1,370,134	784,774	-	626,839
209	2000 NOTE REDEMPTION	18,610	20,094	-	-	38,704
210	LID NO. 99-1 GUARANTY	95,237	86	-	-	95,323
211	UTGO BOND REDEMPTION	180,670	186,737	54,008	3,699	317,099
301	PROPERTY ACQUISITION FUND	115,953	107,721	150,000	-	73,675
305	GENERAL GOVT CAPITAL IMPR	124,360	70,675	150,000	1,633	46,669
309	IMPACT FEE TRUST	318,022	251,331	-	13,900	583,253
401	WATER OPERATING	208,566	583,832	527,445	(72,672)	192,281
402	SEWER OPERATING	341,899	1,649,394	1,498,150	(328,479)	164,664
407	UTILITY RESERVE	1,325,893	985	-	-	1,326,878
408	UTILITY BOND REDEMPTION	4,902	1,258,471	1,259,603	-	3,769
410	SEWER CAPITAL CONSTRUCTION	5,754,371	392,358	2,464,306	(663,527)	3,018,896
411	STORM SEWER OPERATING FUND	268,469	429,764	375,765	(17,032)	305,436
412	STORM SEWER CAPITAL	449,520	36,375	15,357	(1,614)	468,925
420	WATER CAPITAL ASSETS	2,311,006	175,538	345,594	(6,419)	2,134,532
605	LIGHTHOUSE MAINTENANCE TRUST	2,107	2	-	(1)	2,108
631	MUNICIPAL COURT	-	68,580	68,580	-	-
		<b>\$ 18,834,261</b>	<b>\$ 13,780,833</b>	<b>\$ 13,346,318</b>	<b>\$ (1,507,749)</b>	<b>\$ 17,761,028</b>

**COMPOSITION OF CASH AND INVESTMENTS  
AS OF JUNE 30, 2011**

	MATURITY	RATE	BALANCE
CASH ON HAND			\$ 300
CASH IN BANK			1,495,861
ESCROW COLUMBIA BANK			60,000
INVESTMENTS/CD COLUMBIA BANK			1,000,000
INVESTMENTS/US BANK			989,126
LOCAL GOVERNMENT INVESTMENT POOL		0.2300%	14,215,741
			<b>\$ 17,761,028</b>

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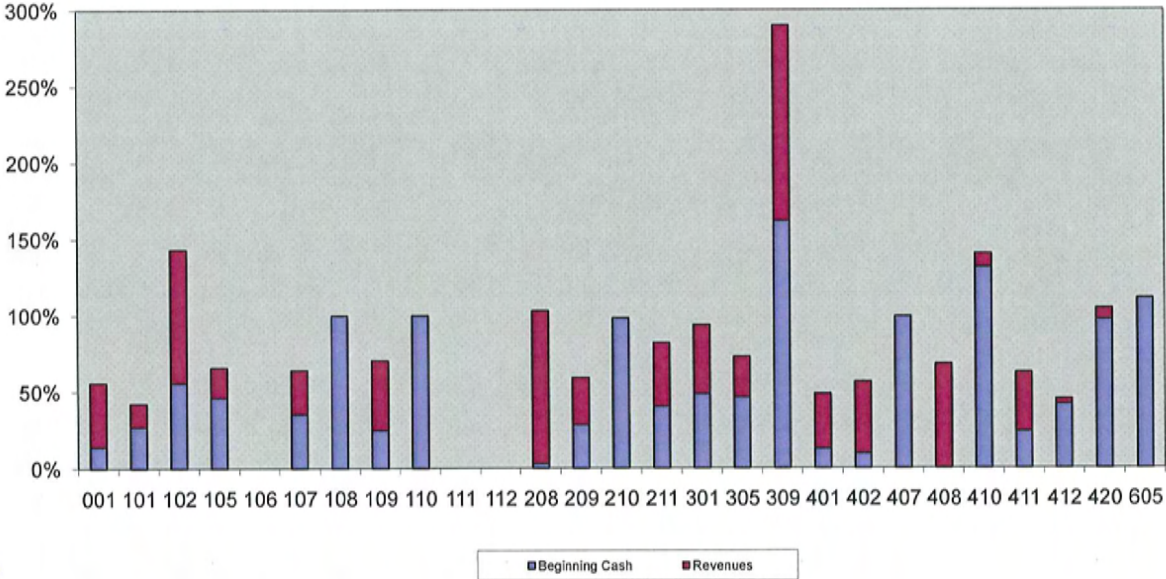
**Ending Cash Balances by Fund**



**CITY OF GIG HARBOR**  
**YEAR-TO-DATE RESOURCE SUMMARY**  
**AND COMPARISON TO BUDGET**  
**AS OF JUNE 30, 2011**

FUND NO.	DESCRIPTION	ESTIMATED RESOURCES	ACTUAL Y-T-D RESOURCES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT	\$ 11,475,566	\$ 6,438,197	\$ 5,037,370	56%
101	STREET FUND	1,593,266	677,607	915,660	43%
102	STREET CAPITAL FUND	911,556	1,305,534	(393,979)	
105	DRUG INVESTIGATION FUND	12,776	8,422	4,354	66%
106	DRUG INVESTIGATION FUND	34,071	34,106	(35)	
107	HOTEL-MOTEL FUND	276,430	177,391	99,040	
108	PUBLIC ART CAPITAL PROJECTS	91,938	91,869	68	100%
109	PARK DEVELOPMENT FUND	1,986,919	1,401,677	585,242	71%
110	CIVIC CENTER DEBT RESERVE	3,989,426	3,986,854	2,572	100%
111	STRATEGIC RESERVE FUND	280,000	280,252	(252)	
112	EQUIPMENT RESERVE FUND	50,000	50,045	(45)	
208	LTGO BOND REDEMPTION	1,370,824	1,411,613	(40,789)	103%
209	2000 NOTE REDEMPTION	65,296	38,704	26,592	59%
210	LID NO. 99-1 GUARANTY	97,032	95,323	1,709	98%
211	UTGO BOND REDEMPTION	448,272	367,407	80,865	82%
301	PROPERTY ACQUISITION FUND	238,761	223,675	15,086	94%
305	GENERAL GOVT CAPITAL IMPR	267,561	195,035	72,526	73%
309	IMPACT FEE TRUST	196,407	569,353	(372,946)	290%
401	WATER OPERATING	1,630,318	792,398	837,921	49%
402	SEWER OPERATING	3,522,988	1,991,293	1,531,695	57%
407	UTILITY RESERVE	1,336,291	1,326,878	9,412	99%
408	UTILITY BOND REDEMPTION	1,854,697	1,263,372	591,324	68%
410	SEWER CAPITAL CONSTRUCTION	4,376,516	6,146,729	(1,770,214)	
411	STORM SEWER OPERATING FUND	1,115,176	698,233	416,943	63%
412	STORM SEWER CAPITAL	1,074,092	485,895	588,197	45%
420	WATER CAPITAL ASSETS	2,379,995	2,486,544	(106,549)	
605	LIGHTHOUSE MAINTENANCE TRUST	1,900	2,109	(209)	
631	MUNICIPAL COURT		68,580	(68,580)	
		<b>\$ 40,678,072</b>	<b>\$ 32,615,094</b>	<b>\$ 8,062,978</b>	<b>80%</b>

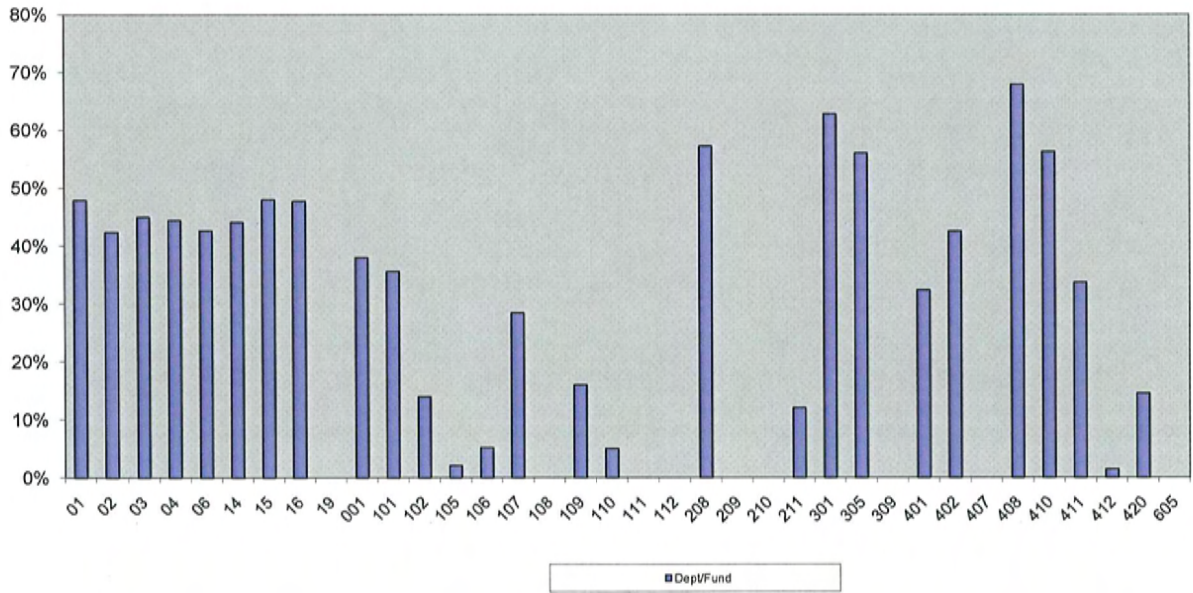
**Resources as a Percentage of Annual Budget**



CITY OF GIG HARBOR  
YEAR-TO-DATE EXPENDITURE SUMMARY  
AND COMPARISON TO BUDGET  
FOR PERIOD ENDING JUNE 30, 2011

FUND NO.	DESCRIPTION	ESTIMATED EXPENDITURES	ACTUAL Y-T-D EXPENDITURES	BALANCE OF ESTIMATE	PERCENTAGE (ACTUAL/EST.)
001	GENERAL GOVERNMENT				
01	NON-DEPARTMENTAL	\$ 3,166,427	\$ 1,517,239	\$ 1,649,188	48%
02	LEGISLATIVE	29,350	12,432	16,918	42%
03	MUNICIPAL COURT	360,750	162,383	198,367	45%
04	ADMINISTRATIVE/FINANCIAL	1,290,800	574,065	716,735	44%
06	POLICE	2,846,352	1,213,394	1,632,958	43%
14	COMMUNITY DEVELOPMENT	1,200,050	529,283	670,768	44%
15	PARKS AND RECREATION	483,175	232,018	251,157	48%
16	BUILDING	250,330	119,526	130,804	48%
19	ENDING FUND BALANCE	1,848,330	-	1,848,330	
001	TOTAL GENERAL FUND	11,475,564	4,360,339	7,115,225	38%
101	STREET FUND	1,593,266	567,102	1,026,164	36%
102	STREET CAPITAL FUND	911,556	127,211	784,345	14%
105	DRUG INVESTIGATION FUND	12,776	271	12,505	2%
106	DRUG INVESTIGATION FUND	34,071	1,758	32,313	5%
107	HOTEL-MOTEL FUND	276,430	78,653	197,777	28%
108	PUBLIC ART CAPITAL PROJECTS	91,938	-	91,938	
109	PARK DEVELOPMENT FUND	1,986,919	317,402	1,669,517	16%
110	CIVIC CENTER DEBT RESERVE	3,989,426	200,000	3,789,426	5%
111	STRATEGIC RESERVE FUND	280,000	-	280,000	
112	EQUIPMENT RESERVE FUND	50,000	-	50,000	
208	LTGO BOND REDEMPTION	1,370,824	784,774	586,050	57%
209	2000 NOTE REDEMPTION	65,297	-	65,297	
210	LID NO. 99-1 GUARANTY	97,032	-	97,032	
211	UTGO BOND REDEMPTION	448,272	54,008	394,265	12%
301	PROPERTY ACQUISITION FUND	238,761	150,000	88,761	63%
305	GENERAL GOVT CAPITAL IMPR	267,561	150,000	117,561	56%
309	IMPACT FEE TRUST	196,407	-	196,407	
401	WATER OPERATING	1,630,320	527,445	1,102,875	32%
402	SEWER OPERATING	3,522,989	1,498,150	2,024,839	43%
407	UTILITY RESERVE	1,336,291	-	1,336,291	
408	UTILITY BOND REDEMPTION	1,854,697	1,259,603	595,094	68%
410	SEWER CAPITAL CONSTRUCTION	4,376,516	2,464,306	1,912,210	56%
411	STORM SEWER OPERATING FUND	1,115,176	375,765	739,411	34%
412	STORM SEWER CAPITAL	1,074,092	15,357	1,058,735	1%
420	WATER CAPITAL ASSETS	2,379,995	345,594	2,034,401	15%
605	LIGHTHOUSE MAINTENANCE TRUST	1,900	-	1,900	
631	MUNICIPAL COURT	-	68,580	(68,580)	
		\$ 40,678,076	\$ 13,346,318	\$ 27,331,758	33%

Expenditures as a Percentage of Annual Budget

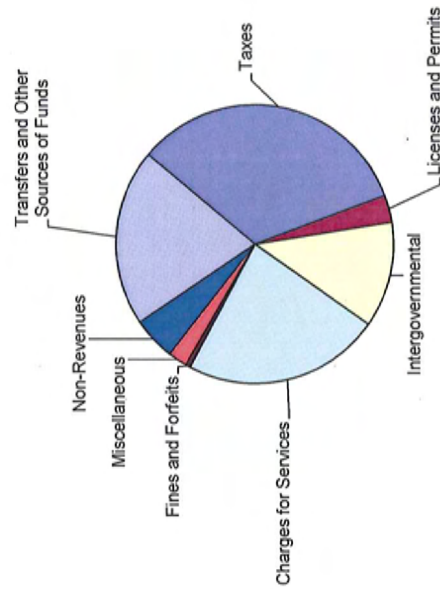


CITY OF GIG HARBOR  
 YEAR-TO-DATE REVENUE SUMMARY  
 BY TYPE  
 FOR PERIOD ENDING JUNE 30, 2011

TYPE OF REVENUE	AMOUNT
Taxes	\$ 4,580,081
Licenses and Permits	431,512
Intergovernmental	1,691,885
Charges for Services	3,173,062
Fines and Forfeits	75,874
Miscellaneous	308,151
Non-Revenues	686,888
Transfers and Other Sources of Funds	2,833,380
Total Revenues	13,780,833
Beginning Cash Balance	18,834,261
Total Resources	\$ 32,615,094

diff \$ 1,513,983

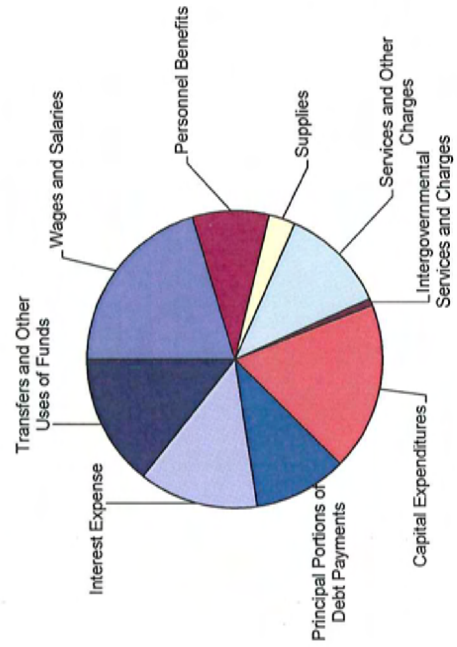
Revenues by Type - All Funds



CITY OF GIG HARBOR  
 YEAR-TO-DATE EXPENDITURE SUMMARY  
 BY TYPE  
 FOR PERIOD ENDING JUNE 30, 2011

TYPE OF EXPENDITURE	AMOUNT
Wages and Salaries	\$ 2,718,246
Personnel Benefits	1,115,171
Supplies	389,086
Services and Other Charges	1,557,394
Intergovernmental Services and Charges	99,838
Capital Expenditures	2,443,303
Principal Portions of Debt Payments	1,361,533
Interest Expense	1,746,851
Transfers and Other Uses of Funds	1,914,896
Total Expenditures	13,346,318
Ending Cash Balance	17,754,793
Total Uses	\$ 31,101,111

Expenditures by Type - All Funds



**CITY OF GIG HARBOR  
STATEMENT OF FINANCIAL POSITION  
AS OF JUNE 30, 2011**

	SPECIAL REVENUE FUNDS										
	001 GENERAL GOVERNMENT	101 STREET	102 ST CAP	105 DRUG INVESTIGTN	106 DRUG INVESTIGTN	107 HOTEL - MOTEL	108 PUBLIC ART PROJECTS	109 PARK DVLP FUND	110 CIVIC CTR DEBT RSRV	111 STRATEGIC RESERVE	112 EQUIPMENT RESERVE
<b>ASSETS</b>											
CASH	\$ 182,769	\$ 9,730	\$ 105,120	\$ 762	\$ 3,080	\$ 9,093	\$ 8,747	\$ 139,217	\$ 265,329	\$ 26,682	\$ 4,765
INVESTMENTS	1,735,977	92,471	998,991	7,239	29,268	86,412	83,123	752,830	3,521,524	253,570	45,280
RECEIVABLES	1,189,237	43,380	55,690	-	-	39,289	-	-	-	-	-
FIXED ASSETS	-	-	-	-	-	-	-	-	-	-	-
OTHER	-	-	-	-	-	-	-	-	-	-	-
<b>TOTAL ASSETS</b>	<b>3,107,983</b>	<b>145,582</b>	<b>1,159,800</b>	<b>8,001</b>	<b>32,348</b>	<b>134,794</b>	<b>91,869</b>	<b>892,047</b>	<b>3,786,854</b>	<b>280,252</b>	<b>50,045</b>
<b>LIABILITIES</b>											
CURRENT	14,135	63,887	-	-	-	-	-	-	-	-	-
LONG TERM	4,598	13,987	-	-	-	-	-	-	-	-	-
<b>TOTAL LIABILITIES</b>	<b>18,733</b>	<b>77,874</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>FUND BALANCE:</b>											
BEGINNING OF YEAR	2,636,930	389,408	491,626	5,747	34,075	133,874	91,787	299,848	3,983,655	-	-
Y-T-D REVENUES	4,812,659	245,402	795,386	2,525	31	79,574	83	909,602	3,198	280,252	50,045
Y-T-D EXPENDITURES	(4,360,339)	(567,102)	(127,211)	(271)	(1,758)	(78,653)	-	(317,402)	(200,000)	-	-
<b>ENDING FUND BALANCE</b>	<b>3,089,250</b>	<b>67,708</b>	<b>1,159,800</b>	<b>8,001</b>	<b>32,348</b>	<b>134,794</b>	<b>91,869</b>	<b>892,047</b>	<b>3,786,854</b>	<b>280,252</b>	<b>50,045</b>
<b>TOTAL LIAB. &amp; FUND BAL.</b>	<b>3,107,983</b>	<b>145,582</b>	<b>1,159,800</b>	<b>8,001</b>	<b>32,348</b>	<b>134,794</b>	<b>91,869</b>	<b>892,047</b>	<b>3,786,854</b>	<b>280,252</b>	<b>50,045</b>



CITY OF GIG HARBOR  
STATEMENT OF FINANCIAL POSITION  
AS OF JUNE 30, 2011

	SPECIAL REVENUE FUNDS						TOTAL
	301	305	309	605	631		SPECIAL
	PROPERTY ACQUISITION	GEN GOVT CAPITAL	IMPACT TRUST	LIGHTHOUSE MAINT	MUNICIPAL COURT		REVENUE
ASSETS							
CASH	\$ 7,014	\$ 4,443	\$ 55,530	\$ 201	\$ -		\$ 639,712
INVESTMENTS	66,660	42,226	527,723	1,908	-		6,509,226
RECEIVABLES	-	-	-	-	-		138,360
FIXED ASSETS	-	-	-	-	-		-
OTHER	-	-	-	-	-		-
TOTAL ASSETS	73,675	46,669	583,253	2,109	-		7,287,298
LIABILITIES							
CURRENT	-	1,633	22,240	-	-		87,760
LONG TERM	-	-	-	-	-		13,987
TOTAL LIABILITIES	-	1,633	22,240	-	-		101,748
FUND BALANCE:							
BEGINNING OF YEAR	115,953	124,360	309,682	2,107	-		5,982,121
Y-T-D REVENUES	107,721	70,675	251,331	2	-		2,795,827
Y-T-D EXPENDITURES	(150,000)	(150,000)	-	-	-		(1,592,398)
ENDING FUND BALANCE	73,675	45,035	561,013	2,109	-		7,185,550
TOTAL LIAB. & FUND BAL.	\$ 73,675	\$ 46,669	\$ 583,253	\$ 2,109	\$ -		\$ 7,287,298

CITY OF GIG HARBOR  
STATEMENT OF FINANCIAL POSITION  
AS OF JUNE 30, 2011

	208	209	210	211	TOTAL
	LTGO BOND	2000 NOTE	LID 99-1	UTGO BOND	DEBT
	REDEMPTION *****	REDEMPTION*****	GUARANTY	REDEMPTION*****	SERVICE
ASSETS					
CASH	\$ 59,680	\$ 3,685	\$ 9,075	\$ 30,190	\$ 102,630
INVESTMENTS	567,159	35,019	86,247	286,909	975,334
RECEIVABLES	-	-	-	6,215	6,215
FIXED ASSETS	-	-	-	-	-
OTHER	-	-	-	-	-
TOTAL ASSETS	626,839	38,704	95,323	323,314	1,084,179
LIABILITIES					
CURRENT	-	-	-	10,786	10,786
LONG TERM	-	-	-	2,450	2,450
TOTAL LIABILITIES	-	-	-	13,236	13,236
FUND BALANCE:					
BEGINNING OF YEAR	41,478	18,610	95,237	177,349	332,674
Y-T-D REVENUES	1,370,134	20,094	86	186,737	1,577,051
Y-T-D EXPENDITURES	(784,774)	-	-	(54,008)	(838,782)
ENDING FUND BALANCE	626,839	38,704	95,323	310,078	1,070,943
TOTAL LIAB. & FUND BAL.	\$ 626,839	\$ 38,704	\$ 95,323	\$ 323,314	\$ 1,084,179

CITY OF GIG HARBOR  
STATEMENT OF FINANCIAL POSITION  
AS OF JUNE 30, 2011

	PROPRIETARY							TOTAL PROPRIETARY	TOTAL	
	401	402	407	408	410	411	412			420
	WATER OPERATING	SEWER OPERATING	UTILITY RESERVE	UTILITY REDEMPTION	SEWER CAP. CONST.	STORM SEWER OPERATING	SEWER CAP. CAPITAL	WATER CAP. ASSETS		
<b>ASSETS</b>										
CASH	\$ 18,397	\$ 15,768	\$ 32,157	\$ 359	\$ 287,421	\$ 29,080	\$ 44,645	\$ 203,223	\$ 631,050	\$ 1,566,161
INVESTMENTS	173,884	148,896	1,294,722	3,410	2,731,475	276,356	424,279	1,931,308	6,984,331	16,204,867
RECEIVABLES	327,695	484,181	-	-	5,490	175,805	-	-	993,171	2,326,982
FIXED ASSETS	3,273,359	8,209,417	-	-	23,764,369	394,566	34,642	2,093,722	37,770,075	37,770,075
OTHER	-	-	-	168,878	-	-	-	-	168,878	168,878
<b>TOTAL ASSETS</b>	<b>3,793,335</b>	<b>8,858,261</b>	<b>1,326,878</b>	<b>172,647</b>	<b>26,788,756</b>	<b>875,807</b>	<b>503,566</b>	<b>4,228,253</b>	<b>46,547,504</b>	<b>58,026,964</b>
<b>LIABILITIES</b>										
CURRENT	127,304	8,750	-	1,217,888	(6,714)	2,279	-	3,172	1,352,679	1,465,361
LONG TERM	44,595	80,717	-	23,366,538	-	33,251	-	-	23,525,102	23,546,137
<b>TOTAL LIABILITIES</b>	<b>171,900</b>	<b>89,468</b>	<b>-</b>	<b>24,584,426</b>	<b>(6,714)</b>	<b>35,529</b>	<b>-</b>	<b>3,172</b>	<b>24,877,781</b>	<b>25,011,498</b>
<b>FUND BALANCE:</b>										
BEGINNING OF YEAR	3,565,048	8,617,550	1,325,893	(24,410,647)	28,867,418	786,278	482,548	4,395,137	23,629,226	32,580,951
Y-T-D REVENUES	583,832	1,649,394	985	1,258,471	392,358	429,764	36,375	175,538	4,526,716	13,712,253
Y-T-D EXPENDITURES	(527,445)	(1,498,150)	-	(1,259,603)	(2,464,306)	(375,765)	(15,357)	(345,594)	(6,486,220)	(13,277,738)
<b>ENDING FUND BALANCE</b>	<b>3,621,436</b>	<b>8,768,794</b>	<b>1,326,878</b>	<b>(24,411,779)</b>	<b>26,795,470</b>	<b>840,277</b>	<b>503,566</b>	<b>4,225,082</b>	<b>21,669,723</b>	<b>33,015,466</b>
<b>TOTAL LIAB. &amp; FUND BAL.</b>	<b>\$ 3,793,335</b>	<b>\$ 8,858,261</b>	<b>\$ 1,326,878</b>	<b>\$ 172,647</b>	<b>\$ 26,788,756</b>	<b>\$ 875,807</b>	<b>\$ 503,566</b>	<b>\$ 4,228,253</b>	<b>\$ 46,547,504</b>	<b>\$ 58,026,964</b>



**Subject: Park & Street Donation Program**

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey

**For Agenda of:** July 25, 2011

**Proposed Council Action:**

Receive and File

**Exhibits:** Park & Street Donation Process and Opportunities

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** \_\_\_\_\_

**Approved as to form by City Atty:** \_\_\_\_\_

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** \_\_\_\_\_

Expenditure	Amount	Appropriation
Required \$0	Budgeted N/A	Required N/A

**INFORMATION / BACKGROUND**

The process to develop a donation program has been in the works for several months. At the last Council meeting an ordinance and resolution were adopted to provide for monetary donations.

Attached is the administrative process that was developed to provide street and park furniture donation opportunities for individuals, community organizations and businesses to be personally involved in adding amenities to our public facilities.

**FISCAL CONSIDERATION**

A donation fund and policy have already been set up for accounting purposes.

**BOARD OR COMMITTEE RECOMMENDATION**

The attached park and street furniture process and selections were provided at the June Parks Commission Meeting.



**DONATION OPPORTUNITIES IN GIG HARBOR**

The City of Gig Harbor provides opportunities for individuals, community organizations and businesses to be personally involved in shaping the special characteristics of our community. A variety of items are available for sponsorship. Donors wishing to contribute funds for parks or street amenities shall select from a list of styles, colors, sizes and locations as determined by the City.

Donors will receive Certificates of Appreciation along with public recognition of their gifts, unless they wish to remain anonymous. Contributions to the City for "exclusively public purposes" are tax deductible for federal income tax purposes.

Donations can be made in several ways:


- In memory of a loved one
- Celebration of a special event
- Name of donor or organization
- Anonymous

Commemorative donation plaques may be purchased through the City and are limited to the size, design and verbiage standard below:

- "In Memory of ..."
- "Donated by ..."
- Brass-style plaque (3"x5")

The total item cost will be determined when the order is placed. Freight and sales tax will be included as the responsibility of the donor. The cost of a donated item includes maintenance for the first 10 years for metal, 8 years for recycled plastic and 5 years for wood. Beyond that time, any necessary repair or replacement will become the responsibility of the donor. The City reserves the right to relocate or remove any item as needed to maximize community benefit.

The City's pedestrian amenities donation policy is available for viewing. For additional details on making a donation, please contact the Public Works Operations Department at (253) 851-6170.

ITEM	ESTIMATED COST	(not including freight & tax)
<p><b>BENCH – PARK/STREET</b></p> <ul style="list-style-type: none"> <li>• Austin Estuary Park</li> <li>• Cushman Trail (Grandview Trailhead)</li> <li>• BMX Park</li> <li>• Eddon Boat Park</li> <li>• Grandview Forest Park</li> <li>• KLM Veterans Memorial Park</li> <li>• Soundview Drive</li> <li>• Stinson Street</li> <li>• Pioneer Way</li> <li>• Novak Street</li> <li>• Grandview Street</li> <li>• Stanich Avenue</li> </ul> <p>Pilot Rock - Park Avenue (recycled plastic)</p>	<p>5' - \$815</p> <p>6' - \$860</p>	

ITEM	ESTIMATED COST	(not including freight & tax)
<p><b>BENCH – PARK (HIGH USE PARK)</b></p> <ul style="list-style-type: none"> <li>Crescent Creek Park</li> <li>Skate Park</li> <li>Wilkinson Farm Park</li> </ul> <p>Foresite – Park Scapes (no arms, wood)</p>	<p>5' - \$590</p> <p>6' - \$630</p>	
<p><b>BENCH - STREET</b></p> <p>Skip-A-Stone</p> <p>(various designs - fish, forest, wetland, birds)</p>	<p>\$1,500</p>	
<p><b>PICNIC TABLE</b></p> <ul style="list-style-type: none"> <li>Austin Estuary Park</li> <li>Donkey Creek Park</li> <li>Wilkinson Farm Park</li> <li>KLM Veterans Memorial Park</li> <li>Crescent Creek Park</li> <li>Eddon Boat Park</li> <li>Skansie Brothers Park</li> </ul> <p>FairWeather F-4, F-5 (recycled plastic)</p>	<p>4' - \$2,740</p> <p>ADA-\$2,435</p>    <p>6' - \$2,360</p> <p>8' - \$2,880</p> <p>ADA \$2,675</p>	  
<p><b>PICNIC TABLE (HIGH USE)</b></p> <ul style="list-style-type: none"> <li>Skate Park</li> <li>BMX</li> <li>Sand Volleyball Courts</li> </ul> <p>Single Wheel Chair (8')</p> <p>Double Wheel Chair (12')</p> <p>Kay Park (wood)</p>	<p>6' - \$290</p> <p>8' - \$320</p>  <p>SWC - \$345</p> <p>DWC - \$600</p>	  

ITEM	ESTIMATED COST	(not including freight & tax)
<p><b>TRASH RECEPTACLE - PARKS</b></p> <p>Pilot Rock TRH (55 gallon, solid lid, side opening, recycled plastic)</p>	<p>\$505</p>	
<p><b>TRASH RECEPTACLE - STREETS</b></p> <p>Landscape Forms-Scarborough (30 gallon, side opening, metal)</p>	<p>\$870</p>	
<p><b>DRINKING FOUNTAIN – STREETS/PARKS</b></p> <p>TimberForm 2010-06 (Accessible) (Cast Aluminum, w/freeze-resistant valve)</p> <p>TimberForm 2010-08 (Accessible w/pet bowl)</p>	<p>\$3,450</p> <p>\$4,100</p>	
<p><b>DRINKING FOUNTAIN – PARKS (HIGH USE)</b></p> <p>Halsey Taylor 4590 (Accessible) (Stone Aggregate)</p>	<p>\$1,720</p>	

**CITY OF GIG HARBOR  
COMMITTEE OUTLINE MINUTES**

*Consent Agenda - 3c*

City of Gig Harbor Finance and Safety Committee  
(Council Committee Ekberg, Malich, and Payne)

Date: June 20, 2011

Time: 4:00 p.m.

Location: Executive Conf Rm.

Scribe: Jaci Auclair

**Commission Members and Staff Present:** Steve Ekberg, Ken Malich, Tim Payne, Chief Mike Davis, and Molly Towslee.

**Others Present:**

**Absent:**

<b>Topic / Agenda Item</b>	<b>Main Points Discussed</b>	<b>Recommendation/Action Follow-up (if needed)</b>
<b>NEW BUSINESS</b>		
1. AWC / RMSA Yearly Report.	Councilmember Ekberg acknowledged receipt of the AWC/RMSA Yearly Report.	Receive and file.
2. Accident Prevention Policy / Safety Committee.	Molly Towslee introduced the Accident Prevention Policy developed at the recommendation of AWC/RMSA.	Add requirement to "not be impaired" and bring to council for final approval.
3. Air Guns Regulations.	At citizen's request, Chief Davis reviewed current ordinance on whether shooting varmint is permissible. RCW 9.20.020 does not prohibit this type of action, but citizens should be aware of species on the endangered list.	The committee directed Chief Davis to advise citizen of findings.
4. Volunteer Policy.	Molly Towslee introduced the Volunteer Policy developed at the recommendation of AWC/RMSA.	Bring to council for final approval.





**Business of the City Council**  
**City of Gig Harbor, WA**

**Subject:** Dedication of Right-of-Way –  
Quitclaim Deed Agreement for Harbor Hill LLC  
(EN-10-0114)

**Proposed Council Action:**  
Accept Quitclaim Deed for Right-of-Way and  
authorize the Mayor to sign documents  
necessary for conveyance.

**Dept. Origin:** Public Works/Engineering

**Prepared by:** Willy Hendrickson, Engineering  
Technician *WJH*

**For Agenda of** July 25, 2011

**Exhibits:** Quitclaim Deed  
Vicinity Map  
Location Map

	Initial & Date
<b>Concurred by Mayor:</b>	<i>CLH 7/20/11</i>
<b>Approved by City Administrator:</b>	<i>RJK</i>
<b>Approved as to form by City Atty:</b>	<i>email approv via AB 7/18/11</i>
<b>Approved by Finance Director:</b>	<i>DF 7/18/11</i>
<b>Approved by Department Head:</b>	<i>den 7/18/11</i>

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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**INFORMATION/BACKGROUND**

Harbor Hill LLC is providing the City a Right-of-Way Quitclaim Deed and a Real Estate Excise Tax Affidavit on parcel number 0222312019 for the proposed road to be constructed by McCormick Creek LLC as part of their Plat. The required 30 feet of ROW is along the westerly edge of the existing west storm pond parcel (west of the YMCA) which serves a number of the Harbor Hill properties. The Real Estate Excise Tax Affidavit will be paid by McCormick Creek LLC.

**BOARD OR COMMITTEE RECOMMENDATION**

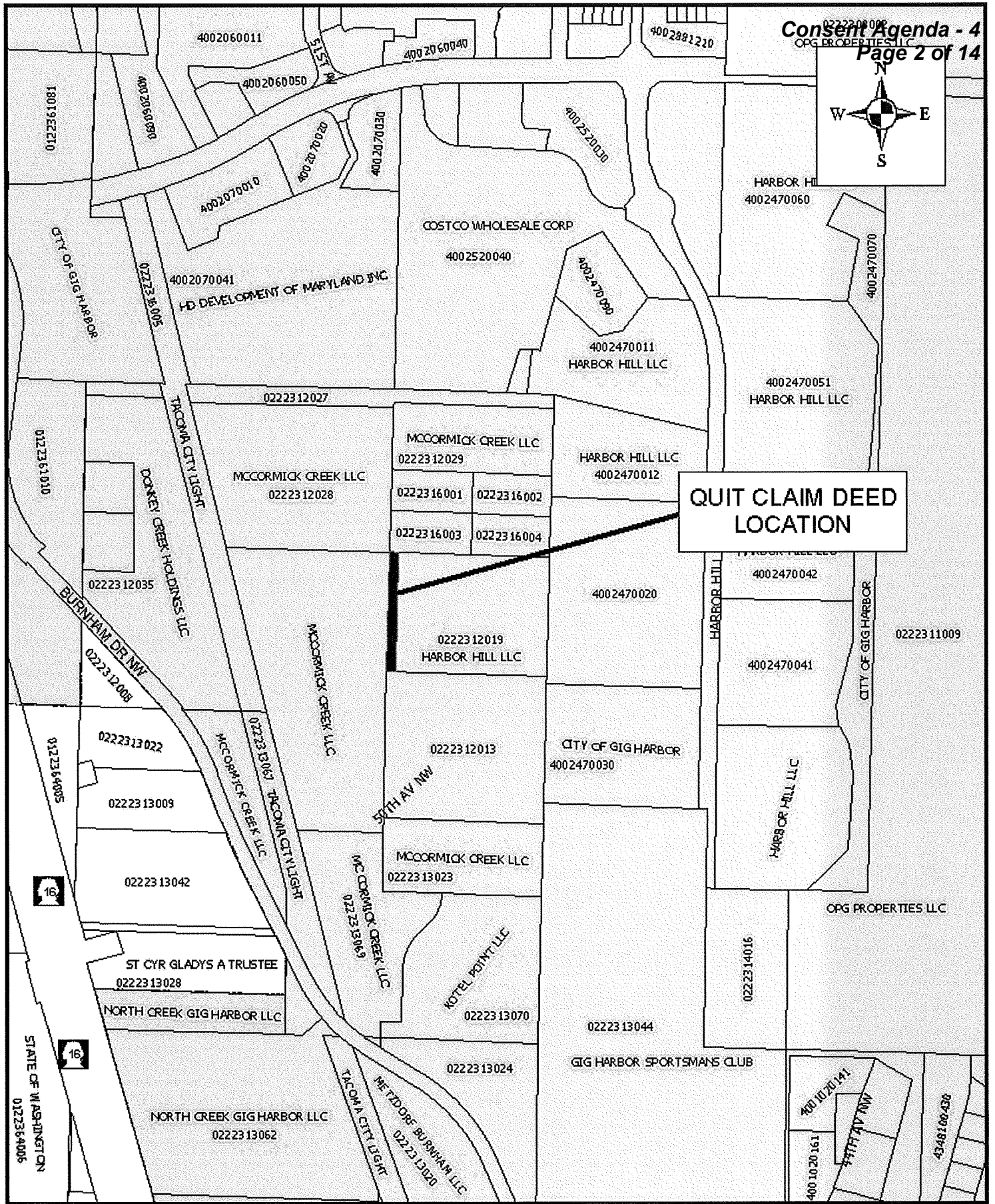
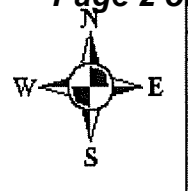
None

**FISCAL CONSIDERATION**

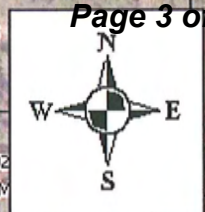
None

**RECOMMENDATION/MOTION**

Accept Quitclaim Deed for Right-of-Way and authorize the Mayor to sign documents necessary for conveyance.



HARBOR HILL LLC - QUIT CLAIM DEED FOR RIGHT-OF-WAY  
VICINITY MAP



HARBOR HILL LLC - QUIT CLAIM DEED FOR RIGHT-OF-WAY  
LOCATION MAP



4423 Point Fosdick Drive  
Gig Harbor, Washington 98335

P 253-851-7009  
F 253-851-7161

www.harbor-hill.com  
www.orm.com

May 26, 2011

**City of Gig Harbor**  
Attn: Willy Hendrickson  
3510 Grandview Street  
Gig Harbor, WA 98335

Re: McCormick Creek

Dear Willy:

Harbor Hill LLC is providing the City a right-of-way deed and a Real Estate Excise Tax Affidavit for the proposed road to be constructed by McCormick Creek LLC as part of their project. The required 30-feet of ROW is along the westerly edge of our existing "West Storm Pond" parcel which serves a number of the Harbor Hill properties.

If you have any questions, or need any additional information, please contact me.

Sincerely,

John Chadwell  
General Manager – Harbor Hill  
Olympic Property Group LLC  
*A Pope Resources Company*

Harbor Hill LLC  
19245 Tenth Ave NE  
Poulsbo, WA 98370  
(360) 394-0555

A subsidiary of Olympic Property Group, a Pope Resources company.

*Excellence in Northwest Master Planned Communities:*  
Port Gamble; Port Ludlow; Broadmoor, Seattle; West Hills, Bremerton;  
Arborwood, Kingston; Harbor Hill, Gig Harbor.



Return Address:

City of Gig Harbor  
Attn: \_\_\_\_\_  
3510 Grandview Street  
Gig Harbor, WA 98335

Document Title(s): Quit Claim Deed for Right-of-Way	Assessor's Property Tax Parcel/Account Number: Portion of 0222312019
Reference Number(s) of Documents assigned or released if applicable: Additional reference numbers are on page _____ of document.  N/A	
Grantor(s) (Last name first, then first name and initials):  1. Harbor Hill LLC, a Washington limited liability company 2. 3.	
Grantee(s) (Last name first, then first name and initials):  1. City of Gig Harbor 2. 3.	
Legal Description (abbreviated: i.e., lot, block, plat or section, township, range): Additional legal is on page 4 of document.  A portion of Section 31, Township 22 North, Range 2 East. Quarter 24, Willamette Meridian, Pierce County.	
The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.	

QUIT CLAIM DEED FOR RIGHT-OF-WAY

The GRANTOR, **HARBOR HILL LLC**, a Washington limited liability company, for valuable consideration, the receipt of which is hereby acknowledged, conveys and quit claims to **CITY OF GIG HARBOR** for the use of the public forever as a public road and highway, all interest, including after acquired title, in the following described real estate, situate in the city of Gig Harbor, county of Pierce, state of Washington:

See Exhibit A for legal description and Exhibit B for graphical depiction,  
both attached hereto and by this reference made a part hereof.

Together with the right to make all reasonably necessary slopes for cuts and fills upon the abutting property on each side of any road that is now, or may be in the future, constructed on said property, in conformity with City approved plans and specifications for road purposes, and to the same extent and purposes as if the rights herein granted had been acquired by condemnation proceedings under eminent domain laws of the State of Washington, provided, however, that such right shall not extend more than thirty (30) feet from the margins of such road.

Dated this 25<sup>th</sup> day of May, 2011.

GRANTOR  
**HARBOR HILL LLC**

\_\_\_\_\_  
Signature

By John Rose  
Printed Name

Its President  
Title

STATE OF WASHINGTON )  
                                  ) ss.  
COUNTY OF KITSAP   )

I certify that I know or have satisfactory evidence that JON ROSE is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the President of HARBOR HILL LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

5.25.11  
Dated

*Sarah J. Steffen*  
Notary Public in and for the State of Washington

SARAH J. STEFFEN  
Printed Name

Residing at: Pulso, Kitsap County

Appointment Expires: 12/15/2014



**EXHIBIT A**  
**RIGHT-OF-WAY DEDICATION**

The West 30 feet of the West half of the Southeast quarter of the Northwest quarter of Section 31, Township 22 North, Range 2 East, W.M., Pierce County, Washington;

EXCEPT the North 660 feet thereof;

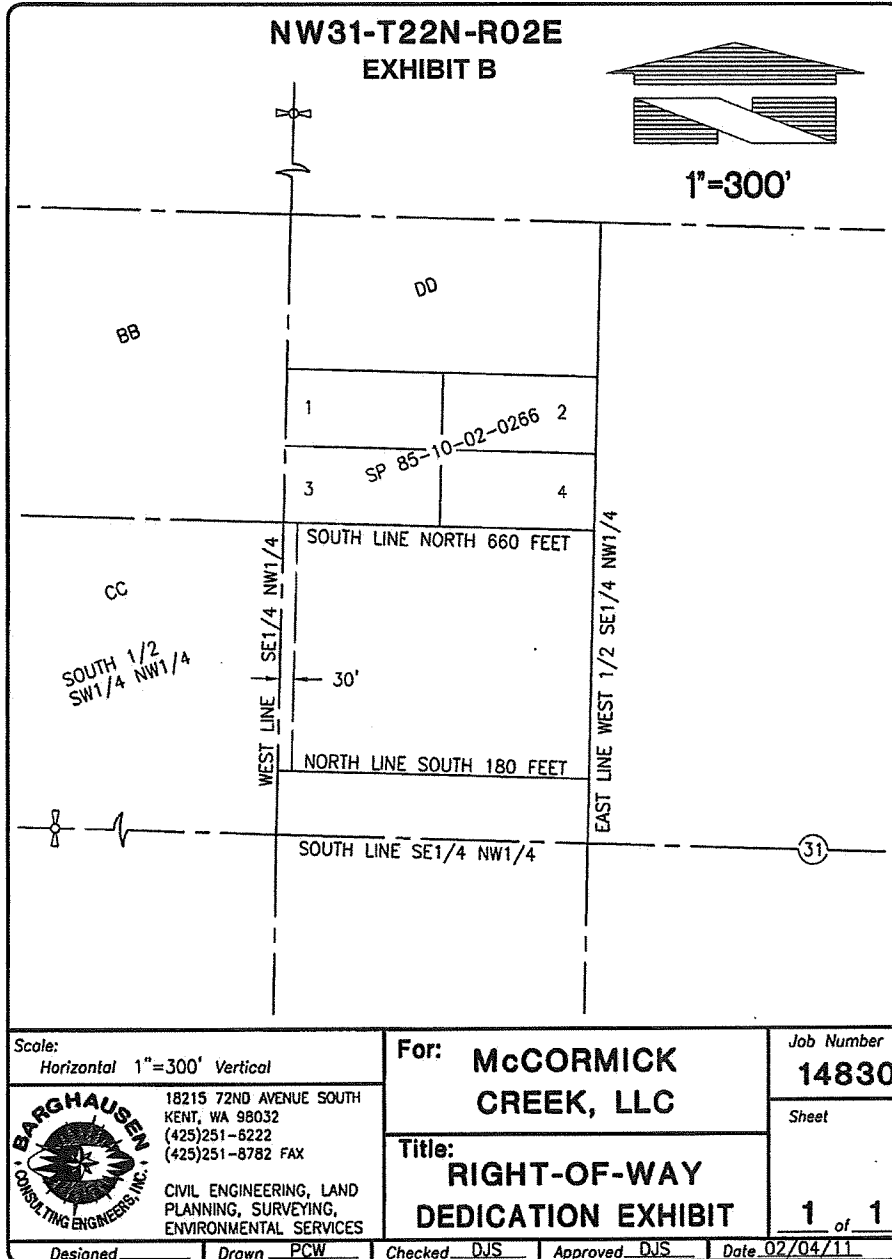
And also EXCEPT the South 180 feet thereof.



Project Name: McCormick Creek Development  
February 4, 2011

DJS/ath  
148301.002.doc







PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier.

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED
(See back of last page for instructions)

Check box if partial sale of property If multiple owners, list percentage of ownership next to name.

Form sections 1-3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Section 4: Street address of property (XXX 50th Avenue N.W., Gig Harbor, WA 98332) and location details.

Section 5: Select Land Use Code(s) and exemption questions regarding property tax.

Section 6: Designation questions for forest land, current use, or historical property.

Section 7 (I): NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) instructions and signature line.

Section 7 (2): NOTICE OF COMPLIANCE (HISTORIC PROPERTY) instructions and signature line.

Section 7 (3): OWNER(S) SIGNATURE line.

Section 7: List all personal property (tangible and intangible) included in selling price.

Section 7: Exemption information including WAC number and reason for exemption.

Table with 2 columns: Description and Amount. Includes Gross Selling Price (\$5,000.00), Excise Tax (State \$64.00, Local \$25.00), and Total Due (\$99.00).

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX \*SEE INSTRUCTIONS

Section 8: I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Includes signature lines for Grantor and Grantee.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT

CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

This form is your receipt when stamped by cashier.

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form sections 1-3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Form section 4: Street address of property (XXX 50th Avenue N.W., Gig Harbor, WA 98332) and legal description.

Form section 5: Select Land Use Code(s) and exemption questions regarding property tax.

Form section 6: Designation questions for forest land, current use, or historic property.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) NEW OWNER(S) instructions.

DEPUTY ASSESSOR and DATE fields.

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY) NEW OWNER(S) instructions.

(3) OWNER(S) SIGNATURE instructions.

PRINT NAME field.

Form section 7: List all personal property (tangible and intangible) included in selling price.

If claiming an exemption, list WAC number and reason for exemption.

Type of Document (Quit Claim Deed for Right-of-Way) and Date of Document (4/19/11).

Table with 2 columns: Description and Amount. Includes Gross Selling Price (\$5,000.00), Excise Tax (State \$64.00, Local \$25.00), and Total Due (\$99.00).

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX \*SEE INSTRUCTIONS

Form section 8: I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. Includes signature lines for Grantor and Grantee.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



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REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

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THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED

(See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name.

Form with sections 1 and 2: Seller/Grantor (Harbor Hill LLC) and Buyer/Grantee (City of Gig Harbor) information including names, addresses, and phone numbers.

Section 3: Property tax correspondence and parcel information. Includes checkboxes for correspondence and parcel details like 'Portion of 0222312019'.

Section 4: Street address of property (XXX 50th Avenue N.W., Gig Harbor, WA 98332) and location (Gig Harbor).

Section 5: Land Use Code (B1 - Undeveloped land) and exemption questions regarding property tax.

Section 6: Designation questions (forest land, current use, historical property) with YES/NO checkboxes.

Section 7: Personal property included in selling price and exemption details. Includes a table for Gross Selling Price, Exemption Claimed, and Taxable Selling Price.

Section 8: Notices of Continuation and Compliance, and Owner's Signature. Includes fields for Deputy Assessor, Date, and Print Name.

Section 8: Certification of truth and correctness. Includes signature lines for Grantor and Grantee, and their names and signing dates.

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).



PLEASE TYPE OR PRINT

REAL ESTATE EXCISE TAX AFFIDAVIT

CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

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(See back of last page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name

Form sections 1-3: Seller/Grantor and Buyer/Grantee information, including names, addresses, and tax correspondence details.

Section 4: Street address of property (XXX 50th Avenue N.W., Gig Harbor, WA 98332) and location (Gig Harbor).

Section 5: Select Land Use Code(s) (91 - Undeveloped land) and exemption questions.

Section 6: Property classification questions regarding forest land, current use, and special valuation.

Section 7 (left): NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE) and NOTICE OF COMPLIANCE (HISTORIC PROPERTY).

Section 7 (right): Financial summary table showing Gross Selling Price (\$5,000.00), Exemption Claimed (\$0.00), Taxable Selling Price (\$5,000.00), and Total Due (\$99.00).

Section 8 (left): Signature and name of Grantor or Grantor's Agent (Jon Rose, President of Harbor Hill LLC).

Perjury: Perjury is a class C felony which is punishable by imprisonment in the state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

Section 8 (right): Signature and name of Grantee or Grantee's Agent.

# INSTRUCTIONS

Note: To report a transfer of a controlling interest in real property, please use the Real Estate Excise Tax Affidavit Controlling Interest Transfer Return, Page 14 of 14 Revenue Form No. 84-0001B. This form is available online at <http://dor.wa.gov>.

**Section 1:**

Enter the name(s) of seller/grantor. This is the person(s) conveying interest in the property.

**Section 2:**

Enter the name(s) of buyer/grantee. This is the person(s) receiving interest in the property.

**Section 3:**

- Enter the **name and address** where you would like all future property tax information sent.
- Enter the **tax parcel number and current assessed value** for real and personal property being conveyed. Check the box to indicate personal property.

**Section 4:**

- Enter the street address of the property.
- Enter the county if in unincorporated area. Enter city name if located within a municipality.
- Enter the legal description of the property.

**Section 5:**

- Enter the appropriate land use code for the property. Please list all codes that apply on the lines provided in section 5. See WAC 458-53-030 (5) for a complete list.

▪ 09 - Land with mobile home	▪ 23 - Apparel and other finished products made from fabrics, leather, and similar materials	▪ 33 - Primary metal industries	▪ 71 - Cultural activities/nature exhibitions
▪ 10 - Land with new building	▪ 24 - Lumber and wood products (except furniture)	▪ 34 - Fabricated metal products	▪ 74 - Recreational activities (golf courses, etc.)
▪ 11 - Household, single family units	▪ 25 - Furniture and fixtures	▪ 35 - Professional scientific and controlling instruments; photographic and optical goods; watches/clocks manufacturing	▪ 75 - Resorts and group camps
▪ 12 - Multiple family residence (2-4 Units)	▪ 26 - Paper and allied products	▪ 39 - Miscellaneous manufacturing	▪ 80 - Water or mineral right
▪ 13 - Multiple family residence (5 + Units)	▪ 27 - Printing and publishing	▪ 50 - Condominiums-other than residential	▪ 81 - Agriculture (not in current use)
▪ 14 - Residential condominiums	▪ 28 - Chemicals	▪ 53 - Retail Trade - general merchandise	▪ 83 - Agriculture current use RCW 84.34
▪ 15 - Mobile home parks or courts	▪ 29 - Petroleum refining and related industries	▪ 54 - Retail Trade - food	▪ 86 - Standing Timber (separate from land)
▪ 16 - Hotels/motels	▪ 30 - Rubber and miscellaneous plastic products	▪ 58 - Retail trade - eating & drinking (restaurants, bars)	▪ 88 - Forest land designated RCW 84.33
▪ 17 - Institutional Lodging (convalescent homes, nursing homes, etc.)	▪ 31 - Leather and leather products	▪ 59 - Tenant occupied, commercial properties	▪ 91 - Undeveloped Land (land only)
▪ 18 - All other residential not coded	▪ 32 - Stone, clay and glass products	▪ 64 - Repair services	▪ 94 - Open space land RCW 84.34
▪ 19 - Vacation and cabin		▪ 65 - Professional services (medical, dental, etc.)	▪ 95 - Timberland classified RCW 84.34
▪ 21 - Food and kindred products		▪ 96 - Improvements on leased land	
▪ 22 - Textile mill products			

**Section 6:**

Indicate whether the property is designated as forest land per chapter 84.33 RCW, classified as current use (open space, farm, agricultural, or timber) per chapter 84.34 RCW, or receiving special valuation as historic property per chapter 84.26 RCW.

**Section 7:**

- List **personal property** included in the selling price of the real property. For example, include tangible (furniture, equipment, etc) and intangible (goodwill, agreement not to compete, etc).
- **Use Tax** is due on personal property purchased without payment of the sales tax. Use Tax may be reported on your Combined Excise Tax Return or a Consumer Use Tax Return, both available at <http://dor.wa.gov>.
- If you are claiming a **tax exemption**, cite the specific Washington Administrative Code (WAC) number, section and subsection and provide a brief explanation. Most tax exemptions require specific documentation. Refer to the appropriate WAC to determine documentation requirements. Chapter 458-61A WAC is available online at <http://dor.wa.gov>.
- Enter the **type of document** (quit claim deed, statutory warranty deed, etc.), and **date of document** (MM/DD/YYYY)
- Enter the **selling price** of the property.

**Selling price:** For tax purposes, the selling price is the true and fair value of the property conveyed. When property is conveyed in an arm's length transaction between unrelated persons for valuable consideration, there is a presumption that the selling price is equal to the total consideration paid or contracted to be paid, including any indebtedness. Refer to RCW 82.45.030 for more information about selling price.

- **Deduct** the amount of **personal property** included in the selling price.
- **Deduct** the amount of **tax exemption** claimed per chapter 458-61A WAC.

**Due Date, Interest and Penalties:** Tax is due at the time of sale/transfer. If tax is not paid within one month of the date of sale/transfer, interest and penalties will apply. The interest rate is variable and determined per RCW 82.32.050. Delinquent penalties are 5% one month after the due date; 10% two months after the due date; and 20% three months after the due date. (RCW 82.45.100)

**State Technology Fee** - A \$5.00 Electronic Technology Fee that is due on all transactions.

**Affidavit Processing Fee** - A minimum of \$5.00 shall be collected in the form of tax and processing fee. A processing fee is due on all transactions where no tax is due and on all taxable transactions where the tax due is less than \$5.00.

**Section 8:**

Both grantor (seller) and grantee (buyer), or the agent of each, must sign this form, certifying that all the information provided is correct. Note: Original signatures required on the "County Treasurer" copy. Signatures may be required on the "Assessors" copy. Check with your county.

**Where to send completed forms:**

Completed forms should be submitted to the County Treasurer's or Recorder's Office where the property is located.

**Audit:**

Information you provide on this form is subject to audit by the Department of Revenue. Underpayments of tax will result in the issuance of a tax assessment with interest and penalties. Note: in the event of an audit, it is the taxpayers' responsibility to provide documentation to support the selling price or any exemption claimed. **This documentation must be maintained for a minimum of four years from date of sale. (RCW 82.45.100)**

**Ruling requests:**

You may request a predetermination of your tax liability. The written opinion will be binding on both you and the Department based on the facts presented (WAC 458-20-100(9)). Send your ruling request to:

Department of Revenue  
Taxpayer Information & Education  
P.O. Box 47478  
Olympia, WA 98504-7478  
FAX (360) 705-6655

For tax assistance, contact your local County Treasurer/Recorder or visit [dor.wa.gov](http://dor.wa.gov) or call (360) 570-3265. To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users please call 1-800-451-7985.



**Subject: Resolution – Surplus Equipment**

**Proposed Council Action:**

Adopt the attached resolution surplusizing this City-owned equipment.

**Dept. Origin:** Finance

**Prepared by:** Kay Johnson

**For Agenda of:** July 25, 2011

Initial & Date

**Concurred by Mayor:**

*[Signature]*

**Approved by City Administrator:**

\_\_\_\_\_

**Approved as to form by City Atty:**

*N/A*

**Approved by Finance Director:**

*OK 7/14*

**Approved by Department Head:**

*[Signature]*

7.2.11

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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**INFORMATION / BACKGROUND**

The city has a surplus of broken monitors, keyboards, mice, printers, and obsolete computers that are not upgradable or cannot be repaired and need to be properly disposed. This surplus occurred due to the replacement of outdated equipment.

**FISCAL CONSIDERATION**

The surplus computer equipment will be sold to either a recycling center or charity organization to be refurbished and reused.

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Adopt the attached resolution surplusizing this city-owned computer equipment.

**A RESOLUTION OF THE CITY OF GIG HARBOR  
DECLARING CITY EQUIPMENT SURPLUS AND ELIGIBLE  
FOR SALE.**

**WHEREAS**, the Gig Harbor City Council has determined that city-owned equipment is surplus to the City's equipment needs and has been or is in need of being replaced with new equipment; and

**NOW, THEREFORE**, the City Council of the City of Gig Harbor hereby resolves as follows.

To declare as surplus:

EQUIPMENT	Quantity	SERIAL / ASSET NUMBER	MODEL INFO.
Dell Precision 650 WS	1	ST#DH20p21 Asset#01055	Precision 650
Dell Latitude D620	1	ST#GVY6ZC1 asset #01461	Latitude d620
<b><u>Monitors</u></b>			
Dell FP 2000 FP	1	SN#KR08G15247602 214A3DP No asset #	2000 FP
Dell 1702 FP	1	SB#TW09E24946635 32A015L	1702 FP



<b><u>Printers</u></b>				
	HP Office Jet 5610 All-in-One	1	SN#CN741DEIK0 asset #01513	Hpoj 5610
	HP Color Laser Jet 5500dn	1	SN#JPHR007930 No asset #	Hpclj 5500DN
	Brother Intellifax 4750e	1	SN#U60283A5J2078 64 Asset#01236	4750e
	Dell Keyboard	1	SN#cn-orh659- 73571-75m-00q8	Dell L100
	Gateway Mouse	1	00637150	Gateway 2000
	Microsoft Intellimouse exp. 2.0	1	Ctl093lpd0144	1007
	TA Adler Royal Satellite Typewriter	1	SN/Model#AGD-8500	Satellite

PASSED ON THIS 25 day of July, 2011   .

APPROVED:

\_\_\_\_\_  
MAYOR CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
MOLLY M. TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO.



**Subject:** Amendment to Assigned Counsel Agreement

**Dept. Origin:** Administration

**Prepared by:** Rob Karlinsey, City Administrator

**Proposed Council Action:**

**For Agenda of:** July 25, 2011

Authorize the Mayor to sign the Amendment to the Assigned Counsel Agreement with Pierce County.

**Exhibits:** Assigned Counsel Amendment

Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** \_\_\_\_\_

**Approved as to form by City Atty:** *by e-mail*

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** \_\_\_\_\_

Expenditure	\$52,959 in 2011	Amount		Appropriation	
Required	\$54,557 in 2012	Budgeted	\$165,000 in 2011	Required	0 in 2011

**INFORMATION / BACKGROUND**

For the past several years, Pierce County has been providing Assigned Counsel services for the City's Municipal Court. The two-year agreement with Pierce County for Assigned Counsel services expired December 31, 2010. Attached is an amendment to the contract for 2011-2012.

**FISCAL CONSIDERATION**

We are proposing no increase in fee for 2011, but a 5% increase for 2012. The annual amount will increase from \$51,959.04 in 2011 to \$54,557.00. This will be included in the 2012 Budget.

**BOARD OR COMMITTEE RECOMMENDATION**

None

**RECOMMENDATION / MOTION**

**Move to:** Authorize the Mayor to sign the Amendment to the Assigned Counsel Agreement.

**AMENDMENT NO. 3 TO ASSIGNED COUNSEL AGREEMENT**

THIS AMENDMENT NO. 3 to that certain Assigned Counsel Agreement dated January 1, 2007, as amended (the "Agreement") is made by and between the CITY OF GIG HARBOR, a Washington municipal corporation (the "City"), and PIERCE COUNTY, a political subdivision of the State of Washington (the "County"), on behalf of its Department of Assigned Counsel (the "Department").

**WITNESSETH:**

WHEREAS, the parties entered into an Agreement for the provision of legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2007-2008 calendar years, and extended by amendment the Agreement to cover services through the 2010 calendar year; and

WHEREAS, the parties desire to extend the term of the Agreement to cover the 2011-2012 calendar years;

NOW, THEREFORE, in consideration of the mutual promises contained in the Agreement and this Amendment, the parties hereto agree as follows:

**TERMS:**

**Section 1.** Section 1 of the Agreement is hereby amended to read as follows:

The Department will provide legal counsel services to indigent defendants in the Gig Harbor Municipal Court for the 2011-2012 calendar years. Such services will include, but are not limited to, legal services to all indigent defendants charged with misdemeanor crimes, including, where appropriate, interviewing defendants held in custody, representation at arraignments as requested by the Court, and at all subsequent proceedings in the Municipal Court. Indigency status will be determined by the City in coordination with the Court.

**Section 2.** Section 2 of the Agreement is hereby amended to read as follows:

A. In return for the services rendered to the City and to those indigent defendants represented by the Department in 2011, the City agrees to pay the County the annual sum of Fifty-One Thousand Nine Hundred Fifty-nine and 04/100's Dollars (\$51,959.04). Payments shall be made in equal quarterly installments of Twelve Thousand Nine Hundred Eighty-nine and 76/100's Dollars (\$12,989.76), due and payable at the end of each quarter for those services rendered. In return for the services rendered to the City and to those indigent defendants represented by the Department in 2012, the City agrees to pay the County the annual sum of Fifty-four Thousand Five Hundred Fifty-seven Dollars (\$54,557). Payments shall be made in

equal quarterly installments of Thirteen Thousand Six Hundred Thirty-nine and 25/100's Dollars (\$13,639.25), due and payable at the end of each quarter for those services rendered.

B. An allowance of \$2,000 shall be available to the County to cover costs associated with conflict counsel, expert services and investigations. These costs will be paid on a reimbursement basis, after presentation of an invoice for such costs. In the event that the retention of the services in this subparagraph exceeds \$2,000, the City shall provide additional funds for those services so that all payments for those services remain separate from the contract compensation to the County under this Agreement.

**Section 3. Ratification.** The parties intend that this Amendment relate back to December 31, 2010, and this Amendment shall ratify the prior oral understandings between the parties set forth in the Agreement and this Amendment.

EXCEPT AS EXPRESSLY MODIFIED BY THIS AMENDMENT NO. 3, ALL TERMS AND CONDITIONS OF THE AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, this Amendment shall become effective upon signature by the last party hereto.

**CITY OF GIG HARBOR**

**PIERCE COUNTY**

\_\_\_\_\_  
Mayor Date

\_\_\_\_\_  
Michael R. Kawamura Date  
Director, Department of Assigned Counsel

Attest:

Approved as to legal form only:

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

By \_\_\_\_\_  
Deputy Prosecuting Attorney Date

Approved as to legal form only:

Recommended:

\_\_\_\_\_  
City Attorney Date

By \_\_\_\_\_  
Budget & Finance Date



Subject: Second Reading of Ordinance –
2011 Comprehensive Plan Amendments

Proposed Council Action: Adopt ordinance.

Dept. Origin: Planning Department

Prepared by: Jennifer Kester
Senior Planner

For Agenda of: July 25, 2011

Exhibits: Draft ordinance with exhibits; Planning
Commission recommendations; Planning
Commission minutes

Initial & Date

Concurred by Mayor:

CLH 7/14/11

Approved by City Administrator:

JKR

Approved as to form by City Atty:

EMAIL

Approved by Finance Director:

N/A

Approved by Department Head:

TD 7/14/11

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required. Values: 0, 0, 0.

INFORMATION / BACKGROUND

The attached draft ordinance reflects the Planning Commission's recommendations on the two Comprehensive Plan amendments which were included in 2011 annual review cycle and are still active. Two amendments originally forwarded to the Planning Commission for review were subsequently withdrawn by the City. The Transportation Element amendment was withdrawn as the Puget Sound Regional Council (PSRC) has determined that it can certify the existing plan with no revisions. The Capital Facilities Plan update was removed from the Planning Commission docket as it will be updated as part of this year's budget process as allowed by GHMC 19.09.020.

The active amendments are listed below.

- A. PL-COMP-11-0003: Electric Vehicle Infrastructure Policies. This text amendment adds policies to two elements of the Comprehensive Plan to support the State-mandated requirement to allow battery charging stations in most of our zoning districts.
B. PL-COMP-11-0004: Gig Harbor Bay UGA Expansion. This is a companion amendment to a Pierce County UGA amendment to add the Gig Harbor Bay to the City's municipal UGA.

The Planning Commission reviewed the proposed amendments at one public hearing and one work study session. No members of the public testified at the public hearing. At their June 2nd

meeting, the Planning Commission voted to recommend approval of the two active amendments. Notices of the Planning Commission recommendations on those two applications and their findings are enclosed.

**POLICY ANALYSIS**

The process for Comprehensive Plan amendment (Chapter 19.09) states that the City Council shall consider the Planning Commission's recommendations and after considering the criteria found in GHMC 19.09.170 make written findings regarding each application's consistency or inconsistency with the criteria. Those amendments which are consistent with the criteria should be approved. The applicable criteria for approval are enclosed.

**ENVIRONMENTAL ANALYSIS**

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed amendments on March 25, 2011 per WAC 197-11-340(2). The appeal period for the DNS expired on June 6, 2011.

**FISCAL CONSIDERATION**

None

**BOARD OR COMMITTEE RECOMMENDATION**

Having reviewed the proposed 2011 Comprehensive Plan amendments the City of Gig Harbor Planning Commission recommended the City Council **APPROVE** the Electric Vehicle Infrastructure policies and the expansion of the UGA to include the entirety of the waters of Gig Harbor Bay (PL-COMP-11-0003 and PL-COMP-11-0004).

**RECOMMENDATION / MOTION**

Adopt ordinance.

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

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO GROWTH MANAGEMENT AND PLANNING, MAKING THE FOLLOWING AMENDMENTS TO THE CITY OF GIG HARBOR COMPREHENSIVE PLAN FOR THE 2011 ANNUAL CYCLE: ADDING POLICIES TO THE UTILITIES AND TRANSPORTATION ELEMENTS TO SUPPORT ELECTRIC VEHICLE INFRASTRUCTURE; EXPANDING GIG HARBOR'S MUNICIPAL URBAN GROWTH AREA TO INCLUDE THE ENTIRETY OF THE WATERS OF GIG HARBOR BAY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

---

WHEREAS, the City of Gig Harbor plans under the Growth Management Act (chapter 36.70A RCW); and

WHEREAS, the Act requires the City to adopt a Comprehensive Plan; and

WHEREAS, the City adopted a revised GMA Comprehensive Plan as required by RCW 36.70A.130 (4) in December 2004; and

WHEREAS, the City is required to consider suggested changes to the Comprehensive Plan (RCW 36.70A.470); and

WHEREAS, except under circumstances not applicable here, the City may not amend the Comprehensive Plan more than once a year (RCW 36.70A.130); and

WHEREAS, the City is required to provide public notice and public hearing for any amendments to the Comprehensive Plan and the adoption of any elements thereto (RCW 36.70A.035, RCW 36.70A.130); and

WHEREAS, on March 14, 2011, the City Council evaluated the comprehensive plan amendment applications submitted for the 2011 annual cycle, held a public hearing on such applications, and forwarded four comprehensive plan amendment applications to the Planning Commission for further processing in the 2011 Comprehensive Plan annual cycle; and

WHEREAS, on March 25, 2011, the City of Gig Harbor, as the applicant of the four amendments, withdrew two applications for comprehensive plan applications related to capital facilities planning and transportation element updates; and

WHEREAS, on March 30, 2011, the City's SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the two remaining comprehensive plan amendment applications, pursuant to WAC 197-11-340(2), which was not appealed; and

WHEREAS, the Planning Director notified the Washington State Department of Commerce of the City's intent to amend the Comprehensive Plan and forwarded a copy of the proposed amendments on March 30, 2011 pursuant to RCW 36.70A.106; and

WHEREAS, the Planning Commission held a work study session on May 5, 2011 to discuss the two applications; and

WHEREAS, the Planning Commission held a public hearing on the Comprehensive Plan amendments on June 2, 2011; and

WHEREAS, after the public hearing on June 2, 2011, the Planning Commission voted to recommend approval of the two proposed amendments as documented in the Planning Commission's written recommendations signed by Planning Commission Chair, Harris Atkins, all dated June 2, 2011; and

WHEREAS, the Gig Harbor City Council had a public hearing and first reading of an Ordinance implementing the recommendations of the Planning Commission for the two applications and amending the Comprehensive Plan on June 11, 2011; and

WHEREAS, the Gig Harbor City Council had a second reading of an Ordinance implementing the recommendations of the Planning Commission for the two applications and amending the Comprehensive Plan on \_\_\_\_\_, 2011;

Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Comprehensive Plan Text Amendments.

A. **Notice.** The City Clerk confirmed that public notice of the public hearings held by the City Council on the following applications was provided.

B. **Hearing Procedure.** The City Council's consideration of the comprehensive plan text amendments is a legislative act. The Appearance of Fairness doctrine does not apply.

C. **Testimony.** No members of the public testified at the public hearing.

D. **Criteria for Approval.** The process for Comprehensive Plan amendments (Chapter 19.09) states that the City Council shall consider the Planning Commission's recommendations and after considering the criteria found in GHMC 19.09.170 shall make written findings regarding each application's consistency or inconsistency with the criteria. The criteria found in GHMC 19.09.170 are as follows:

**19.09.170 Criteria for approval.**

A. The proposed amendment will further and be consistent with the goals, policies and objectives of the comprehensive plan; and



B. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and

C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and

D. The proposed amendment advances the public interest; and

E. For text amendments which propose to increase density or intensity of permitted development and all land use map amendments, the following approval criteria also apply:

1. Adequate infrastructure, facilities and services are available to serve the proposed or potential development expected as a result of this amendment, according to one of the following provisions:

a. The city has adequate funds for needed infrastructure, facilities and services to support new development associated with the proposed amendments; or

b. The city's projected revenues are sufficient to fund needed infrastructure, facilities and services, and such infrastructure, facilities and services are included in the schedule of capital improvements in the city's capital facilities plan; or

c. Needed infrastructure, facilities and services will be funded by the developer under the terms of a development agreement associated with the comprehensive plan amendment; or

d. Adequate infrastructure, facilities and services are currently in place to serve expected development as a result of this comprehensive plan amendment based upon an assessment of land use assumptions; or

e. Land use assumptions have been reassessed, and required amendments to other sections of the comprehensive plan are being processed in conjunction with this amendment in order to ensure that adopted level of service standards will be met; and

2. For a land use map amendment, the subject parcels being redesignated are physically suitable for the allowed land uses in the designation being requested, including compatibility with existing and planned surrounding land uses; and

3. The proposed amendment will not create a demand to change land use designations of other properties, unless the change in land use designation for other properties is in the long-term interest of the community in general.

**E. Applications. The City Council hereby enters the following findings and conclusions for each application:**

**1. COMP PL-11-0003 – Electric Vehicle Infrastructure Policies.**

Summary: Adding the following policies to support the State-mandated requirement to allow battery charging stations in most of our zoning districts:

In the Transportation Element (Chapter 11): New Policy under Goal 11.5 Air Quality

11.5.3 Encourage and support the use of electric vehicles; provide a broad range of opportunities for vehicle recharge.

In the Utilities Element (Chapter 8): New Policy under Goal 8.2 Encourage the conservation of energy resources.

8.2.1.g Encourage utility conservation efforts and infrastructure that minimize demand for natural resources.

Findings:

- a) Goal 8.2 of the Comprehensive Plan calls for the City to *encourage the conservation of energy resources* and Goal 11.5 Air Quality calls for *implementing programs that help to meet and maintain clean air requirements*. The addition of the proposed policies to support electric vehicle infrastructure provides more specificity on how those goals could be accomplished.
- b) The Council finds that the proposed policies are consistent with state law, the Growth Management Act, Vision 2040 and the Pierce County Countywide Planning Policies as follows:
  - i. During the 2009 session the Washington State Legislature passed House Bill 1481 (HB 1481), an Act relating to electric vehicles. The Bill addressed electric vehicle infrastructure including the structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations. It required that the City must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas.
  - ii. The Environment Goal of the Growth Management Act is to *Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water* (RCW 36.70A.020(10)). The Planning Commission finds that supporting and encouraging electric vehicle infrastructure meets this goal.
  - iii. Vision 2040 calls for continued efforts to reduce pollutants from transportation activities, including through the use of cleaner fuels and vehicles and increasing alternatives to driving alone, as well as design and land use. (MPP-En-19)
  - iv. The adopted Countywide Planning Policies emphasize the prevention of air and water quality degradation. (Goal 5.8)
- c) The City Council finds that the proposed policies do not adversely affect the City's transportation facilities. The use of the City's roads will not increase by encouraging electric vehicles; instead, a larger variety of "green" vehicles will be supported.

- d) Given the need to provide opportunities for the use of alternative fuel vehicles which reduce emissions, the City Council finds that proposed policies advance the public interest.

Conclusion: After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, criteria for approval found in Chapter 19.09 GHMC, applicable law, and public testimony, the City Council hereby **approves** application PL-COMP-11-0003.

## **2. PL-COMP-11-0004 – Gig Harbor Bay UGA Expansion.**

Summary: A comprehensive Plan map amendment to expand the UGA boundary to include the entirety of the waters of Gig Harbor Bay.

### Findings:

- a) Goal 2.1.4.c of the Comprehensive Plan calls for the City to *at a minimum, review the urban growth area boundary every five years. As appropriate, make adjustments which account for projected population rate changes, adjustments in available service capacity, changes which reflect community desires or goals and which promote sound and reasonable land use development patterns. In reviewing revisions to the urban growth boundary, consideration should be given to the potential impacts on environmentally sensitive areas.* The City Council finds that the urban growth area boundary should be adjusted to reflect the City's desire to have law enforcement authority over the waters of the bay and allow for reasonable and logical future city limits for permitting purposes.
- b) The City Council finds that the proposed policies are consistent with the Growth Management Act and the Pierce County Countywide Planning Policies as follows:
- i. The Growth Management Act does not specifically speak to the regulation/jurisdiction of marine waters beyond incorporating by reference the Shoreline Management Act; however, there appears to be no language which would prohibit this amendment.
  - ii. Countywide planning policy on Urban Growth Areas 2.2.1 states that: "Any of the following shall be considered in determining the location of urban growth area boundaries: a. geographic, topographic, and manmade features ...." Given the configuration of the bay and narrow opening into Colvos Passage/Tacoma Narrows, Gig Harbor Bay is essentially a separate water body and geographically separate from Puget Sound as a whole.
- c) As the proposal will not expand residential or employment capacity in the UGA, no additional public facilities are expected to be needed. Therefore, the City Council finds that the proposed amendment will not adversely impact the City's ability to provide infrastructure. In regards to law enforcement for the proposed UGA expansion, the City's marine unit will patrol the eastern portion of the bay once the area is annexed. In addition, the City has already entered into an interlocal agreement with Pierce County granting the City of

Gig Harbor legal authority to address derelict boats and buoys in the unincorporated area of the harbor (PC ORD 2010-101; Interlocal approved by City Council 1/13/11).

- d) The City Council finds that the proposed map amendment to move the UGA boundary to just outside the entrance to the bay advances the public interest by 1. Creating a logical future city limit boundary, avoiding any "donut holes" with future annexations or dual jurisdiction permitting for property owners; and 2. Allowing the City to annex the waters of the bay without annexing uplands to gain police authority over marine vessels in the entire bay.

Conclusion: After consideration of the materials in the file, staff presentation, the Planning Commission recommendation, the City's Comprehensive Plan, criteria for approval found in Chapter 19.09 GHMC, applicable law, and public testimony, the City Council hereby **approves** application PL-COMP-11-0004, as identified in Exhibit A attached to this Ordinance.

Section 2. Transmittal to State. The Planning Director is directed to forward a copy of this Ordinance, together with all of the exhibits, to the Washington State Commerce Department within ten days of adoption, pursuant to RCW 36.70A.106.

Section 3. Severability. If any portion of this Ordinance or its application to any person or circumstances is held by a court of competent jurisdiction to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the remainder of the Ordinance or the application of the remainder to other persons or circumstances.

Section 4. Effective Date. This ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this \_\_\_ day of \_\_\_\_\_, 2011.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

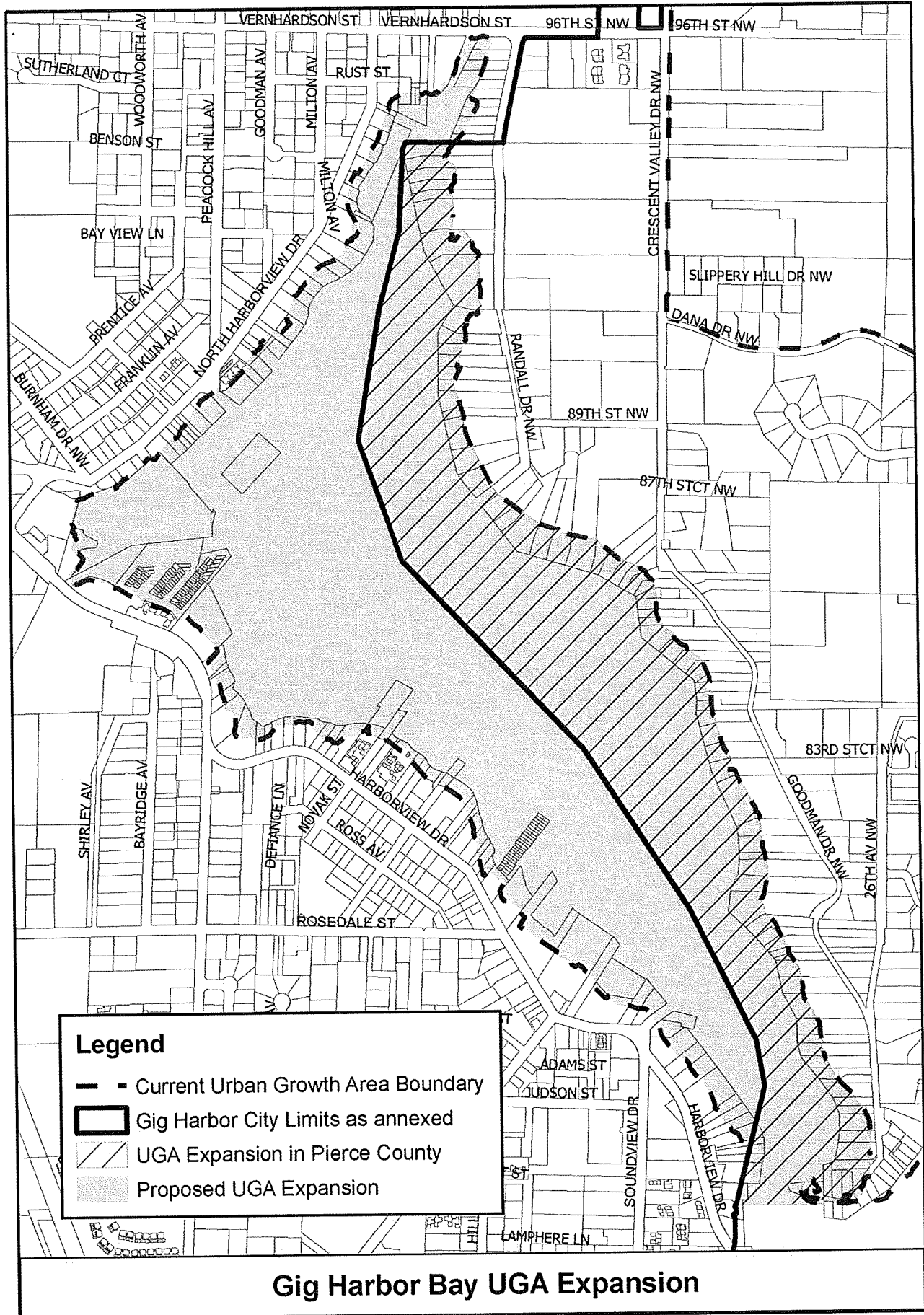
APPROVED AS TO FORM:  
Office of the City Attorney

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Angela S. Belbeck

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO.

EXHIBIT A - PL-COMP-11-0004





COMMUNITY DEVELOPMENT DEPARTMENT

**NOTICE OF RECOMMENDATION**  
**CITY OF GIG HARBOR PLANNING COMMISSION**  
**PL-COMP-11-0003**

**TO:** Mayor Hunter and Members of the Council  
**FROM:** Harris Atkins, Chair, Planning Commission  
**RE:** PL-COMP-11-0003 – Electric Vehicle Infrastructure Policies

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Having reviewed the proposal and after holding a public hearing on June 2, 2011, the City of Gig Harbor Planning Commission recommends the City Council **APPROVE** the following Comprehensive Plan amendment:

**PL-COMP-11-0003: Electric Vehicle Infrastructure Policies.** Adding the following policies to support the State-mandated requirement to allow battery charging stations in most of our zoning districts:

In the Transportation Element (Chapter 11): New Policy under Goal 11.5 Air Quality

11.5.3 Encourage and support the use of electric vehicles; provide a broad range of opportunities for vehicle recharge.

In the Utilities Element (Chapter 8): New Policy under Goal 8.2 Encourage the conservation of energy resources.

8.2.1 g) Encourage utility conservation efforts and infrastructure that minimize demand for natural resources.

**CRITERIA FOR APPROVAL**

The Planning Commission made this recommendation after reviewing the criteria for approval found in GHMC 19.09.170. The Planning Commission has determined that criterion E does not apply as the proposal is not a land use amendment and does not increase the density or intensity of permitted development. The recommendation is based on the following analysis of the applicable criteria:

*A. The proposed amendment will further and be consistent with the goals, policies and objectives of the comprehensive plan; and*

Goal 8.2 of the Comprehensive Plan calls for the City to *encourage the conservation of energy resources* and Goal 11.5 Air Quality calls for *implementing programs that help to meet and maintain clean air requirements*. The addition of the proposed policies to support electric vehicle infrastructure provides more specificity on how those goals could be accomplished.

*B. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and*

The Planning Commission finds that the proposed policies are consistent with state law, the Growth Management Act, Vision 2040 and the Pierce County Countywide Planning Policies as follows:

During the 2009 session the Washington State Legislature passed House Bill 1481 (HB 1481), an Act relating to electric vehicles. The Bill addressed electric vehicle infrastructure including the structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations. It required that the City must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas.

The Environment Goal of the Growth Management Act is to *Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water* (RCW 36.70A.020(10)). The Planning Commission finds that supporting and encouraging electric vehicle infrastructure meets this goal.

Vision 2040 calls for continued efforts to reduce pollutants from transportation activities, including through the use of cleaner fuels and vehicles and increasing alternatives to driving alone, as well as design and land use. (MPP-En-19)

The adopted Countywide Planning Policies emphasize the prevention of air and water quality degradation. (Goal 5.8)

*C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and*



The Planning Commission finds that the proposed policies do not adversely affect the City's transportation facilities. The use of the City's roads will not increase by encouraging electric vehicles; instead, a larger variety of "green" vehicles will be supported.

*D. The proposed amendment advances the public interest; and*

Given the need to provide opportunities for the use of alternative fuel vehicles which reduce emissions, the Planning Commission finds that proposed policies advance the public interest.

Harris Atkins, Chairman  
Planning Commission



Date 6/2/2011

cc: Planning File



COMMUNITY DEVELOPMENT DEPARTMENT

**NOTICE OF RECOMMENDATION**  
**CITY OF GIG HARBOR PLANNING COMMISSION**  
**PL-COMP-11-0004**

**TO:** Mayor Hunter and Members of the Council  
**FROM:** Harris Atkins, Chair, Planning Commission  
**RE:** PL-COMP-11-0004 – Gig Harbor Bay UGA Expansion

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Having reviewed the proposal and after holding a public hearing on June 2, 2011, the City of Gig Harbor Planning Commission recommends the City Council **APPROVE** the following Comprehensive Plan amendment:

**PL-COMP-11-0004: Gig Harbor Bay UGA Expansion.** Comprehensive Plan map amendment to expand the UGA boundary to include the entirety of the waters of Gig Harbor Bay.

**CRITERIA FOR APPROVAL**

The Planning Commission made this recommendation after reviewing the criteria for approval found in GHMC 19.09.170. The Planning Commission has determined that criterion E does not apply as the proposal is not a land use designation amendment and does not increase the density or intensity of permitted development. The recommendation is based on the following analysis of the applicable criteria:

*A. The proposed amendment will further and be consistent with the goals, policies and objectives of the comprehensive plan; and*

*Goal 2.1.4.c of the Comprehensive Plan calls for the City to at a minimum, review the urban growth area boundary every five years. As appropriate, make adjustments which account for projected population rate changes, adjustments in available service capacity, changes which reflect community desires or goals and which promote sound and reasonable land use development patterns. In reviewing revisions to the urban growth boundary, consideration should be given to the potential impacts on environmentally sensitive areas.*

The Planning Commission finds that the urban growth area boundary should be adjusted to reflect the City's desire to have law enforcement authority over

the waters of the bay and allow for reasonable and logical future city limits for permitting purposes.

*B. The proposed amendment is consistent with the Growth Management Act, the countywide planning policies and other applicable interjurisdictional policies and agreements, and/or other state or local laws; and*

The Planning Commission finds that the proposed policies are consistent with the Growth Management Act and the Pierce County Countywide Planning Policies as follows:

The Growth Management Act does not specifically speak to the regulation/jurisdiction of marine waters beyond incorporating by reference the Shoreline Management Act; however, there appears to be no language which would prohibit this amendment.

Countywide planning policy on Urban Growth Areas 2.2.1 states that: "Any of the following shall be considered in determining the location of urban growth area boundaries: a. geographic, topographic, and manmade features ...." Given the configuration of the bay and narrow opening into Colvos Passage/Tacoma Narrows, Gig Harbor Bay is essentially a separate water body and geographically separate from Puget Sound as a whole.

*C. The proposed amendment will not adversely impact the city's ability to provide sewer and water, and will not adversely affect transportation facilities and other public facilities and services such as parks, police, fire, emergency medical services and governmental services; and*

As the proposal will not expand residential or employment capacity in the UGA, no additional public facilities are expected to be needed. Therefore, the Planning Commission finds that the proposed amendment will not adversely impact the City's ability to provide infrastructure. In regards to law enforcement for the proposed UGA expansion, the City's marine unit will patrol the eastern portion of the bay once the area is annexed. In addition, the City has already entered into an interlocal agreement with Pierce County granting the City of Gig Harbor legal authority to address derelict boats and buoys in the unincorporated area of the harbor (PC ORD 2010-101; Interlocal approved by City Council 1/13/11).

*D. The proposed amendment advances the public interest; and*

The Planning Commission finds that the proposed map amendment to move the UGA boundary to just outside the entrance to the bay advances the public interest by 1. Creating a logical future city limit boundary, avoiding any "donut holes" with future annexations or dual jurisdiction permitting for property owners; and 2. Allowing the City to annex the waters of the bay without

annexing uplands to gain police authority over marine vessels in the entire bay.

Harris Atkins, Chairman  
Planning Commission

HARRIS ATKINS

Date 6/2/2011

cc: Planning File

City of Gig Harbor Planning Commission  
Minutes of Work-Study Session  
May 5, 2011  
Gig Harbor Civic Center

**PRESENT:** Commissioners: Jim Pasin, Ben Coronado, Jill Guernsey and Craig Baldwin. Commissioners Absent: Harris Atkins, Bill Coughlin, Michael Fisher. Staff Present: Jennifer Kester and Tom Dolan. Guests: Shawn Hoey from the Master Builders Association of Pierce County.

**CALL TO ORDER:** Vice Chair Jim Pasin called the meeting to order at 5:10 p.m.

**INTRODUCTION TO COMPREHENSIVE PLAN AMENDMENTS**

Senior Planner Jennifer Kester gave a PowerPoint presentation on the Growth Management Act (GMA) and Comprehensive Plans, answering the questions: What is GMA? What is a Comprehensive Plan? What does this Planning Commission do?

**COMP-11-0003: ELECTRIC VEHICLE INFRASTRUCTURE**

Ms. Kester presented the city-sponsored Comprehensive Plan text amendment to add policies to the Transportation and Utilities elements to support the State-mandated requirement to allow electric vehicle infrastructure in most of our zoning districts. Ms. Kester explained the types of electric vehicle infrastructure: battery charging stations (level 1-3) and battery exchange stations.

**COMP-11-0004: GIG HARBOR BAY UGA EXPANSION**

Ms. Kester presented the city-sponsored Comprehensive Plan map amendment to expand the UGA to include the entirety of the Gig Harbor Bay. Currently, the UGA boundary follows the ordinary high water mark of the bay. State statute does not allow the annexation of area outside of the UGA. The City's proposal to move the UGA boundary to just outside the entrance to the bay will create a logical UGA boundary, avoid any donut holes with future annexations and allow the City to annex the waters of the bay without annexing uplands to gain police authority over marine vessels in the entire bay.

Ms. Kester explained that this is a companion amendment to a City-request Pierce County UGA amendment. While the County is the jurisdiction with the authority to set UGA boundaries, the City needs to amend its Comprehensive Plan, which currently shows the UGA running down the middle of bay, in order to maintain consistency between plans.

**Future Actions:** The Planning Commission directed staff to prepare and advertise for a public hearing on the two proposed amendments on June 2<sup>nd</sup>. The Commission also asked for staff to prepare draft findings for approval that could be reviewed by the Commission after the public hearing in case testimony is supportive of the amendments.

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of April 21, 2011 as amended. Coronado / Guernsey – Motion passed.

**MEETING DATES:**

The Planning Commission decided to cancel the May 19<sup>th</sup> meeting. The next scheduled meeting is June 2<sup>nd</sup> when a public hearing on the two proposed Comprehensive Plan amendments will occur.

**The Planning Commission adjourned the meeting at 7:00pm.**

City of Gig Harbor Planning Commission  
Work Study Session and Public Hearing  
Council Chambers  
June 2, 2011  
5:00 pm

**PRESENT:** Harris Atkins, Michael Fisher, Jim Pasin, Bill Coughlin, Jill Guernsey, Craig Baldwin and Ben Coronado.

**STAFF PRESENT:** Staff: Tom Dolan, Jennifer Kester and Diane Gagnon.

**CALL TO ORDER:** at 5:00 pm

**APPROVAL OF MINUTES:**

**MOTION:** Move to approve the minutes of May 5, 2011. Pasin/Coronado – Motion passed.

**WORK-STUDY SESSION:**

**1. WWR Properties, Inc., 3803 Bridgeport Way W., University Place, WA 98466**

On July 13, 2010, Randy Boss, on behalf of Jim White of WWR Properties, Inc., submitted a revised application for a zoning code text amendment which would increase the commercial gross floor area in the C-1 district outside of the view basin from 65,000 square feet to 100,000 square feet, provided a conditional use permit is granted. This is the introductory presentation by the applicant on the amendment. Future work study sessions and a public hearing are expected.

Senior Planner Jennifer Kester gave a brief overview of the proposed zoning code amendment.

The representative for the applicant, Mr. Randy Boss went over the proposal and the Olympic Town Center project which prompted the proposed change. He distributed an aerial photo of other large buildings in the area and their square footages. Mr. Boss reviewed the history of the project and the previous applications made. He noted that they had asked for an increase previously and it had been too large of an increase so they were asking for a smaller increase at this time. He stated that their client Fred Meyer has scaled down their store size to approximately 80,000 square feet which is even less than what they had proposed in their current application. Mr. Boss then went over in more detail how a 78,000 square foot building will match the existing mass and scale of the existing buildings on the west side. He then made a comparison to several of the buildings in Gig Harbor North.

Commissioner Michael Fisher asked what the total of all the buildings would be in the proposed shopping center and Mr. Boss answered about 185,000 square feet. He then asked what the size was of the Fred Meyer store in University Place and Mr. Boss said

it was 165,000 square feet. Commissioner Craig Baldwin asked about how Gig Harbor North was developed and Ms. Kester answered that it was in the PCD zone and therefore it allowed for larger buildings. She explained where in the city C-1 zoning exists. She noted that this amendment would not apply to the C-1 parcel on the waterfront. Additionally she stated that the building size limitation applies to retail buildings only and that the original limitation was for 35,000 square feet and then increased to 65,000 square feet in this area. Commissioner Bill Coughlin asked if they were asking to reduce their request to 80,000 square feet and Mr. Boss said yes they were proposing to amend their request.

Ms. Kester went over the process for private text amendments. She also reminded the commission that this was an amendment to increase the allowed square footage and is not tied to Fred Meyer in any way. Mr. Fisher asked about how big of a building they could build if they were just building an office building and Ms. Kester noted that it would only be limited by the development standards. Mr. Coughlin noted that there would be more employment if it were developed as an office building and Ms. Kester said she could provide that data. Planning Director Tom Dolan stated that they also needed to think about whether the city could handle any more medical office. Ms. Kester said she would pull some minutes from the previous meetings on increasing the building size. Commissioner Jim Pasin said that he felt that the 80,000 square foot request was reasonable. He reminded everyone about the intent of the Westside neighborhood. Mr. Fisher asked about traffic and Mr. Boss answered that they have received traffic CRCs for a larger building and he explained the link that will be developed and other infrastructure changes. Commissioner Harris Atkins asked if it wasn't Fred Meyer, what it would be. Mr. Boss said that there aren't any other retail tenants who would build an 80,000 square foot structure; this is being done because of the financing and lease structuring. He said that they would probably divide the building up if Fred Meyer left. Commissioner Ben Coronado asked about vacancy rates on the Westside and Mr. Boss said that it is minimal. Mr. Dolan asked if there was any information that the Planning Commission needed prior to the next work study session on June 16<sup>th</sup>. The Commission then decided to continue the work-study session to after the public hearing scheduled at 6:00 pm.

They called a 5 minute recess prior to the public hearing at 6:00 pm

Commissioner Jill Guernsey had to leave at 6:00 pm.

## **PUBLIC HEARING**

- 1. CITY OF GIG HARBOR, 3510 Grandview St, Gig Harbor, WA 98335 -**  
Application for a Comprehensive Plan Text Amendment (PL-COMP-11-0003) to add policies to two elements to support the State-mandated requirements to allow electric vehicle charging infrastructure in most of our zoning districts.



2. **CITY OF GIG HARBOR, 3510 Grandview St, Gig Harbor, WA 98335** – Application for a Comprehensive Plan Text Amendment (PL-COMP-11-0004) a companion amendment to a Pierce County UGA amendment to add the entirety of the waters of Gig Harbor Bay to the City’s municipal UGA.

Ms. Kester went over the two proposed Comprehensive Plan amendments, noting that she had received a comment from Carole Holmaas saying she was unable to make the meeting but that she had heard no opposition to the proposal to add the waters of Gig Harbor Bay to the City’s Urban Growth Area. Mr. Dolan noted that the County was also supportive of this amendment.

Mr. Atkins opened the public hearing at 6:05 pm and there being no comment closed the public hearing.

Mr. Coughlin asked why this area was not originally part of the UGA. Ms. Kester said that somehow in the county process, the line got moved and it was probably an oversight. She noted that the city does not currently have police authority on the other side of the bay. She noted that this UGA amendment process was a precursor to annexing this area.

**MOTION:** Move to recommend approval of both comprehensive plan amendments. Fisher/Pasin – approved unanimously.

Ms. Kester passed out proposed findings for the commission to review for the chair’s signature.

After the review of the draft findings, Mr. Atkins asked if there was a better term rather than “donut hole”. It was decided to put it in quotes. Mr. Pasin said he was fine with the proposed findings with the amendment and everyone agreed.

**WORK-STUDY SESSION (continued):**

The Planning Commission then held further discussion on the WWR Properties proposal. Mr. Atkins asked each of the Planning Commission members if they had any concerns that should be addressed prior to the next meeting. Mr. Coronado said he would like to know about vacancies in the neighborhood and the effects of approving this proposal on the downtown. Mr. Coughlin said he would like to see a current buildable lands survey and the undeveloped buildings in C-1. He would also like to see some long term projections from the applicant on the trends of these types of stores. Mr. Pasin said that he would like some information on the road that is being proposed and whether the city has agreed to that. Mr. Atkins said that he would like to see more information regarding the increased congestion this would create if other sites took advantage of this increased square footage. Ms. Kester said that staff would do a capacity evaluation of this change and an analysis of the intersections. Mr. Fisher said he didn’t really have any concerns and Mr. Baldwin said that he felt that the real issue was whether we wanted this to be an office building or retail and was C-1 intended for

retail. Mr. Fisher asked if Mr. Boss had information on retail purchases by household. Mr. Boss said he would try to provide something for their next meeting. Ms. Kester reiterated that she would provide some historical information as to why the limitation was imposed in the first place. Mr. Pasin felt that the community had changed radically and the history was no longer relevant. Mr. Coughlin asked about the impervious surface limitations and Ms. Kester said she would provide some information on the surrounding businesses and the sizes of the major tenants. Mr. Coughlin asked about the impact to stormwater and Ms. Kester said that with enough engineering the difference can be mitigated and the difference is not that large. Mr. Atkins asked for examples of other uses that might fit in 65,000 square feet versus 80,000. Mr. Dolan noted that this application is for a C-1 zone and there have been comments that this should be applied to B-2 so they might want to keep that in mind. Mr. Pasin said he didn't think that it was appropriate as it just complicates the process by adding B-2. Mr. Fisher asked if they approved the increase to 80,000 could they build 3 - 80,000 square foot buildings on this site and Ms. Kester said yes, if the site could accommodate it with a 20 foot separation. Mr. Atkins wondered if making this increase in C-1 would make it easier to occur in B-2. Ms. Kester said she would provide an analysis of the two different zones.

Mr. Dolan asked if they wanted to schedule a public hearing on this issue at this time. It was decided to make the decision at the June 16<sup>th</sup> meeting.

#### **ADJOURNMENT**

**MOTION:** Move to adjourn at 6:48 p.m. Pasin/Fisher – Motion carried.



Business of the City Council  
City of Gig Harbor, WA

**Subject:** Second Reading of Ordinance –  
Electric Vehicle Infrastructure

**Proposed Council Action:** Adopt  
ordinance

**Dept. Origin:** Planning

**Prepared by:** Jennifer Kester  
Senior Planner

**For Agenda of:** July 25, 2011

**Exhibits:** Ordinance, Images

Initial & Date

**Concurred by Mayor:** CLH 7/14/11

**Approved by City Administrator:** RJK

**Approved as to form by City Atty:** EMAIL

**Approved by Finance Director:** N/A

**Approved by Department Head:** 7/14/11

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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**INFORMATION / BACKGROUND**

Enclosed for your consideration is a proposed zoning code text amendment related to allowing electric vehicle infrastructure in the City. This amendment is appropriate to meet the requirements of HB 1481 passed by the State Legislature in 2009 (now codified as RCW 36.70A.695). The Bill addressed electric vehicle infrastructure including the structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations

The purpose of the bill was to encourage the transition to electric vehicle use and to expedite the establishment of a convenient and cost-effective electric vehicle infrastructure that such a transition necessitates. The Legislature agreed that the development of a convenient infrastructure to recharge electric vehicles is essential to increase consumer acceptance of these vehicles. The State's success in encouraging this transition will serve as an economic stimulus to the creation of short-term and long-term jobs as the entire automobile industry and its associated direct and indirect jobs transform over time from combustion to electric vehicles.

In order to help cities implement this legislation, the Department of Commerce in cooperation with the Puget Sound Regional Council developed a model ordinance for electric vehicle infrastructure which could be used by Puget Sound jurisdictions.

Specific to Gig Harbor, the legislation requires that Gig Harbor allow battery charging stations as a use in all zones except those zoned residential, resource or critical areas by July 1, 2011. As the City does not currently prohibit these in its zoning code, the City is currently in

compliance with the legislation. However, staff felt adopting the relevant provisions of model ordinance were appropriate to ensure consistency in regulations throughout the region and provide for some local control.

#### Electric Vehicle Infrastructure Primer and the Proposed Ordinance:

In general there are two types of electric vehicle infrastructure: 1) battery charging stations (required to be allowed in Gig Harbor) and 2) battery exchange stations (not required, but may be allowed). Images of these types of infrastructure are enclosed.

Battery charging stations come in three types based on the quickness of charging: Level 1 (slowest and most typical of a home installation), Level 2, and Level 3 (also known as rapid charging stations and the quickest). The proposed ordinance would allow Level 1 and Level 2 in all zones either permitted outright or as an accessory use. The proposed ordinance allows Level 3 (Rapid Charging) in nonresidential and multi-family zones (those in multi-family zones must be private facilities, like in a condo or apartment complex).

Battery exchange stations, which the City does not need to allow, would be allowed only in the zones which allow gas stations under the proposed ordinance. The staff felt that allowing this type of infrastructure was appropriate given the impacts are similar to a gas station and the building design could be mitigated through design review.

Regarding the permit process for the installation of electric vehicle infrastructure, the proposed ordinance includes the following:

- Level 1 and 2 charging station would be exempt from a zoning permit; however other permits may be required such as an electrical permit.
- Level 3 charging stations (Rapid Charging) would require minor site plan review.
- Battery exchange stations would require major site plan review, like a gas station.
- All electric vehicle infrastructures would be exempt from SEPA
- Parking stalls with battery charging stations can count towards required parking

#### FISCAL CONSIDERATION

None.

#### SEPA DETERMINATION

The SEPA Responsible Official issued a Determination of Nonsignificance (DNS) for the proposed ordinance on May 25, 2011.

#### BOARD OR COMMITTEE RECOMMENDATION

The Planning and Building Committee reviewed the proposed amendment at their May 2<sup>nd</sup>, 2011 meeting and recommended approval. At the September 2010 retreat, the Council included this text amendment in the list of items which would be directly considered by the City Council. The Planning Commission had no objection to direct consideration.

#### RECOMMENDATION / MOTION

Adopt ordinance.

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

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO ELECTRIC VEHICLE INFRASTRUCTURE FOR THE PURPOSE OF COMPLIANCE WITH RCW 36.70A.695; ADDING ZONING CODE CHAPTER TO REGULATE ELECTRIC VEHICLE INFRASTRUCTURE IN THE CITY; AMENDING THE LAND USE MATRIX TO ALLOW ELECTRIC VEHICLE INFRASTRUCTURE AS A USE IN CERTAIN ZONES; MAKING HOUSEKEEPING AMENDMENTS TO IMPLEMENT THE NEW CHAPTER ON ELECTRIC VEHICLE INFRASTRUCTURE; ADDING CHAPTER 17.73; ADDING SECTION 17.72.090; AMENDING SECTIONS 17.14.020, 17.96.025, 17.96.030 AND 18.04.060 OF THE GIG HARBOR MUNICIPAL CODE; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.**

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WHEREAS, during the 2009 session the Washington State Legislature passed House Bill 1481 (HB 1481), an Act relating to electric vehicles. The Bill addressed electric vehicle infrastructure including the structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations; and

WHEREAS, the purpose of HB 1481 is to encourage the transition to electric vehicle use and to expedite the establishment of a convenient and cost-effective electric vehicle infrastructure that such a transition necessitates. The Legislature agreed that the development of a convenient infrastructure to recharge electric vehicles is essential to increase consumer acceptance of these vehicles. The State's success in encouraging this transition will serve as an economic stimulus to the creation of short-term and long-term jobs as the entire automobile industry and its associated direct and indirect jobs transform over time from combustion to electric vehicles; and

WHEREAS, greenhouse gas emissions related to transportation constitute more than fifty percent of all greenhouse gas emissions in the State of Washington; and

WHEREAS, the use of electricity from the Northwest as a transportation fuel instead of petroleum fuels results in significant reductions in the emissions of pollutants, including greenhouse gases, and reduces the reliance of the state on imported sources of energy for transportation; and

WHEREAS, with the potential emerging market for plug-in electric vehicles, new industry standards have been adopted to ensure universal compatibility between vehicle manufacturers. Broad-based installation of new

universally compatible charging stations is intended to ensure that plug-in electric vehicles will be a viable alternative to gasoline-powered vehicles; and

WHEREAS, RCW 36.70A.695 requires that City of Gig Harbor allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas; and

WHEREAS, because most of the recharging for private electric vehicles will be done in residential settings, allowing Level 1 and Level 2 battery charging stations in residential zones is in the public interest; and

WHEREAS, pursuant to RCW 36.70A.695, the City desires to amend development regulations to allow battery charging stations, and in some zones battery exchange stations, as a use in City of Gig Harbor; and

WHEREAS, the proposed development regulations amendments were forwarded to the Washington State Department of Commerce on May 3, 2011, pursuant to RCW 36.70A.106, and was granted expedited review on May 18, 2011; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on May 25, 2011; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on July 11, 2011; and

WHEREAS, on \_\_\_\_\_, the City Council held a second reading during a regular City Council meeting; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Chapter 17.73 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

### **Chapter 17.73 Electric Vehicle Infrastructure**

#### **17.73.010 Purpose**

It is the purpose of this chapter to allow for adequate and convenient electric vehicle charging stations to serve the needs of the traveling public. It is further intended to allow for residents to have safe and efficient personal electric charging stations located at their place of residence and to allow nonresidential developments to supply electric vehicle infrastructure to their customers and employees.

#### **17.73.020 General Provisions**

A. Where Permitted. Electric vehicle infrastructure is allowed as specified in Chapter 17.14 GHMC, Land Use Matrix. An electric vehicle charging station equipped with Level 1 or Level 2 charging equipment is permitted outright as an accessory use to any principal use.

B. Permits Required.

1. Electric Vehicle Charging Stations, Level 1 and Level 2. No zoning permit is required for the installation of electric vehicle charging stations equipped with Level 1 or Level 2 charging equipment provided the applicable regulations contained in Title 17 and 18 are met and all other required permits are obtained.

2. Rapid Charging Stations. Minor site plan review, as provided for in GHMC 17.96.030(A), is required for rapid charging stations.

3. Battery Exchange Stations. Major site plan review, as provided for in GHMC 17.96.030(B), is required for battery exchange stations.

C. Off-street parking. See GHMC Section 17.72.090 for off-street parking provisions for electric vehicle charging station spaces.

D. Use of specially designated charging stalls. Electric vehicle charging stations should be reserved for parking and charging electric vehicles only.

E. Electric vehicle parking. Electric vehicles may be parked in any space designated for public parking, subject to the restrictions that would apply to any other vehicle that would park in that space.

### **17.73.030 Definitions**

A. "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

B. "Battery electric vehicle (BEV)" means any vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries, and produces zero tailpipe emissions or pollution when stationary or operating.

C. "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.27 RCW and consistent with rules adopted under RCW 19.27.540.

D. "Charging levels" means the standardized indicators of electrical force, or voltage, at which an electric vehicle's battery is recharged. The terms 1, 2, and 3 are the most common EV charging levels, and include the following specifications:

1. Level 1 is considered slow charging.
2. Level 2 is considered medium charging.
3. Level 3 is considered fast or rapid charging.

E. "Electric scooters and motorcycles" means any 2-wheel vehicle that operates exclusively on electrical energy from an off-board source that is stored in the vehicle's batteries and produces zero emissions or pollution when stationary or operating.

F. "Electric vehicle" means any vehicle that operates, either partially or exclusively, on electrical energy from the grid, or an off-board source, that is stored on-board for motive purpose. "Electric vehicle" includes: (1) a battery electric vehicle; (2) a plug-in hybrid electric vehicle; (3) a neighborhood electric vehicle; and (4) a medium-speed electric vehicle.

G. "Electric vehicle charging station" means a public or private parking space that is served by battery charging station equipment that has as its primary purpose the transfer of electric energy (by conductive or inductive means) to a battery or other energy storage device in an electric vehicle.

H. "Electric vehicle charging station — restricted" means an electric vehicle charging station that is (1) privately owned and restricted access (e.g., single-family home, executive parking, designated employee parking) or (2) publicly owned and restricted (e.g., fleet parking with no access to the general public).

I. "Electric vehicle charging station — public" means an electric vehicle charging station that is (1) publicly owned and publicly available (e.g., Park & Ride parking, public library parking lot, on-street parking) or (2) privately owned and publicly available (e.g., shopping center parking, non-reserved parking in multi-family parking lots).

J. "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

K. "Electric vehicle parking space" means any marked parking space that identifies the use to be exclusively for the parking of an electric vehicle.

L. "Medium-speed Electric Vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle, equipped with a roll cage or crush-proof body design, whose speed attainable in one mile is more than 25 miles per hour but not more than 35 miles per hour and otherwise meets or exceeds the federal regulations set forth in 49 C.F.R. Sec. 571.500.

M. "Neighborhood Electric Vehicle" means a self-propelled, electrically powered four-wheeled motor vehicle whose speed attainable in one mile is more than 20 miles per hour and not more than 25 miles per hour and conforms to federal regulations under Title 49 C.F.R. Part 571.500.

N. "Non-Electric Vehicle" means any motor vehicle that does not meet the definition of "electric vehicle."

O. "Plug-in hybrid electric vehicle (PHEV)" means an electric vehicle that (1) contains an internal combustion engine and also allows power to be delivered to drive wheels by an electric motor; (2) charges its battery primarily by connecting to the grid or other off-board electrical source; (3)



may additionally be able to sustain battery charge using an on-board internal-combustion-driven generator; and (4) has the ability to travel powered by electricity.

P. "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels and that meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

Section 2. Section 17.14.020 in the Land Use Matrix chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**Section 17.14.020 Land use matrix**

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 <sup>20</sup>	PCD-C	ED <sup>18</sup>	WR	WM	WC	PCD-BP	PCD-NB	MUD <sup>25</sup>
<b>Uses</b>																				
Dwelling, single-family	-	P	P	P	P	C	P	P	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	P	P	P	-	P <sup>14</sup>	P
Dwelling, duplex	-	-	-	P	P	P	-	P	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	P	P	P	-	P <sup>14</sup>	P
Dwelling, triplex	-	-	-	C	P	P	-	P	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	-	C <sup>17</sup>	P	-	P <sup>14</sup>	P
Dwelling, fourplex	-	-	-	C	P	P	-	P	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	-	C <sup>17</sup>	P	-	P <sup>14</sup>	P
Dwelling, multiple-family	-	-	-	-	P	P <sup>6</sup>	-	P	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	-	-	-	-	P <sup>14</sup>	P
Accessory apartment <sup>1</sup>	-	C	P	-	P	-	C	C	C	P <sup>14</sup>	C	C	P <sup>14</sup>	-	-	-	P	-	P <sup>14</sup>	P
Family day care provider	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P
Home occupation <sup>2</sup>	-	P	P	P	P	P	P	P	C	P	-	C	-	-	P	P	P	-	-	-
Adult family home	-	P	P	P	P	P	P	P	C	P	P	P	P	-	P	P	P	-	P	P
Living facility, independent	-	-	-	C	-	P	C	C	C	P	C	C	P	C <sup>22</sup>	-	-	-	-	-	P
Living facility, assisted	-	-	-	C	-	P	C	C	C	P	-	C	P	C	-	-	-	-	-	P
Nursing facility, skilled	-	-	-	C	-	P	C	C	C	P	C	C	P	C	-	-	-	-	-	P
Hospital	-	-	-	-	-	-	-	-	C	-	C	C	-	C	-	-	-	C	-	-
School, primary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	-
School, secondary	P	C	P	C	P	C	C	C	C	P	-	C	P	-	-	-	-	-	-	-
School, higher educational	P	C	-	C	-	C	C	C	C	P	-	C	P	-	-	-	-	P	-	-
School, vocational/trade	P	C	-	C	-	C	C	C	C	P	-	C	P	P	-	-	-	P	-	-
Government administrative office	P	C	P	C	P	C	C	P	P	P	P	P	P	P	C	P	P	P	P	P

	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 <sup>20</sup>	PCD-C	ED <sup>18</sup>	WR	WMI	WC	PCD-BP	PCD-NB	MUD <sup>25</sup>
<b>Uses</b>																				
Public/private services	P	C	-	C	-	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P
Religious worship, house of	-	C	P <sup>5</sup>	C	P <sup>5</sup>	C	C	C	C	P	-	C	P	C	-	-	-	C	-	P/C <sup>15</sup>
Museum	P	-	-	-	-	-	-	-	-	-	C	C	P	-	-	-	-	-	-	-
Community recreation hall	P	-	P	C	P	C	C	C	C	P	C	C	P	-	-	-	-	P	P	-
Clubs	-	-	C	C	C	C	C	C	P	P	P	P	P	C	-	C <sup>21</sup>	P	P	C	-
Parks	P	P	P	P	P	P	P	P	P	P	C	C	P	-	P	P	P	P	P	P
Essential public facilities	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utilities	P	C	P	C	P	C	C	C	C	P	C	C	P	C	C	C	C	P	P	P
Electric Vehicle Charging Station <sup>26</sup>	P	P <sup>27</sup>	P <sup>27</sup>	P <sup>27</sup>	P <sup>27</sup>	P <sup>27</sup>	P <sup>27</sup>	P	P	P	P	P	P	P	P <sup>27</sup>	P <sup>27</sup>	P	P	P	P
Rapid Charging Station <sup>28</sup>	P	-	-	-	P <sup>29</sup>	P <sup>29</sup>	-	P <sup>29</sup>	P	P	P	P	P	P	-	-	P	P	P	P <sup>29</sup>
Battery Exchange Station	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	-	C	P	-
Cemetery	-	-	-	C	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Lodging, level 1	-	C	-	C	-	P	P	P	P	P	C	C	-	-	C	C	C	-	-	P
Lodging, level 2	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	-	-	P
Lodging, level 3	-	-	-	-	-	-	-	C	P	-	P	P	P	-	-	-	C	P	-	P
Personal services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Business services	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Professional services	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	P	P	P	P	P
Ancillary services	P	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 1	-	-	-	-	-	-	P	P	P	P	P	P	P	P	-	P	P	P	P	P
Product services, level 2	-	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	P <sup>16</sup>
Sales, level 1	-	-	-	-	-	-	C <sup>7,8</sup>	-	P	P	P	P	P	C <sup>23</sup>	-	-	P	C <sup>24</sup>	P <sup>13</sup>	P
Sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C <sup>23</sup>	-	-	-	-	-	-
Sales, level 3	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	-	-	-	-	-
Sales, ancillary	-	-	-	-	-	-	P	P	P	-	P	P	P	P	-	-	P	P	-	-
Commercial child care	-	-	C	-	C	-	C	C	C	-	-	P	-	C	-	-	-	C	-	-
Recreation, indoor commercial	-	-	-	-	-	-	C	C	P	-	P	P	P	C	-	-	-	C	-	P
Recreation, outdoor	-	-	-	-	-	-	C	C	C	-	P <sup>10</sup>	P	P	C	-	-	-	C	-	P

Uses	PI	R-1	RLD	R-2	RMD	R-3	RB-1	RB-2	DB	B-1	B-2	C-1 <sup>20</sup>	PCD-C	ED <sup>18</sup>	WR	WM	WC	PCD-BP	PCD-NB	MUD <sup>25</sup>
commercial																				
Entertainment, commercial	-	-	-	-	-	-	-	-	P	-	P	P	P	-	-	-	-	C	-	P
Automotive fuel-dispensing facility	-	-	-	-	-	-	-	-	P	-	P	P	P	C	-	-	-	C	P	-
Vehicle wash	-	-	-	-	-	-	-	-	-	-	P	P	P	-	-	-	-	-	-	-
Parking lot, commercial	-	-	-	-	-	C	-	-	-	-	-	-	-	-	-	-	C <sup>19</sup>	-	-	-
Animal clinic	-	-	-	-	-	-	-	-	P <sup>9</sup>	-	P	P	-	P	-	-	-	P	-	P
Kennel	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	-	-	-	-	-
Adult entertainment facility <sup>3</sup>	-	-	-	-	-	-	-	-	-	-	P	P	-	-	-	-	-	-	-	-
Restaurant 1	-	-	-	-	-	-	C <sup>8</sup>	P	P	P	P	P	P	P	-	C <sup>12</sup>	P	P	P	P
Restaurant 2	-	-	-	-	-	-	-	-	P	-	P	P	P	C <sup>23</sup>	-	-	P	C <sup>24</sup>	P	P
Restaurant 3	-	-	-	-	-	-	-	-	P	-	P	P	P	C <sup>23</sup>	-	-	P	C <sup>24</sup>	P	P
Tavern	-	-	-	-	-	-	-	-	C	-	P	P	P	-	-	-	P	-	-	-
Drive-through facility	-	-	-	-	-	-	-	-	C	-	C	C	P	-	-	-	-	-	-	-
Marina	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine sales and service	-	-	-	-	-	-	-	-	-	-	-	P	-	-	-	P	P	-	-	-
Marine boat sales, level 1	-	-	-	-	-	-	-	-	-	-	P	P	-	P	-	P	P	-	-	-
Marine boat sales, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	C <sup>23</sup>	-	P	P	-	-	-
Ministorage	-	-	-	-	-	-	-	C	-	-	C	C	P	C	-	-	-	-	-	P
Industrial, level 1	-	-	-	-	-	-	-	C	C	-	C	P	-	P	-	-	-	C	-	P
Industrial, level 2	-	-	-	-	-	-	-	-	-	-	-	P	-	P	-	-	-	-	-	-
Marine industrial	-	-	-	-	-	-	-	-	-	-	-	P	-	C	-	P <sup>11</sup>	C	-	-	-
Wireless communication facility <sup>4</sup>	C	C	C	C	C	C	P	P	C	P	C	P	P	P	C	C	C	P	P	-
Accessory uses and structures	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

<sup>1</sup> Accessory apartments requiring conditional use permits are subject to the criteria in GHMC Section 17.64.045.

<sup>2</sup> Home occupations are subject to Chapter 17.84 GHMC.

<sup>3</sup> Adult entertainment facilities are subject to Chapter 17.58 GHMC.

<sup>4</sup> Wireless communication facilities are subject to Chapter 17.61 GHMC.

<sup>5</sup> Houses of religious worship shall be limited to parcels not greater than 5 acres.

<sup>6</sup> Multiple-family dwellings shall be limited to no more than eight attached dwellings per structure in the R-3 district.

<sup>7</sup> Sales, level 1 uses shall be limited to food stores in the RB-1 district.

<sup>8</sup> See GHMC Section 17.28.090(G) for specific performance standards of restaurant 1 and food store uses in the RB-1 zone.

- <sup>9</sup> Animal clinics shall have all activities conducted indoors in the DB district.
- <sup>10</sup> Drive-in theaters are not permitted in the B-2 district.
- <sup>11</sup> Marine industrial uses in the WM district shall be limited to commercial fishing operations and boat construction shall not exceed one boat per calendar year.
- <sup>12</sup> Coffeehouse-type restaurant 1 uses shall not exceed 1,000 square feet in total size in the WM district.
- <sup>13</sup> Sales, level 1 uses shall be limited to less than 7,500 square feet per business in the PCD-NB district.
- <sup>14</sup> Residential uses shall be located above a permitted business or commercial use.
- <sup>15</sup> Houses of religious worship on parcels not greater than 10 acres are permitted uses in the MUD district; houses of religious worship on parcels greater than 10 acres are conditionally permitted uses in the MUD district.
- <sup>16</sup> Auto repair and boat repair uses shall be conducted within an enclosed building or shall be in a location not visible from public right-of-way and adjacent properties.
- <sup>17</sup> Only one triplex dwelling or one fourplex dwelling is conditionally permitted per lot in the WM district.
- <sup>18</sup> Planned unit developments (PUDs) are conditionally permitted in the ED district.
- <sup>19</sup> Commercial parking lots in the WC district shall be related to shoreline uses.
- <sup>20</sup> Junkyards, auto wrecking yards and garbage dumps are not allowed in the C-1 district.
- <sup>21</sup> Clubs in the WM zone shall not serve alcoholic beverages and shall not operate a grill or deep-fat fryer.
- <sup>22</sup> Independent living facilities are conditionally allowed in the ED zone only when in combination with assisted living facilities, skilled nursing facilities or hospitals in the same site plan or binding site plan.
- <sup>23</sup> See GHMC Section 17.45.040 for specific performance standards of sales and restaurant uses in the ED zone.
- <sup>24</sup> See GHMC Section 17.54.030 for specific performance standards of sales and restaurant uses in the PCD-BP zone.
- <sup>25</sup> Permitted and conditional uses in the MUD district overlay are subject to the minimum parcel size and location requirements contained in GHMC 17.91.040(A).
- <sup>26</sup> Level 1 and Level 2 charging only.
- <sup>27</sup> Electric vehicle charging stations, level 1 and level 2 only, are allowed only as accessory to a principal outright permitted or principal permitted conditional use.
- <sup>28</sup> The term "Rapid" is used interchangeably with Level 3 and Fast Charging.
- <sup>29</sup> Only "electric vehicle charging stations – restricted" as defined in Chapter 17.73 GHMC.

Section 3. Section 17.72.090 is hereby added to the Off-Street Parking and Loading Requirements chapter of the Gig Harbor Municipal Code, which shall read as follows:

**17.72.090 Electric Vehicle Charging Station Spaces.**

A. Purpose. For all parking lots or garages, except those that include restricted electric vehicle charging stations.

B. Number. No minimum number of charging station spaces is required.

C. Minimum Parking Requirements. An electric vehicle charging station space may be included in the calculation for minimum required off-street parking spaces that are required pursuant to GHMC 17.72.030.

D. Design Standards. Off-street electric vehicle charging station spaces shall meet the provisions of GHMC 17.72.020, Off-street parking design standards.

E. Location and Design Criteria. The provision of electric vehicle parking will vary based on the design and use of the primary parking lot. The following required and additional locational and design criteria are provided in recognition of the various parking lot layout options.

1. Where provided, parking for electric vehicle charging purposes is required to include the following:

a. Signage. Each charging station space shall be posted with signage indicating the space is only for electric vehicle charging purposes. Days and hours of operations shall be included if time limits or tow away provisions are to be enforced.

b. Maintenance. Charging station equipment shall be maintained in all respects, including the functioning of the charging equipment. A phone number or other contact information shall be provided on the charging station equipment for reporting when the equipment is not functioning or other problems are encountered.

c. Accessibility. Where charging station equipment is provided within an adjacent pedestrian circulation area, such as a sidewalk or accessible route to the building entrance, the charging equipment shall be located so as not to interfere with accessibility requirements of WAC 51-50-005.

d. Lighting. Where charging station equipment is installed, adequate site lighting shall exist, unless charging is for daytime purposes only.

2. Parking for electric vehicles should also consider the following:

a. Notification. Information on the charging station, identifying voltage and amperage levels and any time of use, fees, or safety information.

b. Signage. Installation of directional signs at the parking lot entrance and at appropriate decision points to effectively guide motorists to the charging station space(s).

F. Data Collection. To allow for maintenance and notification, owners of any private new electric vehicle infrastructure station that will be publicly available (see definition of "electric vehicle charging station — public" in Chapter 17.73 GHMC) shall submit information on the station's geographic location, date of installation, equipment type and model, and owner contact information to the Planning Department.

Section 4. Section 17.96.025 in the Site Plans chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.96.025 Exemptions.**

The following are exempt from the site plan review provisions of this chapter:

- A. Single-family and duplex dwellings on lots of record and any appurtenance thereto;
- B. Subdivisions and short plats;
- C. Planned unit developments and planned residential developments;
- D. Modifications to the interior of an existing structure that does not change the use;
- E. Change in use of an existing structure, provided the change in use does not increase the number of required off-street parking spaces and does not require a change of use capacity evaluation as provided for in GHMC 19.10.004;
- F. Normal maintenance and repair of existing improvements, facilities and structures;
- G. Installation and replacement of underground utilities located in public rights-of-way and approved utility easements or corridors;
- H. Utility pump stations, utility boxes and utility vaults;
- I. Removal of underground tanks when the site is restored to the condition prior to removal;
- J. Removal of all buildings and structures on a site together with the discontinuance of use of the land and buildings;
- K. Special uses as provided for in Chapter 17.65 GHMC;
- L. Uses allowed in approved common areas as provided for in GHMC 17.99.280;
- M. Land clearing as provided for in Chapter 17.94 GHMC;
- N. Temporary trailers as provided for in GHMC 17.01.090;
- O. Sign permits as provided for in Chapter 17.80 GHMC;
- P. Installation and modification of Level 1 and Level 2 electric vehicle charging stations as defined in GHMC 17.73.030(D).

Section 5. Section 17.96.030 in the Site Plans chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**17.96.030 Site plan review.**

Any use or development that is subject to the requirements for site plan review, unless exempt as provided for in GHMC 17.96.025, shall be classified and processed as provided for in this section.

**A. Minor Site Plan Review.**

1. Applications for minor site plan review shall be processed in accordance with the procedures established under GHMC Title 19 for a Type I project permit application. A decision on a minor site plan review application shall be rendered prior to or concurrent with the issuance of any other applicable permit. The following are classified as minor site plan reviews:

- a. Change in use of an existing structure which increases the number of required off-street parking spaces and/or requires a change of use capacity evaluation as provided for in GHMC 19.10.004;

- b. Modifications to the number of off-street parking stalls, amount of impervious surface and height of structures on an existing site or approved site plan, provided such modifications do not exceed a 10 percent increase over the original;
- c. Modifications to the parking lot layout or parking lot landscaping on an existing site or approved site plan;
- d. Modifications to the landscaping, common area, or vegetation retention areas, provided the modifications do not adversely affect the basic character and quality of such;
- e. Modifications to the total amount of gross floor area on an existing site or approved site plan which do not exceed a 10 percent increase over the original or 1,000 square feet increase, whichever is less;
- f. Removal of some but not all buildings on a site;
- g. Modification or expansion of existing stormwater facilities;
- h. Modifications to the conditions of approval of a minor site plan review decision;
- i. Installation and modification of rapid charging stations as defined in GHMC 17.73.030(P).

2. If a minor site plan review includes any use or development classified as a major site plan review in subsection B of this section, the entire project shall be processed under the provisions for major site plan review.

#### B. Major Site Plan Review.

1. Applications for major site plan review shall be processed in accordance with the procedures established under GHMC Title 19 for a Type II project permit application, except as provided for in subsection (B)(3) of this section. The following are classified as major site plan reviews:

- a. Construction of a building or installation of impervious surfaces on a vacant parcel;
- b. Modifications to an existing site or approved site plan which are not classified as a minor site plan review in subsection A of this section or are exempt from site plan review under GHMC 17.96.025;
- c. Any development subject to a SEPA threshold determination pursuant to Chapter 18.04 GHMC;
- d. Creation of new regional stormwater ponds;
- e. Establishment of a new use or change of use which is not located in an existing building;
- f. Modifications to the conditions of approval of a major site plan review decision;
- g. Installation and modification of battery exchange stations as defined in GHMC 17.73.030(C).

2. If a SEPA threshold determination for a development requiring major site plan review is appealed, the major site plan review application shall be processed in accordance with the procedures established under GHMC Title 19 for a Type III project permit and the SEPA open record

appeal hearing shall be consolidated with the Type III project permit open record hearing.

3. A major site plan review application for a project which has an associated administrative interpretation, as provided for in GHMC 17.66.050, shall be processed as a Type III application as defined in GHMC Title 19.

C. A minor or major site plan review application that is part of a project that requires additional applications with other procedure types may be processed collectively under the highest numbered procedure for any application unless the applicant chooses to have each application processed individually following the permit processing procedures in GHMC 19.01.002(B).

Section 6. Section 18.04.060 in the Environmental Review (SEPA) chapter of the Gig Harbor Municipal Code is hereby amended, to read as follows:

**18.04.060 Categorical exemptions and threshold determinations – Adoption by reference.**

The city adopts the following sections of Chapter 43.21C RCW and Chapter 197-11 WAC, as now existing or hereinafter amended, by reference as supplemented in this chapter:

RCW

43.21C.410 Battery charging and exchange station installation.

WAC

- 197-11-300 Purpose of this part.
- 197-11-305 Categorical exemptions.
- 197-11-310 Threshold determination required.
- 197-11-315 Environmental checklist.
- 197-11-330 Threshold determination process.
- 197-11-335 Additional information.
- 197-11-340 Determination of nonsignificance (DNS).
- 197-11-350 Mitigated DNS.
- 197-11-355 Optional DNS process.
- 197-11-360 Determination of significance (DS)/ initiation of scoping.
- 197-11-390 Effect of threshold determination.

Section 7. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or



constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 8. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this \_\_\_ day of \_\_\_\_\_, 2011.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
Angela S. Belbeck

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
PUBLISHED:  
EFFECTIVE DATE:  
ORDINANCE NO: -

## ELECTRIC VEHICLE INFRASTRUCTURE

Three levels of battery charging stations should be considered:

Level 1, uses 110 volts and is similar to a regular household outlet. It can charge an electric vehicle battery in 16-24 hours, depending on the size of the battery pack.

Level 2, uses 220 volts and is similar to an electric oven or dryer outlet. It can charge an electric vehicle battery in 4-6 hours.

Level 3 rapid charging stations, also called DC fast charge, require 480 volts and can fully charge an electric vehicle in less than 30 minutes.

Battery exchange stations are facilities that use an automated process to exchange depleted vehicle batteries with fully charged batteries. This are not yet in use in North America, but are used in other countries, such as Japan and Isreal.

### Examples of Private and Public Battery Charging, and Battery Exchange Stations



A wall-mounted Level 2 home charging station in a carport. Outdoor home charging stations can also be Level 1 and may not have to be covered. *Photo courtesy of Plug In America.*



A typical Level 2 pedestal-style charging station in a surface parking lot. *Photo courtesy of ECOtality.*



Rapid Charging Station Vacaville, CA  
*Photo: David Dickey*



Battery Exchange Station in Tokyo  
*Photo: Better place.*

**Subject: Second Reading of Ordinance Amending the Special Events Chapter of the Gig Harbor Municipal Code.**

**Proposed Council Action:**

Adopt the Ordinance at this second reading.

Dept. Origin: Administration  
Prepared by: Molly Towslee, City Clerk  
For Agenda of: July 25, 2011

Exhibits: Draft Ordinance

Initial & Date

Concurred by Mayor: CLH 7/18/11  
Approved by City Administrator: POK  
Approved as to form by City Atty: by email 6/30  
Approved by Finance Director: CP 7/18/11  
Approved by Department Head: \_\_\_\_\_

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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**INFORMATION / BACKGROUND**

Chapter 5.28 of the Municipal Code regulating Special Events was adopted in 1983 and amended in 2009. The code inadequately reflects current conditions. The following is an overview of the recommended changes:

- Change “director of administration” to “City Administrator” and add “or his designee” throughout the chapter. This is a housekeeping amendment.
- Add language to allow certain commercially organized special events at the rate of one per month.
- Include an application fee of \$500 for commercially organized events to help cover administrative costs.
- Update the insurance requirements for events that include liquor to adequately protect the city per recommendation from the city’s insurance pool, AWC RMSA.

**FISCAL CONSIDERATION**

The \$500 fee for a Commercially Organized Special Event Permit is in line with other jurisdictions and will help pay the cost for staff review and administration of the permit.

**BOARD OR COMMITTEE RECOMMENDATION**

At the June 27th Council meeting, the proposed changes were present to Council by Laureen Lund, Marketing Director. Council directed staff to come back with the amendments to the code in draft ordinance form for consideration.

**RECOMMENDATION / MOTION**

**Move to:** Adopt the Ordinance at this second reading.

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

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO SPECIAL EVENTS, AMENDING CHAPTER 5.28 OF THE GIG HARBOR MUNICIPAL CODE TO REFLECT A DESIRE TO ALLOW COMMERCIAL ENTITIES TO ORGANIZE EVENTS AND TO UPDATE CURRENT POSITION TITLES; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

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WHEREAS, Chapter 5.28 of the Gig Harbor Municipal Code contains provisions for licensing and regulating special events on public rights of way and public waterways; and

WHEREAS, the code requires modification to reflect current conditions; and

WHEREAS, in order to offer a wider array of opportunities for special events, the City Council desires to allow commercial sponsors to organize events; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Section 5.28.010 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.010 Purpose and intent.**

....

B. The intent of this chapter is to allow ~~community-based organizations to sponsor~~ sponsorship of special events on public thoroughfares and public waterways, and to provide guidelines that protect the public's health, safety, and welfare.

Section 2. Section 5.28.020 of the Gig Harbor Municipal Code shall be amended to add a new subsection F to read as follows:

**5.28.020 Definitions.**

...

F. "Commercially Organized Events" means sporting events such as races and triathlons, performances such as concerts and theatre. Such events are limited to no more than one per month. No events will be allowed that are designed for the primary purpose of selling products.

Section 3. Section 5.28.030 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.030 Permit – Required.**

No person shall engage in, participate in, aid, form or start any special event, unless a permit has been obtained from the city administrator or his designee.

Section 4. Section 5.28.040 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.040 Permit – Application – Fee.**

There shall be paid by the sponsor(s) at the time of application a non-refundable fee of ~~\$50.00~~ for each special event as follows:

a) Non-profit Event	<u>\$ 50.00</u>
b) Commercially Organized Event	<u>\$500.00</u>

Section 5. Section 5.28.060 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.060 Permit – Application – Filing period.**

...

B. The city administrator or his designee shall notify the applicant in writing of approval or disapproval, no later than 20 days following the date of the application.

Section 6. Section 5.28.080 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.080 Insurance Required.**

...

C. If alcohol is permitted and being served, the applicant must obtain a license from the Washington State Liquor Board and provide a minimum of \$1,000,000 liquor liability coverage.

Section 7. Section 5.28.090 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.090 Permit – Issuance standards.**

After departmental review, the city administrator or his designee ~~The director of administration shall~~ may issue a special events permit unless he finds that:

...

B. The size or nature of the event requires the diversion of so great a number of city staff and / or police officers of the city that police protection or city services to the remainder of the city is ~~dangerously~~ unreasonably diminished;

...

E. In the case of an application for a commercially organized event, a commercially organized event has already been scheduled in the month requested or the city administrator or his designee determines a primary purpose of the event is to sell products.

Section 8. Section 5.28.100 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.100. Traffic Control.**

The chief of police may require any reasonable and necessary traffic control. If such traffic control cannot be handled by the sponsor and shall require the deployment of additional police personnel, the permittee shall be responsible for the expense. The chief of police or his designee ~~director of administration~~ shall notify the applicant(s) of the actual projected expense ~~and collect this amount before a permit is issued.~~

Section 9. Section 5.28.110 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.110 Appeal procedure.**

Upon denial of a permit by the city administrator or his designee, ~~director of administration~~, an applicant may appeal to the city council by filing a written notice of appeal for hearing by the city council at its next meeting. Upon such appeal, the city council may reverse, affirm, or modify the administrator's ~~director's~~ determination.

Section 10. Section 5.28.120 of the Gig Harbor Municipal Code shall be amended as follows:

**5.28.120 Permit – Revocation.**

The city administrator or his designee ~~director of administration~~ shall have the authority to revoke a permit upon application of the standards for issuance as herein set forth. ~~The director~~ In the event of revocation, the city administrator or his designee shall notify the permittee of the revocation, in writing, ~~15 days prior to the event, or as soon as~~ reasonably possible.

Section 11. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 12. Effective Date. This ordinance shall take effect and be in full force and effect five days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of July, 2011.

CITY OF GIG HARBOR

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Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

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Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

---

Angela S. Belbeck

FILED WITH THE CITY CLERK: 07/06/11  
PASSED BY THE CITY COUNCIL: 07/25/11  
PUBLISHED: 08/03/11  
EFFECTIVE DATE: 08/08/11  
ORDINANCE NO:



**Subject:** Donkey Creek Public Meeting  
Public Input – Comment Forms

**Proposed Council Action:** Staff Report

**Dept. Origin:** Administration

**Prepared by:** Lita Dawn Stanton  
Special Projects *[Signature]*

**For Agenda of:** July 25, 2011

**Exhibits:** Comment Sheet Tally

	Initial & Date
<b>Concurred by Mayor:</b>	_____
<b>Approved by City Administrator:</b>	_____
<b>Approved as to form by City Atty:</b>	_____
<b>Approved by Finance Director:</b>	_____
<b>Approved by Department Head:</b>	_____

Expenditure Required	n/a	Amount Budgeted	n/a	Appropriation Required	n/a
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**INFORMATION / BACKGROUND**

On July 14, a public meeting was held to provide an update on the Donkey Creek Project. The public was invited to a presentation and asked to provide comment. A Comment Form depicting three road configuration options was provided and included a "Round-About", a "T-Intersection" and the Mayor's "1-Way" recommendation. A summary of votes is attached. It includes all Comment Forms, emails and telephone calls through July 20, 2011.

**FISCAL CONSIDERATION**

none

**BOARD OR COMMITTEE RECOMMENDATION**

n/a

**RECOMMENDATION / MOTION**

Staff report.



**Donkey Creek Open House**  
**July 14, 2011**

ROAD CONFIGURATION OPTIONS	PUBLIC MEETING VOTES	NOTE	EMAILS CALLS	TOTALS
Open The Creek	4	(No Config Marked)		4
Do Nothing	15	(No Config Marked)	5	20
Mayor's 1-Way	24		5	29
T-Intersection	0		1	1
Round-About	25		5	30
"What About Fish" (comment only)	1	(No Config Marked)		1
"What About Emergency Vehicles" (comment only)	1	(No Config Marked)		1
"Bridge now - Roads Later"			1	1
<b>TOTAL</b>	<b>70</b>		<b>17</b>	<b>87</b>

Discarded Form	1	
Blank (left over)	20	
Out and May Be Returned	9	Due July 20
<b>TOTAL FORMS PRINTED</b>	<b>100</b>	

RECEIVED  
JUL 25 2011  
CITY OF GIG HARBOR

July 23, 2011

To Whom it may Concern,  
we have been reading through  
my Gateway having been gone and  
it is with interest that someone  
thinks that there needs to be  
changes in the Fenholm District.

My comment is what isn't  
broken dont try and fix!

The City has a very very  
broken area at Harbor View  
and Pioneer that you seem to  
want to keep your head in  
the sand about.

Yes you put up that  
huge job of brick and  
mortar and I am sure you  
must hold your breath that  
it will protect the building  
however now you have put the  
predestines in very grave danger  
as they are invisible until you  
are right on top of them. yes

I am speaking from experience  
as a driver and an observer  
of that area. Someone will  
get hit there one day and  
the city will pay dearly  
for endangerment. So my  
suggestion is leave Finhelm  
alone and show real concern  
where it is needed.

Thank you  
Sandra Moore

**Subject:** Resolution authorizing a Development Agreement for phased development with Chapel Hill Presbyterian Church.

**Proposed Council Action:** Adopt the Resolution authorizing the Mayor to execute the Development Agreement with Chapel Hill Presbyterian Church.

**Dept. Origin:** Planning Department

**Prepared by:** Kristin Moerler, Associate Planner

**For Agenda of:** July 25, 2011

**Exhibits:** Project Summary, Hearing Examiner Recommendation, Resolution, and Development Agreement with Exhibits

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Department Head:**

Initial & Date  
 CLH 7/18/11  
 —  
 email  
 N/A  
 TD 7/14/11

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

**INFORMATION/BACKGROUND**

The proposed development agreement is to allow Chapel Hill Church (the Developer) to extend the approval of the proposed Chapel Hill Westside Expansion improvements for a duration of seven (7) years. This would allow the developer four (4) additional years to submit the required building and/or civil permits needed to construct the proposed improvements. The proposed phasing plan has been developed so each phase can stand alone. This is intended to allow the Developer to pursue phases in the order they determine over time as they have not determined which phase would be constructed first.

A project summary sheet is included to describe the proposal and also contains a brief background on the permitting process and a summary of vested regulations. The project was submitted in 2006 and is vested to the 1996 critical area regulations.

**FISCAL CONSIDERATION**

There are no fiscal considerations associated with this proposal.

**BOARD OR COMMITTEE RECOMMENDATION**

The Hearing Examiner held a public hearing on the proposal on June 2, 2011. The Hearing Examiner has provided the attached recommendation on this development agreement and is holding his approval of the underlying permits in abeyance until action is taken by City Council on the development agreement per GHMC19.08.040B.

**RECOMMENDATION / MOTION**

**Move to:** Adopt the Resolution authorizing the Mayor to execute the Development Agreement with Chapel Hill Presbyterian Church.

## **Chapel Hill Church Westside Expansion Project Summary**

### Summary of Proposal

The proposal includes a new 122 space parking lot in the northwest corner of the site, a prayer garden and walking paths, a multi-purpose field in the southwest corner of the site, a pavilion structure located near the proposed field, and 54 space parking lot adjacent to the pavilion. Additionally the application includes a new access to Northcreek Lane, which would be gated much of the time to prevent through traffic, but opened to facilitate church patrons leaving the site at peak times.

### Background on the proposal

The current proposal was submitted to the City on March 6, 2006. The applications submitted at that time included a conditional use permit, site plan review, design review, binding site plan (BSP) and an environmental checklist (for SEPA). The SEPA determination and Design Review were issued and the project was preparing to proceed to public hearing in September of 2008, when staff determined that the project did not meet the criteria for approval of the binding site plan in the R-1.

The applicant in 2009 proposed revisions to the project in response to the public comment received as a part of the SEPA review process in 2008. In 2010 the applicant formally withdrew the BSP application and applied for the proposed development agreement. The delay in making application for the development agreement relates to the fact that the City was in the process of revising the processing of development agreements in 2009 to clarify the processing of such agreements when associated with site specific development proposals such as this one.

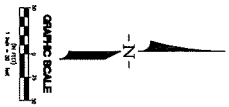
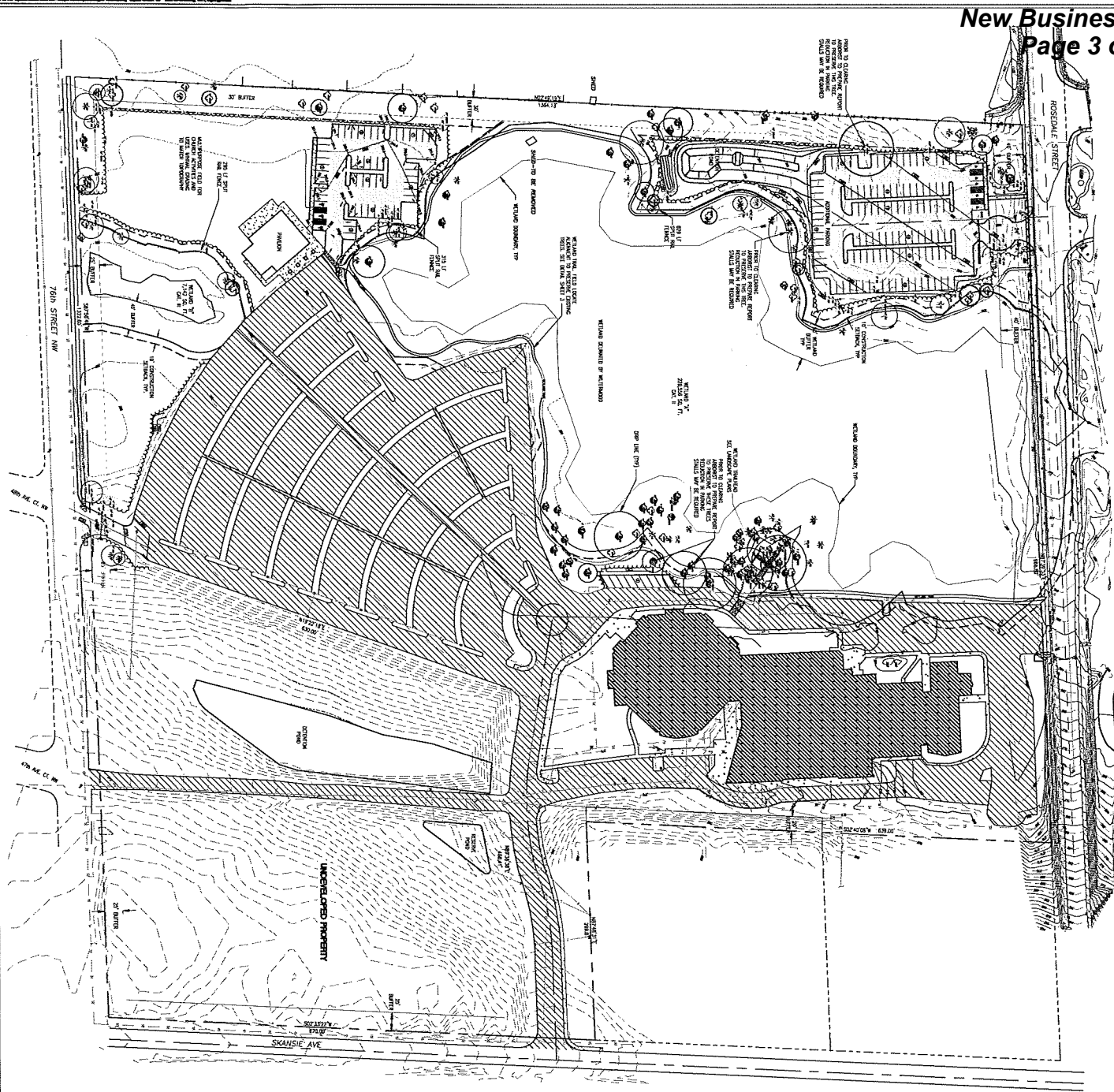
### Vesting Implications

The site is presently vested to the 1996 critical areas ordinance as a complete conditional use permit was submitted prior to the adoption of the new critical areas ordinance in the spring of 2006. The site does contain two regulated wetlands. Wetland A (located just south of Rosedale street) is a category 2 wetland under both codes. The buffer for wetland A would increase from 50 feet to 100 feet, with the ability to reduce the buffer to 75 feet based on mitigating impacts. Wetland B, a category 4 wetland, would increase from 40 to 50 feet with the ability to reduce the buffer to 40 feet with mitigation. These buffer numbers are based on a review of the wetland reports submitted for the project, a formal wetland analysis under the current regulations has not been required as the site is vested to the old regulations.

The site is additionally vested to old stormwater regulations. Stormwater regulations were updated at the beginning of 2010.

CHAPEL HILL PRESBYTERIAN CHURCH WESTSIDE ENHANCEMENTS

A PORTION OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST, WAL  
SIG HARBOR, WASHINGTON  
CLEARING, GRADING, TOPOGRAPHY AND TREE PRESERVATION PLAN



- RETAINED TREES**
- 10" DBH
  - 12" DBH
  - 14" DBH
  - 16" DBH
  - 18" DBH
  - 20" DBH
  - 22" DBH
  - 24" DBH
  - 26" DBH
  - 28" DBH
  - 30" DBH
- EXISTING TREES**
- 10" DBH
  - 12" DBH
  - 14" DBH
  - 16" DBH
  - 18" DBH
  - 20" DBH
  - 22" DBH
  - 24" DBH
  - 26" DBH
  - 28" DBH
  - 30" DBH
- EXISTING TREES SUMMARY**
- GRAND PINE (G.P.) - 11  
 WHITE PINE (W.P.) - 11  
 DOUGLASS PINE (D.P.) - 11  
 REDWOOD (R.W.) - 11  
 TOTAL - 44

**TREE RETENTION SUMMARY**

10" DBH - 11  
 12" DBH - 11  
 14" DBH - 11  
 16" DBH - 11  
 18" DBH - 11  
 20" DBH - 11  
 22" DBH - 11  
 24" DBH - 11  
 26" DBH - 11  
 28" DBH - 11  
 30" DBH - 11  
 TOTAL - 44

**TOPOGRAPHIC NOTE:**  
 ALL ELEVATIONS ARE IN FEET UNLESS OTHERWISE NOTED.  
 THE SURFACE TOPOGRAPHY HAS BEEN OBTAINED FROM AERIAL PHOTOGRAPHS AND FIELD SURVEY.  
 THE PROPOSED GRADING AND DRAINAGE PLAN HAS BEEN DEVELOPED TO MAINTAIN THE EXISTING SURFACE TOPOGRAPHY AS MUCH AS POSSIBLE.  
 THE PROPOSED GRADING AND DRAINAGE PLAN HAS BEEN DEVELOPED TO MAINTAIN THE EXISTING SURFACE TOPOGRAPHY AS MUCH AS POSSIBLE.

DATE:	10/11/2011	DRAWN BY:	J. W. HARRIS
SCALE:	AS SHOWN	CHECKED BY:	J. W. HARRIS
TITLE:	CHAPEL HILL PRESBYTERIAN CHURCH WESTSIDE ENHANCEMENTS	PROJECT NO.:	1146

NO.	DESCRIPTION	DATE	BY	DATE
1	APPLICATION RE-SUBMITTED SET	6/14/2011	CTB	
2	APPLICATION RE-SUBMITTED SET	8/16/2011	CTB	
3	CONTRACT SET	10/11/2011	CTB	
4	REVISIONS	10/11/2011	CTB	

THE CHAPEL HILL PRESBYTERIAN CHURCH WESTSIDE ENHANCEMENTS  
 CLEARING, GRADING, TOPOGRAPHY AND TREE PRESERVATION PLAN

CLEARING: CHAPEL HILL PRESBYTERIAN CHURCH  
 P.O. BOX 610  
 100 W. 10TH ST. N.  
 WISCONSIN, WI 53081-0610

**WestSound Engineering, Inc.**

311 E. 10th Street  
 Phone: (253) 576-3776  
 Fax: (253) 576-0038  
 E-mail: westsound@westsoundeng.com  
 www.westsoundeng.com

Port Orchard, WA 98366

JOB No. 1146      SHEET 2 OF 4

RECEIVED  
CITY OF GIG HARBOR  
JUN 20 2011  
COMMUNITY  
DEVELOPMENT

June 16, 2011


Chapel Hill Presbyterian Church  
P.O. Box 829  
Gig Harbor, WA 98335

RE: PL-SPR-06-0013, PL-CUP-06-0009, PL-DEV-10-0003, & PL-SEPA-06-0025  
Chapel Hill Church West Side Expansion

Dear Applicant:

Transmitted herewith is the Report and Recommendation of the Hearing Examiner regarding your request for approval of a development agreement for the above entitled matter.

Very truly yours,

  
STEPHEN K. CAUSSEAU, JR.  
Hearing Examiner

SKC/jjp  
cc: Parties of Record

**RECOMMENDATION TO GIG HARBOR CITY COUNCIL CONCERNING THE PROPOSED DEVELOPMENT AGREEMENT FOR THE CHAPEL HILL CHURCH WEST SIDE EXPANSION.**

**CASE NO.:** PL-SPR-06-0013, PL-CUP-06-0009, PL-DEV-10-0003, & PL-SEPA-06-0025 Chapel Hill Church West Side Expansion

**OWNERS:** Chapel Hill Presbyterian Church/Presbytery of Olympia  
P.O. Box 829  
Gig Harbor, WA 98335

**APPLICANT:** Chapel Hill Presbyterian Church  
P.O. Box 829  
Gig Harbor, WA 98335

**PLANNER:** Kristin Moerler, Associate Planner

**SUMMARY OF REQUEST:**

Chapel Hill Presbyterian Church has applied for site plan review, conditional use permit, design review and a development agreement to expand the existing church facilities on the site. This project is known as the Chapel Hill Church Westside expansion project. The proposal includes a new 122 space parking lot in the northwest corner of the site, a prayer garden and walking paths, a multi-purpose field in the southwest corner of the site, a pavilion structure located near the proposed field, and a 54 space parking lot adjacent to the pavilion. The application includes a new gated access to Northcreek Lane that would remain closed much of the time to prevent through traffic, but opened to facilitate church patrons leaving the site at peak times.

The development agreement is proposed to allow the applicant seven years to construct the proposed improvements. Without the development agreement the permits would be valid for three years with the potential to request one extension of up to a year, based on the provisions of GHMC 19.02.008. The applicant is proposing a phased approach for the construction of the improvements identified in this application. The phases are described in the proposed development agreement. Each of the proposed phases includes provision of the infrastructure needed to serve that phase, so that the applicant has flexibility in which phase is constructed first.



**SUMMARY OF RECOMMENDATION:**

Approval of the development agreement.

**DATE OF DECISION:**

June 16, 2011

**PUBLIC HEARING:**

After reviewing the Community Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on June 2, 2011 at 1:30 p.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1" - Staff Report by Kristin Moerler, Associate Planner dated May 26, 2011**
- EXHIBIT "2" - Preliminary Civil Plans**
- EXHIBIT "3" - Architectural/Landscaping Plans**
- EXHIBIT "4" - Revised CUP # 06-1220**
- EXHIBIT "5" - Proposed Development Agreement**
- EXHIBIT "6" - Notice of Administrative Decision**
- EXHIBIT "7" - Mitigated Determination of Nonsignificance**
- EXHIBIT "8" - Four Public Comment Letters**
- EXHIBIT "9" - Wetland Delineation and Categorization**
- EXHIBIT "10" - Addendum to Wetland Delineation and Categorization**
- EXHIBIT "11" - Memo from Eric Mendenhall to Jennifer Sitts**
- EXHIBIT "12" - Report and Decision dated August 3, 1994**
- EXHIBIT "13" - Report and Decision dated June 6, 1995**
- EXHIBIT "14" - Report and Decision dated June 6, 1995**
- EXHIBIT "15" - Report and Decision dated May 30, 1996**
- EXHIBIT "16" - Report and Decision dated October 13, 2003**
- EXHIBIT "17" - Traffic Study**
- EXHIBIT "18" - Memo from Jeff Langhelm to Kristin Moerler**
- EXHIBIT "19" - Email from Eva Jacobson to Kristin Moerler**
- EXHIBIT "20" - Memo from Amy Londgren to Kristin Moerler**
- EXHIBIT "21" - Request for Comments**
- EXHIBIT "22" - Request for Comments**

- EXHIBIT "23" - Letter with Attachments from Daniel Banales**
- EXHIBIT "24" - Letter from Brian and Stephanie Ward**
- EXHIBIT "25" - Photographs**
- EXHIBIT "26" - Letter with Attachments from Michelle Karlinsey**
- EXHIBIT "27" - Lithonia Lighting**

KRISTIN MOERLER appeared, presented the Planning Department Staff Report, and testified that the public hearing will consider the conditional use permit as well as the proposed development agreement. The Examiner holds his decision on other permits in abeyance until the council rules on the development agreement. However, if the Examiner denies the conditional use permit and site plan review, then he would make no recommendation to the council as such denial would amount to the final decision. The proposed agreement would allow the phased development over seven years as compared with the zoning code maximum of three years plus one, one year extension. The application requests a parking lot in the northwest corner, a prayer garden, and a field and parking area in the southeast corner. The prayer garden and path are located near the church. She then presented a history of the site and noted that the latest approval occurred in 2003. The Environmental Official finalized the SEPA review in September, 2008, but the applicant submitted a completed application in 2006. The project was ready for approval in 2008 pursuant to the binding site plan process. Staff believed the project approvable but code requirements tied the church to the R1 classification and they needed a development agreement to move forward. In 2009 the church made changes to the project based on comments received in 2008. The application is vested to all the 2006 codes to include a previous wetland code. The wetlands are Category III in the south and the new ordinance would require a larger buffer. A Category II is located to the north. The church is closer to the east side of the parcel but no structures are proposed in that area. She has received comments regarding impacts of the proposed parking area due to its close proximity to the west property line. The proposed 30 foot wide buffer exceeds the buffer requirements in the code. The parking lot is consistent with City requirements for such use in a residential area. The northwest parking lot is separated from the church, and neighbors raise concerns about the use of the lot by high school students. She received four letters in opposition to the parking lots. She then introduced Exhibit 23, another letter in opposition. She has included a condition of approval requiring the buffers to provide a thick, residential screen. A further condition requires retention of the buffer on the east side of the church facing Skansie Boulevard.

EVA HILL appeared and testified that the church has existed in Gig Harbor for 89 years and had its original location on Pioneer. It grew and in 1965 built at this location. The congregation has continued to grow and they have had several public hearings to expand the church. Members are very active in the community and church membership is not required to participate in church functions. The church is really more than just a sanctuary and provides many events for the area. They have outreach programs and provide a community shelter during emergencies. They have tried to be a good neighbor and have grown with the community. They have carefully planned their uses and preserved the

critical areas on the site. They have prepared a master plan in accordance with the Hearing Examiner's suggestion in 1995 and have complied with requirements on the buffers. They now have a plan accompanied by a development agreement. A BSP is not appropriate because they do not propose a residential use. The new site plan shows parking in three areas: near the sanctuary, in the field area to the southwest, and in the northwest corner. The prayer garden will have trails and all amenities are for church activities. They will protect all wetlands and buffers and will provide enhancement along the parking areas. The city attorney has reviewed the development agreement and can pass it onto the City Council. The membership is engaged in providing funding for the new improvements. The agreement breaks the improvements into seven different components that they will construct independent of each other. If the membership decides none of the improvements should be built, then they will not be. They held an open house two years ago and carefully looked at the trees in the buffer and will not remove any. They will also retain other trees and will plant additional trees to ensure a dense vegetation screen. The light standards are lower and face down and will generally be security lighting. Concerning the parking needs, they have increased in the number of events, and people do not leave the site immediately following church services. Children come to the north end of the building during the week and have used parking spaces across the Skansie Avenue. Century Link may not allow them to continue using the parking area, and they need sufficient parking for events. They need the parking to accommodate additional uses that may occur in the future. People can park on the site, use the sidewalk on Rosedale, and no longer have to cross the street. Improvements previously installed include a sidewalk paid for by the church and road improvements of over one million dollars. Concerning security they will remove the shacks constructed along the west side of their property, and the new parking areas will allow visibility into the site and will discourage use of the wooded area. Homes should have more security. Some homes have extended their rear yard into the ten foot wide buffer required by subdivision approval. One home had constructed a sport court on church property. The 1993 plat approval required a ten foot wide buffer. Concerning Condition 14 she has no problem with the language but noted that the increase in number of vehicles was below the threshold to require improvements during the peak period. They established a lighting plan and presented it to the Design Review Board, which approved it.

MS. MOERLER then testified that the lighting plan was approved administratively. The lighting plans call for four, 20 foot tall poles with adjustable lighting fixtures. Ms. Hill then testified that they will have a gate on the northwest parking lot and will close it when not in use. They will install a solid board fence along a portion of the west property line, six feet in height. They will not install a ball field at the southeast corner but a playground. They will clear the playground of vegetation except for the trees. Outside groups will not use the area.

CRAIG BALDWIN, professional engineer, appeared and testified that there would be minor grading for the grass area. Concerning Condition 13, frontage improvements, the church has already constructed such improvements to full City standards and the City has accepted them. They will install a road approach for the new parking lot but should not

have to perform new improvements to the street. They installed the improvements in 1996, and the road is in good condition. They do not own or maintain the road.

STEPHANIE WARD appeared and testified that she abuts the proposed northwest parking lot and that only one parcel in the cul-de-sac has encroached, the others have not. The church previously installed a wood fence. She moved to her home in 2003, and noted that four trees fell down, two on the church property and two on theirs. Two other trees are in jeopardy. The soils are very wet due to the wetland, which has a depth of two inches of water. They are above the wetland and she has concerns about erosion and trees. She has a child that attends the preschool and is aware of the church's outreach program. She walks her child to the school and notes that it is in a high traffic area and that drivers do not observe the crosswalk. In the previous expansion the church said it would not affect neighbors. However, the expansion now requires additional parking. She then introduced Exhibits 24 and 25. She is concerned about the location of the lot in an area completely removed from the church. High school students will use it after hours as will other juveniles. If the lot is in close proximity to their rear yards, trespassers would have access to their property. The buffer behind her fence has no vegetation other than blackberries and Alder trees. All other trees are at 30 feet or beyond. She desires that the significant trees remain and they will continue planting a screen on their yard. She would propose a 40 foot wide buffer to protect their home from vandals and crime. Northcreek has sidewalks and a street buffer. Impacts will include cars idling, noise, and people talking.

MICHELLE KARLINSEY appeared and testified that she abuts the Wards' property to the north. The parking lot is detrimental to the area due to vandalism and loitering by high school students and others. Removal of the vegetation may invite teens to use the parking lot. They leave school property now and the lot will create larger problems. She hears the people beyond her fence now. She also has concerns with the 30 foot buffer and has tried to plant on her parcel. Only blackberries are in the 30 foot wide area and deciduous trees beyond that. Her property is greater in height than the parking lot. She requests conifer trees within the 30 foot buffer planted well before the time of development of the lot so they will have time to grow and provide a screen. She recommended 20 foot as opposed to 16 foot light standards and noiseless light bulbs.

RAY PHILLIPS appeared and testified that he resides along west property line of the church parcel near the south property line. The church will need to maintain the field and he anticipates pesticides and herbicides near his rear yard. The blackberries extend 30 feet beyond his rear yard. The building will create noise. The area is secure now and supports animals, but after the clearing it will open the property to all. The trail to the south around the buffer will add to the security problem. Mosquitoes will become a problem within the wetland.

MS. HILL reappeared and testified that they will plant additional trees along the property line and will maintain all trees along the buffer line. They will also have a ten foot wide planting strip along the edge of the parking lot in addition to what the City requires in the 30 foot buffer. If they can lower the light standards, they will do so.

MS. MOERLER reappeared and testified that if they reduce the height of the light poles, it could reduce the lighting amount below the minimum standard. Such could generate the need for additional light standards. She then introduced Exhibit 27, a lighting exhibit.

JEFF LANGHELM, city engineer, appeared and testified concerning Condition 13, that as public works standards change the City requests some types of improvements. We look at the road standards in 1996 as opposed to today. He notes changes in standards regarding lighting and driveways. They are not asking for more sidewalks or lights, but the driveway must meet present standards.

MS. WARD reappeared and requested speed bumps in the area.

MR. BALDWIN reappeared, addressed Condition 14, and testified that the City did approve the traffic concurrency for seven p.m. peak hour trips. A failing intersection exists at Hunt/Skansie based upon p.m. peak traffic. The recommended condition is included due to the unknown amount of traffic generated by activities at the site. He would like the condition revised to reflect the seven p.m. peak hour trips.

MS. HILL reappeared and testified they do not expect additional traffic over and above seven p.m. peak trips.

The Examiner then left the record open for staff and the applicant and the City to discuss Conditions 13 and 14.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 3:20 p.m.

**NOTE:** A complete record of this hearing is available in the office of the City of Gig Harbor Community Development Department.

**FINDINGS, CONCLUSIONS AND RECOMMENDATION:**

**FINDINGS:**

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, viewed the property, and taken this matter under advisement.
2. The City issued a Mitigated Determination of Non-Significance (MDNS) on August 20, 2008 (exhibit 7). The appeal period for this decision expired on September 10, 2008. The SEPA determination is final at this time.
3. Legal notice of the proposed action and scheduled hearing was published in the Peninsula Gateway on May 18, 2011. In addition, notice was mailed to all property

owners within 300 feet of the subject site on May 19, 2011. Notice was also posted on the subject site on May 23, 2011.

4. The applicant, Chapel Hill Presbyterian Church and Presbytery of Olympia, has a possessory ownership interest in a rectangular, 34.17 acre parcel of property located at the southwest quadrant of the intersection of Rosedale Street and Skansie Avenue within the City of Gig Harbor. Improvements on the site include a church sanctuary and multi-purpose building in the northcentral portion of the site and parking areas to the north and south of said structure. The parcel accesses from both Skansie Avenue and Rosedale Street. The site also has a gated access from the southeast corner of the parking lot onto Northcreek Lane.
5. The applicant submitted completed applications for site plan review (Case No. SPR06-0013) and conditional use permit approval (Case No. 06-009) that would allow construction of a new, 122 space, parking lot in the northwest corner of the church parcel; a prayer garden and walking paths in the central portion of the parcel; and a multi-purpose field, pavilion, and 54 space parking lot in the southeast corner of the site. The project includes a new access from the parking lot in the northwest corner onto Rosedale Street and a new access from the existing parking lot onto Northcreek Lane. The applicant has also requested approval of a development agreement that would allow phased development of the project over a seven year period. Without the development agreement the applicant would have three years to complete the project plus the ability to request one, one year time extension.
6. The parcel is located within the Single-Family Residential (R-1) zone classification of the Gig Harbor Municipal Code (GHMC). Parcels to the south and west are also within the R-1 classification, and parcels abutting the west property line are improved with single-family residential dwellings within the Heights at Gig Harbor subdivision. Parcels to the north are located within the Residential Business (RB-2) and the Public Institution (PI) zone classifications and improved with the Century Link telecommunications building, the Discovery Elementary School, and Gig Harbor High School. Parcels to the east are located within the Medium Density Residential (R-2) and Residential and Business District (RB-2) zone classifications and are either improved with condominiums or remain vacant.
7. Chapter 19.08 GHMC sets forth the procedure and criteria for considering a development agreement. Section 19.08.040(B)(1) GHMC provides in relevant part as follows:

If the final decision on the underlying project permit application is made by the hearing examiner, then the hearing examiner shall consider both the project permit application and the proposed development agreement together during the public hearing. The hearing examiner shall make a recommendation to the council on the development agreement and his/her

decision on the underlying project permit application shall be held in abeyance until the city council considers the proposed development agreement in a public hearing....

If the City Council approves the development agreement and the mayor executes said agreement, then the Hearing Examiner issues "his/her final decision on the underlying project permit application". In the present case the Examiner conducted a public hearing to consider the site plan review and conditional use permit applications along with the proposed development agreement.

8. Section 19.08.040(B)(1) GHMC also provides in part:

...Nothing in this section obligates the hearing examiner to forward a recommendation to the city council for further consideration if the hearing examiner denies the underlying project permit application.

In the present case the Examiner has forwarded the development agreement to the City Council, finding that the applicant has shown that the request satisfies all criteria for a conditional use permit and site plan review. Such is especially true considering that the applicant meets the definition of "Religious worship, house of" as set forth in GHMC 17.04.696.

9. On September 22, 2000, Congress adopted the "Religious Land Use and Institutional Persons Act of 2000". Codified at 42 USC 2000 cc, said act provides in part:

Subsection 2. Protection of land use as religious exercise.

(a) Substantial Burdens

- (1) General Rule-No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution-

(A) is in furtherance of a compelling government interest; and

(B) is the least restrictive means of furthering that compelling government interest.

In the present case residents have raised objections to the proposed improvements along the west property line. However, denial of these improvements would not

further a compelling government interest nor would it constitute the least restrictive means of furthering that compelling government interest. The applicant has provided a minimum, 40 foot wide buffer from the west property line to include significant vegetative screening.

10. In Anderson, American Law of Zoning 4<sup>th</sup> Edition, Section 12.21, the author interprets the favored status granting religious uses in general as follows:

Churches, synagogues, and other institutions dedicated to religious objectives are in some degree protected from the full impact of zoning restrictions. These uses are favored for reasons ranging from their unique contribution to the public welfare to constitutional guarantees of freedom of worship....

In Section 12.23, Anderson, supra, the author discusses the manner in which courts review special use permits [conditional use permits] for churches:

...The serious question is what standards may be imposed on religious institutions. A common criteria for reviewing a special permit application is whether the use, if permitted, will have a serious impact on the property values of the neighborhood. This factor is of doubtful validity in relation to religious uses. Another is the potential traffic congestion which may be expected if the use is allowed. This appears to carry little weight where religious issues are in issue. The list of criteria commonly employed to determine the suitability of proposed uses at a specific site, including potential noise, glare, architectural dissimilarity, etc., is of limited value to a board reviewing a permit application for a religious use. The emphasis of the reviewing court appears to be placed on the high character of religious use. This emphasis seems clearly to subordinate the interest of neighboring landowners.

While the right of a municipality to require a special permit seems to be firmly established, the grounds upon which a permit may be denied are few. If a religious institution must get a special permit the burden of proving compliance with the standards is on the institution. The burden usually is not severe.

11. Our Washington Supreme Court agrees with Anderson, supra, and also notes that municipalities should examine less restrictive alternatives than those required in a zoning code. The Supreme Court' decision in The City of Sumner v. First Baptist Church of Sumner, 97 Wn. 2<sup>nd</sup> 1 (1982), addresses establishment of a religious school on a church site. The Court held:

When the City, in the exercise of its police power, is confronted with rights protected by the First Amendment, it should not be uncompromising and



rigid. Rather it should approach the problem with flexibility. There should be some play in the joints of both the zoning ordinance and the building code. An effort to accommodate the religious freedom of appellants while at the same time giving effect to the legitimate concerns of the City as expressed in its building code and zoning ordinance would seem to be in order. The record does not disclose that such an effort was made by either the City or the trial court.

The trial court should consider the practical effect uncompromising enforcement of the City's building code and zoning ordinance will have on appellants' First Amendment rights. It should "searchingly examine" the asserted interest of the City (Wisconsin v. Yoder, supra), and should consider the effect of allowing specific exemptions or deviations in this case. It should determine whether there are less restrictive alternatives than strict enforcement of all the technical provisions of the code while still fulfilling the legitimate governmental interest of adequately protecting the children... In the final analysis the accommodation between the competing interests must be the goal. Only if such accommodation is not possible should one legitimate interest override another. 97 Wn. 2<sup>nd</sup> 1 at 9, 10

In the present case Staff and the applicant have worked together to accommodate the applicant's goal while at the same time providing greater protection to abutting parcel owners along the west property line than required by the code. Staff, in recommending approval subject to proposed conditions, "searchingly examined" the interests of the City and its residents and maintained a reasonable amount of compatibility between the two uses. See also Westchester Day School v. City of Mamaroneck, 504 F.3<sup>rd</sup> 338(2d Circuit 2007), wherein a local zoning board denied a substantial expansion to a 60 year old, Jewish day school. The board based its decision upon traffic issues, concerns regarding parking, and intensity of use. The Second Circuit Court of Appeals held that the board's action constituted a substantial burden on the school and was arbitrary and capricious as a matter of law. The deficiencies in traffic, parking, and future use were not supported by the record and the Court ruled that denial was not because of a "compelling state interest" but because of "undue deference to the opposition of a small group of neighbors".

12. With the above in mind findings are hereby made upon the general provisions of the development agreement as set forth in GHMC 19.08.020 as follows:
  - A. Criteria A requires a development agreement consistent with the applicable policies and goals of the City of Gig Harbor Comprehensive Plan. The purpose of the present development agreement is to allow the applicant to phase the project and extend development over a period of seven years. The development agreement does not affect Comprehensive Plan goals and policies, but the project itself is consistent with the Rosedale/Hunt

Neighborhood Design Area as set forth in Policy 3.9.3(e) of the Comprehensive Plan. Furthermore, the applicant will maintain significant existing vegetation and will provide more than required buffering from abutting residential uses.

- B. Criteria B requires a development agreement consistent with applicable development regulations. In the present case the project satisfies all development regulations set forth in Title 19 GHMC. The applicant has requested no deviations from development standards other than the time limit. The applicant likewise has requested no deviations from Title 15 GHMC addressing buildings and construction.
  - C. Policy (B)(4) provides that a development agreement cannot authorize deviations from requirements of GHMC Title 18, environment. The applicant submitted a completed application for conditional use permit and site plan review approval on March 6, 2006. Residents assert that the project should not be vested to critical areas standards in effect on said date due to the lapse of time. However, staff notes that the SEPA threshold determination and design review approval occurred in 2008, and that the project was ready to proceed to public hearing in September, 2008, as a binding site plan (BSP). However, Staff determined that the project did not meet the criteria for a binding site plan in a R-1 classification. The applicant then made changes to the project as a result of comments received during the SEPA process. In 2010 the applicant formerly withdrew the BSP application and applied for the present development agreement. The delay in making application for the development agreement was principally that of the City, which was in the process of revising the development agreement process. Furthermore, GHMC 19.02.006 sets forth the criteria for expiration of completed applications. Prior to the expiration of an application the City must send the applicant a certified letter requesting needed information or revisions within 30 days. In the present case the City did not send the applicant any such letter and therefore the project remains vested under the 2006 Critical Areas Ordinance. No deviations are requested from the requirements of said ordinance.
13. Section 19.08.020(C) GHMC provides that the development agreement must specify certain items. Findings on each are hereby made as follows:
- A. The development agreement defines and details the project components in Exhibit B. Said exhibit shows seven phases and provides site plans and proposed improvements for each such phase.
  - B. The development agreement does not provide a specific amount of impact fees, but Section 3(G) does not vest the project to impact fees and thus the applicant will pay the impact fees in effect on the date of an application.

Furthermore, Section 12 further addresses "Existing land use fees and impact fees".

- C. Subsection (C)(3) requires the agreement to contain mitigation measures required pursuant to SEPA review. The recitals note that the City Environmental Official issued a Mitigated Determination of Nonsignificance (MDNS) and required one mitigating measure, namely an archeological survey prior to ground disturbing activities.
- D. Subsection (C)(4) requires the agreement to set forth design standards, and Section (8) of the development agreement sets forth permitted uses and development standards. Subsection (C)(6) requires the agreement to address parks and common open space preservation and the agreement does so in Section 13D.
- E. Subsection (C)(7)(8) requires the agreement to set forth phasing and a build out or vesting period for the project. As previously found the development agreement does so.
- F. Section 19.08.020(D) GHMC requires the agreement to reserve authority for the City to impose new or different regulations as required by a serious threat to public health and safety. The agreement makes such provision in Section 22.


**CONCLUSIONS:**

- 1. The Hearing Examiner has jurisdiction to consider and decide the issues presented by this request.
- 2. The proposed development agreement satisfies all applicable criteria set forth in GHMC 19.08.020 and therefore should be approved by the Gig Harbor City Council.

**RECOMMENDATION:**

It is hereby recommended that the Gig Harbor City Council approve the "Development Agreement Between The City of Gig Harbor and Chapel Hill Presbyterian Church For The West Side Enhancements, Conditional Use Permit and Site Development".

RECOMMENDED this 16th day of June, 2011.

  
\_\_\_\_\_  
**STEPHEN K. CAUSSEAU, JR.**  
Hearing Examiner

TRANSMITTED this 16<sup>th</sup> day of June, 2011, to the following:

**OWNERS:** Chapel Hill Presbyterian Church/Presbytery of Olympia  
P.O. Box 829  
Gig Harbor, WA 98335

**APPLICANT:** Chapel Hill Presbyterian Church  
P.O. Box 829  
Gig Harbor, WA 98335

**OTHERS:**

Eva Hill  
2020 Squak Mountain Loop S.W.  
Issaquah, WA

Stephanie Ward  
7887 Beardsley Avenue N.W.  
Gig Harbor, WA 98335

Craig Baldwin  
217 S.W. Wilkins Drive  
Port Orchard, WA

Michelle Karlinsey  
7969 Beardsley Avenue  
Gig Harbor, WA 98335

Roy and Betsy Phillips  
7697 Beardsley Avenue N.W.  
Gig Harbor, WA 98335

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH CHAPEL HILL PRESBYTERIAN CHURCH.**

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WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located south of Rosedale Street NW and west of Skansie Avenue, Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, the Hearing Examiner held a public hearing on June 2, 2011 on

the underlying permits associated with the proposed development agreement and has forwarded a recommendation on the development agreement; and

WHEREAS, on July 25, 2011, the City Council held its public hearing on the development agreement during a regular public meeting; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with Chapel Hill Presbyterian Church.

Section 2. The City Council hereby directs the Planning Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 25<sup>th</sup> day of July, 2011.

APPROVED:

\_\_\_\_\_  
MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

BY: \_\_\_\_\_  
ANGELA S. BELBECK

FILED WITH THE CITY CLERK:  
PASSED BY THE CITY COUNCIL:  
RESOLUTION NO.

**DEVELOPMENT AGREEMENT  
BETWEEN THE CITY OF GIG HARBOR AND  
CHAPEL HILL PRESBYTERIAN CHURCH FOR  
THE WEST SIDE ENHANCEMENTS,  
CONDITIONAL USE PERMIT AND SITE DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and Chapel Hill Presbyterian Church, a non-profit corporation organized under the laws of the State of Washington, hereinafter the "Developer" or "CHPC."

**RECITALS**

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, this Development Agreement relates to the development known as Chapel Hill Presbyterian Church – West Side Enhancements, which is located at: 7700 Skansie Ave., Gig Harbor, WA (hereinafter the "Property"); Application No. MSPA 06-1219, DRB 06-1220, CUP 06-1220, SEPA 06-1223; and

WHEREAS, the City issued a Mitigated Determination of Non-significance (MDNS) for the proposed development applications referenced above on August 20, 2008, requiring an archeological survey prior to approval of any ground disturbing activity on the site; and

WHEREAS, the Hearing Examiner will consider the above applications after approval of this Development Agreement; and

WHEREAS, after a public hearing on July 25, 2011 by Resolution No. \_\_\_\_, the City Council authorized the Mayor to sign this Development Agreement with the Developer;

Now, therefore, the parties hereto agree as follows:

## **General Provisions**

**Section 1. The Project.** The Project is the development and use of the Property contemplated in this Agreement including a new 122 space parking lot, prayer garden, walking paths, multi-purpose field, pavilion structure and 54 space parking lot adjacent to the pavilion.

**Section 2. The Property.** The Property consists of 34.17 acres and is legally described in Exhibit "A", attached hereto and incorporated herein by this reference.

**Section 3. Definitions.** As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

A. "Adopting Resolution" means the resolution which approves this Development Agreement, as required by RCW 36.70B.200.

B. "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

C. "Design Guidelines" means the Gig Harbor Design Manual, as adopted by the City.

D. "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3).

E. "Director" means the City's Planning Director .

F. "Effective Date" means the effective date of the Adopting Resolution.

G. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include building codes, clearing and grading codes, stormwater management codes, stormwater management and site development manuals, regulations relating to taxes and impact fees.



H. "Landowner" is the party who has acquired any portion of the Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

**Section 4. Exhibits.** Exhibits to this Agreement are attached hereto and incorporated herein, including the following:

Exhibit A – legal description of the Property.

Exhibit B – Map showing Development Phases and explanation of phases

**Section 5. Project is a Private Undertaking.** It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

**Section 6. Term of Agreement.**

A. This Agreement shall commence upon the effective date of the Adopting Resolution, and shall continue in force for a period of seven years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

B. Extensions are authorized in this Agreement. The Developer may request the extension at least 60 days prior to expiration of the current agreement. All requests for extensions shall be reviewed by the city council.

**Section 7. Vested Rights of Developer.** During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this Agreement, including the exhibits hereto, or as expressly consented thereto by the Developer.

**Section 8. Permitted Uses and Development Standards.** The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

**Section 9. Minor Modifications.** Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

**Section 10. Further Discretionary Actions.** Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

**Section 11. Financing of Public Facilities.** [Intentionally omitted.]

**Section 12. Existing Land Use Fees and Impact Fees.**

A. Land use fees adopted by the City by ordinance as of the Effective Date may be increased by the City from time to time, and applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

B. All impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code.

**Section 13. Phasing of Development.**

A. The parties acknowledge that the most efficient and economic development of the Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents.

B. The improvements associated with the Project may be constructed in phases in accordance with the terms of this Agreement and as shown on "Exhibit B". Because the phases are not dependent upon one another, each phase may be constructed in the order determined by the Developer.

C. A Wetland and Wetland Buffer Notice shall be recorded on the title to provide notice in the public record of the presence of wetlands prior to the

approval of the civil or building permits for the first phase proposed to be constructed.

D. All open space will be maintained in a natural condition until approval is given for the referenced phase of improvements. Clearing will be limited to only the phase that is being built and landscaping for that phase must be implemented according to approved plans.

**Section 14. Dedication of Public Lands.** [Intentionally omitted.]

**Section 15. Default.**

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the Gig Harbor Municipal Code, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

**Section 16. Annual Review.** The City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

**Section 17. Termination.**

A. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals, or if the Hearing Examiner denies the Project.

B. This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence and the lot or parcel upon which such residence is located, when it has been approved by the City for occupancy.

**Section 18. Effect upon Termination on Developer Obligations.** Termination of this Agreement as to the Developer of the Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

**Section 19. Effects upon Termination on City.** Upon any termination of this Agreement as to the Developer of the Property or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

**Section 20. Assignment and Assumption.** The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property at least 30 days in advance of such action.

**Section 21. Covenants Running with the Land.** The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer

contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

**Section 22. Amendment to Agreement; Effect of Agreement on Future Actions.** This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property after termination of this Agreement.

**Section 23. Notices.** Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the following addresses:

If to the Developer:

Chapel Hill Presbyterian Church  
P.O. Box 829  
Gig Harbor, WA 98335

If to the City:

City of Gig Harbor  
Attn: City Administrator  
3510 Grandview Street  
Gig Harbor, WA 98335

Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

**Section 24. Reimbursement for Agreement Expenses of the City.** Developer agrees to reimburse the City for actual expenses incurred over and above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff, legal and consultant costs not otherwise included within application fees. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer. In the event Developer fails to pay the fees within the 30-day period, the City may declare the Developer in default and terminate this Agreement after 30 days written notice if the default is not timely cured.

**Section 25. Applicable Law and Attorneys' Fees.** This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

**Section 26. Third Party Legal Challenge.** In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

**Section 27. Specific Performance.** The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

**Section 28. Severability.** If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Adopting Resolution, such invalidity shall not affect the validity of the remainder of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

CITY OF GIG HARBOR

By: Diana L. Wimber  
Its: Chair of Session  
Date: July 13, 2011  
Diana L. Wimber

By: \_\_\_\_\_  
Its: Mayor  
Date: \_\_\_\_\_

ATTEST:

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

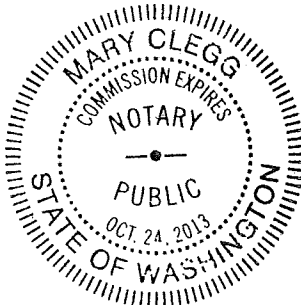
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF Pierce         )

I certify that I know or have satisfactory evidence that Diana Wimber is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Chair of Session of Chapel Hill Presbyterian Church, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 7-13-11



Mary K Clegg  
Printed: Mary K Clegg  
NOTARY PUBLIC in and for Washington  
Residing at: 7917 36th St NW - Gig Harbor, WA  
My appointment expires: OCT. 24, 2013

STATE OF WASHINGTON        )  
  ) ss.  
COUNTY OF PIERCE         )

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Printed: \_\_\_\_\_  
NOTARY PUBLIC in and for Washington  
Residing at: \_\_\_\_\_  
My appointment expires: \_\_\_\_\_



**EXHIBIT A**

**LEGAL DESCRIPTION**

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH,  
RANGE 2 EAST, OF THE W.M.;

EXCEPT THE NORTH HALF OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST  
QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

ALSO EXCEPT ROSEDALE STREET NW ON THE NORTH AND 46TH AVENUE NW ON THE EAST;

(BEING REVISED PARCEL A OF BOUNDARY LINE ADJUSTMENT NO. 9710160287.);

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

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**EXHIBIT B**

**DEVELOPMENT AGREEMENT  
BY AND BETWEEN THE CITY OF GIG HARBOR  
AND CHAPEL HILL PRESBYTERIAN CHURCH, FOR THE  
WEST SIDE ENHANCEMENTS,  
CONDITIONAL USE PERMIT AND SITE DEVELOPMENT**

**PROJECT PHASES**

The parties acknowledge that the most efficient and economic development of the Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents.

The improvements associated with the Project may be constructed in phases in accordance with the terms of the Developer Agreement and as depicted herein. Because the phases are not dependent upon one another, each phase may be constructed in the order determined by the Developer.

Construction of each phase must be done according to the approved plans, including Civil plans, Landscape plans, building plans that are effective at the time of construction.

- A. Prayer Garden**
- B. Prayer Garden Parking Area - near sanctuary**
- C. Trail around wetlands**
- D. Northwest Parking area**
- E. Multi Purpose Field**
- F. Multi Purpose Parking area**
- G. Pavilion**
- H. North Creek Street Exit**

**Phase A: Prayer Garden**

Street Improvements.

Match with existing concrete sidewalks  
Install sidewalk crossings as shown on plans

Potable Water and Fire Flow Facilities

N/A

Sewer Facilities.

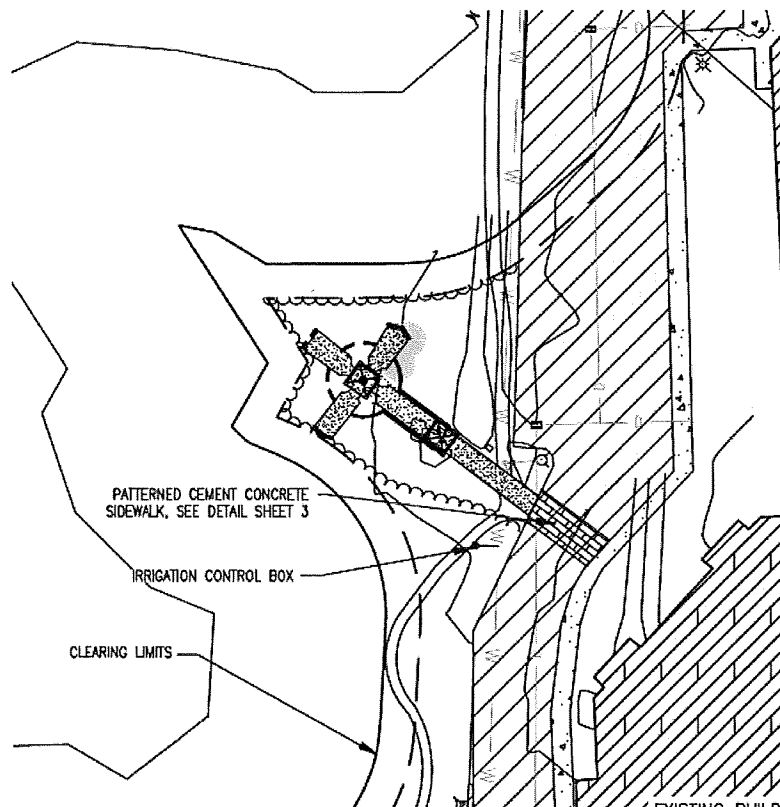
N/A

Utilities.

Water line extended for landscaping, Power connection for lighting

Parks and Open Space.

Clearing only as shown on approved plans. Landscape according to approved plans.



**Phase B: Prayer Garden Parking Area - near sanctuary**

Civil plans to be submitted and approved prior to start of construction

Street Improvements.

Tie into existing storm drainage on site .

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

N/A

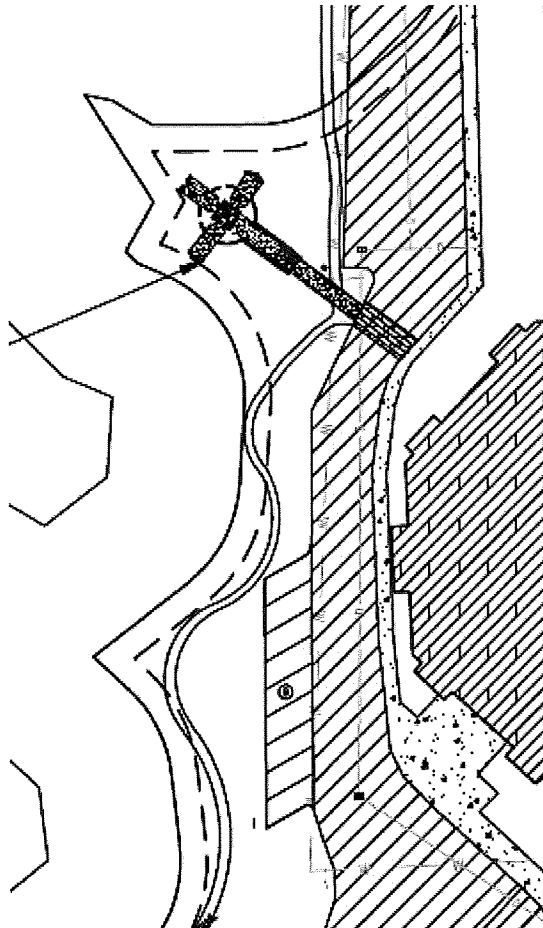
Utilities.

Extend on site power as necessary and install approved lighting

Parks and Open Space.

Arborist to submit report prior to clearing. Landscaping installed per plan .

See tree retention plan for clearing.



**Phase C: Trail around wetlands**

Landscape plan set approved

Street Improvements.

Match with existing concrete sidewalks

Potable Water and Fire Flow Facilities

N/A

Sewer Facilities.

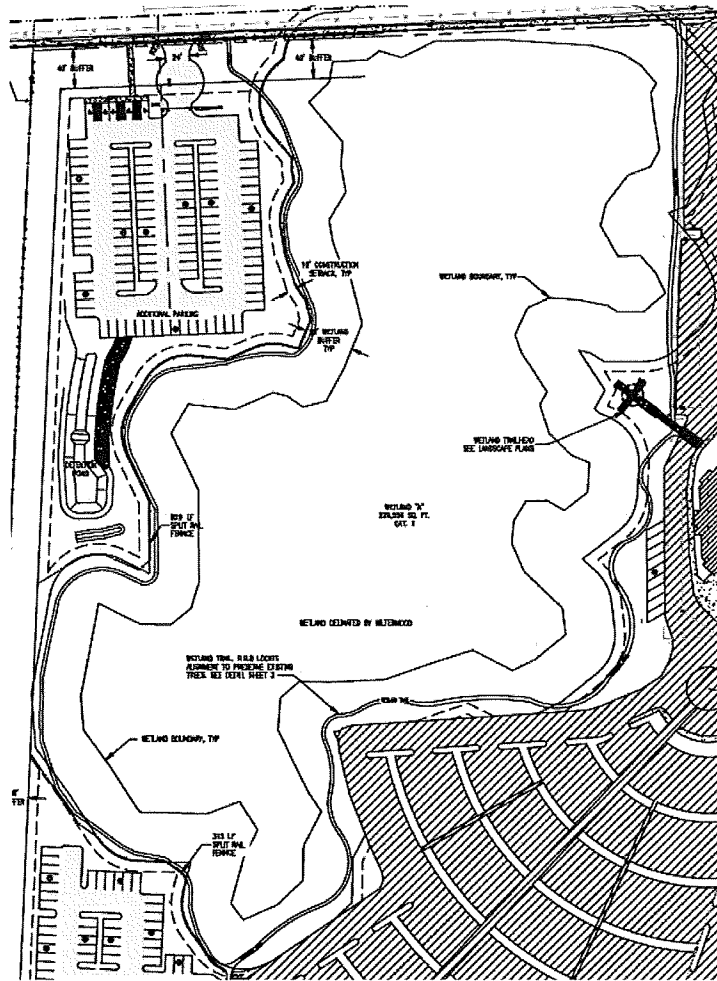
N/A

Utilities.

Water line extended for landscaping, Install power and lighting per approved plans

Parks and Open Space.

Clearing only as shown on approved plans. Landscape according to approved plan



**Phase D: Northwest Parking area**

Civil plans to be submitted and approved prior to construction  
Street Improvements.

Build on site drainage improvements per plan.

Construct all Fire and Emergency Vehicle access. Tie into existing  
Rosedale street.

Gate according to plans

Potable Water and Fire Flow Facilities.

One water CRC needed.

Construct water and Fire Flow as required by building permit

Sewer Facilities.

N/A

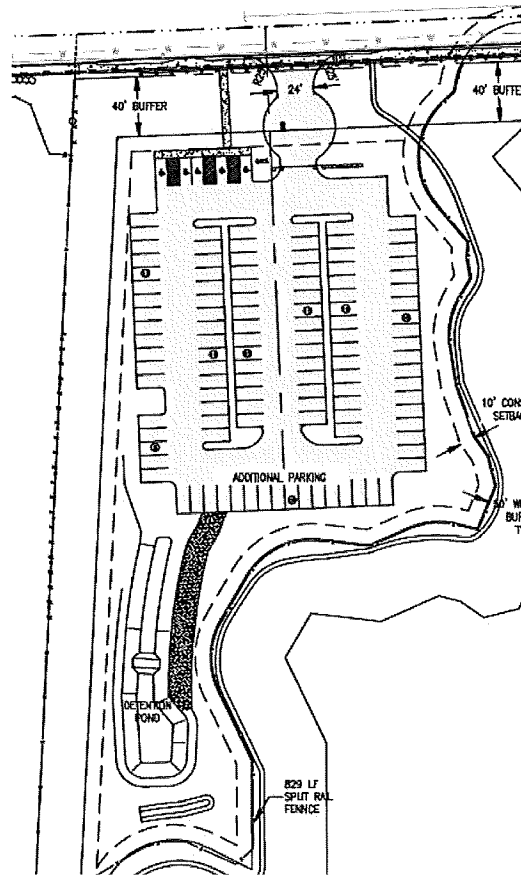
Utilities.

Construct utilities – power, lighting and irrigation water. Onsite connections  
needed.

Parks and Open Space.

Landscape per approved plans. Install construction fencing and wetland  
fencing around wetland A, prior to clearing.

Clear only areas indicated on plans as necessary for this phase.



**Phase E Multi Purpose Field**

Civil plans to be submitted and approved prior to start of construction.

Street Improvements.

N/A

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

N/A

Utilities.

Extend on site power, lighting and irrigation water per approvals

Parks and Open Space.

Clear only area needed for construction. Construct Wetland B buffer and construction fencing. See tree retention plan per landscape plans.

**Phase F: Multi Purpose Parking area**

Civil and building permit plans to be submitted and approved prior to start of construction.

Street Improvements.

Build on site drainage improvements per plan.

Construct all Fire and Emergency Vehicle access. Tie into existing parking lot.

Construct wetland buffer fencing – Wetland B and portions of wetland A as needed.

Potable Water and Fire Flow Facilities.

Install as required per approved building permit plans

Sewer Facilities.

N/A

Utilities.

Construct utilities – power, lighting and irrigation water per approved plans

Parks and Open Space.

Landscape per approved plans

**Phase G: Pavilion**

Civil and building permit plans to be submitted and approved prior to start of construction.

Street Improvements.

Build on site drainage improvements as required per approved civil plans.

Construct all Fire and Emergency Vehicle access. Tie into existing parking lot.

Potable Water and Fire Flow Facilities.

Apply for water connection ( one CRC) and one connect per building plans



Construct Water and Fire Flow as required by building permit  
Sewer Facilities.

Apply for Sewer connection (Sewer CRC) per approved civil plans.  
Extend and construct sewer connection. Tie into main line at street

Utilities.

Construct utilities – power, lighting and irrigation water per approved plans

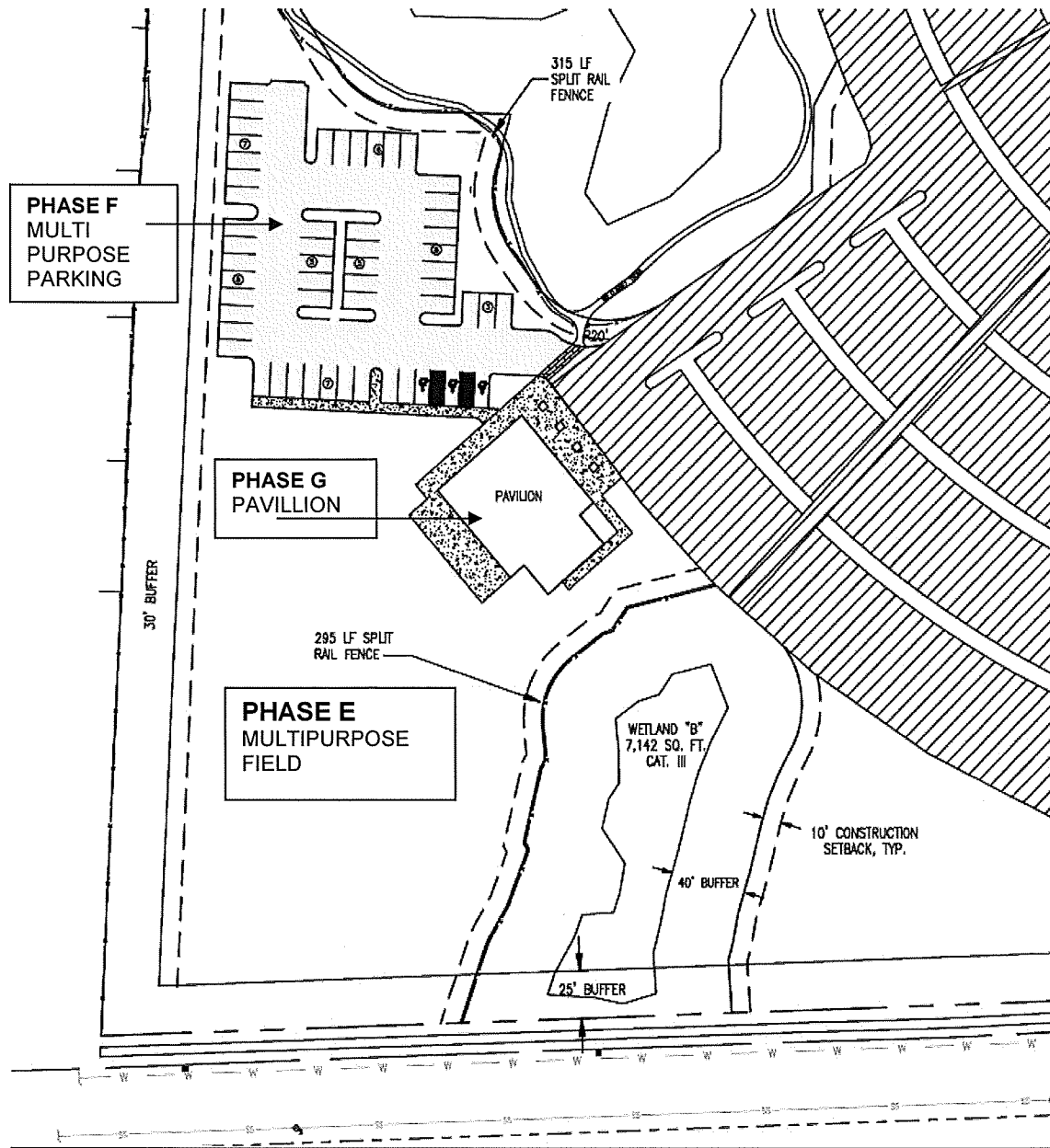
Parks and Open Space.

Install landscaping per approved Landscape plans

Clearing only as needed for this phase including drainage facility

Construct Wetland B buffer and construction fencing.

ILLUSTRATION FOR PHASES E, F, G:



**Phase H: North Creek Street exit**

Civil plans to be submitted for approval prior to start of construction.

Street Improvements.

Tie into existing storm drainage on site and street .

Construct and tie into existing North Creek street to match elevations.

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

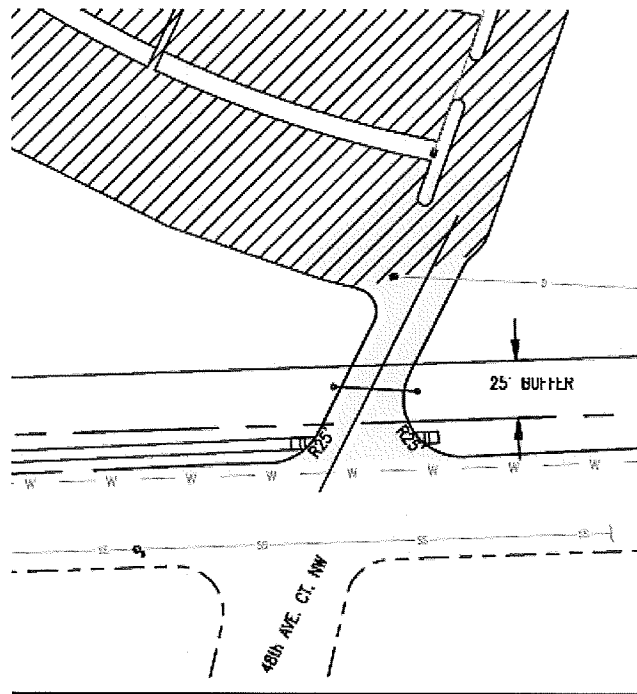
N/A

Utilities.

Extend on site power and lighting if required per approved plans

Parks and Open Space.

Clear only area needed for construction. No landscaping required – see tree retention plan per landscape plans.



July 21, 2011

Mayor & City Council  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, WA 98335

Dear Mayor Hunter and Members of the City Council:

As residents of The Heights neighborhood, we respectfully request that you deny Chapel Hill's request for a seven-year development agreement pertaining to their proposed (but not yet approved) land use applications. We ask that you deny the development agreement for the following reasons:

- Isolated Parking Lot Abutting Residential. Chapel Hill's proposal to construct an isolated, stand-alone parking lot with 20-foot light poles violates the intent of the City's Design Manual. See attached June 1, 2011 letter to the Hearing Examiner. This parking lot will not have a building associated with it as the Design Manual requires; and it will be an attractive public nuisance, especially given its close proximity to two high schools.
- 12 Years, Not 7 Years. While the proposed development agreement is for seven years, you should view it more in terms of 12 years. Chapel Hill submitted their land use application five years ago, just one month before the 2006 Critical Areas Ordinance was adopted. Therefore, through the proposed development agreement, Chapel Hill is actually asking for 12 years of vesting (the five years the application has languished since 2006 plus the seven additional years requested in the development agreement).

We believe it is both unfair and irresponsible to allow Chapel Hill to vest under pre-2006 Critical Areas rules for twelve years. The Critical Areas Ordinance is a significant City policy that was adopted for the benefit of the environment and the community. Chapel Hill knows that they cannot build their proposed parking lot if they had to follow today's rules that have been in place for the past five years.

We are also questioning whether Chapel Hill's land use applications are still valid—changes to the application have occurred over the last five years and may warrant a new application under today's rules and regulations.

- Little or No Consideration for the City. We have not seen the proposed development agreement, but we respectfully ask what is being offered to the City by Chapel Hill in return for 12 years of vesting under obsolete rules? (We have suggestions later in this letter)
- "Need More Time for Fund Raising" Is Not A Good Reason. We're hearing that Chapel Hill needs a total of 12 years of vesting because of the economy and the resulting additional time needed to raise the funds necessary to construct the proposed site improvements. Since when has a developer's lack of financing been a reason for the City

*J. Michael* 7824 SCHOOLHOUSE AVE  
*Donna J. Michael* 7824 Schoolhouse Ave.

Sincerely,

*Donna J. Michael* 7989 Beardsley AVE NW  
Gig Harbor, WA 98335  
Neighbors in the The Heights Subdivision

*Brian Ward* - 7887 Beardsley  
*Stephanie Wall* 7887 Beardsley  
*Stephanie Dwy.* 7712 Beardsley  
*Jennifer Cantan* - 7601 Beardsley

*Jackie Roberts* - 7989 Beardsley

*Chad Quiron*  
7404 Schoolhouse A.

*Carolyn W. Jackson* 7956 Beardsley Ave.  
*T. Thomas W. Putnam* 5050 Roby St. NW.  
*Dianna Putnam* 5050 Roby St., NW

*Blayne* 5134 Roby St Gig Harbor (Brent Taylor)

*Sharon R. Taylor* 5134 Roby St. Gig Harbor WA

*Steven E. Bay* 7848 Schoolhouse Ave NW  
STEVEN E. BAY Gig Harbor, WA 98335

*Donn A. Reimund* 7888 Schoolhouse Ave  
Donn A. Reimund Gig Harbor WA 98335

*Amy L. Small* 5155 Roby St NW GH 98335  
Amy L. Small

*James Dusool* 7704 Schoolhouse Ave NW GH 98335

*William R. Smith* 7601 BEARDSLEY AVE GH 98335  
William R. Smith

*Liz & Katrina* 7777 BEARDSLEY AVE GH 98335  
Liz & Katrina

*Wendy Pipes* 7868 Beardsley Ave 98335  
*Mark Pipes* →

0 ~~Marta R. Britt~~ 7990 Schoolhouse Ave

TIMOTHY HOLMETS 7989 SCHOOLHOUSE AVE

Daniel Bonales 7855 Beardsley Ave

Laureen Holt 7796 Beardsley Ave NW

Laureen Holt 253-519-6353

Dejen 7789 Beardsley Ave NW

James Lee 253-719-5433

~~James Lee~~

Kevin O'Brien 253-223-1474

Ellen Brouillet 7824 Beardsley Ave NW

Paul Brouillet 253-851-1006

Joe Brouillet 7797 BEARDSLEY AVE  
GIG HARBOR WA

Michelle Karlusiy 7969 Beardsley ave  
Sig Harbor, WA 98335

Sally Maklinsky 7957 Schoolhouse Ave NW  
Sig Harbor, WA 98335

Elizabeth Phillips 7697 Beardsley Ave NW  
Sig Harbor, WA 98335

Brian and Stephanie Ward  
7887 Beardsley Avenue Northwest  
Gig Harbor, Washington 98335

June 1, 2011

Kristin Moerler, Associate Planner  
City of Gig Harbor  
3510 Grandview Street  
Gig Harbor, Washington 98335

Dear Kristin,

Thank you for meeting today with my wife and explaining Chapel Hill Church's conditional use permit request and site plan review process. My prior letter, dated September 17, 2008, cited our request that the permit be denied. Our position has not changed. The isolated and dislocated proposed parking lot in the northwest corner of the church's property remains objectionable for a number of reasons.

First, there is no necessity for the 122 space lot planned within a mere 30 feet of the property line. Adequate parking spaces both on the church grounds and in immediately surrounding businesses (Centurylink and the public schools on Rosedale Street) provide a myriad of options both on Sunday and throughout the weekday evenings. In the Traffic Impact Analysis Final Report dated July 2003, item 5 in the conclusions section stated "no additional parking facilities will be needed". At that time, we made no objections to the church's eastside expansion because the city planners assured us our neighborhood would not be impacted. Nothing has changed. The church was allowed to expand based on the supposition that no additional parking spaces would be needed.

Second, there are environmental considerations which make the northwest corner parking lot ill-advised. The topography slopes downward from our neighborhood's backyard fences and toward a substantial wetland area immediately to the south. Several trees have come down due to the unstable ground within and just outside our property's southeast corner. The runoff from the proposed parking lot would only add to the problem and further destabilize the area. Additionally, the wetland appears to have markedly grown in area since the last wetland study. We recommend an updated study of the wetland issues. Since there has been no development of the area by the church since 2006, the city should hold the church's site plan to the current regulations regarding buffers and setbacks. A 100-foot wetland buffer (the current requirement) should be enforced.

Third, an unmonitored and totally isolated parking lot (whether gated or not) would invite unauthorized use. In the past few years we have had teenagers walking the fence line and smoking tobacco and other substances during school hours. A parking lot would facilitate similar trespasses with the added prospect of vehicle prowls, graffiti and burglaries to adjacent residences since there would be easy access to backyard fences.

A final objection concerns quality of life issues for our neighborhood. When the parking lot is in use, the related sounds of over one hundred vehicles starting and stopping, doors slamming and

occupants conversing to and from church would negatively impact the quality of life of the residential property owners. Air pollution from the exhaust of idling vehicles would be a health concern and nuisance. Additionally, the planned retention pond would hold water and increase the propagation of mosquitoes in the current wetland area. This would limit our opportunities to enjoy our backyard activities. Currently, the wetland recedes during the relatively drier summer months. The church does not adequately maintain or repair the retention pond on the south end of the property. Stagnant water routinely flows over the city-maintained sidewalk and onto North Creek Lane.

The proposed 122 space parking lot and associated retention pond are clearly in violation of GHMC 17.64.040 (B) in that they would "be detrimental to the public health, safety, comfort, convenience, and general welfare" and would "adversely affect the established character of the surrounding neighborhood" (our neighborhood). We advocate against the approval of the conditional use permit relative to the 122 space parking lot and retention pond.

Best regards,

A handwritten signature in cursive script, appearing to read "B. Ward".

Brian Ward

A handwritten signature in cursive script, appearing to read "Stephanie Ward".

Stephanie Ward



June 1, 2011

Attn: Gig Harbor Hearing Examiner  
3510 Grandview Street  
Gig Harbor, WA 98335

Greetings:

As explained in this letter, I respectfully request that you deny approval of Chapel Hill's land use applications PL-SPR-06-0013, PL-CUP-06-0009, PL-DEV-10-0003, and PL-SEPA-06-0025.

Thank you for the opportunity to comment on the Chapel Hill land use applications. Chapel Hill is an asset to the community, and we appreciate all of the good this organization accomplishes. However, as next-door neighbors to Chapel Hill's proposed site development, we believe Chapel Hill's land use applications should be denied for the following reasons:

First, we understand that Chapel Hill's land use applications were submitted just one month before the City's changes to its critical areas ordinance went into effect back in 2006. Presumably, Chapel Hill timed its application submittal so that it could vest under less restrictive wetland buffer requirements—50 feet under the old code vs. 100 feet under current code. We respectfully ask you to consider whether Chapel Hill's land use applications can indeed vest under outdated regulations. The following points support this conclusion:

1. The land use applications are five years old, as is the critical areas ordinance which Chapel Hill is trying to evade. It is our understanding that fault for this extraordinarily long languishing period rests primarily with the property owner. Is it really the City's intent for neglected land use applications to vest under outdated rules indefinitely? An approved site plan expires after only three years—it is neither fair nor logical that an unapproved, languishing application vests indefinitely while an approved application expires relatively quickly.
2. Wetlands change over time. The last wetland delineation and categorization for the proposed site plan was completed in 2006—almost five years ago, and we believe basing your decision on an out-of-date wetland study would be inappropriate. Because of the length of time that has elapsed, we recommend that Chapel Hill conduct a new wetland delineation and categorization study and then submit new land use applications under current rules and regulations. The changes resulting from a current study may likely be substantial enough to require an entirely new land use application (and therefore require compliance with existing regulations).

Wetlands are dynamic ecosystems that can fluctuate and change in size and type relatively quickly. We actually have reason to believe that at least one of Chapel Hill's wetland ponds have expanded recently—evidence of this growth can be seen as water from one of the ponds routinely spills over onto the North Creek Lane sidewalk and street.

Second, we do not believe that an isolated parking lot with no associated use in the proximate vicinity meets the intent of the City's standards. From reading the City's Design Manual, asphalt parking areas should not be the dominant or primary feature of any site. Section 17.99.330 of the Design Manual states that, "Parking lots and parking structures should not visually dominate Gig Harbor's urban setting." The proposed isolated parking lot's frontage and access is on Rosedale Street, a main thoroughfare.

Furthermore, paragraph E of that same section reads as follows:

**E. Minimize parking in front of buildings (IBE).**

No more than 50 percent of required parking may be located forward of the front facade of a building. In this context, the front facade of the building shall be any side facing or abutting the street providing primary access to the site. If a site has frontage on more than one street providing primary access, it shall be the longest of its street frontages.

From reading this paragraph, we believe that parking areas are intended to be associated with and screened by buildings, not isolated and distant from buildings—especially parking lots that front a main arterial such as Rosedale Street. With no associated building in the vicinity and with the lot's primary access and frontage on Rosedale Street, 100% of the parking should be considered "forward of the front," and therefore in violation of the 50% maximum in paragraph E above. The proposed plan does show some vegetation screening along Rosedale. However, no amount of frontage screening should exempt the parking lot from the 50% rule.

We are also concerned with the increased security risks that placing an un-supervised, isolated parking lot far from the church grounds and close to the neighboring high school will invite. Though we understand that the church is proposing a gate to keep out automobile traffic, we hardly think such a gate would deter any pedestrians. We have witnessed juveniles, presumably from the high school, using the property as a hangout and thoroughfare and are worried that removing the existing vegetation will make for even easier access to loitering, smoking, graffiti, and other criminal activity. We are concerned, furthermore, that those activities will spill over into the residential area more easily. Therefore, we believe that creating such an attractive nuisance is not in keeping with the City's statutory intent to protect residential neighborhoods from negative externalities of non-residential uses.

For all of the reasons listed above, we respectfully request that you deny approval of Chapel Hill's site plan application and conditional use permit application.

**Requested Conditions if Approved**

Should the plans for the parking lot section be approved, we request changes to the application to mitigate its detrimental effects on our neighborhood. We first want to point out our gratitude for Chapel Hill's flexibility and willingness to preserve the large, old Maple tree on the northwest corner of the site. Preservation of this magnificent tree will help with screening and will also

assist in maintaining the character of the neighborhood; we request that maintaining this tree, including sufficient clearance around the tree, remain a requirement should the application be approved.

#### Parking Lot Lighting

In addition, we request that Chapel Hill change its parking lot lighting proposal. Currently, Chapel Hill is proposing 20-foot-tall parking lot lights, the maximum height allowed for parking lot lighting. The Outdoor Lighting Section 17.99.350 of the Design Manual states that “protection of neighborhoods” is an important goal of the City’s outdoor lighting design standards. Please refer to paragraph A, “Keep light sources hidden from public view,” and paragraph D, “Avoid Excessive Light Throw.” In keeping with these standards, 20-foot-tall light poles are not appropriate next to a residential neighborhood. We request that the height of the light poles for the proposed parking lot be limited to 12 feet tall.

In addition, we request that the permit, if approved, require “noiseless” light bulbs in the parking lot lights. Sodium vapor and other bulbs produce a loud buzzing sound that is very unpleasant.

#### Buffer

We understand that the proposed site plan includes a 30-foot vegetated buffer between the parking lot and the residential neighborhood, and we request that this buffer remain a condition if the permit is approved. In addition, we request that a dense row of non-deciduous fir trees be planted along the residential property line and that the parking lot not be permitted to be constructed until the trees are at least 15 feet tall or the last year of the permit life, whichever is sooner.

Thank you for reviewing and considering our concerns. Attached to this letter is my September 3, 2008 letter to Planning Director Tom Dolan. With the exception of the Maple tree (which is now proposed to remain), this letter is still relevant and needs to be included in your consideration and part of the official record.

We also understand that in conjunction with its site plan and CUP application, Chapel Hill has requested a development agreement with the City. I have been told that this DA will be considered separately from the Hearing Examiner process, and I therefore reserve my right to make additional requests and comments on project phasing and other issues pertaining to the DA at a later date.

Sincerely,

Michelle Karlinsey  
7969 Beardsley Avenue  
Gig Harbor, WA 98335  
253-853-2846



**Business of the City Council  
City of Gig Harbor, WA**

**Subject:** Public Hearing and Ordinance - Medical Cannabis Interim Regulations

**Proposed Council Action:** Move to adopt on First Reading Ordinance No. 1222 making additional findings of fact in support of Medical Cannabis Interim Regulations established by Ordinance No. 1218 and amending the same.

**Dept. Origin:** Administration

**Prepared by:** Angela Belbeck

**For Agenda of:** July 25, 2011

**Exhibits:** Ordinance; Studies and data

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

**Approved by Department Head:**

Initial & Date

*GH by mail*

*e-mail*

<b>Expenditure Required</b>	n/a	<b>Amount Budgeted</b>	n/a	<b>Appropriation Required</b>	n/a
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**INFORMATION/BACKGROUND**

On July 11, 2011, the City Council adopted Ordinance No. 1218 establishing interim zoning regulations for "collective gardens" which will become legal under state law effective July 22, 2011, subject to conditions set forth in state law. As required by law, Ordinance No. 1218 set a public hearing date for July 25, 2011 so that the City Council could take public testimony relating to the interim zoning regulations.

After taking public testimony and close of the public hearing, the City Council may make additional findings to be incorporated into the proposed ordinance attached, or adopt it as attached. The ordinance may be adopted at first reading pursuant to GHMC 1.08.020B upon the affirmative vote of a majority plus one of the whole membership of the council (5 votes).

**FISCAL CONSIDERATION**

None.

**BOARD OR COMMITTEE RECOMMENDATION**

None.

**RECOMMENDATION/MOTION**

Move to adopt on First Reading Ordinance No. 1222 making additional findings of fact in support of Medical Cannabis Interim Regulations established by Ordinance No. 1218 and amending Ordinance No. 1218.

ORDINANCE NO. 1222

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING; MAKING ADDITIONAL FINDINGS IN SUPPORT OF THE ADOPTION OF INTERIM ZONING REGULATIONS RELATING TO MEDICAL CANNABIS COLLECTIVE GARDENS UNDER ORDINANCE NO. 1218; AMENDING SECTION 3(B) OF ORDINANCE NO. 1218 TO EXPAND THE DEFINITION OF COLLECTIVE GARDEN; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE

---

WHEREAS, on July 11, 2011, the City Council adopted Ordinance No. 1218, establishing immediate interim regulations relating to medical cannabis collective gardens; and

WHEREAS, pursuant to RCW 36.70A.390 and RCW 35A.63.220, a city may adopt interim zoning regulations as long as the city council holds a public hearing on the interim zoning regulations within 60 days of its adoption; and

WHEREAS, the City Council held the public hearing on the interim zoning regulations adopted under Ordinance No. 1218 on July 25, 2011; and

WHEREAS, after considering input from City staff and the public testimony received at the public hearing, the City Council has determined that the interim regulations should be modified; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Additional Findings. In support of the interim zoning regulations established by Ordinance No. 1218, and in addition to the findings previously made as set forth in Ordinance No. 1218, the Gig Harbor City Council makes the following additional findings:

1. The City Council has considered the studies and data on file in the City Clerk's office relating to the land use and other secondary impacts associated with medical marijuana and further takes notice of and specifically relies upon the data and studies.

2. The City Council has determined that revising the definition of "medical marijuana or cannabis collective garden" and "collective garden" will encompass all forms of collective gardens that may be authorized under chapter 69.51A RCW.

3. Other: \_\_\_\_\_

---

---

Section 2. Amendment of Ordinance No. 1218

1. Section 3(B) of Ordinance No. 1218 is hereby amended to read as follows:

B. "Medical cannabis collective garden" or "collective garden" means any place, area or garden where qualifying patients engage in the production, processing, and delivery of cannabis for medical use as set forth in chapter 69.51A RCW and subject to the limitations therein and in this ordinance.

2. A new paragraph is added to Section 3 of Ordinance No. 1218 to read as follows:

In addition to the above definitions and as necessary to interpret or apply this ordinance, the City hereby adopts those definitions set forth in chapter 69.51A RCW, as the same now exist or as it may hereafter be amended. In the event chapter 69.51A RCW is amended to include definitions for any of the terms set forth above, the definitions set forth above shall be deemed automatically amended to conform to such amendments.

Section 3. Transmittal to Department. Pursuant to RCW 36.70A.106, this ordinance shall be transmitted to the Washington State Department of Commerce.

Section 4. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 5. Effective Date. This ordinance shall take effect and be in full force and effect five days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this 25th day of July, 2011.

CITY OF GIG HARBOR

\_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Molly M. Towslee, City Clerk

APPROVED AS TO FORM:  
Office of the City Attorney

\_\_\_\_\_  
Angela S. Belbeck

FILED WITH THE CITY CLERK: 07/21/11  
PASSED BY THE CITY COUNCIL: 07/25/11  
PUBLISHED: 08/03/11  
EFFECTIVE DATE: 08/08/11  
ORDINANCE NO: 1122

**STUDIES AND OTHER DATA AND INFORMATION REGARDING  
LAND USE IMPACTS RELATING TO MEDICAL MARIJUANA  
AND OTHER MARIJUANA GROW OPERATIONS**

**Attachments:**

1. "White Paper on Marijuana Dispensaries," by California Police Chiefs Association's Task Force on Marijuana Dispensaries, 2009.
2. PowerPoint Presentation: "Summit on the Impact of California's Medical Marijuana Laws," Commander Michael Regan, El Cerrito, California, April 23, 2009.
3. PowerPoint Presentation: "Marijuana Symposium: Secondary Effects of Medical Marijuana," Commander Michael Regan, El Cerrito, California, September 20, 2007.
4. "Cannabis Clubs in the DEA San Francisco Field Division: A report of the Marijuana Dispensaries, complaints, and Associated Neighborhood Crime," Javier F. Pena, Special Agent in Charge, DEA San Francisco Field Division, March 1, 2007 [portions only].
5. "Signs your Neighbor is Running a Marijuana Grow Operation," Drug Enforcement Administration, Seattle Field Division, undated.

**ATTACHMENT 1**



**WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

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

## ACKNOWLEDGMENTS

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

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

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

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

Nate Johnson, California State University Police  
Mike Kanalakis, Monterey County Sheriff's Office  
Bob Kochly, Contra Costa County Office of District Attorney  
Tommy LaNier, The National Marijuana Initiative, HIDTA  
Carol Leveroni, California Peace Officers Association  
Kevin McCarthy, Los Angeles Police Department  
Randy Mendoza, Arcata Police Department  
Mike Nivens, California Highway Patrol  
Rick Oules, Office of the United States Attorney  
Mark Pazin, Merced County Sheriff's Department  
Michael Regan, El Cerrito Police Department  
Melissa Reisinger, California Police Chiefs Association  
Kimberly Rios, California Department of Justice, Conference Planning Unit  
Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
Crystal Spencer, California Department of Justice, Conference Planning Unit  
Sam Spiegel, Folsom Police Department  
Valerie Taylor, ONDCP  
Thomas Toller, California District Attorneys Association  
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

**TABLE OF CONTENTS**

	<u>Pages</u>
ACKNOWLEDGMENTS .....	i-ii
EXECUTIVE SUMMARY.....	iv-vi
WHITE PAPER ON MARIJUANA DISPENSARIES	
INTRODUCTION .....	1
FEDERAL LAW.....	1-2
CALIFORNIA LAW.....	2-6
LAWS IN OTHER STATES.....	6
STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES .....	6-7
HOW EXISTING DISPENSARIES OPERATE.....	7-8
ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES.....	8
ANCILLARY CRIMES.....	8-10
OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES.....	11
SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE.....	11-14
ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS.....	14
POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES.....	14-17
LIABILITY ISSUES.....	18-19
A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES.....	19-30
PENDING LEGAL QUESTIONS.....	31-39
CONCLUSIONS.....	40
ENDNOTES.....	41-44
NON-LEGAL REFERENCES.....	45-49

## **WHITE PAPER ON MARIJUANA DISPENSARIES**

by

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

#### **EXECUTIVE SUMMARY**

##### **INTRODUCTION**

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

##### **FEDERAL LAW**

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

## **CALIFORNIA LAW**

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

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

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

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

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

## **LOCAL GOVERNMENTAL RESPONSES**

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

## **LIABILITY**

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

## **ENFORCEMENT OF MARIJUANA LAWS**

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

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

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

## **WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

### **CALIFORNIA POLICE CHIEFS ASSOCIATION**

Editor: Dennis Tilton, M.A.Ed., M.A.Lit., M.C.J., J.D.

Adjunct Professor of Criminal Justice, Political Science, & Public Administration, Upper Iowa University  
Sheriff's Legal Counsel (Retired), San Bernardino County Sheriff's Department

#### **INTRODUCTION**

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

#### **FEDERAL LAW**

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

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

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



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

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

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

## **CALIFORNIA LAW**

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

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

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

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

## **1. Conduct**

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

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

## 2. Patients and Cardholders

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

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

## 3. Primary Caregivers

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

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

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

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

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

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

#### 4. Cooperatives and Collectives

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

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

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

## **LAWS IN OTHER STATES**

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

## **STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES**

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

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

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

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

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

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

## HOW EXISTING DISPENSARIES OPERATE

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

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

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

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

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

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

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

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

### **ANCILLARY CRIMES**

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

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

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

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

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

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

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.<sup>40</sup>

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.<sup>41</sup>

## **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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> 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 . . . .”<sup>46</sup>

## **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,<sup>47</sup> 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.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> 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 . . . .”<sup>52</sup> 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.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup> 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,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **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.<sup>66</sup> 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.<sup>67</sup>

## **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.<sup>68</sup>

## **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."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

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 . . ."<sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> 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 . . ."<sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.<sup>79</sup>

## **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.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

#### **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.<sup>85</sup> 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.<sup>86</sup>

#### **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.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> 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,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> 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,<sup>92</sup> 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.<sup>93</sup>

## **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.<sup>94</sup>

## **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.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> 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.<sup>100</sup>

## **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 (CO<sub>2</sub>, 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.

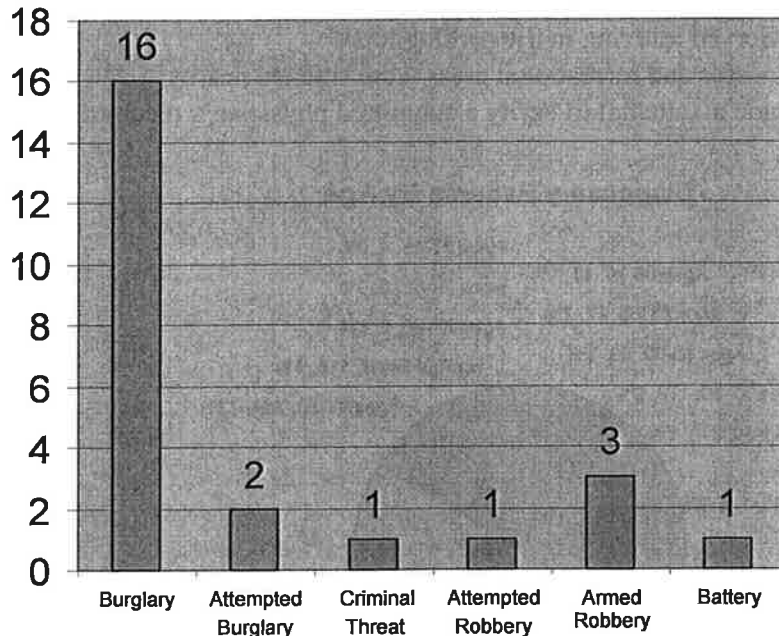
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

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:

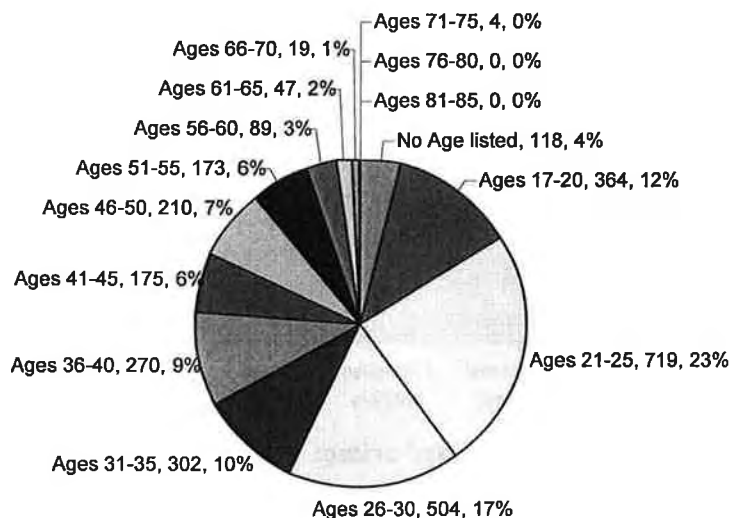
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- 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 12<sup>th</sup> 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.<sup>101</sup> 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.<sup>1</sup> 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).)

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<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup>

## 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

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>4</sup> 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).)<sup>5</sup> 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

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<sup>5</sup> 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.

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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.<sup>6 102</sup>

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.

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<sup>6</sup> 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.<sup>103</sup> 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

- <sup>1</sup> U.S. Const., art. VI, cl. 2.
- <sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.
- <sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- <sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- <sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- <sup>6</sup> 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>
- <sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- <sup>8</sup> Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- <sup>9</sup> H&S Code sec. 11362.5(a).
- <sup>10</sup> H&S Code sec. 11362.7 *et. seq.*
- <sup>11</sup> H&S Code sec. 11362.7.
- <sup>12</sup> H&S Code secs. 11362.71–11362.76.
- <sup>13</sup> H&S Code sec. 11362.77.
- <sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747 at p. 786.
- <sup>15</sup> 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.
- <sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- <sup>17</sup> 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.
- <sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- <sup>19</sup> *Id.* Emphasis added.
- <sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- <sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- <sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- <sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>24</sup> H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4<sup>th</sup> 747 at p. 764.
- <sup>25</sup> *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- <sup>26</sup> *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747; see also H&S Code sec. 11362.765.
- <sup>27</sup> Israel Packel, 4-5. Italics added.
- <sup>28</sup> H&S Code sec. 11362.7(d)(1).
- <sup>29</sup> See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
- <sup>30</sup> H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2),(3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4<sup>th</sup> 1383, 1395.
- <sup>31</sup> *People v. Mower*, 28 Cal.4th at 476. Emphasis added.
- <sup>32</sup> Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>
- <sup>33</sup> "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>
- <sup>34</sup> Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>



- <sup>35</sup> Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20060808/ai\\_n16659257](http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257)
- <sup>36</sup> Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
- <sup>37</sup> Ricci Graham, "Another Medical Marijuana Clinic Robbed," *Oakland Tribune*, 10 September 2005, available at [http://findarticles.com/p/articles/mi\\_qn4176/is\\_20050910/ai\\_n15809189/print](http://findarticles.com/p/articles/mi_qn4176/is_20050910/ai_n15809189/print)
- <sup>38</sup> Laura Clark, "Pot Dispensary Owner Slain at Home." *Ukiah Daily Journal*, 19 November 2007, available at <http://www.marijuana.com/drug-war-headline-news/24910-ca-pot-dispensary-owner-slain-home.html>
- <sup>39</sup> Laura Clark, "Breaking News: Medical Marijuana Supplier Les Crane Killed," *Ukiah Daily Journal*, 19 November 2005; Laura Clark, "Les Crane Murder Investigation Continues," *Ukiah Daily Journal*, 27 November 2005; Glenda Anderson, "Laytonville Marijuana Guru Shot to Death," *Santa Rosa Press Democrat*, 19 November 2005; Glenda Anderson, "Pot Activist Likely Knew Killers: Police Believe Gunmen Who Robbed Laytonville Man Familiar With Home," *Santa Rosa Press Democrat*, 20 November 2005, available at <http://www.equalrights4all.us/content/view/192/50/>
- <sup>40</sup> Mark Scaramella, "The Mendo Pot Chronicles," *Anderson Valley Advertiser*, 3 October 2007, available at <http://www.theava.com/04/0616-cerelli.html>
- <sup>41</sup> Kirk Johnson, "Killing Highlights Risk of Selling Marijuana, Even Legally," *New York Times*, 13 March 2007, available at <http://www.nytimes.com/2007/03/02/us/02cannabis.html?ex=1181880000&en=c609936094adda50&ei=5070>
- <sup>42</sup> Tami Abdollah & Richard Winton, "Pot Theft Claimed in Boy's Shooting Death," *Los Angeles Times*, 23 January 2007, available at [http://www.californiapolicechiefs.org/nav\\_files/marijuana\\_files/bellflower\\_shooting\\_death.pdf](http://www.californiapolicechiefs.org/nav_files/marijuana_files/bellflower_shooting_death.pdf)
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- <sup>44</sup> Planning Commission Agenda, available at <http://www.el-cerrito.org>; see also Alan Lopez, "El Cerrito Moves to Ban Dispensaries," *Contra Costa Times*, 24 June 2006, available at <http://www.thc-ministry.net/forum/archive/el-cerrito-moves-to-ban-cannabis-clubs-6974.htm>
- <sup>45</sup> Fred Ortega, "City Bans Outlets for Medical Marijuana," *San Gabriel Valley Tribune*, 17 August 2006, available at <http://www.lca-uk.org/lcaforum/viewtopic.php?f=6&t=2436&start=0&sid=15b6da115a0da43facb17644195cbb>
- <sup>46</sup> Ortega.
- <sup>47</sup> Greg Beato, "Pot Clubs in Peril: Are San Francisco Zoning Boards a Bigger Threat to Medical Marijuana Than the DEA?" *Reason Magazine*, February 2007, available at <http://www.reason.com/news/show/118314.html>; Craig T. Steckler, *City of Fremont Police Department Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts*, 20 June 2006; Tim Miller, *City of Anaheim Police Department: Special Operations Division Memorandum re Medical Marijuana Dispensary (MMD) Ban Ordinance*, 13 June 2007.
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- <sup>50</sup> Cal. H&S Code sec. 11362.5.
- <sup>51</sup> Ethan Stewart, "The Medical Marijuana Movement Grows in Santa Barbara: Emerald Dreams and Smoky Realities," *Santa Barbara Independent*, 3 May 2007, available at <http://independent.com/news/2007/may/03/medical-marijuana-movement-grows-santa-barbara/>; see also Adam Ashton, "DEA Busts Pot Store Day After Council Talk," *Modesto Bee*, 28 September 2006.
- <sup>52</sup> McDonald.
- <sup>53</sup> Stewart.
- <sup>54</sup> Stewart.
- <sup>55</sup> Stewart.
- <sup>56</sup> National Drug Intelligence Center, *Domestic Cannabis Cultivation Assessment 2007*, February 2007; available at <http://www.usdoj.gov/ndic/pubs21/22486/>; Jaxon Van Derbeken, Charlie Goodyear, & Rachel Gordon, "3 S.F. Pot Clubs Raided in Probe of Organized Crime," *San Francisco Chronicle*, 23 June 2005, available at [© 2009 California Police Chiefs Assn](http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/23/MNGRODDG321.DTL; LAPD report information, 2007.</a></p></div><div data-bbox=)

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<sup>58</sup> Kate Heneroty, "Medical marijuana indictment unsealed," *Jurist*, 24 June 2005, available at <http://jurist.law.pitt.edu/paperchase/2005/06/medical-marijuana-indictment-unsealed.php>; Stacy Finz, "19 Named in Medicinal Pot Indictment: More Than 9,300 Marijuana Plants Were Seized in Raids," *San Francisco Chronicle*, 24 June 2005, available at <http://sfgate.com/cgi-bin/article.cgi?file=/c/a/2005/06/24/BAGV9DEC4C1.DTL>

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<sup>60</sup> City of San Diego, *Crime Statistics*, 2007, available at <http://www.sandiego.gov>

<sup>61</sup> National Drug Intelligence Center, *Marijuana*, January 2001, available at <http://www.usdoj.gov>

<sup>62</sup> George Anastasia, "Viet Gangs on the Rise Again—The Emerging American Underworld—Gangs' Plant-filled Houses a Growing Part of Drug Trade," *Chronicle of Boredom*, 18 April 2007.

<sup>63</sup> Will Bigham, "Houses Linked to Asian Gangs," *Inland Valley Daily Bulletin*, 23 September 2007, available at [http://www.dailybulletin.com/newsci\\_6980682](http://www.dailybulletin.com/newsci_6980682)

<sup>64</sup> Bigham, 23 September 2007.

<sup>65</sup> Feds Came and Went—Now What? *Humboldt County News*, 30 June 2008, available at <http://news.humcounty.com/archives/2008/6>

<sup>66</sup> LAPD Report Number DR#060625000, 16 August 2006.

<sup>67</sup> LAPD Report Number DR#060625001, 16 August 2006.

<sup>68</sup> Tim Miller, City of Anaheim Police Department: Special Operations Division Memorandum re Marijuana Dispensary (MMD) Ban Ordinance, 25 October 2006; Johnson; Craig T. Steckler, City of Fremont Police Department; Memorandum re Medical Marijuana Dispensaries – Potential Secondary Impacts, 20 June 2006.

<sup>69</sup> Stewart.

<sup>70</sup> Johnson.

<sup>71</sup> Ashton.

<sup>72</sup> "What has the U.S. DEA said about medical marijuana?" "Medical Marijuana ProCon.org, 2005; "What has federal law enforcement said about medical marijuana?" Medical Marijuana ProCon.org., 2009, available at <http://medicalmarijuana.procon.org/viewanswers.asp?questionID=000630>

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<sup>74</sup> Avila; Anastasia; "DEA Raids Miami Grow House," CBS5.com, 30 April 2008, available at <http://cbs5.com/national/dea.raid.miami.2.712958.html>

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<sup>76</sup> Bigham, 23 September 2007; Ethan Baron, "Angel Linked to Grow-op," *The Province (CNBC)*, 22 May 2005, available at <http://www.mapinc.org/newstcl/v05/n823/a02.html>

<sup>77</sup> Bigham, 23 September 2007.

<sup>78</sup> Bigham, 23 September 2007.

<sup>79</sup> Heather Allen, "Marijuana Grow Houses Flourish as Southwest Florida Market Drops," *HeraldTribune.com*, 24 July 2007, available at <http://www.heraldtribune.com/article/20070724/NEWS/707240498>

<sup>80</sup> Eric Bailey and Tim Reiterman, "Where Mary Jane is the girl next door," *Los Angeles Times*, 31 May 2008, available at <http://articles.latimes.com/2008/may/31/local/me-pot31>

<sup>81</sup> Eureka House Fire the Result of You-know-what," *Humboldt County News*, 7 September 2008, available at <http://news.humcounty.com/>; written remarks of Arcata Police Chief Randy Mendosa, 1 March 2009.

<sup>82</sup> Jesse McKinley, "Marijuana Hotbed Retreats on Medicinal Use," *New York Times*, 9 June 2009, available at [http://www.nytimes.com/2008/06/09/us/pot.html?\\_r=1&em&ex=1213329](http://www.nytimes.com/2008/06/09/us/pot.html?_r=1&em&ex=1213329)

<sup>83</sup> Deputies: Fire Damages Holiday Marijuana Grow Home, *tampabay.com*, 15 February 2008, available at <http://blogs.tampabay.com/breakingnews/2008/02/holiday-fire-ma.html>

<sup>84</sup> Don Ruane, "Grow Houses Can Impact Utility Bills, Public Safety," *News-press.com*, 12 April 2008, available at

<http://www.news-press.com/apps/pbcs.dll/article?AID=/20080412/NEWS0103/804120394>

<sup>85</sup> "DEA Raids Miami Grow House."

<sup>86</sup> Sandy Louey, "Arrests Take Toll on Local Gang," *The Sacramento Bee*, 14 August 2008, available at <http://www.sacbee.com/elkgrove/v-print/story/1152310.html>

<sup>87</sup> Avila.

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- <sup>88</sup> Scott Glover, "Morro Bay Pot Dispensary Owner Found Guilty of Federal Charges," *Los Angeles Times*, 6 August 2008, available at <http://articles.latimes.com/2008/aug/06/local/me-pot6>
- <sup>89</sup> Bailey and Reiterman.
- <sup>90</sup> Janis Ramsay, "Special Report: Grow-op House Can Still Be Dream Home: Realtor Says," *The Barrie Advance*, 25 August 2008, available at <http://www.mapinc.org/drugnews/v08/n818/a06.html>
- <sup>91</sup> Avila.
- <sup>92</sup> Bailey and Reiterman.
- <sup>93</sup> Steve Davis, "Grow Security," *Cannabis Culture Magazine*, 6 August 2004, available at <http://www.cannabisculture.com//articles/3441.html>
- <sup>94</sup> Bailey and Reiterman.
- <sup>95</sup> See *People v. Urziceanu*, 132 Cal.App.4th 747.
- <sup>96</sup> City of Pleasant Hill Presentation to Its Planning Commission by Planning Division Staff on April 24, 2007.
- <sup>97</sup> Office Consolidation: By-law 361-2004 of the City of Brampton, Ontario, Canada.
- <sup>98</sup> Bill McCollum, "Landmark Bill Targeting Marijuana Grow Houses Becomes Law," Attorney General Bill McCollum News Release, 17 June 2008, available at <http://myfloridalegal.com/newsrel.nsf/newsreleases/AFAE7E2BCC1688D18525746B0070D23B>
- <sup>99</sup> "Asian Gangs Move Grow-ops," *The Asian Pacific Post*, 27 September 2007, available at [http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003\\_asian\\_gangs\\_move\\_grow\\_ops.do.html](http://www.asianpacificpost.com/portal2/ff8080811548063f0115482401d00003_asian_gangs_move_grow_ops.do.html)
- <sup>100</sup> See Asian Gangs Move Grow-ops.
- <sup>101</sup> See "Does Marijuana Contribute to Psychotic Illnesses?" *Current Psychiatry Online* 6(2), February 2007.
- <sup>102</sup> See, e.g., [http://www.californiapolicechiefs.org/nav\\_files/research/ordinances.html](http://www.californiapolicechiefs.org/nav_files/research/ordinances.html)
- <sup>103</sup> National Drug Intelligence Center.

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**ATTACHMENT 2**

## Summit on the Impact of California's Medical Marijuana Laws

### Dispensary Related Crime

April 23, 2009

Commander Michael Regan

## The El Cerrito Experience

- Why El Cerrito?
- Movement to Allow a Dispensary in our City
- Two weeks to convince our Council
- Success with the Council led to Cal Chiefs
- Cal Chiefs forms Task Force
  1. Try to help others deal with this issue
  2. Calling it what it is "legalized drug dealing"
  3. Advocating for change

## Worse than combining a Liquor Store and Casino analogy

Reasoning is this:

1. Lots of cash
2. Lots of guns
3. However, unlike Liquor Stores and Casinos, with very little if any oversight or ability to impact businesses

## Dispensaries

- What exactly is a MMJ Dispensary?
  1. Store Front Retailer
  2. Profit / Non-Profit
  3. Primary Care Giver
- "Dispensary" does not appear anywhere in Prop 215 or AB420
- Some estimates claim 400-800 dispensaries in California (Nobody really knows)
- No State control as compared to Liquor Licenses

## Collective / Cooperative

- Collectives: An organization that merely facilitates the collaborative efforts of patient and caregiver members –including the allocation of costs and revenues.
- No business may call itself a "cooperative" (or "co-op") unless it is properly organized and registered as such under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) They are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons."

## Collective / Cooperative

- Neither should purchase marijuana from nor sell to, non-members.
- They should only provide a means for facilitating or coordinating transactions between members.

### Primary Caregiver Defined

- *People v. Mentch* (CA Supreme Court Case # S148204 (2008))
- Must do more than just provide MMJ
- Must be a person "who has consistently assumed responsibility for the housing, health and safety" of the patient.
- "a defendant asserting primary caregiver status must prove that he or she consistently provided caregiving, independent of any assistance in taking marijuana"
- The CUA "does not provide similar protection where the provision of marijuana is itself the substance of the relationship."

### Dispensary Enforcement Actions

- Since 2004 the DEA has initiated over 87 investigations involving dispensaries.
- 130 enforcement actions taken as part of these investigations
- 365 people were arrested on both federal and state charges. None were charged with simple possession. The fact that a wide variety of state charges were also filed indicates that these subjects were also in violation of state law as well.
- Unknown number of State/Local Investigations.
- Publicizes the disingenuous profiteers in this industry and demonstrates the need for statewide regulation.

### Capitol Compassionate Care

- Sept. 2004 the Roseville Dispensary closed by DEA and IRS. Reported to open back up the next day.
- \$100,000 in cash, 12 pounds of marijuana and several hundred marijuana plants are seized.
- Richard Marino indicated on 19 counts of marijuana trafficking and money laundering.
- The indictment alleges that in eight months the dispensary made approximately \$2.7 mil from the sale of marijuana and \$356,130 was traced to money laundering activities.
- The U.S. Attorney handling the case stated, "This case is a perfect example of a person using Medical Marijuana as a smokescreen to hide his true agenda, which is to line his pockets with illegal drug money."
- July 2008 sentenced to 51 months in Federal Prison.

### Holistic Caregivers of Compton

- May 2008: Virgil Grant, the owner of six L.A.-area dispensaries is arrested. He and his wife are indicted on 42 charges, including 22 counts of money laundering.
- Investigation sparked by a December 2007 traffic collision in which a motorist was killed, and a CHP officer was paralyzed by a marijuana impaired driver.
- "a large amount of marijuana and marijuana edibles" are found in the suspect vehicle. Forensic expert testified that there was a high concentration of marijuana in driver's blood, "It's one of the highest levels I recall seeing."

### Holistic Caregivers of Compton

- During the investigation, an employee sold a pound of marijuana for \$5,700 out the back door of one of the dispensaries.
- Even before the indictment, Compton officials were "trying to rid the city" of Grant's dispensary.
- Grant initially obtained a business license for a "herbal" retail store, later it was discovered that Grant was operating a dispensary.
- At a bond hearing, a request was made to hold Grant without bail, noting that he had a previous conviction on drug and weapon related offenses

### Compassionate Collective of Alameda County

- Opened in 2004, that year they took in \$74,000.
- In 2005, sales rose to \$1.3 million.
- In 2006, sales hit \$21 million
- And in the first six months of this 2007 took in a whopping \$26.3 million.
- November 5, 2007; Winslow and Abraham Norton were indicted on charges of conspiracy to distribute and distribution of marijuana as well as conspiracy to launder money and money laundering
- Seized were several hundred pounds of marijuana, approx \$200,000 in cash, two bank accounts, two IRAs, a 2005 Mercedes Benz, a 2006 ML500 Mercedes Benz, a residence and two commercial buildings.

### Compassionate Collective of Alameda County

- Feb 2005 a group of suspects entered the dispensary, tied everyone up and robbed the place of about \$50,000.
- April 2005, Winslow Norton arrested in Mendocino County after being found in possession of 44 pounds of marijuana packaged for individual sale and \$2,280 in cash. A man who claimed he was Norton's father came to the jail to post bail with a bag containing \$150,000 in cash and reeking of marijuana.
- June 2005, a masked gunman fired four shots into a dispensary worker's car as he pulled into the parking lot.
- February 2007, the brothers were involved in a shootout at a Fremont hotel after being lured there via Craig's list.
- In July of 2007, one of the club's customers was ambushed, robbed for his marijuana and killed at a nearby gas station.

### Compassionate Caregivers

- Larry Kristich owned and operated the business from 02-05
- Dispensaries in Oakland, San Francisco, San Leandro, West Hollywood, San Diego, Bakersfield and Ukiah
- Company employed more than 200 people as growers, clone cultivators, drivers, directors, store managers, retail sellers (referred to as "budtenders") and security guards
- Pled guilty to federal narcotics and money laundering charges, admitting that he was responsible for the distribution of more than 15,000 pounds of marijuana
- Admitted that sales of marijuana at Compassionate Caregivers' stores totaled over \$95 million. Kristich also admitted that he laundered more than \$50 million of that money

### Beyond Bomb

- March 2006: Search warrants resulted in the seizure of thousands of marijuana plants, hundreds of marijuana-laced candies and soft drinks, three guns, approximately \$189,000 in cash and 12 arrests.
- Beyond Bomb Products were seized at the Compassionate Caregivers dispensary in Los Angeles and at other dispensaries throughout the state.
- Described as the largest West Coast operation of its type.
- Affolter was sentenced to more than five years and then sued for \$100,000 by Hershey, for trademark infringement, trademark dilution and unfair competition.
- L.A. NORML called the arrests aggressive and "uncalled for." "Despite the large number of plants seized, the suspects could have a defense if they operated as a caregivers' cooperative."

### Beyond Bomb



### California Healthcare Collective

- Luke Scarmazzo
- Joint investigation by Modesto PD and DEA culminated in September 2006.
- Search Warrant at the "collective" resulted in Scarmazzo and Ricardo Montes being charged with distribution of marijuana, conspiracy to distribute marijuana, possession of firearms and money laundering. Somewhere between 4 and 8 Mil in sales.
- Reported that the DEA seized more than 100 pounds of marijuana, one thousand plants, multiple firearms, and more than \$200,000 in cash.

### Nature's Medicinal Cooperative

- First action against Nature's Medicinal Cooperative in May 2007
- Operator was warned that federal agents would return if he reopened. At that time 155 pounds of processed marijuana, edibles and \$55,000 in cash were seized.
- Records indicate in a four month span the dispensary purchased 1,500 pounds of marijuana.
- In July 2007 the dispensary was again closed by federal agents. More than 87 pounds of marijuana seized and five arrests.
- Purported that the business brought in \$9.6 million in nine months. According to DEA: "The nature of this enterprise was to make money—plain and simple."
- David Chavez Jr. and Sr. charged with conducting a "continuing criminal enterprise". They and six others were charged with conspiring to distribute marijuana and other charges including possessing firearms in furtherance of the trafficking crimes.

### Hayward Local Patients Cooperative

- October 2007: Owner Shon Squier and Manager Valerie Herschel charged with conspiracy to distribute and distribution of marijuana. The business was on pace "to net more than \$50 million in sales this year".
- Squier allegedly used the profit from marijuana sales to buy a Hayward home for \$532,107 and Herschel allegedly used \$85,853 for a down payment on a home.
- Squier said that he served about 75 customers a day, had 70,000 individual patients in his books and 60 employees.
- DEA froze bank accounts containing \$1.5 million, confiscated two Mercedes, a Hummer, a Cadillac Escalade, Harley Davidson and Ducati motorcycles, indoor marijuana growing equipment and \$200,000 in cash.

### Tainted Inc. / Compassion Medicinal Edibles

- Oakland-based business that produced candy, cookies, ice cream, brownies and energy drinks containing marijuana.
- Michael Martin's company supplied marijuana-laced foods to dispensaries in the Bay Area, Los Angeles, Seattle, Vancouver and Amsterdam.
- Search warrants resulted in the seizure of 400 plants and edibles.
- Martin plead guilty and was sentenced to two years of non-prison confinement. The maximum statutory penalty for the violation is 20 years imprisonment, \$1,000,000 fine.
- Defense attorneys arguing for non-prison confinement said Martin had a good-faith belief in the medicinal effectiveness of marijuana and that he accepted responsibility for his acts.
- Martin was supported in the case by Americans for Safe Access, who stated, "Enforcement actions against people like Michael Martin, who are trying to produce edible, non-smoked medicine, is a travesty."

### Tainted Inc. / Compassion Medicinal Edibles



### Pacific Greens Inc Santa Barbara

- October 2007: Investigation started with the stop and arrest of Marcel Garcia for possession of several pounds of Marijuana.
- Follow-up led to the arrest of Alexio Garcia for felon in possession of a firearm.
- The Investigation eventually led to David Najera who was operating dispensary.
- March 2008: Investigation resulted in the seizure of 125 pounds of MJ, 2 pounds of hash, \$171,000 in cash and 16 firearms. 6 arrests w/ 2 outstanding. Detectives said they also found a "sophisticated indoor grow" operation as part of the investigation.
- Evidence showed that the facility was operating outside the guidelines of Proposition 215, and case turned over to DEA.

### Berkeley Medical Herbs / Dragonfly Holistic Solutions / Holistic Solutions

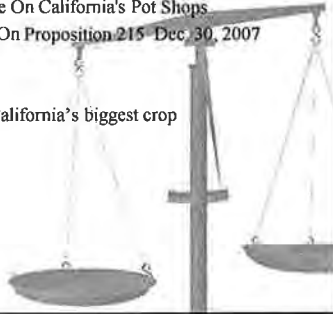
- Ken Estes has been involved in the medical marijuana movement since 1992
- 1998 Estes opens Berkeley Medical Herbs.
- 2001, after three armed robberies in 10 months and continued violations of even Berkeley's lax dispensary rules, Estes asked to leave by the City and other Dispensaries.
- Estes and his brother Randy Moses open Dragonfly Holistic Solutions in Oakland.
- June 2004, Estes is ordered to close as part of Oakland's dispensary reduction. Estes vows to continue to operate in defiance of city rules until he is arrested. He eventually closed the dispensary.

### Berkeley Medical Herbs / Dragonfly Holistic Solutions / Holistic Solutions

- Estes then opens a dispensary in Richmond. In May of 2006 he receives a "cease and desist" order from the City which he ignores.
- August of 2006, a traffic stop results in the seizure of 30 pounds of marijuana destined for the Richmond dispensary. Estes responds that "the city is harassing him to destroy his business."
- It is reported, Estes owns or shares ownership in at least five similarly-named cannabis clubs in Richmond, San Francisco, Clear Lake, South Lake Tahoe and San Mateo, all of which have come under law enforcement and media scrutiny.
- Since January, Estes dispensaries as well as the homes of his managers and grow sites in Oakland, San Leandro and Humboldt County have been the focus of an on-going investigation.
- Estes was also on the periphery of a "Honey Oil" prosecution in Contra Costa County.

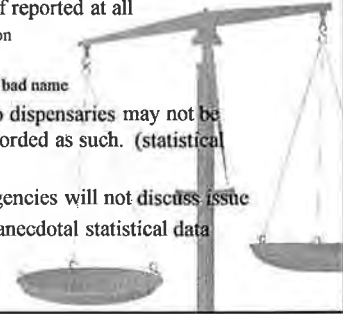
## Media Investigations

- 60 Minutes The Debate On California's Pot Shops  
Morley Safer Reports On Proposition 215- Dec. 30, 2007
- CNBC Marijuana is California's biggest crop



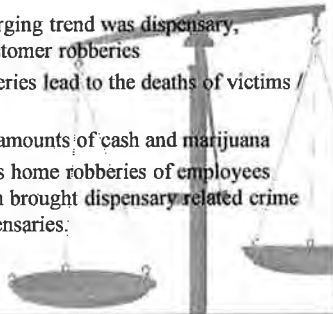
## Dispensary Related Crimes

- Under reported if reported at all
  1. Fear of Prosecution
  2. "Covert Industry"
  3. Giving industry a bad name
- Crimes related to dispensaries may not be associated or recorded as such. (statistical gathering)
- Some Cities / Agencies will not discuss issue
- "Need" for non-anecdotal statistical data



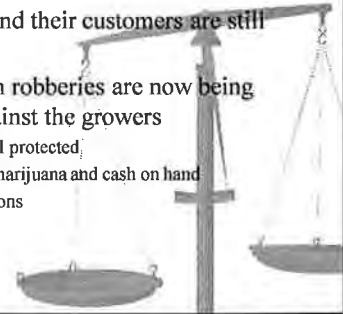
## Dispensary Related Crimes

- Pre 2006 the emerging trend was dispensary, employee and customer robberies
- Some of the robberies lead to the deaths of victims / suspects
- Target was large amounts of cash and marijuana
- Another issue was home robberies of employees and owners which brought dispensary related crime to cities w/o dispensaries.



## Dispensary Related Crime

- Dispensaries and their customers are still targets but,
- Home invasion robberies are now being committed against the growers
  1. Potentially less well protected,
  2. Large amounts of marijuana and cash on hand
  3. More remote locations



## Home Invasion Robberies

About 30 neighbors signed a certified letter given to MacFarlane earlier this month in which they demand that he address the nuisances allegedly created by growing marijuana, including the discharge of firearms, verbal threats, smell of marijuana and the noise of motion sensitive alarms



## Los Angeles Experience

- Los Angeles Police Department reported;
- 200% increase in robberies,
- 52.2% increase in burglaries,
- 57.1% rise in aggravated assaults,
- 130.8% rise in burglaries from autos near cannabis clubs in Los Angeles.
- Estimated there are 400 dispensaries in Southern California alone
- Use of armed gang members as armed "security guards"\*

\* Information from LAPD Det. Dennis Packer



### San Francisco Experience

Crimes that occurred at, or in close proximity to, San Francisco's Dispensaries (Jan 06/Feb07)

- 3 homicides 2 attempted homicides
- 6 possession of a loaded firearm
- 1 exhibiting deadly weapon
- 57 robberies and 27 attempted robberies
- 98 aggravated assaults
- 144 incidents of battery
- 7 incidents of battery on a police officer
- 1 forcible rape, 1 attempted rape
- 3 sexual batteries
- 198 Burglaries and 2 attempted burglaries

### Where does the money go?

- If marijuana costs \$400 a pound to grow
- If the wholesale price is \$2,500-\$3,000
- If the retail price is \$5,000-\$6,400 per pound
- Where does the extra \$2500-\$3,400 per pound go?



### Where does the Marijuana come from?

- Dispensaries sell a significant amount of Marijuana
- Enforcement actions reveal 10-100 pounds on hand at a given time
- 1/8<sup>th</sup> ounce most common sale point, 1 Pound is 128 1/8<sup>ths</sup>
- No Accounting of where it comes from;
  - 1 Indoor and Outdoor grows.
  - 2 Org. crime involved in grows
  - 3 Drug Traffic Organizations (L.A report indicates dispensaries buying marijuana smuggled into US from Mexico)\*
  - 4 OMGs (Hells Angels and Mongols)

\* Information from LAPD Det. Dennis Packer

### Teenage Use/Abuse

- In August 2006, a high school coach provided his "medical marijuana" recommendation to students to enable them to purchase marijuana for recreational use. The 16 and 17 year olds then went to a dispensary in Sherman Oaks, California and purchased marijuana
- In a separate case, while walking across campus, a Van Nuys patrol officer observed a card placed on several vehicles in the school parking lot that advertised medical marijuana recommendations at JT Medical Group, Inc., in North Hollywood

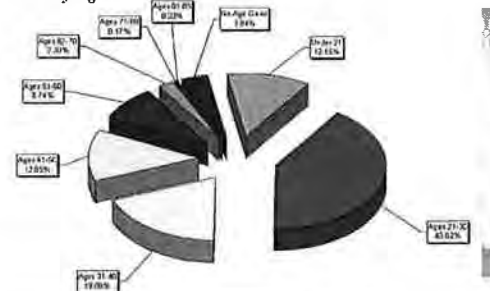
### San Diego Investigation

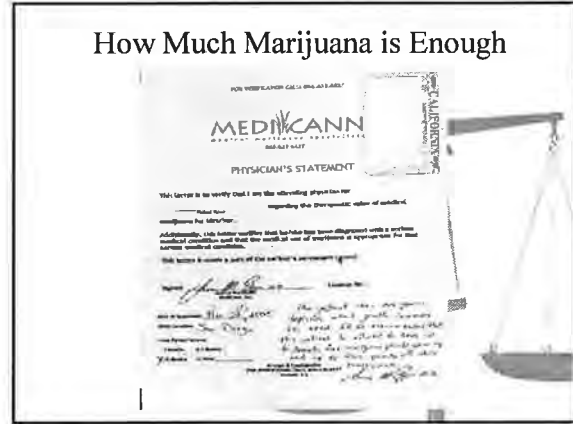
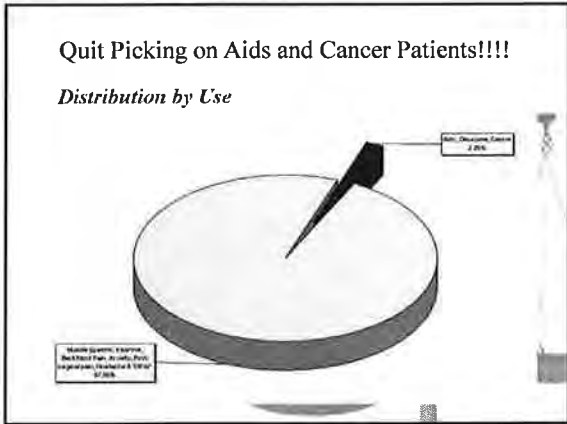
- July 2006: S.D.P.D., S.D.S.O., D.E.A served 13 state search warrants on dispensaries located in the city and county
- The effort began in Sept. 2005 after numerous complaints from residents in the neighborhoods where the dispensaries were operating. The investigation covered two areas of concern:
- First: The proliferation of physician recommendations for the use of marijuana. Marijuana recommendations appeared to be openly sold to anyone who had the cash for it. Numerous apparently healthy individuals in their late teens or early 20's in possession of these recommendations were encountered.
- Second: The investigation of the more than 20 store fronts that would sell marijuana to anyone with a recommendation or a caregiver form signed by the same doctors.

Information Provided by San Diego DDA Danton Mosler

### Demographics Data

Patients by Age





- ### Report Blasts City, Marijuana Dispensaries
- March 08: A Santa Barbara County Civil Grand Jury report on medical marijuana dispensaries concluded that they are largely unregulated. Their findings are as follows:
    - Inventory and sales records not accurately maintained.
    - There are few restrictions to prevent patients from purchasing large amounts of marijuana in several shops as often as they please, customers can purchase up to eight ounces each visit.
    - Should require fingerprinting, photographing and background checks of operators, as well as mandatory inventory and sales audits.

- ### Report Blasts City, Marijuana Dispensaries
- The average cost for an ounce is \$350 to \$600. Dispensary owners reported that the average amount sold at one time is one-eighth of one ounce, which could last from one day to one month depending on the patient's use.
  - Concluded that some operators keep records of how often a patient purchases, but no requirement exists to do so.
  - "They cannot control what the patient does with the cannabis after leaving."
  - The number of dispensaries jumped from five to more than 20 when local voters approved Measure P in 2006. Measure P declared marijuana to be the lowest priority for local law enforcement.

- ### Obtaining a Liquor License
- The department shall make a thorough investigation to determine:
- Whether the applicant and the premises for which a license is applied qualify for a license and
  - Whether the provisions of this division have been complied with and
  - Shall investigate all matters connected therewith which may affect the public welfare and morals.
  - The department shall deny an application if either the applicant or the premises for which a license is applied do not qualify for a license under this division.
  - The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, 23958 B&P.

- ### Obtaining a Barber's License
- Complete a 1,500-hour barbering course at an approved institution. The approval must come from the California State Board of Barbering and Cosmetology.
  - You must also pass the barber licensing exam which consists of two parts: a practical and a written portion.
  - You must be 17 years old or older and have completed the tenth grade in a public or private school or its equivalent.



## Obtaining a Pharmacist's License

- To be licensed as a pharmacist in California, you must be at least 18 years of age.
- Have obtained a B.S. in Pharmacy or a Pharm D. degree from an ACPE accredited college of pharmacy program. Graduates from a college of pharmacy program outside the U.S. must obtain certification from the Foreign Pharmacy Graduate Examination Committee.
- Have completed 1,500 intern experience hours or verified licensure as a pharmacist in another state for at least one year.
- Have taken and passed the North American Pharmacist Examination (NAPLEX) and the California Practice Standards and Jurisprudence Examination 4200(a)(1-6) B&P.

## Obtaining a Dispensary License

- There is no process
- There is no approval
- There is no licensing entity
- There are very few if any restrictions
- However, you can go to school;

## Oaksterdam University

- Oaksterdam U. Gives New Meaning to Higher Education  
Learning how to get started in the medical marijuana business costs a lot less than an Ivy League education and takes as little as one weekend. The school prepares students for jobs in California's medical marijuana industry.  
So how are job prospects in the field? Entry-level workers make a little more than minimum wage; "bud tenders" can make over \$50,000 a year; owners and top managers make six figures.



## Oaksterdam University

- Faculty:
  - Richard Lee: Oaksterdam University President  
Lee has been serving on the City of Oakland Cannabis Regulation and Revenue Ordinance Commission.
  - Robert Raich: Attorney in both of the U.S. Supreme Court cases; *United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483 (2001), and *Gonzales v. Raich*, 545 U.S. 1 (2005).
  - Chris Conrad: Qualified as an expert in cannabis cultivation, sex, genetics, cloning, crop yields, preparation, smell, medical use, personal use, dosage, consumption, sales, and commercial intent. Investigated more than 700 criminal cases, testified more than 150 times. Mikki Norris

## Oaksterdam University

- **Curriculum**
  - Politics/Legal Issues 101
  - Horticulture 101
  - Cooking/Concentrates 101
  - Budtending/Medical Cannabis 101
  - Distribution/Dispensary Management 102
  - Cannabusiness 102
  - Horticulture 102: Advanced Grow Lab
  - Legal Issues 102

## Do Criminals Own Dispensaries?

- In January 2007, DEA executed 11 search warrants and identified 17 owners and/or operators in the Los Angeles area. Of these 17 owners and/or operators;
  1. 14 had prior criminal histories,
  2. 7 had prior weapons charges,
  3. 8 had prior drug charges,
  4. 2 had murder / attempted murder charges.
- One drug dealer reports, I am doing business with the same people, only now they think they are legit.

### Owners Lying on the Business Application

- **San Marcos:** A Dispensary was able to receive a business license because it called itself a nutritional supplement store. Now the city is intent on shutting down the business.
- **Tracy:** City officials said the group misrepresented itself on its business license. The collective said its activity would be "retail sales conducted by a nonprofit corporation."
- **Cathedral City:** Dispensary has a business license from the city, issued Nov. 5, which describes it as a spice and extract manufacturer as well as a spice and herb retailer.

### Owners Lying on the Business Application

- **Santa Rosa:** The owner of a medical marijuana dispensary failed to disclose her plans for a marijuana club when she signed a three-year lease. Instead, the letter said she planned to run a video game business.
- **Alameda:** Dispensary's owner failed to disclose the true nature of his business on his license application, listing the business as "miscellaneous retail". The City Attorney's opinion was that "The phrase 'miscellaneous retail' suggests that a variety of lawful, noncontroversial items will be sold."

### The Claremont Saga

- Mr. Kruse officially applied for his business license on Sept. 14, 2006.
- The matter was given to the City Attorney's Office as the City had no Dispensary Ordinance.
- Without waiting for a response, he opened his medical marijuana shop the following day without an approved license.
- On September 26, 2006, the city council unanimously voted to enforce a moratorium on marijuana dispensaries in Claremont. City officials fined Kruse \$500 a day, approximately \$10,000 a month.

### The Claremont Saga

- After months of riling up city hall, Darrell Kruse, admits that he had an ulterior motive in opening his business in Claremont. Mr. Kruse now claims that his outrageous behavior and confrontational style was all just an act in order to get Claremont to pass a moratorium on marijuana dispensaries and therefore block competition from other businesses.
- It is revealed that Kruse and his business partner, David Touhey are co-owners of another marijuana dispensary in nearby Pomona.
- April 10, 2007, Kruse approached the city council to offer an apology to council members and city officials for his actions.

### Pot Doctors

#### Medical Board of California

- In a May 13, 2004 press release, the Medical Board clarified that these accepted standards for recommending marijuana are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:
  1. Taking a history and conducting a good faith examination of the patient;
  2. Developing a treatment plan with objectives;
  3. Providing informed consent, including discussion of side effects;
  4. Periodically reviewing the treatment's efficacy;
  5. Consultations, as necessary; and
  6. Keeping proper records supporting the decision to recommend the use of medical marijuana.
- ([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

### Media Investigations of Pot Doctors

- **Doctor's orders: Get high** By Chris Colin January 31, 2001
- **High times for medicinal marijuana:** In California, marijuana is supposed to be prescribed only to people suffering from life-threatening conditions By David Willis
- 10News Exposes 'Marijuana Doctors' July 7, 2006
- **License to Chill** By Michael Goldstein / New York Daily News, Feb. 11, 2007
- **Out of town doctors reportedly recommending marijuana without exams** By Jose Gaspar August 16, 2007

### Media Investigations of Pot Doctors

- I-Team Investigation: **Who Is Doc 420?**
- **Availability Of Medical Marijuana Questioned** / By Dan Noyes SAN FRANCISCO, Nov. 1, 2007 (KGO)
- **'Pot docs' issuing 'Get Out of Jail Free' cards** By Linda Williams /TWN Staff Writer / 12/26/2007
- **This bud's for you, and you, and you too** How I got my hands on some marijuana -- the legal (and easy) way. May 9, 2008

### Pot Doctor Prosecution

- Dr. Jimenez operated several medical marijuana clinics and advertised his services extensively on the internet.
- May 2006, San Diego PD ran two u/c operations at Dr. Jimenez's clinic in San Diego.
- January 2007, Laguna Beach PD ran an u/c operation at Dr. Jimenez's clinic in Orange County.
- Based on the u/c operations, Dr. Jimenez was charged with gross negligence, repeated negligent acts, incompetence, dishonesty or corruption, false representations, failure to maintain adequate and accurate records and false and/or misleading advertising.

### Pot Doctor Prosecution

- The Administrative Law Judge (ALJ) found that Dr. Jimenez:
  1. Violated the standard of care when he issued medical marijuana recommendations to the undercover agents without conducting good faith medical examinations, failed to do proper informed consent, and failed to consult with any primary care physicians or review prior medical records prior to issuing recommendations.
  2. Engaged in dishonest behavior by coaching the undercover agents as to what to say in order to qualify for medical marijuana recommendations and in preparing false medical records.
  3. Engaged in false and misleading advertising in representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. The decision is effective April 24, 2009.

### Diversions

- Hoey was arrested after deputies found 100 pounds of marijuana in his house and \$500,000 cash in a storage locker. He was convicted in 2008 for possessing and selling hundreds of pounds of marijuana.
- Sheriff's deputies confiscated almost \$900,000, a wine collection valued at least \$250,000 and Oriental rugs worth \$165,000.
- Hoey faced more than 10 years in state prison, but was sentenced to a year in County Jail after he pleaded no contest to trafficking.
- He said he thought his sales were legal because he was largely selling to medical users through a Santa Cruz dispensary.
- He remains adamant that most of the marijuana was destined for medicinal users. Hoey said his "one mistake" was that he had also sold pot to friends on the East Coast.
- Hoey had shipped marijuana through the US Postal Service to people in 10-15 states, and many were not medicinal users.

### Diversions

- 01/26/2008: A Paradise man who claimed to be growing marijuana for medical purposes for himself and eight others pleaded no contest to felony charges of cultivation and possession for sale of marijuana.
- Investigation began in December with a traffic stop in Nebraska resulting in the seizure of more than 68 pounds of processed and packed marijuana.
- A passenger in the car admitted that he had been working for a month making trips between Chicago and Butte County.
- Sheriff's deputies obtained a search warrant for both locations and found the suspect had medical marijuana recommendations for himself and eight others, he called "patients."
- Deputies also found more than nine pounds of marijuana in various stages of processing, more than \$39,000 in a shoe box and a loaded shotgun.

### Diversions

- November 28, 2008: Authorities arrested two men and were looking for a third after they discovered processed and live marijuana plants at two Trinity County properties.
- A search of the properties turned up 70 pounds of processed marijuana and 364 live plants from a greenhouse and an indoor growing area. Also seized were 13 firearms, including a .223 assault rifle and a Benelli 12-gauge shotgun, more than \$70,000 in cash and an unspecified number of vehicles.
- Authorities believe that the men were involved in exploiting California's medical marijuana act, selling the cultivated marijuana from Trinity County, north to Oregon, Washington and Alaska, Knill said.

## Diversion

- Utah Highway Patrol's Criminal Interdiction Team conducts directed interdiction efforts to impact drug trafficking along the I-80 corridor, a major pipeline to get drugs from California. This effort is timed with the harvest season.
- In the most recent effort, 14 stops resulted in the seizure of more than 285 pounds of marijuana being trafficked from northern California to places like Colorado, Kansas, Virginia, New Hampshire and New York. Troopers also seized \$7,800 in cash headed back to California and a handgun belonging to a convicted felon.
- The Commander of the unit states marijuana makes up a majority of the drugs seized. Most of that marijuana comes from California and at least half of the subjects arrested claim that the marijuana is grown for medicinal purposes.\*

\*Interdiction Unit Commander, Lieutenant Chris Simmons

## Internet Posts

Why is it better than buying pot from the neighborhood pot dealer?

- #1) The best quality and variety in the world. There are over 100 "weed stores" from Long Beach to The Valley and the weather is right!
- #2) They accept credit. You can have no money in the bank and walk out of a weed store with an ounce of OG KUSH.
- #3) You can complain. If "Lil Smoker" down the street sells you a short 1/4, you're shit out of luck. But when the weed store shorts you, you can tell them and they will hook you up.
- #4) Less risk. Sure, these places get raided every once in a while but the customers are never arrested. At worst, you might get questioned for a short period of time, but who cares? If you are doing a drug deal at a gas station or something, that's sketchy. Or worse, sitting in the drug dealer's living room with an ounce in your pocket when he gets raided, you are going to jail.
- #5) Convenience. With so many stores and Internet access ([www.canorml.org](http://www.canorml.org)) You can find a good place, close to you that will be open when they say they are (a lot of places are open until midnight)!

## Internet Posts

**Are most of the people shopping at the Medical Marijuana Clinics legitimately sick? No. But, is anyone legitimately sick?**

**What is the best/worst thing about having a medical marijuana card?** The best thing is always having the best weed. The worst thing is spending all my money on always having the best weed.

## Internet Posts

A post from one of Doc420's fans on a marijuana message board

- I got my prescription about a week ago and it was the easiest thing I've ever done. I'm pretty sure that for no previous medical records you can easily say that you have ADD or insomnia. *I would recommend Sona Patel at doc420.com. She works off of Melrose and she'll make your appointment last 10 minutes as long as you tell her that you've tried prescription pills for your ailment and you are unwilling to take them again (so get your story straight before you get there).*

## Internet Ads

**GET YOUR RECOMMENDATION FROM A LICENSED M.D.**

- Doctor's office available on-site where qualified patients in need of medical marijuana recommendation can receive a low-cost, expert evaluation by a licensed physician. Do it Legally!
- New Patients \$125  
All Renewals \$99
- <http://iecannabisconsultants.com/>

## Internet Ads

**PACIFIC SUPPORT SERVICES**

Have you or anyone you know experienced an illness which you believe Medical Marijuana could provide relief? Anxiety - Arthritis - AIDS - Chronic Pain - Chronic Nausea - Cancer - Glaucoma - Insomnia - Migraines - Sports Injuries - Auto Accidents

Yes, in the state of California, it is legal to own, grow and smoke Medical Marijuana as long as you do it properly. Qualifying is simple and our experienced physicians are more than happy to help you. Please bring your documentation you have with you - old prescription bottles, medical bills, test results, etc. Discrete - Simple - Professional - Legal

**420 MAGAZINE MEMBERS GET HUGE DISCOUNTS!**

(You must present this coupon to receive your discount)

New Patients \$150 (Regular \$175) Renewals \$85 (Regular \$175)

If you do not qualify for a recommendation, your visit is FREE

### Having Trouble Finding a Dispensary?

- Weedmaps.com 424 Dispensary Listings
- <http://www.canorml.org/prop/cbelist.html>  
376 Dispensaries, 125 delivery svcs, 83 doctors
- <http://hempevolution.org/clubs/clubs.htm>  
331 Dispensary Listings
- <http://420california.com/Socal.html>  
327 Dispensary Listings, 71 Doctors
- <http://ganjagrocer.com/Dispensaries.html>  
489 Dispensary Listings, 10 Doctors
- <http://mccdirectory.org/>  
249 Dispensary listings

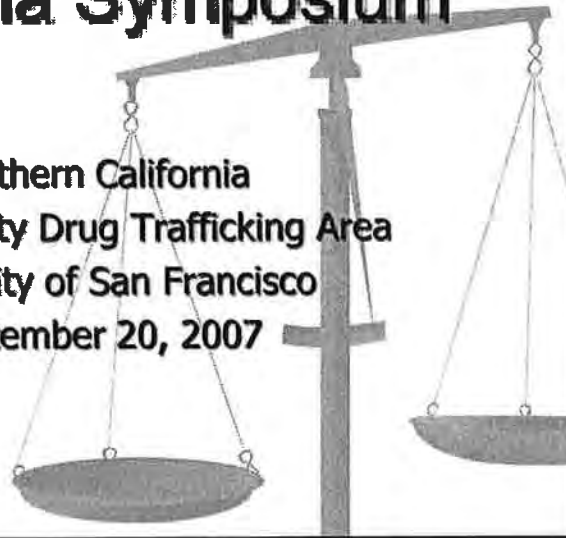
### More Information

- California Police Chiefs Association  
[http://www.californiapolicechiefs.org/nav\\_files/medical\\_marijuana.html](http://www.californiapolicechiefs.org/nav_files/medical_marijuana.html)
- White Papers (Riverside DA and Cal Chiefs)
- Indoor and Outdoor Grow information
- Dispensaries
- Sample Ordinances
- Commander Michael Regan  
(510) 215-4426 [mregan@ci.el-cerrito.ca.us](mailto:mregan@ci.el-cerrito.ca.us)

**ATTACHMENT 3**

# **Marijuana Symposium**

**Northern California  
High Intensity Drug Trafficking Area  
University of San Francisco  
September 20, 2007**



## **Secondary Effects of Medical Marijuana**

### **How Did We Get Here?**

- **Our City Council decided to consider allowing a Marijuana Dispensary in our city.**
- **We in the Police Department researched the potential effects to our community.**
- **We presented sufficient information to encourage our City Council to ban dispensaries in our city.**

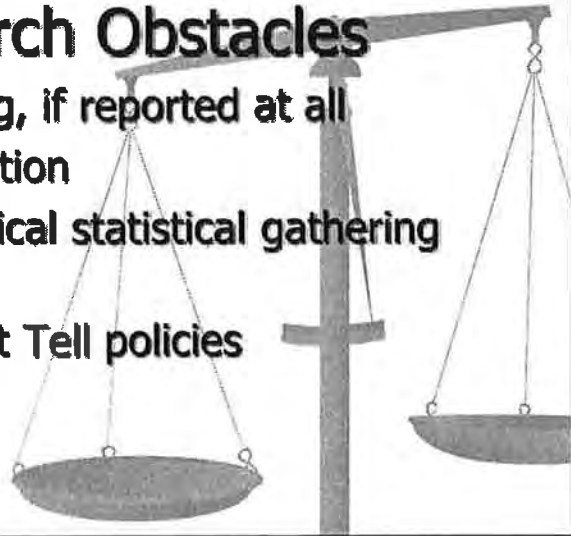




## **Secondary Effects of Medical Marijuana**

### **Research Obstacles**

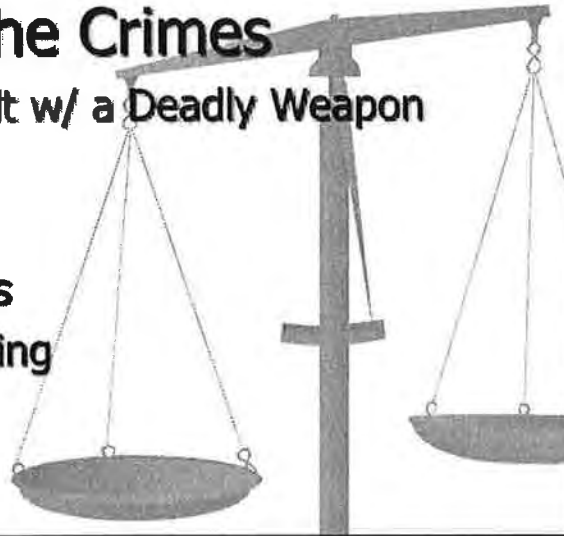
- **Under Reporting, if reported at all**
- **Crime Classification**
- **Reliance on typical statistical gathering techniques**
- **Don't Ask, Don't Tell policies**



## **Secondary Effects of Medical Marijuana**

### **■ The Crimes**

- **Murder / Assault w/ a Deadly Weapon**
- **Robbery**
- **Burglary**
- **Secondary Sales**
- **Money Laundering**
- **Utility Theft**



## **Secondary Effects of Medical Marijuana**

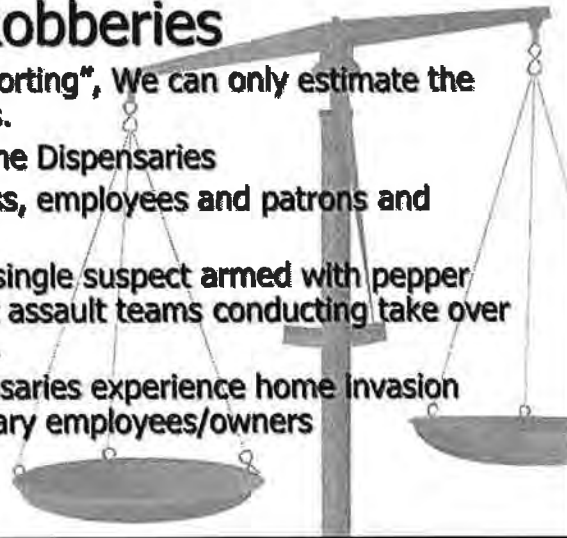
### **Deaths Associated with Medical Marijuana**

- **Myth: Nobody dies from Medical Marijuana**
- **Fact: At least 17 deaths in the last four years directly associated with Medical marijuana.**
  1. Murders during business robberies
  2. Murders during home invasion robberies
  3. Murders during street robberies
  4. Deaths of suspects during attempted robberies
  5. Numerous shootings during robberies



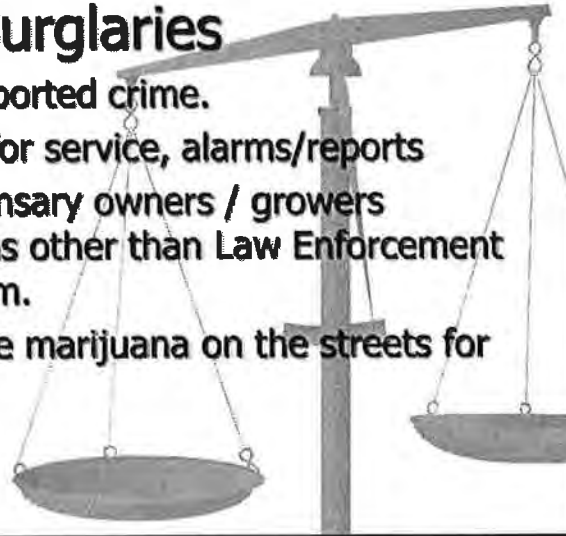
## **Secondary Effects of Medical Marijuana Robberies**

- Based on "under reporting", We can only estimate the number of Robberies.
- Occur in or around the Dispensaries
- Victimize the business, employees and patrons and "suppliers"
- Range from simple, single suspect armed with pepper spray to five suspect assault teams conducting take over bank style robberies.
- Cities without dispensaries experience home invasion robberies of dispensary employees/owners



## **Secondary Effects of Medical Marijuana Burglaries**

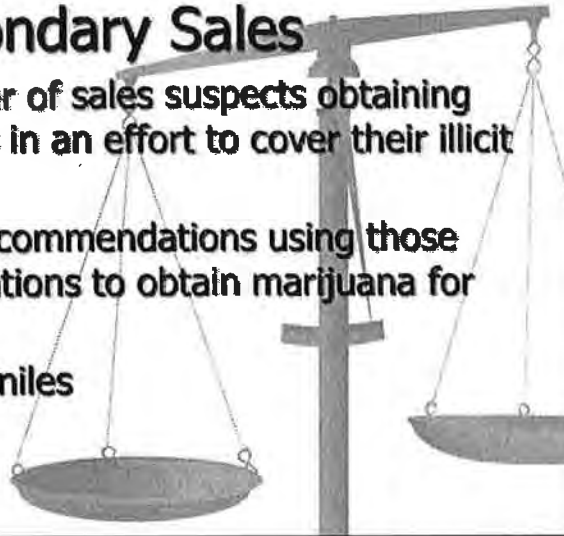
- Another under reported crime.
- A source of calls for service, alarms/reports
- Can lead to dispensary owners / growers resorting to means other than Law Enforcement to combat problem.
- Also leads to more marijuana on the streets for sale.



## **Secondary Effects of Medical Marijuana**

### **Secondary Sales**

- Increasing number of sales suspects obtaining recommendations in an effort to cover their illicit activities.
- People without recommendations using those with recommendations to obtain marijuana for them.
- Popular with Juveniles



## **Secondary Effects of Medical Marijuana**

### **Money Laundering**

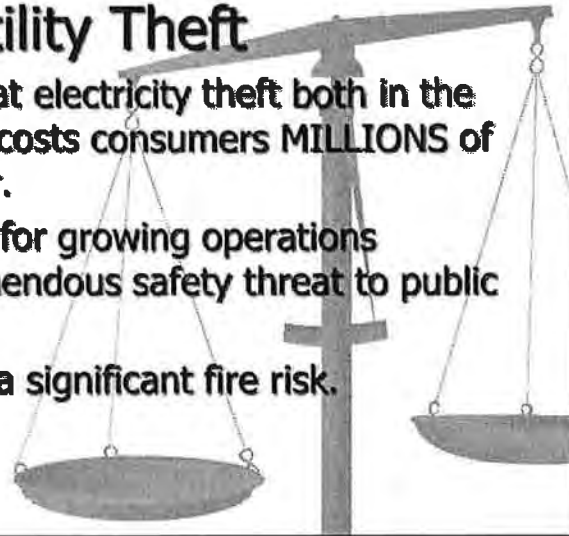
- **Every aspect of this endeavor is "cash only"**
  1. **The growers selling to the dispensaries at an average of approx. \$4,000.00 per pound**
  2. **The dispensaries selling to individuals, at prices that approach \$8,000 per pound**
  3. **The doctors making the recommendations, \$175-250.00 per recommendation plus \$100-\$150.00 for annual renewals**
  
- **In some instances, the money is financing Organized Crime factions, being moved off shore or used to buy property outside the U.S..**



## **Secondary Effects of Medical Marijuana**

### **Utility Theft**

- It is estimated that electricity theft both in the U.S. and Canada costs consumers MILLIONS of dollars every year.
- Make shift wiring for growing operations represents a tremendous safety threat to public safety personnel.
- This also creates a significant fire risk.

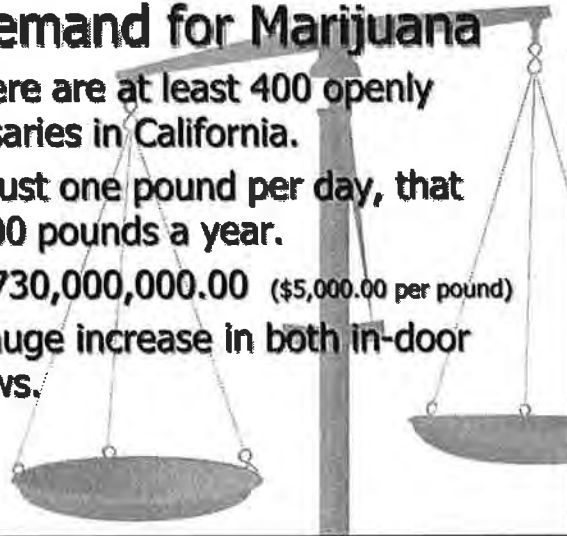




## **Secondary Effects of Medical Marijuana**

### **Increased Demand for Marijuana**

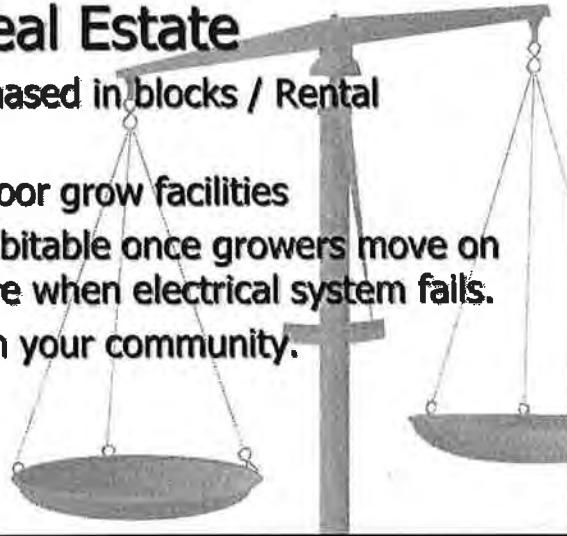
- It is estimated there are at least 400 openly operating Dispensaries in California.
- If each one sells just one pound per day, that equates to 146,000 pounds a year.
- Conservatively, \$730,000,000.00 (\$5,000.00 per pound)
- We have seen a huge increase in both in-door and out door grows.



## **Secondary Effects of Medical Marijuana**

### **Real Estate**

- **New homes purchased in blocks / Rental property**
- **Converted to in-door grow facilities**
- **Potentially uninhabitable once growers move on or damaged by fire when electrical system fails.**
- **Now a blight upon your community.**



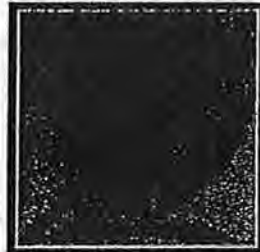
## **Secondary Effects of Medical Marijuana**

- Information used for this report can be found on the Cal Chiefs web site:  
**[http://www.californiapolicechiefs.org/nav\\_files/research/ordinances.html](http://www.californiapolicechiefs.org/nav_files/research/ordinances.html)**
- Or you can contact me at  
Cmdr. Michael Regan  
(510) 215-4426  
[mregan@ci.el-cerrito.ca.us](mailto:mregan@ci.el-cerrito.ca.us)



**ATTACHMENT 4**

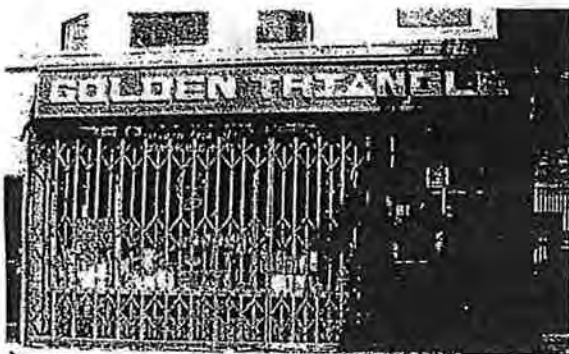
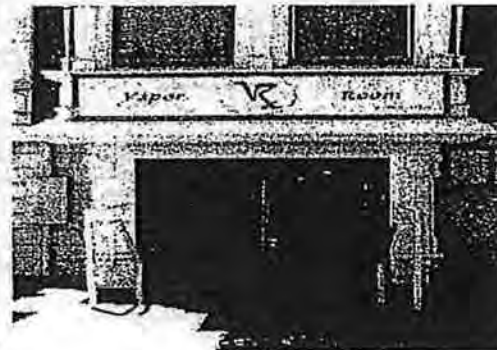
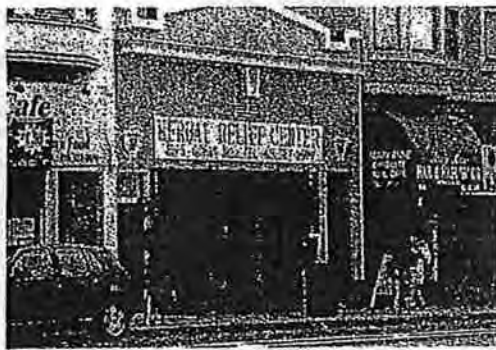
# Cannabis Clubs in the DEA San Francisco Field Division



***A Report of the Marijuana Dispensaries, Complaints, and  
Associated Neighborhood Crime***

***Javier F. Pena, Special Agent in Charge  
Drug Enforcement Administration  
San Francisco Field Division***

***Compiled by the DEA San Francisco Field Division  
March 1, 2007***



**EXECUTIVE SUMMARY**

- According to DEA Intelligence and the California chapter of the National Organization for the Reform of Marijuana Laws (NORML), there are at least 110 “medical marijuana” dispensaries (also known as “pot clubs”) in the San Francisco Field Division’s area of responsibility (AOR) as of February 20, 2007 ([www.canorml.org/prop/cbclist.html](http://www.canorml.org/prop/cbclist.html)).
- California NORML openly advertises a directory of the telephone numbers and addresses of known cannabis clubs in the California, Nevada, Oregon, Washington, Hawaii, Colorado, and Canada. This open advertisement of the illegal distribution and sale of a controlled substance suggests that neither NORML nor the dispensaries fear federal prosecution.
- With the implementation of more rigorous local and municipal zoning laws in many cities in the San Francisco Field Division’s area of responsibility (AOR), many pot growers have moved their operations toward delivery services. Thus, cannabis clubs in California now offer home delivery. Other clubs advertise that they are open 24 hours a day.



\* - Home Delivery Service of Cannabis is Available in These Areas.

- The San Francisco Field Division (SFFD) has initiated **239 marijuana investigations** since calendar year 2004. Approximately 33 of these criminal investigations have been initiated against pot clubs in the SFFD.
- At least **30 marijuana dispensaries** have been targeted by the SFFD for disruption and dismantlement since calendar year 2004. See Section 1 on Page 5 for a list and brief description of the 30 targeted marijuana dispensaries.
- In the past four years, the SFFD has made **170 arrests and seized more than \$20 million in total assets** in association with these 30 pot clubs.
- Many of the pot clubs in the division's area of responsibility have received complaints from neighbors, property owners, business owners, and government officials. The clubs include Green Cross, Resource Green, Caregiver Compassion Center, and the Vapor Room. These complaints include:
  - people smoking pot outside the dispensary,
  - an increase in pedestrian and automobile traffic clogging the streets,
  - illegal parking,
  - public safety concerns,
  - an influx of criminal elements into the neighborhoods,
  - noise, litter, loitering, property damage,
  - the pungent smell of marijuana seeping into neighboring businesses,
  - secondary smoking risks,
  - violations of residential zoning laws,
  - dispensaries operating in school zones or too close to schools or parks,
  - dispensaries operating in or near buildings that house drug treatment facilities,
  - fire hazards from makeshift electrical systems for indoor grows,
  - a decrease in business and revenue for legitimate neighborhood stores,
  - a decrease on tourist revenues and tourist traffic, and
  - a decrease in property values.

See Section 2 on Page 21 for examples of the complaints against marijuana dispensaries in the San Francisco Field Division's area of responsibility.

- In addition to neighborhood complaints, pot clubs in California are attracting major crimes and often violent criminals. A July 2006 report by the California Police Chiefs Association (CPCA) on the secondary effects of marijuana dispensaries, which compiled data from state and local law enforcement agencies and media coverage, shows that in the last two years, there have been at least **5 homicides, 35 robberies, and several fires at pot clubs**. These are just a small sample of the crimes. Crimes related to "medical marijuana" dispensaries are underreported, if reported at all due to the fear of arrest and prosecution. See Section 3 on Page 29 for examples of the major crimes committed at "medical marijuana" dispensaries.

- A one-year analysis of data provided by the San Francisco Police Department (SFPD) of the crimes committed at (or around) 23 of the city's 29 pot clubs in the city of San Francisco between January 1, 2006 and February 1, 2007 shows a significant concentration of violent crimes and property crimes.

- **Violent Crimes**

These offenses include murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Violent crimes that occurred at (or in close proximity to) San Francisco's pot clubs during the last year included:

- 98 aggravated assaults,
- 144 incidents of battery,
- 7 incidents of battery of a police officer,
- 1 attempted rape - bodily force,
- 1 forcible rape – bodily force,
- 3 sexual batteries
- 2 attempted homicides,
- 3 homicides with a gun,
- 21 deaths (causes unknown),
- 6 possession of a loaded firearm,
- 1 exhibiting deadly weapon
- 27 attempted robberies,
- 12 robberies (bodily force, with knife, with gun)
- 45 robberies (residence, commercial, store, street)

- **Property Crimes**

These offenses include burglary, larceny-theft, and motor vehicle theft. Property crimes that occurred at (or in close proximity to) San Francisco's pot clubs during the last year included:

- 20 attempted thefts (petty, building, locked auto)
- 208 grand thefts (from automobiles (locked or unlocked))
- 70 grand thefts (from building, property, store)
- 15 grand thefts (from persons)
- 1 grand thefts / pick-pocketing
- 23 credit card thefts
- 139 petty thefts (building, property, vehicle, shoplifting)
- 2 attempted burglaries
- 113 burglaries (residences, apartments, hotel room, flat)
- 37 burglaries (stores, building warehouse)
- 21 burglaries / forced entries (residences and flats)
- 8 burglaries / unlawful entries
- 19 burglaries / hot prowls

See Section 4 on Page 35 for a list of the marijuana dispensaries in the city of San Francisco.



### SECTION 3

## Crimes Associated with Marijuana Dispensaries in the San Francisco Field Division AOR

The California Police Chiefs Association (CPCA) produced a report that identified instances of criminal activity associated with "medical marijuana" dispensaries in the San Francisco Bay Area. While this is not a true study, it does provide anecdotal information that pot clubs in California are attracting crime and criminal elements. It should be noted that crimes related to "medical marijuana dispensaries" are rarely, if ever, reported so as to not draw additional law enforcement and media attention to this very lucrative business. Also, there is a classification issue with identifying crimes related to "medical marijuana" Since most law enforcement agencies do not make a distinction between "medical marijuana" and marijuana, separating crimes related to these two crime classifications is difficult.

It is a fact that in addition to neighborhood complaints, pot clubs in California are attracting major crimes and often violent criminals. This July 2006 report by the CPCA on the secondary effects of marijuana dispensaries, which compiled data from state and local law enforcement agencies and media coverage, shows that in the last two years, there have been at least 5 homicides, 35 robberies, and several fires at pot clubs located in the division's AOR. Below are just a small sample of the crimes. See [http://www.californiapolicechiefs.org/nav\\_files/research/pdfs\\_ordr/el\\_cerrito\\_ordr.pdf](http://www.californiapolicechiefs.org/nav_files/research/pdfs_ordr/el_cerrito_ordr.pdf) for the full report.

#### HOMICIDES

- **August 19, 2005 – (Alameda County)**
  - A NATURAL SOURCE medical marijuana dispensary was robbed by five subjects armed with assault rifles. A shoot out occurred between the five subjects and two medical marijuana dispensary employees. One suspect was killed in the exchange of gunfire.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff's Department)
  
- **November 19, 2005 – (Laytonville)**
  - Les Crane was the founder of two Mendocino County medical marijuana dispensaries. He claimed to have 1,000 patients. He called the medical marijuana dispensaries "churches" and called marijuana the "tree of life". His religious credentials were issued by the Universal Life Church, which issues certificates through mail and internet. He was previously arrested for marijuana cultivation. His dispensaries offer exotic varieties of marijuana that sell for \$350 an ounce. He was shot to death at his residence at 2:30 a.m. on November 19, 2005. Two others were beaten in home. There were no suspects, but officials believe the killing is related to a Crane's prior arrest in May and pending criminal proceedings for pot growing.  
(Sources: <http://www1.pressdemocrat.com/apps/pbc.dll/article?AID=/20051110/NESW/411190303>  
[www.co.humboldt.ca.us/sheriff/pressreleases](http://www.co.humboldt.ca.us/sheriff/pressreleases) )

- **August 29, 2006 – (Martinez, CA)**
  - A jury found a 17-year old minor guilty of first-degree murder of his neighbor. The victim suffered 26 head wounds, broken fingers, dislodged teeth, bruises, and a gaping stab wound to her abdomen. The friend of the minor told police that the minor that they were scheming to purchase marijuana-growing equipment online using stolen credit cards. The minor tried to purchase grow-lights online using the victims address and the stolen card of the victim's neighbor. When the company refused to ship the order, the minor told his friend he will take care of it. It was suspected that the minor planned to use the marijuana-growing equipment to start an indoor grow site for marijuana distribution.  
(Source: [http://www.courttv.com/news/horowitz/0828006\\_verdict\\_ctv.html](http://www.courttv.com/news/horowitz/0828006_verdict_ctv.html))
- **October, 2006 – (Oroville, CA) (Triple Homicide)**
  - On October 22, 2006, three men, purporting themselves as potential buyers of marijuana, met with a group of "medical marijuana" patients who were trying to sell part of their crop (20 lbs. of marijuana) for \$60,000. This meeting occurred in a motel room at the Best Valley Inn in Oroville. During the meeting, one of the buyers came out of the bathroom, fired a shot into the ceiling and started barking orders for the sellers to get on the floor. One of the sellers produced a gun and fired back. A total of 17 shots were exchanged, resulting in the deaths of two of the buyers and one of the sellers.

#### HOME INVASION - MURDER

- **Clearlake, CA**
  - There have been reported robberies of medical marijuana patients away from the dispensaries. There is one case of home invasion robbery. Multiple suspects entered the home of a person known to be a medical marijuana user. During the robbery, one resident was beaten with a baseball bat while suspects make inquiries regarding the location of marijuana. The two suspects were shot and killed by homeowner. (Source: *Clear Lake P.D. inv. Clawson*)
- **September 2005 – (Olivehurst, CA) (Double Homicide)**
  - According to the Yuba County Sheriff's Department, five suspects attempted a home invasion robbery of a residence in Olivehurst, CA, where they believed the occupants had a stash of "medical marijuana." During the course of the robbery, two individuals were shot and killed.
- **September 2006 – (Bakersfield, CA)**
  - On September 21, 2006, Leon Banks, 56, and his son Leonard Banks, 19, were shot in the backyard of their residence 2413 Fairview Ave. Bakersfield, CA. At 11:30 pm, two gunmen attempted to steal twelve "medical marijuana" plants growing in the Bank's backyard. Leon Banks was shot in the arm and taken to the nearest hospital for treatment. He was released from the hospital within hours. Approximately 6 hours later, Leon and Leonard Banks were shot at their residence as the gunmen returned to re-initiate the theft of the marijuana. Leonard was pronounced dead and Leon is in critical condition.

## POT CLUB ROBBERIES

- **January 12, 2005 – (Alameda County)**
  - A medical marijuana customer was robbed after leaving “THE HEALTH CENTER” medical marijuana dispensary. The victim was accosted by two subjects who possibly followed the victim away from the dispensary.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Dept.)
- **January 25, 2005 – (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary and burglarized it by taking three pounds of marijuana and cash.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **February 6, 2005 – (Alameda County)**
  - THE COMPASSION COLLECTIVE OF ALAMEDA COUNTRY (CCAC), a medical marijuana dispensary, was robbed by two subjects armed with handguns. The suspects took an unspecified amount of cash and marijuana.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Department)
- **March 3, 2005 - (Santa Rosa)**
  - Suspects forced entry into a medical marijuana dispensary and stole a laptop computer, marijuana, and smoking paraphernalia.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 15, 2005 – (Santa Rosa)**
  - Employees of a medical marijuana dispensary were robbed by a suspect armed with a shotgun as they were closing the business. Suspect stole a “duffle bag” of marijuana  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 18, 2005 - (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary and stole a digital scale.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 19, 2005 – (Santa Rosa)**
  - Suspects forced entry into a medical marijuana dispensary and stole one half pound of marijuana.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 27, 2005 – (Alameda County)**
  - THE HEALTH CENTER medical marijuana dispensary was burglarized at dawn. No specifics were provided as to the loss as a result of the burglary. Investigators believed that the victim did not truthfully report the loss of cash and marijuana.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Department)

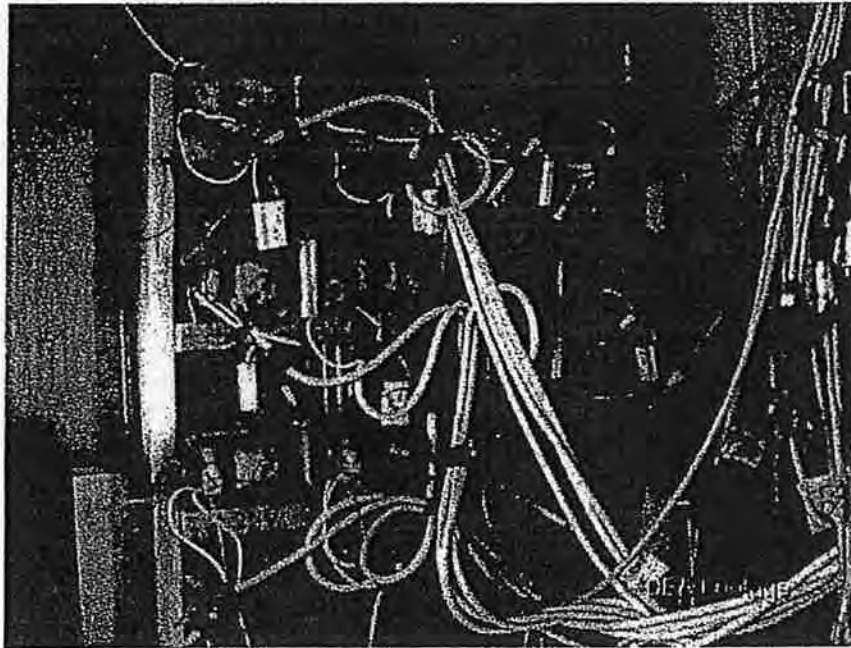
- **May 14, 2005 – (San Francisco)**
  - In a daring home invasion robbery, owner of ALTERNATIVE HEALTH AND HEALING SERVICE was robbed at night. Several pounds of cannabis and dispensary keys were taken by robbers.  
(Source: [http://www.hempevolution.org/thc/dispensary\\_robbed040514.htm](http://www.hempevolution.org/thc/dispensary_robbed040514.htm))
- **May 24, 2005 – (Alameda County)**
  - A NATURAL SOURCE medical marijuana dispensary patron was robbed by three subjects in the parking lot of the dispensary after making a purchase of pot.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff's Department)
- **June 13, 2005 – (Berkeley)**
  - Berkeley had four facilities operating in the city (at time of the report). There were several take-over robberies of medical marijuana dispensaries in Berkeley.  
(Source: Staff Report to Davis City Council)
- **June 19, 2005 – (San Leandro)**
  - On June 19, 2005, suspects entered an unoccupied residence of a medical marijuana dispensary employee and took jewelry and \$10,000 in cash. On June 28, 2005, the suspects returned to the residence and began to force entry but were confronted by the resident.  
(Source: Mark Decoulode San Leandro P.D.)
- **September 8, 2005 – (Bakersfield)**
  - Kern County Sheriffs summoned DEA after being called to investigate a robbery at the medical marijuana facility called FREE AND EASY CANNABIS. Approximately 20 pounds of marijuana and illegal firearms were found at one of the subjects home three subjects were arrested.  
(Source: <http://www.canormal.org/news/fedmmjcaes.html>)
- **September 12, 2005 – (Alameda County)**
  - Cash and marijuana were stolen from the ALAMEDA COUNTRY RESOURCE CENTER, a medical marijuana dispensary. Burglars chopped through the wall of an adjacent fellowship hall during the night.  
(Source: Declaration by LT. Dale Amaral Alameda Country Sheriff's Dept.)
- **September 20, 2005 – (San Leandro)**
  - A medical marijuana dispensary receptionist was accosted by a lone suspect as she walked from her vehicle to her house. The receptionist was able to get into her home and call police before the robbery. (Source: Mark Decoulode San Leandro P.D.)
- **December 19, 2005 - (San Leandro)**
  - The receptionist who was accosted during the September 20, 2005 incident was robbed as she walks from her vehicle to her home. The suspects took a bag containing receipts from the medical marijuana dispensary  
(Source: Mark Decoulode San Leandro P.D.)

- **September 29, 2005 - (San Leandro)**
  - A customer was carjacked and robbed after leaving THE HEALTH CENTER (THC) medical marijuana dispensary. The crime took place four blocks away from THC, witnesses called police. The customer, who is from Garberville in Humboldt County, walked back towards the clinic and found the car abandoned. The victim declined to pursue a criminal complaint. Alameda County Sheriff's Department spokesman stated that "no matter how armored the clinics' buildings are, the people entering and exiting are still targets".  
(Source: [http://www.hempevolution.org/thc.dispensary\\_robbed\\_040514.htm](http://www.hempevolution.org/thc.dispensary_robbed_040514.htm))
- **October 1, 2005 – (Live Oaks)**
  - Four suspects attempted to conduct a home invasion robbery of a home cultivator of medical marijuana. The homeowner fired a shotgun at the suspects. The suspects fled and were later captured by police.
- **October 26, 2005 – (San Leandro)**
  - A Detective on a routine patrol observes a suspicious circumstance and stops two subjects. The stop results in the arrest of the subject for robbery and possession of stolen property. The house the suspects were watching was the home of a medical marijuana dispensary employee.  
(Source: *Mark Decoulode San Leandro PD*)
- **March 5, 2006 – (Ben Lomond) HOME INVASION ROBBERY**
  - Two suspects identified themselves as "police" forced their way into the victim's residence. The victim was assaulted, robbed and left tied up in his residence until he was discovered the next day Investigation revealed that the motive for the robbery was the victim's medical marijuana supply.
- **March 15, 2006 – (Mendocino)**
  - MENDOCINO REMEDIES medical marijuana dispensary employees were pepper sprayed by suspect attempting to take property. A fight between the suspects and victims ensued, suspects fled from the scene.  
(Source: <http://www.co.mendocino.ca.us/sheriff/pressreleases.htm>)
- **March 17, 2006 – (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary.  
(Source: *Lt. Briggs, Santa Rosa PD*)
- **May 2, 2006 – (Santa Cruz)**
  - Burglars stole 10 medicinal marijuana plants from a residence. The thieves got away with more than \$4,000 in electronics, jewelry, and personal items.  
(Source: <http://www.santacruzsentinel.com/archive/2006/May/02/local/stories/09/local.htm>)

- **May 12, 2006 – (Oakland)**
  - A robbery was reported at WE ARE HEMP medical marijuana dispensary. The suspects pretended to be interested in becoming a member. Once inside the premises, the suspects brandished handguns and forced a worker to hand over cash and marijuana. The suspects were never found.  
(Source: *Oakland Tribune*)
  
- **June 27, 2006 – (San Francisco)**
  - EMMALYN'S CALIFORNIA CANNABIS CLINIC was robbed on Sunday, June 27, 2006 after approximately 1:30 p.m. Robbers held up the clerk and stole cash and inventory while most of the staff was handing out fliers at a festival. The two thieves had been in the dispensary about an hour prior to the crime and bought some marijuana. On this date, there was a second reported medical marijuana dispensary robbery at THE PURPLE HEART DISPENSARY. THE PURPLE HEART DISPENSARY was previously robbed in February 2006.  
(Source: *San Francisco Examiner*)
  
- **August – October 2005 – (Butte County)**
  - During the months of August to October 2005, there were six robberies or attempted robberies connected to pot dispensaries. One robbery involved a shoot out between the suspect and victim. Each of the six robberies took place at the victim's residence and the target was the victim's marijuana cultivation. A Butte County Sheriff's Department Detective stated that August - October is the busy time of year for marijuana robberies as it is harvest time for marijuana grows.  
(Source: *Detective Jake Hancock, Butte County Sheriff's Department*)

### POT CLUB FIRES / ENVIRONMENTAL HAZARDS

- **February 5, 2006 – (San Francisco)**
  - The fire in the lower level of a three-story residence was caused by an arcing wire. The fire was small and there were no injuries or displacements. San Francisco Police Department handled the investigation into the marijuana growing operation at the residence.  
(Source: Bay City News)
- During an investigation into the Sparky ROSE marijuana distribution organization (R3-06-0052 / YAM3B – Jeffrey D. HUNTER), the San Francisco Fire Department found an extremely hazardous and illegal electrical configuration used to power the underground indoor grow in a very busy residential neighborhood on Polk Street in San Francisco's Russian Hill neighborhood.
- During an investigation into the Richard WONG drug trafficking organization (R3-04-0012 / YNM3N – Richard WONG (OP. URBAN HARVEST)), SFFD agents located an extremely dangerous and illegal electrical configuration throughout the premises used to power the sophisticated lighting equipment for the indoor grow (see below).







**ATTACHMENT 5**



## SIGNS YOUR NEIGHBOR IS RUNNING A MARIJUANA GROW OPERATION

[www.usdoj.gov/dea/pubs/states/seattle.html](http://www.usdoj.gov/dea/pubs/states/seattle.html)

This is provided for informational purposes only. While marijuana grow operations are appearing on a frequent and accelerating basis in residential neighborhoods, they are almost always connected to organized crime. Do not take it upon yourself to investigate or approach the suspects. Call your local law enforcement or use the "DEA TIPS" link located on the DEA website.

- **FACTS ABOUT MARIJUANA:** Marijuana is a Schedule I substance under the Controlled Substances Act (CSA). Schedule I drugs are classified as having a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. Marijuana is the most widely used illicit drug in America—of the approximately 14 million current illicit drug users<sup>1</sup>, 10.7 million are using marijuana.<sup>2</sup>
- Sixty percent of those currently entering drug treatment are doing so because of marijuana use.<sup>3</sup>
- Of the 4.6 million Americans suffering from illegal drug dependence or serious abuse<sup>4</sup>, *two-thirds* are dependent on or are abusing marijuana<sup>5</sup>.
- More young people are now in treatment for marijuana dependency than for all other illegal drugs combined.<sup>6</sup>
- Marijuana use as a cause for emergency room visits has dramatically increased—surpassing heroin - and has risen 176 percent since 1994<sup>7</sup>.
- Studies show smoking marijuana leads to changes in the brain similar to those caused by the use of cocaine and heroin.<sup>8</sup>
- Heavy marijuana abuse impairs the ability of young people to retain information during their peak learning years, when their brains are still developing.<sup>9</sup>
- Research shows that youth who use marijuana weekly are nearly four times more likely to engage in violence than non-marijuana users.<sup>1</sup>

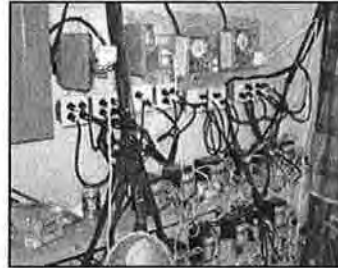


Ask yourself: Do you know your neighbors? Have you been inside their home or does something seem peculiar or different about their home? In order to deflect suspicion, it is not unusual for children to reside in homes being used to cultivate marijuana. The indicators listed below may reveal a marijuana grow that is contained in a home in your neighborhood:

- Windows are covered/blacked out and are never opened.
- Windows have condensation forming due to high levels of humidity.
- Neighbors are seen at the home only on a sporadic basis.



- New neighbors move into a home without furniture or belongings. They are rarely seen entering or exiting with groceries or conducting everyday chores.
- Access to the residence is primarily through the garage.
- Unusual traffic, such as a heavy volume of visitors for short amounts of time, and visitors may be waiting outside in the car.
- People are seen entering with plastic sheeting, plant stocks, fertilizer bags, plastic piping, large amounts of potting soil and pots. These items may also be left outside.
- When seen, individuals are entering or departing the residence with large heavy garbage bags.
- Additional water lines and/or electrical cords are running into the residence.
- Unusual odor omitting from the residence similar to a "skunk" smell.
- Unusual amounts of steam coming from the vents.
- Mail not picked up and garbage not taken out. This is also sometimes done to avoid suspicion.
- Very bright lights not consistent with home lighting.
- Humming sounds, hammering or drilling coming from the residence.



<sup>1</sup> National Household Survey on Drug Abuse (Table 2, NDCS 2002, 58.)

<sup>2</sup> National Household Survey on Drug Abuse (Table 2, NDCS 2002, 58.)

<sup>3</sup> National Household Survey on Drug Abuse, Table 5.25a

<sup>4</sup> U.S. Dept HHS, *Closing the Drug Abuse Treatment Gap: A Report to the President of the United States* (September, 2001) (NDCS 2002, Table 31, 79.)

<sup>5</sup> National Household Survey on Drug Abuse, Table 5.25a

<sup>6</sup> TEDs Treatment Episodes Data Set 1994-1999: "National Admissions to Substance Abuse Treatment Services," SAMHSA October, 2001.

<sup>7</sup> SAMHSA, DAWN, ED 2001

<sup>8</sup> NIDA: *Marijuana: Facts Parents Need to Know*, November 1998.



<sup>9</sup> NIDA: *Marijuana: Facts Parents Need to Know*, November 1998. (14.Pope, HG. and Yurgelun-Todd, D. The Residual Cognitive Effects of Heavy Marijuana Use in College Students. *Journal of the American Medical Association*. February 21, 1996 Vol 275, No. 7. )

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**STUDIES AND OTHER DATA AND INFORMATION REGARDING  
LAND USE IMPACTS RELATING TO MEDICAL MARIJUANA  
AND OTHER MARIJUANA GROW OPERATIONS**

**Attachments:**

1. "White Paper on Marijuana Dispensaries," by California Police Chiefs Association's Task Force on Marijuana Dispensaries, 2009.
2. PowerPoint Presentation: "Summit on the Impact of California's Medical Marijuana Laws," Commander Michael Regan, El Cerrito, California, April 23, 2009.
3. PowerPoint Presentation: "Marijuana Symposium: Secondary Effects of Medical Marijuana," Commander Michael Regan, El Cerrito, California, September 20, 2007.
4. "Cannabis Clubs in the DEA San Francisco Field Division: A report of the Marijuana Dispensaries, complaints, and Associated Neighborhood Crime," Javier F. Pena, Special Agent in Charge, DEA San Francisco Field Division, March 1, 2007 [portions only].
5. "Signs your Neighbor is Running a Marijuana Grow Operation," Drug Enforcement Administration, Seattle Field Division, undated.

**ATTACHMENT 1**

**WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

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

## ACKNOWLEDGMENTS

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

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

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

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Dana Filkowski, Contra Costa County District Attorney's Office  
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Mike Kanalakis, Monterey County Sheriff's Office  
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Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement  
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April 22, 2009

Dennis Tilton, Editor

**TABLE OF CONTENTS**

	<u>Pages</u>
ACKNOWLEDGMENTS .....	i-ii
EXECUTIVE SUMMARY.....	iv-vi
WHITE PAPER ON MARIJUANA DISPENSARIES	
INTRODUCTION .....	1
FEDERAL LAW.....	1-2
CALIFORNIA LAW.....	2-6
LAWS IN OTHER STATES.....	6
STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES .....	6-7
HOW EXISTING DISPENSARIES OPERATE.....	7-8
ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES.....	8
ANCILLARY CRIMES.....	8-10
OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES.....	11
SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE.....	11-14
ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS.....	14
POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES.....	14-17
LIABILITY ISSUES.....	18-19
A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES.....	19-30
PENDING LEGAL QUESTIONS.....	31-39
CONCLUSIONS.....	40
ENDNOTES.....	41-44
NON-LEGAL REFERENCES.....	45-49

## **WHITE PAPER ON MARIJUANA DISPENSARIES**

by

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

#### **EXECUTIVE SUMMARY**

##### **INTRODUCTION**

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

##### **FEDERAL LAW**

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

## **CALIFORNIA LAW**

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

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

## **PROBLEMS POSED BY MARIJUANA DISPENSARIES**

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

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

## **LOCAL GOVERNMENTAL RESPONSES**

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

## **LIABILITY**

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

## **ENFORCEMENT OF MARIJUANA LAWS**

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

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

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

## **WHITE PAPER ON MARIJUANA DISPENSARIES**

**by**

### **CALIFORNIA POLICE CHIEFS ASSOCIATION**

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#### **INTRODUCTION**

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

#### **FEDERAL LAW**

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

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

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

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

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

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

## **CALIFORNIA LAW**

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

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

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

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

## **1. Conduct**

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

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



## 2. Patients and Cardholders

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

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

## 3. Primary Caregivers

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

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

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).)

“Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

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

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

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

#### 4. Cooperatives and Collectives

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

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

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

## **LAWS IN OTHER STATES**

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

## **STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES**

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

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

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

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

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

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

## HOW EXISTING DISPENSARIES OPERATE

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

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

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

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

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

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

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

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

### **ANCILLARY CRIMES**

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

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

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

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

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

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

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.<sup>40</sup>

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.<sup>41</sup>

## **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.<sup>42</sup> 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.<sup>43</sup>

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.<sup>44</sup> 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.<sup>45</sup> 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 . . . .”<sup>46</sup>

## **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,<sup>47</sup> 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.<sup>48</sup> Sharing just purchased marijuana outside dispensaries also regularly takes place.<sup>49</sup>

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,<sup>50</sup> “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.<sup>51</sup> 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 . . . .”<sup>52</sup> 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.”<sup>53</sup>

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.<sup>54</sup> 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.<sup>55</sup> 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.<sup>56</sup> 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.<sup>57</sup> Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,<sup>58</sup> which seem to go hand in hand with medical marijuana cultivation and dispensaries.<sup>59</sup>

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.<sup>60</sup> 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.<sup>61</sup> 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.<sup>62</sup>

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.<sup>63</sup> 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,<sup>64</sup> and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.<sup>65</sup>

#### **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.<sup>66</sup> 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.<sup>67</sup>

## **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.<sup>68</sup>

## **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."<sup>69</sup> Other individuals just make up their own phony doctor recommendations,<sup>70</sup> 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.<sup>71</sup> 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.<sup>72</sup>

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 . . ."<sup>73</sup> Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> 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.<sup>77</sup> 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 . . ."<sup>78</sup> The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.<sup>79</sup>

## **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.<sup>80</sup> 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.<sup>81</sup>

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.<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

#### **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.<sup>85</sup> 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.<sup>86</sup>

#### **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.<sup>87</sup> Dispensaries also sell marijuana to minors.<sup>88</sup>

#### **F. IMPAIRED PUBLIC HEALTH**

Indoor marijuana grow operations emit a skunk-like odor,<sup>89</sup> 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,<sup>90</sup> all of which are dangerous to any children or adults who may be living in the residence,<sup>91</sup> 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,<sup>92</sup> 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.<sup>93</sup>

## **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.<sup>94</sup>

## **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.<sup>95</sup> 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.<sup>96</sup>

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.<sup>97</sup> 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.<sup>98</sup> It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.<sup>99</sup> 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.<sup>100</sup>

## **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 (CO<sub>2</sub>, 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.

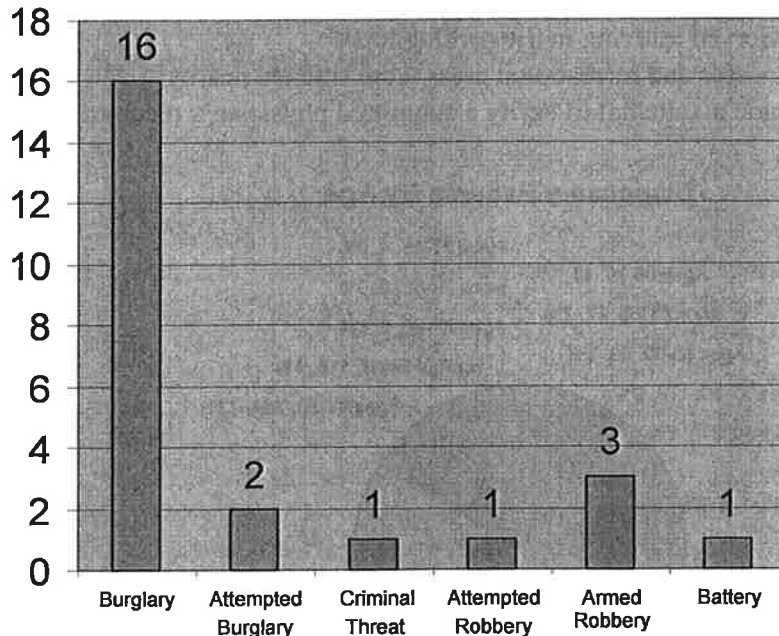
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

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:

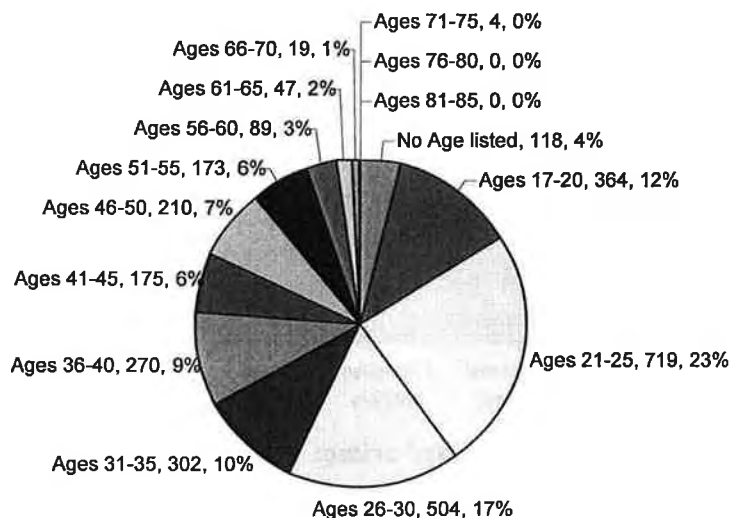
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- 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 12<sup>th</sup> 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.<sup>101</sup> 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.<sup>1</sup> 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).)

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<sup>1</sup> 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."<sup>2</sup> 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.<sup>3</sup>

## 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

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup>

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.

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<sup>4</sup> 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).)<sup>5</sup> 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

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<sup>5</sup> 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.

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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.<sup>6 102</sup>

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.

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<sup>6</sup> 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.<sup>103</sup> 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

- <sup>1</sup> U.S. Const., art. VI, cl. 2.
- <sup>2</sup> U.S. Const., art. I, sec. 8, cl. 3.
- <sup>3</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- <sup>4</sup> *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- <sup>5</sup> *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- <sup>6</sup> 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>
- <sup>7</sup> See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- <sup>8</sup> Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- <sup>9</sup> H&S Code sec. 11362.5(a).
- <sup>10</sup> H&S Code sec. 11362.7 *et. seq.*
- <sup>11</sup> H&S Code sec. 11362.7.
- <sup>12</sup> H&S Code secs. 11362.71–11362.76.
- <sup>13</sup> H&S Code sec. 11362.77.
- <sup>14</sup> H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4<sup>th</sup> 747 at p. 786.
- <sup>15</sup> 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.
- <sup>16</sup> H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- <sup>17</sup> 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.
- <sup>18</sup> *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- <sup>19</sup> *Id.* Emphasis added.
- <sup>20</sup> Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- <sup>21</sup> Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- <sup>22</sup> For a statewide list, see <http://canorml.org/prop/cbelist.html>.
- <sup>23</sup> Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
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**ATTACHMENT 2**

## Summit on the Impact of California's Medical Marijuana Laws

### Dispensary Related Crime

April 23, 2009

Commander Michael Regan

## The El Cerrito Experience

- Why El Cerrito?
- Movement to Allow a Dispensary in our City
- Two weeks to convince our Council
- Success with the Council led to Cal Chiefs
- Cal Chiefs forms Task Force
  1. Try to help others deal with this issue
  2. Calling it what it is "legalized drug dealing"
  3. Advocating for change

## Worse than combining a Liquor Store and Casino analogy

Reasoning is this:

1. Lots of cash
2. Lots of guns
3. However, unlike Liquor Stores and Casinos, with very little if any oversight or ability to impact businesses

## Dispensaries

- What exactly is a MMJ Dispensary?
  1. Store Front Retailer
  2. Profit / Non-Profit
  3. Primary Care Giver
- "Dispensary" does not appear anywhere in Prop 215 or AB420
- Some estimates claim 400-800 dispensaries in California (Nobody really knows)
- No State control as compared to Liquor Licenses

## Collective / Cooperative

- Collectives: An organization that merely facilitates the collaborative efforts of patient and caregiver members –including the allocation of costs and revenues.
- No business may call itself a "cooperative" (or "co-op") unless it is properly organized and registered as such under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) They are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons."

## Collective / Cooperative

- Neither should purchase marijuana from nor sell to, non-members.
- They should only provide a means for facilitating or coordinating transactions between members.



### Primary Caregiver Defined

- *People v. Mentch* (CA Supreme Court Case # S148204 (2008))
- Must do more than just provide MMJ
- Must be a person "who has consistently assumed responsibility for the housing, health and safety" of the patient.
- "a defendant asserting primary caregiver status must prove that he or she consistently provided caregiving, independent of any assistance in taking marijuana"
- The CUA "does not provide similar protection where the provision of marijuana is itself the substance of the relationship."

### Dispensary Enforcement Actions

- Since 2004 the DEA has initiated over 87 investigations involving dispensaries.
- 130 enforcement actions taken as part of these investigations
- 365 people were arrested on both federal and state charges. None were charged with simple possession. The fact that a wide variety of state charges were also filed indicates that these subjects were also in violation of state law as well.
- Unknown number of State/Local Investigations.
- Publicizes the disingenuous profiteers in this industry and demonstrates the need for statewide regulation.

### Capitol Compassionate Care

- Sept. 2004 the Roseville Dispensary closed by DEA and IRS. Reported to open back up the next day.
- \$100,000 in cash, 12 pounds of marijuana and several hundred marijuana plants are seized.
- Richard Marino indicated on 19 counts of marijuana trafficking and money laundering.
- The indictment alleges that in eight months the dispensary made approximately \$2.7 mil from the sale of marijuana and \$356,130 was traced to money laundering activities.
- The U.S. Attorney handling the case stated, "This case is a perfect example of a person using Medical Marijuana as a smokescreen to hide his true agenda, which is to line his pockets with illegal drug money."
- July 2008 sentenced to 51 months in Federal Prison.

### Holistic Caregivers of Compton

- May 2008: Virgil Grant, the owner of six L.A.-area dispensaries is arrested. He and his wife are indicted on 42 charges, including 22 counts of money laundering.
- Investigation sparked by a December 2007 traffic collision in which a motorist was killed, and a CHP officer was paralyzed by a marijuana impaired driver.
- "a large amount of marijuana and marijuana edibles" are found in the suspect vehicle. Forensic expert testified that there was a high concentration of marijuana in driver's blood, "It's one of the highest levels I recall seeing."

### Holistic Caregivers of Compton

- During the investigation, an employee sold a pound of marijuana for \$5,700 out the back door of one of the dispensaries.
- Even before the indictment, Compton officials were "trying to rid the city" of Grant's dispensary.
- Grant initially obtained a business license for a "herbal" retail store, later it was discovered that Grant was operating a dispensary.
- At a bond hearing, a request was made to hold Grant without bail, noting that he had a previous conviction on drug and weapon related offenses

### Compassionate Collective of Alameda County

- Opened in 2004, that year they took in \$74,000.
- In 2005, sales rose to \$1.3 million.
- In 2006, sales hit \$21 million
- And in the first six months of this 2007 took in a whopping \$26.3 million.
- November 5, 2007; Winslow and Abraham Norton were indicted on charges of conspiracy to distribute and distribution of marijuana as well as conspiracy to launder money and money laundering
- Seized were several hundred pounds of marijuana, approx \$200,000 in cash, two bank accounts, two IRAs, a 2005 Mercedes Benz, a 2006 ML500 Mercedes Benz, a residence and two commercial buildings.

### Compassionate Collective of Alameda County

- Feb 2005 a group of suspects entered the dispensary, tied everyone up and robbed the place of about \$50,000.
- April 2005, Winslow Norton arrested in Mendocino County after being found in possession of 44 pounds of marijuana packaged for individual sale and \$2,280 in cash. A man who claimed he was Norton's father came to the jail to post bail with a bag containing \$150,000 in cash and reeking of marijuana.
- June 2005, a masked gunman fired four shots into a dispensary worker's car as he pulled into the parking lot.
- February 2007, the brothers were involved in a shootout at a Fremont hotel after being lured there via Craig's list.
- In July of 2007, one of the club's customers was ambushed, robbed for his marijuana and killed at a nearby gas station.

### Compassionate Caregivers

- Larry Kristich owned and operated the business from 02-05
- Dispensaries in Oakland, San Francisco, San Leandro, West Hollywood, San Diego, Bakersfield and Ukiah
- Company employed more than 200 people as growers, clone cultivators, drivers, directors, store managers, retail sellers (referred to as "budtenders") and security guards
- Pled guilty to federal narcotics and money laundering charges, admitting that he was responsible for the distribution of more than 15,000 pounds of marijuana
- Admitted that sales of marijuana at Compassionate Caregivers' stores totaled over \$95 million. Kristich also admitted that he laundered more than \$50 million of that money

### Beyond Bomb

- March 2006: Search warrants resulted in the seizure of thousands of marijuana plants, hundreds of marijuana-laced candies and soft drinks, three guns, approximately \$189,000 in cash and 12 arrests.
- Beyond Bomb Products were seized at the Compassionate Caregivers dispensary in Los Angeles and at other dispensaries throughout the state.
- Described as the largest West Coast operation of its type.
- Affolter was sentenced to more than five years and then sued for \$100,000 by Hershey, for trademark infringement, trademark dilution and unfair competition.
- L.A. NORML called the arrests aggressive and "uncalled for." "Despite the large number of plants seized, the suspects could have a defense if they operated as a caregivers' cooperative."

### Beyond Bomb



### California Healthcare Collective

- Luke Scarmazzo
- Joint investigation by Modesto PD and DEA culminated in September 2006.
- Search Warrant at the "collective" resulted in Scarmazzo and Ricardo Montes being charged with distribution of marijuana, conspiracy to distribute marijuana, possession of firearms and money laundering. Somewhere between 4 and 8 Mil in sales.
- Reported that the DEA seized more than 100 pounds of marijuana, one thousand plants, multiple firearms, and more than \$200,000 in cash.

### Nature's Medicinal Cooperative

- First action against Nature's Medicinal Cooperative in May 2007
- Operator was warned that federal agents would return if he reopened. At that time 155 pounds of processed marijuana, edibles and \$55,000 in cash were seized.
- Records indicate in a four month span the dispensary purchased 1,500 pounds of marijuana.
- In July 2007 the dispensary was again closed by federal agents. More than 87 pounds of marijuana seized and five arrests.
- Purported that the business brought in \$9.6 million in nine months. According to DEA: "The nature of this enterprise was to make money—plain and simple."
- David Chavez Jr. and Sr. charged with conducting a "continuing criminal enterprise". They and six others were charged with conspiring to distribute marijuana and other charges including possessing firearms in furtherance of the trafficking crimes.

### Hayward Local Patients Cooperative

- October 2007: Owner Shon Squier and Manager Valerie Herschel charged with conspiracy to distribute and distribution of marijuana. The business was on pace "to net more than \$50 million in sales this year".
- Squier allegedly used the profit from marijuana sales to buy a Hayward home for \$532,107 and Herschel allegedly used \$85,853 for a down payment on a home.
- Squier said that he served about 75 customers a day, had 70,000 individual patients in his books and 60 employees.
- DEA froze bank accounts containing \$1.5 million, confiscated two Mercedes, a Hummer, a Cadillac Escalade, Harley Davidson and Ducati motorcycles, indoor marijuana growing equipment and \$200,000 in cash.

### Tainted Inc. / Compassion Medicinal Edibles

- Oakland-based business that produced candy, cookies, ice cream, brownies and energy drinks containing marijuana.
- Michael Martin's company supplied marijuana-laced foods to dispensaries in the Bay Area, Los Angeles, Seattle, Vancouver and Amsterdam.
- Search warrants resulted in the seizure of 400 plants and edibles.
- Martin plead guilty and was sentenced to two years of non-prison confinement. The maximum statutory penalty for the violation is 20 years imprisonment, \$1,000,000 fine.
- Defense attorneys arguing for non-prison confinement said Martin had a good-faith belief in the medicinal effectiveness of marijuana and that he accepted responsibility for his acts.
- Martin was supported in the case by Americans for Safe Access, who stated, "Enforcement actions against people like Michael Martin, who are trying to produce edible, non-smoked medicine, is a travesty."

### Tainted Inc. / Compassion Medicinal Edibles



### Pacific Greens Inc Santa Barbara

- October 2007: Investigation started with the stop and arrest of Marcel Garcia for possession of several pounds of Marijuana.
- Follow-up led to the arrest of Alexio Garcia for felon in possession of a firearm.
- The Investigation eventually led to David Najera who was operating dispensary.
- March 2008: Investigation resulted in the seizure of 125 pounds of MJ, 2 pounds of hash, \$171,000 in cash and 16 firearms. 6 arrests w/ 2 outstanding. Detectives said they also found a "sophisticated indoor grow" operation as part of the investigation.
- Evidence showed that the facility was operating outside the guidelines of Proposition 215, and case turned over to DEA.

### Berkeley Medical Herbs / Dragonfly Holistic Solutions / Holistic Solutions

- Ken Estes has been involved in the medical marijuana movement since 1992
- 1998 Estes opens Berkeley Medical Herbs.
- 2001, after three armed robberies in 10 months and continued violations of even Berkeley's lax dispensary rules, Estes asked to leave by the City and other Dispensaries.
- Estes and his brother Randy Moses open Dragonfly Holistic Solutions in Oakland.
- June 2004, Estes is ordered to close as part of Oakland's dispensary reduction. Estes vows to continue to operate in defiance of city rules until he is arrested. He eventually closed the dispensary.

### Berkeley Medical Herbs / Dragonfly Holistic Solutions / Holistic Solutions

- Estes then opens a dispensary in Richmond. In May of 2006 he receives a "cease and desist" order from the City which he ignores.
- August of 2006, a traffic stop results in the seizure of 30 pounds of marijuana destined for the Richmond dispensary. Estes responds that "the city is harassing him to destroy his business."
- It is reported, Estes owns or shares ownership in at least five similarly-named cannabis clubs in Richmond, San Francisco, Clear Lake, South Lake Tahoe and San Mateo, all of which have come under law enforcement and media scrutiny.
- Since January, Estes dispensaries as well as the homes of his managers and grow sites in Oakland, San Leandro and Humboldt County have been the focus of an on-going investigation.
- Estes was also on the periphery of a "Honey Oil" prosecution in Contra Costa County.

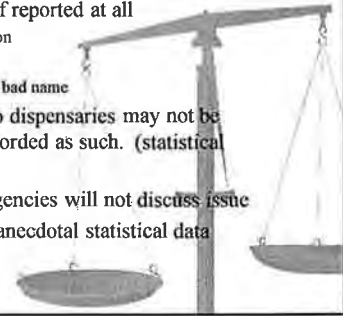
## Media Investigations

- 60 Minutes The Debate On California's Pot Shops  
Morley Safer Reports On Proposition 215- Dec. 30, 2007
- CNBC Marijuana is California's biggest crop



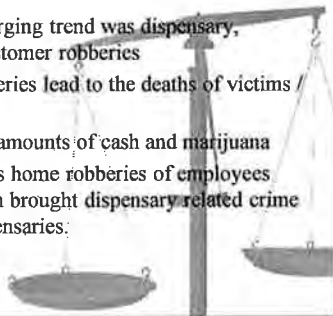
## Dispensary Related Crimes

- Under reported if reported at all
  1. Fear of Prosecution
  2. "Covert Industry"
  3. Giving industry a bad name
- Crimes related to dispensaries may not be associated or recorded as such. (statistical gathering)
- Some Cities / Agencies will not discuss issue
- "Need" for non-anecdotal statistical data



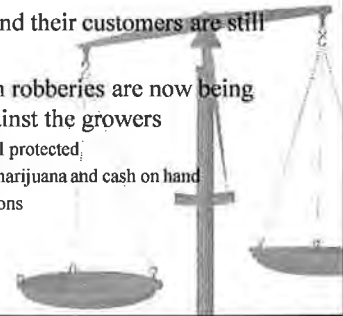
## Dispensary Related Crimes

- Pre 2006 the emerging trend was dispensary, employee and customer robberies
- Some of the robberies lead to the deaths of victims / suspects
- Target was large amounts of cash and marijuana
- Another issue was home robberies of employees and owners which brought dispensary related crime to cities w/o dispensaries.



## Dispensary Related Crime

- Dispensaries and their customers are still targets but,
- Home invasion robberies are now being committed against the growers
  1. Potentially less well protected,
  2. Large amounts of marijuana and cash on hand
  3. More remote locations



## Home Invasion Robberies

About 30 neighbors signed a certified letter given to MacFarlane earlier this month in which they demand that he address the nuisances allegedly created by growing marijuana, including the discharge of firearms, verbal threats, smell of marijuana and the noise of motion sensitive alarms



## Los Angeles Experience

- Los Angeles Police Department reported;
- 200% increase in robberies,
- 52.2% increase in burglaries,
- 57.1% rise in aggravated assaults,
- 130.8% rise in burglaries from autos near cannabis clubs in Los Angeles.
- Estimated there are 400 dispensaries in Southern California alone
- Use of armed gang members as armed "security guards"\*

\* Information from LAPD Det. Dennis Packer



### San Francisco Experience

Crimes that occurred at, or in close proximity to, San Francisco's Dispensaries (Jan 06/Feb07)

- 3 homicides 2 attempted homicides
- 6 possession of a loaded firearm
- 1 exhibiting deadly weapon
- 57 robberies and 27 attempted robberies
- 98 aggravated assaults
- 144 incidents of battery
- 7 incidents of battery on a police officer
- 1 forcible rape, 1 attempted rape
- 3 sexual batteries
- 198 Burglaries and 2 attempted burglaries

### Where does the money go?

- If marijuana costs \$400 a pound to grow
- If the wholesale price is \$2,500-\$3,000
- If the retail price is \$5,000-\$6,400 per pound
- Where does the extra \$2500-\$3,400 per pound go?



### Where does the Marijuana come from?

- Dispensaries sell a significant amount of Marijuana
- Enforcement actions reveal 10-100 pounds on hand at a given time
- 1/8<sup>th</sup> ounce most common sale point, 1 Pound is 128 1/8<sup>ths</sup>
- No Accounting of where it comes from;
  - 1 Indoor and Outdoor grows.
  - 2 Org. crime involved in grows
  - 3 Drug Traffic Organizations (L.A report indicates dispensaries buying marijuana smuggled into US from Mexico)\*
  - 4 OMGs (Hells Angels and Mongols)

\* Information from LAPD Det. Dennis Packer

### Teenage Use/Abuse

- In August 2006, a high school coach provided his "medical marijuana" recommendation to students to enable them to purchase marijuana for recreational use. The 16 and 17 year olds then went to a dispensary in Sherman Oaks, California and purchased marijuana
- In a separate case, while walking across campus, a Van Nuys patrol officer observed a card placed on several vehicles in the school parking lot that advertised medical marijuana recommendations at JT Medical Group, Inc., in North Hollywood

### San Diego Investigation

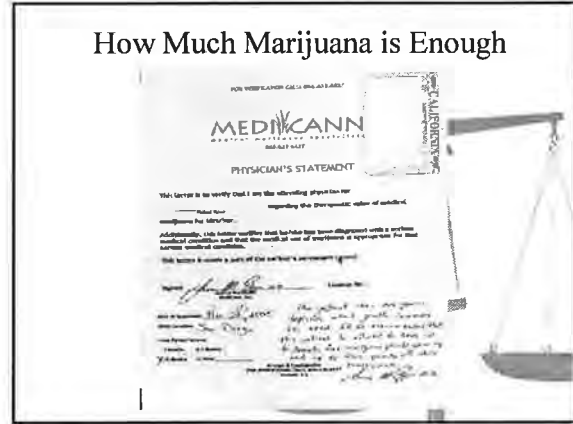
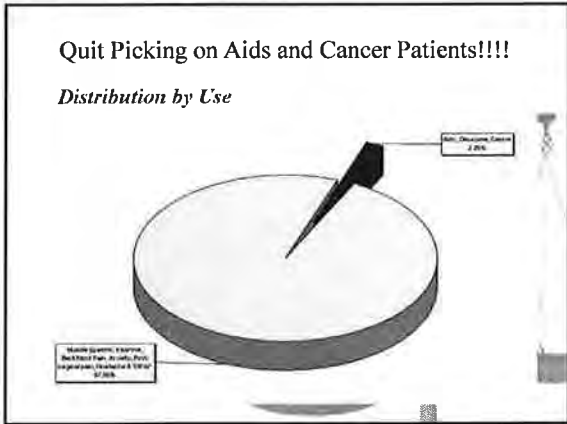
- July 2006: S.D.P.D., S.D.S.O., D.E.A served 13 state search warrants on dispensaries located in the city and county
- The effort began in Sept. 2005 after numerous complaints from residents in the neighborhoods where the dispensaries were operating. The investigation covered two areas of concern:
- First: The proliferation of physician recommendations for the use of marijuana. Marijuana recommendations appeared to be openly sold to anyone who had the cash for it. Numerous apparently healthy individuals in their late teens or early 20's in possession of these recommendations were encountered.
- Second: The investigation of the more than 20 store fronts that would sell marijuana to anyone with a recommendation or a caregiver form signed by the same doctors.

Information Provided by San Diego DDA Danton Mosler

### Demographics Data

Patients by Age





- ### Report Blasts City, Marijuana Dispensaries
- March 08: A Santa Barbara County Civil Grand Jury report on medical marijuana dispensaries concluded that they are largely unregulated. Their findings are as follows:
    - Inventory and sales records not accurately maintained.
    - There are few restrictions to prevent patients from purchasing large amounts of marijuana in several shops as often as they please, customers can purchase up to eight ounces each visit.
    - Should require fingerprinting, photographing and background checks of operators, as well as mandatory inventory and sales audits.

- ### Report Blasts City, Marijuana Dispensaries
- The average cost for an ounce is \$350 to \$600. Dispensary owners reported that the average amount sold at one time is one-eighth of one ounce, which could last from one day to one month depending on the patient's use.
  - Concluded that some operators keep records of how often a patient purchases, but no requirement exists to do so.
  - "They cannot control what the patient does with the cannabis after leaving."
  - The number of dispensaries jumped from five to more than 20 when local voters approved Measure P in 2006. Measure P declared marijuana to be the lowest priority for local law enforcement.

- ### Obtaining a Liquor License
- The department shall make a thorough investigation to determine:
- Whether the applicant and the premises for which a license is applied qualify for a license and
  - Whether the provisions of this division have been complied with and
  - Shall investigate all matters connected therewith which may affect the public welfare and morals.
  - The department shall deny an application if either the applicant or the premises for which a license is applied do not qualify for a license under this division.
  - The department further shall deny an application for a license if issuance of that license would tend to create a law enforcement problem, or if issuance would result in or add to an undue concentration of licenses, 23958 B&P.

- ### Obtaining a Barber's License
- Complete a 1,500-hour barbering course at an approved institution. The approval must come from the California State Board of Barbering and Cosmetology.
  - You must also pass the barber licensing exam which consists of two parts: a practical and a written portion.
  - You must be 17 years old or older and have completed the tenth grade in a public or private school or its equivalent.

### Obtaining a Pharmacist's License

- To be licensed as a pharmacist in California, you must be at least 18 years of age.
- Have obtained a B.S. in Pharmacy or a Pharm D. degree from an ACPE accredited college of pharmacy program. Graduates from a college of pharmacy program outside the U.S. must obtain certification from the Foreign Pharmacy Graduate Examination Committee.
- Have completed 1,500 intern experience hours or verified licensure as a pharmacist in another state for at least one year.
- Have taken and passed the North American Pharmacist Examination (NAPLEX) and the California Practice Standards and Jurisprudence Examination 4200(a)(1-6) B&P.

### Obtaining a Dispensary License

- There is no process
- There is no approval
- There is no licensing entity
- There are very few if any restrictions
- However, you can go to school;

### Oaksterdam University

- Oaksterdam U. Gives New Meaning to Higher Education  
Learning how to get started in the medical marijuana business costs a lot less than an Ivy League education and takes as little as one weekend. The school prepares students for jobs in California's medical marijuana industry.  
So how are job prospects in the field? Entry-level workers make a little more than minimum wage; "bud tenders" can make over \$50,000 a year; owners and top managers make six figures.



### Oaksterdam University

- Faculty:
- Richard Lee: Oaksterdam University President  
Lee has been serving on the City of Oakland Cannabis Regulation and Revenue Ordinance Commission.
- Robert Raich: Attorney in both of the U.S. Supreme Court cases; United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483 (2001), and Gonzales v. Raich, 545 U.S. 1 (2005).
- Chris Conrad: Qualified as an expert in cannabis cultivation, sex, genetics, cloning, crop yields, preparation, smell, medical use, personal use, dosage, consumption, sales, and commercial intent. Investigated more than 700 criminal cases, testified more than 150 times. Mikki Norris

### Oaksterdam University

- Curriculum  
Politics/Legal Issues 101  
Horticulture 101  
Cooking/Concentrates 101  
Budtending/Medical Cannabis 101  
Distribution/Dispensary Management 102  
Cannabusiness 102  
Horticulture 102: Advanced Grow Lab  
Legal Issues 102

### Do Criminals Own Dispensaries?

- In January 2007, DEA executed 11 search warrants and identified 17 owners and/or operators in the Los Angeles area. Of these 17 owners and/or operators;
  1. 14 had prior criminal histories,
  2. 7 had prior weapons charges,
  3. 8 had prior drug charges,
  4. 2 had murder / attempted murder charges.
- One drug dealer reports, I am doing business with the same people, only now they think they are legit.

### Owners Lying on the Business Application

- **San Marcos:** A Dispensary was able to receive a business license because it called itself a nutritional supplement store. Now the city is intent on shutting down the business.
- **Tracy:** City officials said the group misrepresented itself on its business license. The collective said its activity would be "retail sales conducted by a nonprofit corporation."
- **Cathedral City:** Dispensary has a business license from the city, issued Nov. 5, which describes it as a spice and extract manufacturer as well as a spice and herb retailer.

### Owners Lying on the Business Application

- **Santa Rosa:** The owner of a medical marijuana dispensary failed to disclose her plans for a marijuana club when she signed a three-year lease. Instead, the letter said she planned to run a video game business.
- **Alameda:** Dispensary's owner failed to disclose the true nature of his business on his license application, listing the business as "miscellaneous retail". The City Attorney's opinion was that "The phrase 'miscellaneous retail' suggests that a variety of lawful, noncontroversial items will be sold."

### The Claremont Saga

- Mr. Kruse officially applied for his business license on Sept. 14, 2006.
- The matter was given to the City Attorney's Office as the City had no Dispensary Ordinance.
- Without waiting for a response, he opened his medical marijuana shop the following day without an approved license.
- On September 26, 2006, the city council unanimously voted to enforce a moratorium on marijuana dispensaries in Claremont. City officials fined Kruse \$500 a day, approximately \$10,000 a month.

### The Claremont Saga

- After months of riling up city hall, Darrell Kruse, admits that he had an ulterior motive in opening his business in Claremont. Mr. Kruse now claims that his outrageous behavior and confrontational style was all just an act in order to get Claremont to pass a moratorium on marijuana dispensaries and therefore block competition from other businesses.
- It is revealed that Kruse and his business partner, David Touhey are co-owners of another marijuana dispensary in nearby Pomona.
- April 10, 2007, Kruse approached the city council to offer an apology to council members and city officials for his actions.

### Pot Doctors

#### Medical Board of California

- In a May 13, 2004 press release, the Medical Board clarified that these accepted standards for recommending marijuana are the same ones that a reasonable and prudent physician would follow when recommending or approving any medication. They include the following:
  1. Taking a history and conducting a good faith examination of the patient;
  2. Developing a treatment plan with objectives;
  3. Providing informed consent, including discussion of side effects;
  4. Periodically reviewing the treatment's efficacy;
  5. Consultations, as necessary; and
  6. Keeping proper records supporting the decision to recommend the use of medical marijuana.
- ([http://www.mbc.ca.gov/board/media/releases\\_2004\\_05-13\\_marijuana.html](http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html).)

### Media Investigations of Pot Doctors

- **Doctor's orders: Get high** By Chris Colin January 31, 2001
- **High times for medicinal marijuana:** In California, marijuana is supposed to be prescribed only to people suffering from life-threatening conditions By David Willis
- 10News Exposes 'Marijuana Doctors' July 7, 2006
- **License to Chill** By Michael Goldstein / New York Daily News, Feb. 11, 2007
- **Out of town doctors reportedly recommending marijuana without exams** By Jose Gaspar August 16, 2007



### Media Investigations of Pot Doctors

- I-Team Investigation: **Who Is Doc 420?**
- **Availability Of Medical Marijuana Questioned** / By Dan Noyes SAN FRANCISCO, Nov. 1, 2007 (KGO)
- **'Pot docs' issuing 'Get Out of Jail Free' cards** By Linda Williams /TWN Staff Writer / 12/26/2007
- **This bud's for you, and you, and you too** How I got my hands on some marijuana -- the legal (and easy) way. May 9, 2008

### Pot Doctor Prosecution

- Dr. Jimenez operated several medical marijuana clinics and advertised his services extensively on the internet.
- May 2006, San Diego PD ran two u/c operations at Dr. Jimenez's clinic in San Diego.
- January 2007, Laguna Beach PD ran an u/c operation at Dr. Jimenez's clinic in Orange County.
- Based on the u/c operations, Dr. Jimenez was charged with gross negligence, repeated negligent acts, incompetence, dishonesty or corruption, false representations, failure to maintain adequate and accurate records and false and/or misleading advertising.

### Pot Doctor Prosecution

- The Administrative Law Judge (ALJ) found that Dr. Jimenez:
  1. Violated the standard of care when he issued medical marijuana recommendations to the undercover agents without conducting good faith medical examinations, failed to do proper informed consent, and failed to consult with any primary care physicians or review prior medical records prior to issuing recommendations.
  2. Engaged in dishonest behavior by coaching the undercover agents as to what to say in order to qualify for medical marijuana recommendations and in preparing false medical records.
  3. Engaged in false and misleading advertising in representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. The decision is effective April 24, 2009.

### Diversions

- Hoey was arrested after deputies found 100 pounds of marijuana in his house and \$500,000 cash in a storage locker. He was convicted in 2008 for possessing and selling hundreds of pounds of marijuana.
- Sheriff's deputies confiscated almost \$900,000, a wine collection valued at least \$250,000 and Oriental rugs worth \$165,000.
- Hoey faced more than 10 years in state prison, but was sentenced to a year in County Jail after he pleaded no contest to trafficking.
- He said he thought his sales were legal because he was largely selling to medical users through a Santa Cruz dispensary.
- He remains adamant that most of the marijuana was destined for medicinal users. Hoey said his "one mistake" was that he had also sold pot to friends on the East Coast.
- Hoey had shipped marijuana through the US Postal Service to people in 10-15 states, and many were not medicinal users.

### Diversions

- 01/26/2008: A Paradise man who claimed to be growing marijuana for medical purposes for himself and eight others pleaded no contest to felony charges of cultivation and possession for sale of marijuana.
- Investigation began in December with a traffic stop in Nebraska resulting in the seizure of more than 68 pounds of processed and packed marijuana.
- A passenger in the car admitted that he had been working for a month making trips between Chicago and Butte County.
- Sheriff's deputies obtained a search warrant for both locations and found the suspect had medical marijuana recommendations for himself and eight others, he called "patients."
- Deputies also found more than nine pounds of marijuana in various stages of processing, more than \$39,000 in a shoe box and a loaded shotgun.

### Diversions

- November 28, 2008: Authorities arrested two men and were looking for a third after they discovered processed and live marijuana plants at two Trinity County properties.
- A search of the properties turned up 70 pounds of processed marijuana and 364 live plants from a greenhouse and an indoor growing area. Also seized were 13 firearms, including a .223 assault rifle and a Benelli 12-gauge shotgun, more than \$70,000 in cash and an unspecified number of vehicles.
- Authorities believe that the men were involved in exploiting California's medical marijuana act, selling the cultivated marijuana from Trinity County, north to Oregon, Washington and Alaska, Knill said.

### Diversion

- Utah Highway Patrol's Criminal Interdiction Team conducts directed interdiction efforts to impact drug trafficking along the I-80 corridor, a major pipeline to get drugs from California. This effort is timed with the harvest season.
- In the most recent effort, 14 stops resulted in the seizure of more than 285 pounds of marijuana being trafficked from northern California to places like Colorado, Kansas, Virginia, New Hampshire and New York. Troopers also seized \$7,800 in cash headed back to California and a handgun belonging to a convicted felon.
- The Commander of the unit states marijuana makes up a majority of the drugs seized. Most of that marijuana comes from California and at least half of the subjects arrested claim that the marijuana is grown for medicinal purposes.\*

\*Interdiction Unit Commander, Lieutenant Chris Simmons

### Internet Posts

Why is it better than buying pot from the neighborhood pot dealer?

- #1) The best quality and variety in the world. There are over 100 "weed stores" from Long Beach to The Valley and the weather is right!
- #2) They accept credit. You can have no money in the bank and walk out of a weed store with an ounce of OG KUSH.
- #3) You can complain. If "Lil Smoker" down the street sells you a short 1/4, you're shit out of luck. But when the weed store shorts you, you can tell them and they will hook you up.
- #4) Less risk. Sure, these places get raided every once in a while but the customers are never arrested. At worst, you might get questioned for a short period of time, but who cares? If you are doing a drug deal at a gas station or something, that's sketchy. Or worse, sitting in the drug dealer's living room with an ounce in your pocket when he gets raided, you are going to jail.
- #5) Convenience. With so many stores and Internet access ([www.canorml.org](http://www.canorml.org)) You can find a good place, close to you that will be open when they say they are (a lot of places are open until midnight)!

### Internet Posts

**Are most of the people shopping at the Medical Marijuana Clinics legitimately sick? No. But, is anyone legitimately sick?**

**What is the best/worst thing about having a medical marijuana card?** The best thing is always having the best weed. The worst thing is spending all my money on always having the best weed.

### Internet Posts

A post from one of Doc420's fans on a marijuana message board

- I got my prescription about a week ago and it was the easiest thing I've ever done. I'm pretty sure that for no previous medical records you can easily say that you have ADD or insomnia. *I would recommend Sona Patel at doc420.com. She works off of Melrose and she'll make your appointment last 10 minutes as long as you tell her that you've tried prescription pills for your ailment and you are unwilling to take them again (so get your story straight before you get there).*

### Internet Ads

**GET YOUR RECOMMENDATION FROM A LICENSED MD.**

- Doctor's office available on-site where qualified patients in need of medical marijuana recommendation can receive a low-cost, expert evaluation by a licensed physician. Do it Legally!
- New Patients \$125  
All Renewals \$99
- <http://iecannabisconsultants.com/>

### Internet Ads

**PACIFIC SUPPORT SERVICES**

Have you or anyone you know experienced an illness which you believe Medical Marijuana could provide relief? Anxiety - Arthritis - AIDS - Chronic Pain - Chronic Nausea - Cancer - Glaucoma - Insomnia - Migraines - Sports Injuries - Auto Accidents

Yes, in the state of California, it is legal to own, grow and smoke Medical Marijuana as long as you do it properly. Qualifying is simple and our experienced physicians are more than happy to help you. Please bring your documentation you have with you - old prescription bottles, medical bills, test results, etc. Discrete - Simple - Professional - Legal

**420 MAGAZINE MEMBERS GET HUGE DISCOUNTS!**

**(You must present this coupon to receive your discount)**

**New Patients \$150 (Regular \$175) Renewals \$85 (Regular \$175)**

**If you do not qualify for a recommendation, your visit is FREE**

### Having Trouble Finding a Dispensary?

- Weedmaps.com 424 Dispensary Listings
- <http://www.canorml.org/prop/cbelist.html>  
376 Dispensaries, 125 delivery svcs, 83 doctors
- <http://hempevolution.org/clubs/clubs.htm>  
331 Dispensary Listings
- <http://420california.com/Socal.html>  
327 Dispensary Listings, 71 Doctors
- <http://ganjagrocer.com/Dispensaries.html>  
489 Dispensary Listings, 10 Doctors
- <http://mccdirectory.org/>  
249 Dispensary listings

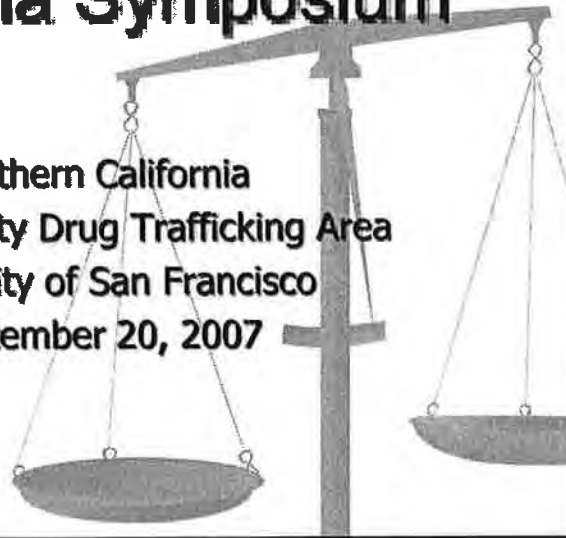
### More Information

- California Police Chiefs Association  
[http://www.californiapolicechiefs.org/nav\\_files/medical\\_marijuana.html](http://www.californiapolicechiefs.org/nav_files/medical_marijuana.html)
- White Papers (Riverside DA and Cal Chiefs)
- Indoor and Outdoor Grow information
- Dispensaries
- Sample Ordinances
- Commander Michael Regan  
(510) 215-4426 [mregan@ci.el-cerrito.ca.us](mailto:mregan@ci.el-cerrito.ca.us)

**ATTACHMENT 3**

# **Marijuana Symposium**

**Northern California  
High Intensity Drug Trafficking Area  
University of San Francisco  
September 20, 2007**



## **Secondary Effects of Medical Marijuana**

### **How Did We Get Here?**

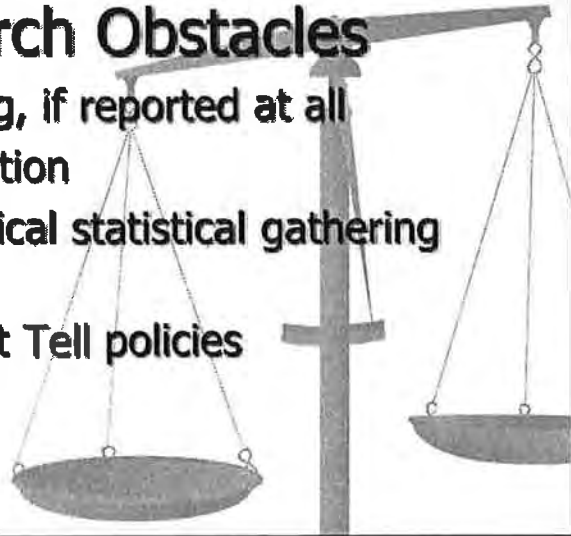
- **Our City Council decided to consider allowing a Marijuana Dispensary in our city.**
- **We in the Police Department researched the potential effects to our community.**
- **We presented sufficient information to encourage our City Council to ban dispensaries in our city.**



## **Secondary Effects of Medical Marijuana**

### **Research Obstacles**

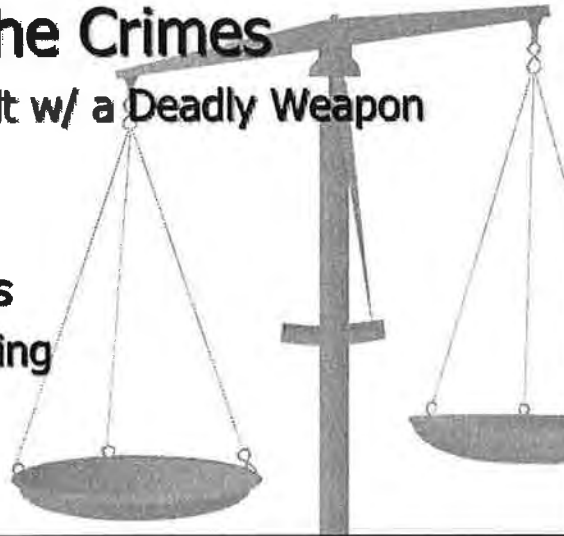
- **Under Reporting, if reported at all**
- **Crime Classification**
- **Reliance on typical statistical gathering techniques**
- **Don't Ask, Don't Tell policies**



## **Secondary Effects of Medical Marijuana**

### **■ The Crimes**

- **Murder / Assault w/ a Deadly Weapon**
- **Robbery**
- **Burglary**
- **Secondary Sales**
- **Money Laundering**
- **Utility Theft**





## **Secondary Effects of Medical Marijuana**

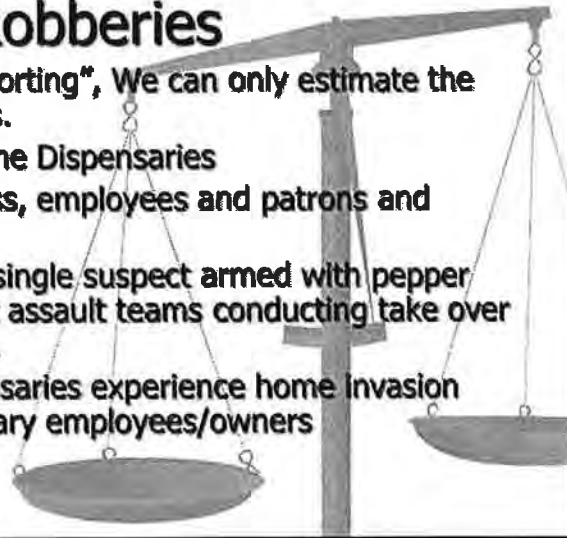
### **Deaths Associated with Medical Marijuana**

- **Myth: Nobody dies from Medical Marijuana**
- **Fact: At least 17 deaths in the last four years directly associated with Medical marijuana.**
  1. **Murders during business robberies**
  2. **Murders during home invasion robberies**
  3. **Murders during street robberies**
  4. **Deaths of suspects during attempted robberies**
  5. **Numerous shootings during robberies**



## **Secondary Effects of Medical Marijuana Robberies**

- Based on "under reporting", We can only estimate the number of Robberies.
- Occur in or around the Dispensaries
- Victimize the business, employees and patrons and "suppliers"
- Range from simple, single suspect armed with pepper spray to five suspect assault teams conducting take over bank style robberies.
- Cities without dispensaries experience home invasion robberies of dispensary employees/owners



## **Secondary Effects of Medical Marijuana Burglaries**

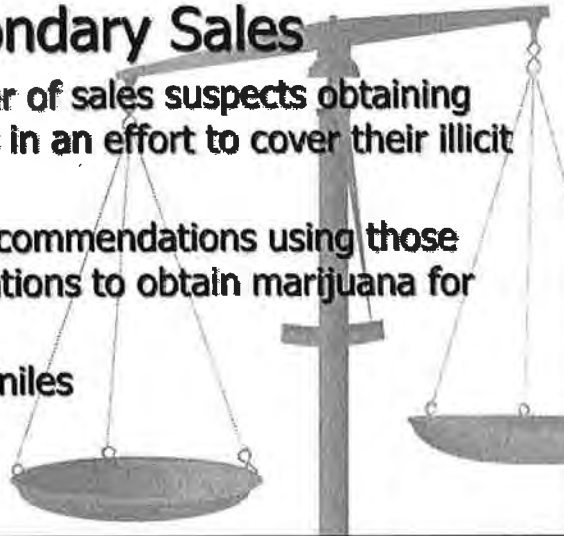
- Another under reported crime.
- A source of calls for service, alarms/reports
- Can lead to dispensary owners / growers resorting to means other than Law Enforcement to combat problem.
- Also leads to more marijuana on the streets for sale.



## **Secondary Effects of Medical Marijuana**

### **Secondary Sales**

- Increasing number of sales suspects obtaining recommendations in an effort to cover their illicit activities.
- People without recommendations using those with recommendations to obtain marijuana for them.
- Popular with Juveniles



## **Secondary Effects of Medical Marijuana**

### **Money Laundering**

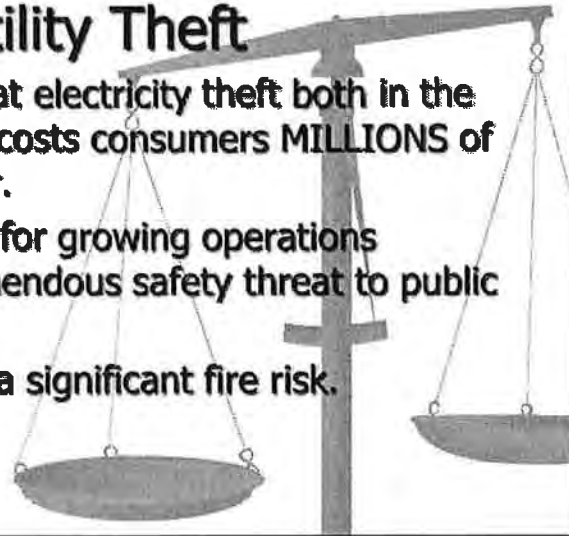
- **Every aspect of this endeavor is "cash only"**
  1. **The growers selling to the dispensaries at an average of approx. \$4,000.00 per pound**
  2. **The dispensaries selling to individuals, at prices that approach \$8,000 per pound**
  3. **The doctors making the recommendations, \$175-250.00 per recommendation plus \$100-\$150.00 for annual renewals**
  
- **In some instances, the money is financing Organized Crime factions, being moved off shore or used to buy property outside the U.S..**



## **Secondary Effects of Medical Marijuana**

### **Utility Theft**

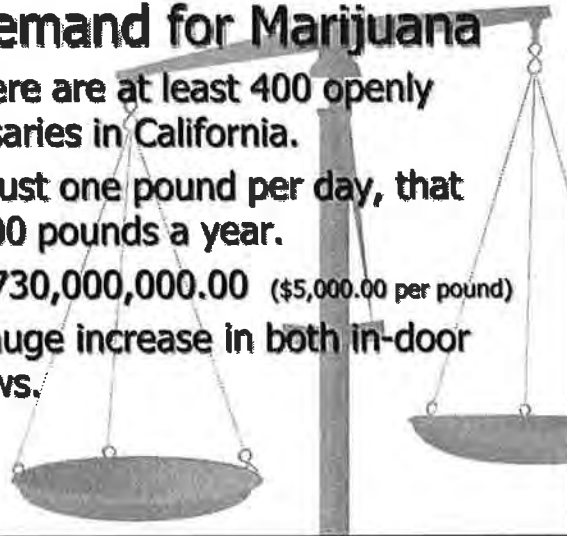
- It is estimated that electricity theft both in the U.S. and Canada costs consumers MILLIONS of dollars every year.
- Make shift wiring for growing operations represents a tremendous safety threat to public safety personnel.
- This also creates a significant fire risk.



## Secondary Effects of Medical Marijuana

### Increased Demand for Marijuana

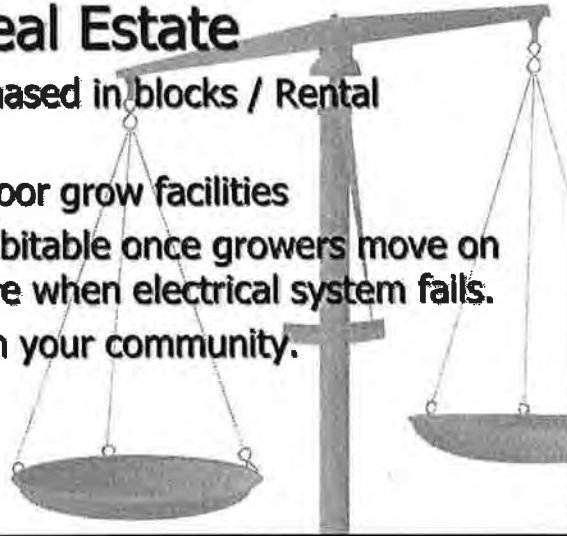
- It is estimated there are at least 400 openly operating Dispensaries in California.
- If each one sells just one pound per day, that equates to 146,000 pounds a year.
- Conservatively, \$730,000,000.00 (\$5,000.00 per pound)
- We have seen a huge increase in both in-door and out door grows.



## **Secondary Effects of Medical Marijuana**

### **Real Estate**

- **New homes purchased in blocks / Rental property**
- **Converted to in-door grow facilities**
- **Potentially uninhabitable once growers move on or damaged by fire when electrical system fails.**
- **Now a blight upon your community.**





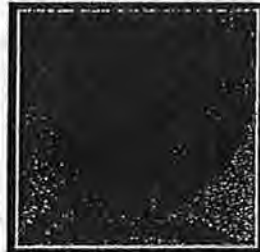
## **Secondary Effects of Medical Marijuana**

- Information used for this report can be found on the Cal Chiefs web site:  
**[http://www.californiapolicechiefs.org/nav\\_files/research/ordinances.html](http://www.californiapolicechiefs.org/nav_files/research/ordinances.html)**
- Or you can contact me at  
Cmdr. Michael Regan  
(510) 215-4426  
[mregan@ci.el-cerrito.ca.us](mailto:mregan@ci.el-cerrito.ca.us)



**ATTACHMENT 4**

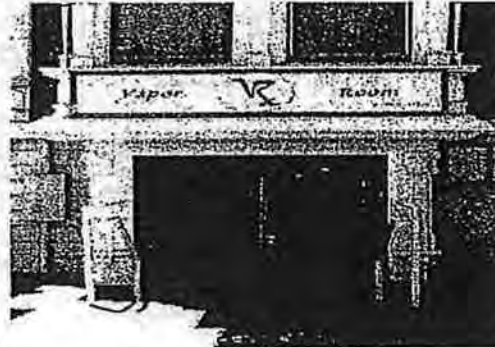
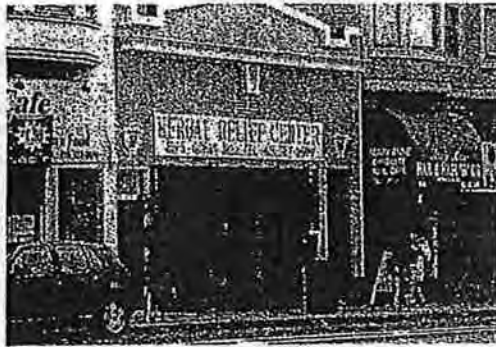
# Cannabis Clubs in the DEA San Francisco Field Division



***A Report of the Marijuana Dispensaries, Complaints, and  
Associated Neighborhood Crime***

***Javier F. Pena, Special Agent in Charge  
Drug Enforcement Administration  
San Francisco Field Division***

***Compiled by the DEA San Francisco Field Division  
March 1, 2007***



**EXECUTIVE SUMMARY**

- According to DEA Intelligence and the California chapter of the National Organization for the Reform of Marijuana Laws (NORML), there are at least 110 “medical marijuana” dispensaries (also known as “pot clubs”) in the San Francisco Field Division’s area of responsibility (AOR) as of February 20, 2007 ([www.canorml.org/prop/cbclist.html](http://www.canorml.org/prop/cbclist.html)).
- California NORML openly advertises a directory of the telephone numbers and addresses of known cannabis clubs in the California, Nevada, Oregon, Washington, Hawaii, Colorado, and Canada. This open advertisement of the illegal distribution and sale of a controlled substance suggests that neither NORML nor the dispensaries fear federal prosecution.
- With the implementation of more rigorous local and municipal zoning laws in many cities in the San Francisco Field Division’s area of responsibility (AOR), many pot growers have moved their operations toward delivery services. Thus, cannabis clubs in California now offer home delivery. Other clubs advertise that they are open 24 hours a day.



\* - Home Delivery Service of Cannabis is Available in These Areas.

- The San Francisco Field Division (SFFD) has initiated **239 marijuana investigations** since calendar year 2004. Approximately 33 of these criminal investigations have been initiated against pot clubs in the SFFD.
- At least **30 marijuana dispensaries** have been targeted by the SFFD for disruption and dismantlement since calendar year 2004. See Section 1 on Page 5 for a list and brief description of the 30 targeted marijuana dispensaries.
- In the past four years, the SFFD has made **170 arrests and seized more than \$20 million in total assets** in association with these 30 pot clubs.
- Many of the pot clubs in the division's area of responsibility have received complaints from neighbors, property owners, business owners, and government officials. The clubs include Green Cross, Resource Green, Caregiver Compassion Center, and the Vapor Room. These complaints include:
  - people smoking pot outside the dispensary,
  - an increase in pedestrian and automobile traffic clogging the streets,
  - illegal parking,
  - public safety concerns,
  - an influx of criminal elements into the neighborhoods,
  - noise, litter, loitering, property damage,
  - the pungent smell of marijuana seeping into neighboring businesses,
  - secondary smoking risks,
  - violations of residential zoning laws,
  - dispensaries operating in school zones or too close to schools or parks,
  - dispensaries operating in or near buildings that house drug treatment facilities,
  - fire hazards from makeshift electrical systems for indoor grows,
  - a decrease in business and revenue for legitimate neighborhood stores,
  - a decrease on tourist revenues and tourist traffic, and
  - a decrease in property values.

See Section 2 on Page 21 for examples of the complaints against marijuana dispensaries in the San Francisco Field Division's area of responsibility.

- In addition to neighborhood complaints, pot clubs in California are attracting major crimes and often violent criminals. A July 2006 report by the California Police Chiefs Association (CPCA) on the secondary effects of marijuana dispensaries, which compiled data from state and local law enforcement agencies and media coverage, shows that in the last two years, there have been at least **5 homicides, 35 robberies, and several fires at pot clubs**. These are just a small sample of the crimes. Crimes related to "medical marijuana" dispensaries are underreported, if reported at all due to the fear of arrest and prosecution. See Section 3 on Page 29 for examples of the major crimes committed at "medical marijuana" dispensaries.

- A one-year analysis of data provided by the San Francisco Police Department (SFPD) of the crimes committed at (or around) 23 of the city's 29 pot clubs in the city of San Francisco between January 1, 2006 and February 1, 2007 shows a significant concentration of violent crimes and property crimes.

- **Violent Crimes**

These offenses include murder and non-negligent manslaughter, forcible rape, robbery, and aggravated assault. Violent crimes that occurred at (or in close proximity to) San Francisco's pot clubs during the last year included:

- 98 aggravated assaults,
- 144 incidents of battery,
- 7 incidents of battery of a police officer,
- 1 attempted rape - bodily force,
- 1 forcible rape – bodily force,
- 3 sexual batteries
- 2 attempted homicides,
- 3 homicides with a gun,
- 21 deaths (causes unknown),
- 6 possession of a loaded firearm,
- 1 exhibiting deadly weapon
- 27 attempted robberies,
- 12 robberies (bodily force, with knife, with gun)
- 45 robberies (residence, commercial, store, street)

- **Property Crimes**

These offenses include burglary, larceny-theft, and motor vehicle theft. Property crimes that occurred at (or in close proximity to) San Francisco's pot clubs during the last year included:

- 20 attempted thefts (petty, building, locked auto)
- 208 grand thefts (from automobiles (locked or unlocked))
- 70 grand thefts (from building, property, store)
- 15 grand thefts (from persons)
- 1 grand thefts / pick-pocketing
- 23 credit card thefts
- 139 petty thefts (building, property, vehicle, shoplifting)
- 2 attempted burglaries
- 113 burglaries (residences, apartments, hotel room, flat)
- 37 burglaries (stores, building warehouse)
- 21 burglaries / forced entries (residences and flats)
- 8 burglaries / unlawful entries
- 19 burglaries / hot prowls

See Section 4 on Page 35 for a list of the marijuana dispensaries in the city of San Francisco.

### SECTION 3

## Crimes Associated with Marijuana Dispensaries in the San Francisco Field Division AOR

The California Police Chiefs Association (CPCA) produced a report that identified instances of criminal activity associated with "medical marijuana" dispensaries in the San Francisco Bay Area. While this is not a true study, it does provide anecdotal information that pot clubs in California are attracting crime and criminal elements. It should be noted that crimes related to "medical marijuana dispensaries" are rarely, if ever, reported so as to not draw additional law enforcement and media attention to this very lucrative business. Also, there is a classification issue with identifying crimes related to "medical marijuana" Since most law enforcement agencies do not make a distinction between "medical marijuana" and marijuana, separating crimes related to these two crime classifications is difficult.

It is a fact that in addition to neighborhood complaints, pot clubs in California are attracting major crimes and often violent criminals. This July 2006 report by the CPCA on the secondary effects of marijuana dispensaries, which compiled data from state and local law enforcement agencies and media coverage, shows that in the last two years, there have been at least 5 homicides, 35 robberies, and several fires at pot clubs located in the division's AOR. Below are just a small sample of the crimes. See [http://www.californiapolicechiefs.org/nav\\_files/research/pdfs\\_ordr/el\\_cerrito\\_ordr.pdf](http://www.californiapolicechiefs.org/nav_files/research/pdfs_ordr/el_cerrito_ordr.pdf) for the full report.

#### HOMICIDES

- **August 19, 2005 – (Alameda County)**
  - A NATURAL SOURCE medical marijuana dispensary was robbed by five subjects armed with assault rifles. A shoot out occurred between the five subjects and two medical marijuana dispensary employees. One suspect was killed in the exchange of gunfire.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff's Department)
- **November 19, 2005 – (Laytonville)**
  - Les Crane was the founder of two Mendocino County medical marijuana dispensaries. He claimed to have 1,000 patients. He called the medical marijuana dispensaries "churches" and called marijuana the "tree of life". His religious credentials were issued by the Universal Life Church, which issues certificates through mail and internet. He was previously arrested for marijuana cultivation. His dispensaries offer exotic varieties of marijuana that sell for \$350 an ounce. He was shot to death at his residence at 2:30 a.m. on November 19, 2005. Two others were beaten in home. There were no suspects, but officials believe the killing is related to a Crane's prior arrest in May and pending criminal proceedings for pot growing.  
(Sources: <http://www1.pressdemocrat.com/apps/pbc.dll/article?AID=/20051110/NESW/411190303>  
[www.co.humboldt.ca.us/sheriff/pressreleases](http://www.co.humboldt.ca.us/sheriff/pressreleases) )

- **August 29, 2006 – (Martinez, CA)**
  - A jury found a 17-year old minor guilty of first-degree murder of his neighbor. The victim suffered 26 head wounds, broken fingers, dislodged teeth, bruises, and a gaping stab wound to her abdomen. The friend of the minor told police that the minor that they were scheming to purchase marijuana-growing equipment online using stolen credit cards. The minor tried to purchase grow-lights online using the victims address and the stolen card of the victim's neighbor. When the company refused to ship the order, the minor told his friend he will take care of it. It was suspected that the minor planned to use the marijuana-growing equipment to start an indoor grow site for marijuana distribution.  
(Source: [http://www.courttv.com/news/horowitz/0828006\\_verdict\\_ctv.html](http://www.courttv.com/news/horowitz/0828006_verdict_ctv.html))
- **October, 2006 – (Oroville, CA) (Triple Homicide)**
  - On October 22, 2006, three men, purporting themselves as potential buyers of marijuana, met with a group of "medical marijuana" patients who were trying to sell part of their crop (20 lbs. of marijuana) for \$60,000. This meeting occurred in a motel room at the Best Valley Inn in Oroville. During the meeting, one of the buyers came out of the bathroom, fired a shot into the ceiling and started barking orders for the sellers to get on the floor. One of the sellers produced a gun and fired back. A total of 17 shots were exchanged, resulting in the deaths of two of the buyers and one of the sellers.

#### HOME INVASION - MURDER

- **Clearlake, CA**
  - There have been reported robberies of medical marijuana patients away from the dispensaries. There is one case of home invasion robbery. Multiple suspects entered the home of a person known to be a medical marijuana user. During the robbery, one resident was beaten with a baseball bat while suspects make inquiries regarding the location of marijuana. The two suspects were shot and killed by homeowner. (Source: *Clear Lake P.D. inv. Clawson*)
- **September 2005 – (Olivehurst, CA) (Double Homicide)**
  - According to the Yuba County Sheriff's Department, five suspects attempted a home invasion robbery of a residence in Olivehurst, CA, where they believed the occupants had a stash of "medical marijuana." During the course of the robbery, two individuals were shot and killed.
- **September 2006 – (Bakersfield, CA)**
  - On September 21, 2006, Leon Banks, 56, and his son Leonard Banks, 19, were shot in the backyard of their residence 2413 Fairview Ave. Bakersfield, CA. At 11:30 pm, two gunmen attempted to steal twelve "medical marijuana" plants growing in the Bank's backyard. Leon Banks was shot in the arm and taken to the nearest hospital for treatment. He was released from the hospital within hours. Approximately 6 hours later, Leon and Leonard Banks were shot at their residence as the gunmen returned to re-initiate the theft of the marijuana. Leonard was pronounced dead and Leon is in critical condition.



## POT CLUB ROBBERIES

- **January 12, 2005 – (Alameda County)**
  - A medical marijuana customer was robbed after leaving “THE HEALTH CENTER” medical marijuana dispensary. The victim was accosted by two subjects who possibly followed the victim away from the dispensary.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Dept.)
- **January 25, 2005 – (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary and burglarized it by taking three pounds of marijuana and cash.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **February 6, 2005 – (Alameda County)**
  - THE COMPASSION COLLECTIVE OF ALAMEDA COUNTRY (CCAC), a medical marijuana dispensary, was robbed by two subjects armed with handguns. The suspects took an unspecified amount of cash and marijuana.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Department)
- **March 3, 2005 - (Santa Rosa)**
  - Suspects forced entry into a medical marijuana dispensary and stole a laptop computer, marijuana, and smoking paraphernalia.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 15, 2005 – (Santa Rosa)**
  - Employees of a medical marijuana dispensary were robbed by a suspect armed with a shotgun as they were closing the business. Suspect stole a “duffle bag” of marijuana  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 18, 2005 - (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary and stole a digital scale.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 19, 2005 – (Santa Rosa)**
  - Suspects forced entry into a medical marijuana dispensary and stole one half pound of marijuana.  
(Source: Lt. Briggs Santa Rosa P.D.)
- **April 27, 2005 – (Alameda County)**
  - THE HEALTH CENTER medical marijuana dispensary was burglarized at dawn. No specifics were provided as to the loss as a result of the burglary. Investigators believed that the victim did not truthfully report the loss of cash and marijuana.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff’s Department)

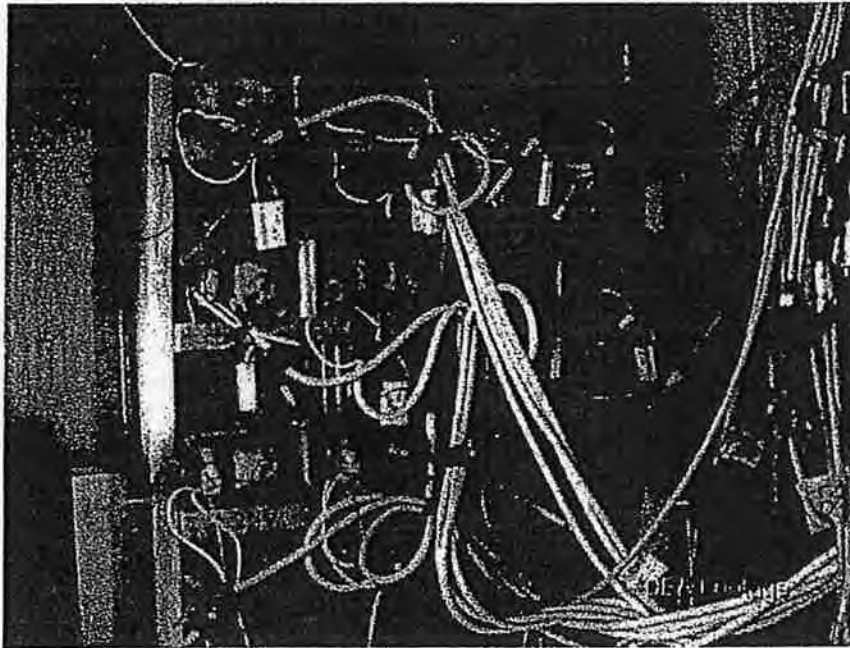
- **May 14, 2005 – (San Francisco)**
  - In a daring home invasion robbery, owner of ALTERNATIVE HEALTH AND HEALING SERVICE was robbed at night. Several pounds of cannabis and dispensary keys were taken by robbers.  
(Source: [http://www.hempevolution.org/thc/dispensary\\_robbed040514.htm](http://www.hempevolution.org/thc/dispensary_robbed040514.htm))
- **May 24, 2005 – (Alameda County)**
  - A NATURAL SOURCE medical marijuana dispensary patron was robbed by three subjects in the parking lot of the dispensary after making a purchase of pot.  
(Source: Declaration by LT. Dale Amaral Alameda County Sheriff's Department)
- **June 13, 2005 – (Berkeley)**
  - Berkeley had four facilities operating in the city (at time of the report). There were several take-over robberies of medical marijuana dispensaries in Berkeley.  
(Source: Staff Report to Davis City Council)
- **June 19, 2005 – (San Leandro)**
  - On June 19, 2005, suspects entered an unoccupied residence of a medical marijuana dispensary employee and took jewelry and \$10,000 in cash. On June 28, 2005, the suspects returned to the residence and began to force entry but were confronted by the resident.  
(Source: Mark Decoulode San Leandro P.D.)
- **September 8, 2005 – (Bakersfield)**
  - Kern County Sheriffs summoned DEA after being called to investigate a robbery at the medical marijuana facility called FREE AND EASY CANNABIS. Approximately 20 pounds of marijuana and illegal firearms were found at one of the subjects home three subjects were arrested.  
(Source: <http://www.canormal.org/news/fedmmjcaes.html>)
- **September 12, 2005 – (Alameda County)**
  - Cash and marijuana were stolen from the ALAMEDA COUNTRY RESOURCE CENTER, a medical marijuana dispensary. Burglars chopped through the wall of an adjacent fellowship hall during the night.  
(Source: Declaration by LT. Dale Amaral Alameda Country Sheriff's Dept.)
- **September 20, 2005 – (San Leandro)**
  - A medical marijuana dispensary receptionist was accosted by a lone suspect as she walked from her vehicle to her house. The receptionist was able to get into her home and call police before the robbery. (Source: Mark Decoulode San Leandro P.D.)
- **December 19, 2005 - (San Leandro)**
  - The receptionist who was accosted during the September 20, 2005 incident was robbed as she walks from her vehicle to her home. The suspects took a bag containing receipts from the medical marijuana dispensary  
(Source: Mark Decoulode San Leandro P.D.)

- **September 29, 2005 - (San Leandro)**
  - A customer was carjacked and robbed after leaving THE HEALTH CENTER (THC) medical marijuana dispensary. The crime took place four blocks away from THC, witnesses called police. The customer, who is from Garberville in Humboldt County, walked back towards the clinic and found the car abandoned. The victim declined to pursue a criminal complaint. Alameda County Sheriff's Department spokesman stated that "no matter how armored the clinics' buildings are, the people entering and exiting are still targets".  
(Source: [http://www.hempevolution.org/thc.dispensary\\_robbed\\_040514.htm](http://www.hempevolution.org/thc.dispensary_robbed_040514.htm))
- **October 1, 2005 – (Live Oaks)**
  - Four suspects attempted to conduct a home invasion robbery of a home cultivator of medical marijuana. The homeowner fired a shotgun at the suspects. The suspects fled and were later captured by police.
- **October 26, 2005 – (San Leandro)**
  - A Detective on a routine patrol observes a suspicious circumstance and stops two subjects. The stop results in the arrest of the subject for robbery and possession of stolen property. The house the suspects were watching was the home of a medical marijuana dispensary employee.  
(Source: *Mark Decoulode San Leandro PD*)
- **March 5, 2006 – (Ben Lomond) HOME INVASION ROBBERY**
  - Two suspects identified themselves as "police" forced their way into the victim's residence. The victim was assaulted, robbed and left tied up in his residence until he was discovered the next day Investigation revealed that the motive for the robbery was the victim's medical marijuana supply.
- **March 15, 2006 – (Mendocino)**
  - MENDOCINO REMEDIES medical marijuana dispensary employees were pepper sprayed by suspect attempting to take property. A fight between the suspects and victims ensued, suspects fled from the scene.  
(Source: <http://www.co.mendocino.ca.us/sheriff/pressreleases.htm>)
- **March 17, 2006 – (Santa Rosa)**
  - Suspects forced entry into a closed medical marijuana dispensary.  
(Source: *Lt. Briggs, Santa Rosa PD*)
- **May 2, 2006 – (Santa Cruz)**
  - Burglars stole 10 medicinal marijuana plants from a residence. The thieves got away with more than \$4,000 in electronics, jewelry, and personal items.  
(Source: <http://www.santacruzsentinel.com/archive/2006/May/02/local/stories/09/local.htm>)

- **May 12, 2006 – (Oakland)**
  - A robbery was reported at WE ARE HEMP medical marijuana dispensary. The suspects pretended to be interested in becoming a member. Once inside the premises, the suspects brandished handguns and forced a worker to hand over cash and marijuana. The suspects were never found.  
(Source: *Oakland Tribune*)
  
- **June 27, 2006 – (San Francisco)**
  - EMMALYN'S CALIFORNIA CANNABIS CLINIC was robbed on Sunday, June 27, 2006 after approximately 1:30 p.m. Robbers held up the clerk and stole cash and inventory while most of the staff was handing out fliers at a festival. The two thieves had been in the dispensary about an hour prior to the crime and bought some marijuana. On this date, there was a second reported medical marijuana dispensary robbery at THE PURPLE HEART DISPENSARY. THE PURPLE HEART DISPENSARY was previously robbed in February 2006.  
(Source: *San Francisco Examiner*)
  
- **August – October 2005 – (Butte County)**
  - During the months of August to October 2005, there were six robberies or attempted robberies connected to pot dispensaries. One robbery involved a shoot out between the suspect and victim. Each of the six robberies took place at the victim's residence and the target was the victim's marijuana cultivation. A Butte County Sheriff's Department Detective stated that August - October is the busy time of year for marijuana robberies as it is harvest time for marijuana grows.  
(Source: *Detective Jake Hancock, Butte County Sheriff's Department*)

### POT CLUB FIRES / ENVIRONMENTAL HAZARDS

- **February 5, 2006 – (San Francisco)**
  - The fire in the lower level of a three-story residence was caused by an arcing wire. The fire was small and there were no injuries or displacements. San Francisco Police Department handled the investigation into the marijuana growing operation at the residence.  
(Source: Bay City News)
- During an investigation into the Sparky ROSE marijuana distribution organization (R3-06-0052 / YAM3B – Jeffrey D. HUNTER), the San Francisco Fire Department found an extremely hazardous and illegal electrical configuration used to power the underground indoor grow in a very busy residential neighborhood on Polk Street in San Francisco's Russian Hill neighborhood.
- During an investigation into the Richard WONG drug trafficking organization (R3-04-0012 / YNM3N – Richard WONG (OP. URBAN HARVEST)), SFFD agents located an extremely dangerous and illegal electrical configuration throughout the premises used to power the sophisticated lighting equipment for the indoor grow (see below).





**ATTACHMENT 5**



## SIGNS YOUR NEIGHBOR IS RUNNING A MARIJUANA GROW OPERATION

[www.usdoj.gov/dea/pubs/states/seattle.html](http://www.usdoj.gov/dea/pubs/states/seattle.html)

This is provided for informational purposes only. While marijuana grow operations are appearing on a frequent and accelerating basis in residential neighborhoods, they are almost always connected to organized crime. Do not take it upon yourself to investigate or approach the suspects. Call your local law enforcement or use the "DEA TIPS" link located on the DEA website.

- **FACTS ABOUT MARIJUANA:** Marijuana is a Schedule I substance under the Controlled Substances Act (CSA). Schedule I drugs are classified as having a high potential for abuse, no currently accepted medical use in treatment in the United States, and a lack of accepted safety for use of the drug or other substance under medical supervision. Marijuana is the most widely used illicit drug in America—of the approximately 14 million current illicit drug users<sup>1</sup>, 10.7 million are using marijuana.<sup>2</sup>
- Sixty percent of those currently entering drug treatment are doing so because of marijuana use.<sup>3</sup>
- Of the 4.6 million Americans suffering from illegal drug dependence or serious abuse<sup>4</sup>, *two-thirds* are dependent on or are abusing marijuana<sup>5</sup>.
- More young people are now in treatment for marijuana dependency than for all other illegal drugs combined.<sup>6</sup>
- Marijuana use as a cause for emergency room visits has dramatically increased—surpassing heroin - and has risen 176 percent since 1994<sup>7</sup>.
- Studies show smoking marijuana leads to changes in the brain similar to those caused by the use of cocaine and heroin.<sup>8</sup>
- Heavy marijuana abuse impairs the ability of young people to retain information during their peak learning years, when their brains are still developing.<sup>9</sup>
- Research shows that youth who use marijuana weekly are nearly four times more likely to engage in violence than non-marijuana users.<sup>1</sup>



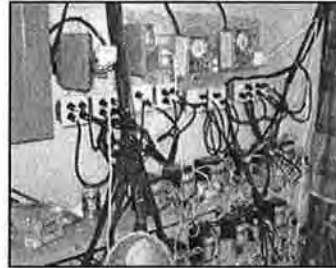
Ask yourself: Do you know your neighbors? Have you been inside their home or does something seem peculiar or different about their home? In order to deflect suspicion, it is not unusual for children to reside in homes being used to cultivate marijuana. The indicators listed below may reveal a marijuana grow that is contained in a home in your neighborhood:

- Windows are covered/blacked out and are never opened.
- Windows have condensation forming due to high levels of humidity.
- Neighbors are seen at the home only on a sporadic basis.





- New neighbors move into a home without furniture or belongings. They are rarely seen entering or exiting with groceries or conducting everyday chores.
- Access to the residence is primarily through the garage.
- Unusual traffic, such as a heavy volume of visitors for short amounts of time, and visitors may be waiting outside in the car.
- People are seen entering with plastic sheeting, plant stocks, fertilizer bags, plastic piping, large amounts of potting soil and pots. These items may also be left outside.
- When seen, individuals are entering or departing the residence with large heavy garbage bags.
- Additional water lines and/or electrical cords are running into the residence.
- Unusual odor omitting from the residence similar to a "skunk" smell.
- Unusual amounts of steam coming from the vents.
- Mail not picked up and garbage not taken out. This is also sometimes done to avoid suspicion.
- Very bright lights not consistent with home lighting.
- Humming sounds, hammering or drilling coming from the residence.



<sup>1</sup> National Household Survey on Drug Abuse (Table 2, NDCS 2002, 58.)

<sup>2</sup> National Household Survey on Drug Abuse (Table 2, NDCS 2002, 58.)

<sup>3</sup> National Household Survey on Drug Abuse, Table 5.25a

<sup>4</sup> U.S. Dept HHS, *Closing the Drug Abuse Treatment Gap: A Report to the President of the United States* (September, 2001) (NDCS 2002, Table 31, 79.)

<sup>5</sup> National Household Survey on Drug Abuse, Table 5.25a

<sup>6</sup> TEDs Treatment Episodes Data Set 1994-1999: "National Admissions to Substance Abuse Treatment Services," SAMHSA October, 2001.

<sup>7</sup> SAMHSA, DAWN, ED 2001

<sup>8</sup> NIDA: *Marijuana: Facts Parents Need to Know*, November 1998.



<sup>9</sup> NIDA: *Marijuana: Facts Parents Need to Know*, November 1998. (14.Pope, HG. and Yurgelun-Todd, D. The Residual Cognitive Effects of Heavy Marijuana Use in College Students. *Journal of the American Medical Association*. February 21, 1996 Vol 275, No. 7. )

Contact: Jodie Underwood  
206-553-5443

**Subject:** Consultants Services Contract with ANCHOR QEA for the Eddon Boat Beach Restoration Project

**Proposed Council Action:** Approve and authorize the Mayor to award a contract with ANCHOR QEA for the design, permitting and construction support for the Eddon Boat Beach Restoration Project in an amount not to exceed \$38,450.

**Dept. Origin:** Administration

**Prepared by:** Lita Dawn Stanton  
Special Projects *LD*

**For Agenda of:** July 25, 2011

**Exhibits:** Contract  
Exhibits A & B

**Concurred by Mayor:**

**Approved by City Administrator:**

**Approved as to form by City Atty:**

**Approved by Finance Director:**

Initial & Date

*CLH 7/20/11*

*R&K*

*email ✓*

*DR 7/20*

Expenditure Required	\$38,450	Amount Budgeted	\$22,500	Appropriation Required	*See Fiscal Below
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**INFORMATION / BACKGROUND**

As part of the 2008 Eddon Boat Park Clean-Up, Anchor QEA facilitated removal of a 12-foot creosote piling bulkhead that left a steep, unfinished grade down to the shoreline. The 2010 Park, Recreation and Open Space Plan identifies as Objective #10 Eddon Boat Park Development: \$300,000 to regrade for improved water access adding gravel/sand mix above and below the water line for enhanced public use. Add trail, seating and soft landing for hand-powered watercraft. In 2011, the City set aside \$22,500 to begin this work. Anchor QEA was chosen to provide design, permitting and construction management for the Eddon Boat Park Restoration Project. Their contract and exhibits are attached.

**FISCAL CONSIDERATION**

\*Eddon Boat Park is identified in the 2011 City Budget (Parks Objective #5) in the amount of \$22,500.

Sources of Funds:	\$ 22,500	.....	2011 Budget
	7,770	.....	Construction Management – 2012 Budget
	9,000	.....	Left in Eddon Boat Soils Monitoring Budget
	<hr/>		
	\$ 39,270	.....	Total amount available

**BOARD OR COMMITTEE RECOMMENDATION**

n/a

**RECOMMENDATION / MOTION**

Move to: Approve and authorize the Mayor to award a contract with Anchor QEA for the design, permitting and construction support for the Eddon Boat Beach Restoration Project in an amount not to exceed \$38,450.

**CONSULTANT SERVICES CONTRACT  
BETWEEN THE CITY OF GIG HARBOR AND  
ANCHOR QEA , LLC**

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THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Anchor QEA, LLC, a corporation organized under the laws of the State of Washington (the "Consultant").

**RECITALS**

WHEREAS, the City is presently engaged in the Eddon Boat Beach Restoration Project and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

1. **Retention of Consultant - Scope of Work.** The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. **Payment.**

A. The City shall pay the Consultant an amount based on time and materials, not to exceed thirty-eight thousand four hundred and fifty dollars and no cents (\$38,450.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 18 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

3. **Relationship of Parties.** The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by March 30, 2012; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman,

because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

**7. Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

C. The provisions of this section shall survive the expiration or termination of this Agreement.

**8. Insurance.**

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverages shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies upon request.

E. Under this Agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

**9. Exchange of Information.** The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

**10. Ownership and Use of Work Product.** Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

**11. City's Right of Inspection.** Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

**12. Records.** The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

**13. Work Performed at the Consultant's Risk.** The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subconsultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

**14. Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

**15. Resolution of Disputes and Governing Law.**

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all



questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

**16. Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:  
ANCHOR QEA, LLC  
ATTN: Peter Hummel  
720 Olive Way, Suite 1900  
Seattle, WA 98101  
(206) 287-9130

City of Gig Harbor  
ATTN: Lita Dawn Stanton  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-6170

**17. Subcontracting or Assignment.** The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

**18. Entire Agreement.** This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

CONSULTANT

CITY OF GIG HARBOR

By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Mayor Charles L. Hunter

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney



720 Olive Way, Suite 1900  
Seattle, Washington 98101  
Phone 206.287.9130  
Fax 206.287.9131

June 3, 2011

Ms. Lita Dawn Stanton  
City of Gig Harbor, Administration Department  
3510 Grandview Street  
Gig Harbor, WA 98335

Re: Eddon Boat Park Beach Design Scope and Fee Proposal

Dear Lita Dawn:

We very much appreciate this opportunity to provide design and permit support for a public access beach at the Eddon Boat Park site (Project). This letter consists of the scope of work and fee proposal that you requested. I will be the principal-in-charge with Anna Spooner serving as the project manager/designer. Anna is a landscape architect and has worked on several shoreline park and habitat projects in the Puget Sound area over the past several years with me.

**Project Understanding & Purpose**

The Project consists of designing and providing permitting and limited construction support to the City of Gig Harbor (City) for a new constructed beach to provide public shoreline access and improved habitat conditions. The City has also received state funding for public art consisting of stone sculptures that will be placed on the beach surface. The City has an interest in creating a beach similar to the one that Anchor QEA led the design for and permitted at Myrtle Edwards Park/Olympic Sculpture Park.

The location of the proposed public access beach is the south end of the cove shoreform (formerly the site of a wood bulkhead). The proposed public access beach and a short trail leading to it would provide a place for the public to safely access the water from the park. Recreational uses are anticipated to be walking, viewing the water and wildlife, and launching or beaching of small human powered watercraft such as kayaks. We recommend that the beach consist of sand/gravel fill material using the same specification as was approved for the remediation in the intertidal zone. In addition, finer grained sandy material

could be placed at the upper beach surface. In addition to providing public access, the proposed beach will need to improve nearshore habitat conditions. This objective is anticipated to be achieved by planting of native riparian and backshore vegetation, placement of large woody debris, and creation of gently sloping sandy gravel beach surface where a steep grass covered slope exists currently. The attached photos show the Olympic Sculpture Park beach and the location of the proposed beach at the Project site. An 18-inch diameter stormdrain is located on the west end of the proposed Project site. Some modifications to this stormdrain (e.g. lengthening with appropriate energy dissipation) are anticipated in conjunction with the Project. The stormwater carries a perennial spring-fed water flow from the adjacent hillside south of the Project site.

The Project will entail applying for and supporting the City in obtaining local, state and federal permits for construction of the beach, as it will occur below the Ordinary High Water Mark (OHWM) and Mean Higher High Water (MHHW).

### **Scope of Work**

#### **Task 1: Concept Design & Permit Strategy**

- Attend 2-hour project kick-off meeting on site with City staff.
- Prepare conceptual site plan and cross-section, which include:
  - Existing and proposed materials and conditions.
  - General material layers and identification of each material, including potential salvaged materials.
- Prepare permit approach and strategy, and meet with City staff to review (1-hour conference call).

#### **Task 1 Work Products:**

- Draft and final concept design drawings in PDF format. Package includes: to scale plan and one typical cross-section, both color rendered.
- Draft and final permit strategy in PDF format.

**Task 1 Proposed Budget: \$5,045**

#### **Task 2: 30%/Permit Level Design, Permit Applications, and Permit Agency Coordination**

- Prepare 30%/Permit Level Design consisting of plans and up to 2 cross-sections.
  - Organize and attend one 30% project meeting with City to review design based on comments from conceptual design. Discuss materials, plant species and construction methods.
  - Coordinate with Project Artist for sculpture placement at one meeting.
-

- Create draft and final project description for permitting. Obtain City input on draft and final project description.
- Calculate quantities for permitting.
- As shown in the Anticipated Environmental Approvals/Permit Matrix (Table 1), Anchor QEA has identified the permits and approvals that are expected to be required for the project.
- Coordinate with resource agencies to confirm appropriate approvals. The project activities will be vetted with the agencies to establish the timeframes for review of the project activities.
- Prepare one draft and final set of permit applications and associated figures. Obtain City review and input on draft materials.
- Figures include:
  - Title sheet (location map)
  - Grading/materials plan and cross sections, indicating location of MHHW/OHWM/MLLW. Brief description of each material.
  - Landscape/planting Plan. Brief description of plant species.
- The City will be responsible for permit agency coordination after permit applications are submitted. However, Anchor QEA will, at the request of the City, provide responses to agency requests for additional information and permit agency representative questions. Permit agency coordination, including initial confirmation of permit requirements, will include an estimated level of effort of 16 hours of staff level support. The level of effort includes travel to and from Seattle to Project site if any agency staff meetings are required following submission of environmental permitting applications/documents.

**Table 1**

**Anticipated Environmental Approvals/Permit Matrix**

<b>Approval</b>	<b>Agency</b>	<b>Trigger</b>	<b>Notes</b>
Clean Water Act Section 404 Permit/ Rivers and Harbors Act Section 10 Permit	U.S. Army Corps of Engineers (Corps)	Placing structures, fill, and/or work within waters of the U.S.	It is assumed that a nationwide permit (NWP) may be appropriate due to the intended habitat restoration benefits of the Project (NWP 27).

Approval	Agency	Trigger	Notes
Clean Water Act Section 401 Water Quality Certification	Washington State Department of Ecology (Ecology)	Necessary for federal approvals (Section 404 permit) associated with in-water work.	The type of 401 Certification would be determined by the Corps. If the project qualifies for a NWP, it is assumed that the 401 Water Quality Certification would be part of the NWP.
Endangered Species Act (ESA) Compliance	National Oceanic and Atmospheric Administration (NOAA) Fisheries, U.S. Fish and Wildlife Service (USFWS)	Associated with federal funding or approvals of activity that may affect species listed under ESA.	Preparation of a short form Biological Evaluation (BE) is anticipated for this project.
National Historic Preservation Act Section 106 compliance	Washington Department of Archaeology and Historic Preservation (DAHP)	Associated with federal funding or approvals that may affect historic properties.	Per previous work in this area, the Tribes were very interested and active participants in the Section 106 process. Depending upon the presence of, and impact to, historic properties, a letter report or memorandum will be prepared.
Coastal Zone Management Act (CZMA) compliance	Ecology	Associated with federal approvals—ensures compliance with Clean Water Act, Shoreline Management Act, etc.	
Hydraulic Project Approval (HPA)	Washington Department of Fish and Wildlife (WDFW)	Work that uses, diverts, obstructs, or changes the natural flow or bed of state waters.	
State Environmental Policy Act (SEPA)	City of Gig Harbor	Development project greater than \$2,500, and not meeting exemption criteria.	A SEPA Checklist and DNS is anticipated for this project.
Shoreline Substantial Development Permit (SSDP) (includes Critical Areas Review)	City of Gig Harbor	Work within 200 feet of shoreline that does not meet exemption standards.	A SSDP is anticipated for this project. Anchor QEA will work with the City to demonstrate that the project could qualify as an exempt activity.

**Task 2 Work Products:**

- Draft and final project description in PDF format.
- Quantities calculations in Excel, provided in PDF file format.
- Drawings, as described above. All drawings prepared in Auto CAD. Drawings provided as PDF files.
- Draft and final permit and environmental review documents including JARPA, SEPA Checklist, CZMA Consistency Determination Application Form, BE short form for ESA compliance, cultural resources evaluation for Section 106 compliance, and Shoreline Substantial Development Permit application.

**Task 2 Proposed Budget: \$20,765**

**Task 3: Finalize Design and Support Construction**

- Organize and attend Final Design project meeting to discuss any regulatory agency or City changes due to comments on 30%/permit set submittal.
- Prepare final drawings for Public Works in AutoCAD
  - Grading/materials plan and cross sections, indicating location of OHWM
    - Indicating dimensions and slopes
    - Materials layers and description of each material including salvaged materials
    - Indicating material depths
    - Providing information on material specs such as gravel size, etc. as notes on drawings.
  - Landscape/planting plan
    - Indicating plant species, location, spacing, container size, and quantity
- Calculate quantities
- Support for construction by Public Works Department shall include one site visit and response to City questions following submittal of final design through the end of construction. Support will include 8 hours of staff level support including travel to and from Seattle to Project site.

**Task 3 Work Products**

- List of drawings as described above. All drawings prepared in Auto CAD. Drawings provided as PDF files. Quantities calculations in Excel, provided in PDF file format.

**Task 3 Proposed Budget: \$5,290**

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**TOTAL PROPOSED BUDGET TASKS 1-3: \$31,100**

**Assumptions**

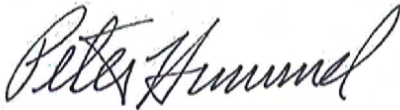
1. Anchor QEA will fill out and submit the local, state, and federal environmental review/environmental permit applications/ documents identified in Table 1 on behalf of the City; the City will conduct follow-up coordination with the agencies. It is assumed that the Project will qualify for a Corps of Engineers Nationwide 27 Permit due to the intended habitat restoration benefits of the Project. The budget for Tasks 2 is based on an estimated number hours for a total of \$20,765. If permit assumptions change based on agency input, additional scope and fees will be negotiated as additional work.
  2. No additional field studies are required prior to submitting permit applications.
  3. Given the relatively minimal impacts resulting from project activities, no formal pre-application meetings with regulatory agencies will be required. The City will be responsible for preparing and obtaining local permits not identified in Table 1.
  4. The City will pay for all permit fees associated with the project.
  5. Section 106 consultation may be required since the project may affect historic/cultural resources depending on site grading. It is assumed that the City will consult with affected tribes in a government-to-government relationship and work with the Corps on the Section 106 process.
  6. Formal ESA consultation will be not be required. Informal consultation will be sufficient to address ESA concerns and the Corps will be the lead federal agency for ESA consultation. It is assumed that a Corps BE short form will be used for the project.
  7. If mitigation is required, it will only involve habitat enhancements within the Project footprint. This could include placement of driftwood or large woody debris and/or riparian plantings adjacent to the OHWM.
  8. No additional documentation, other than the deliverables detailed above for Task 2, will be required by any agencies.
  9. Due to the uncertainty associated with the regulatory agency review process, Anchor QEA cannot guarantee the outcome of the environmental permitting and ESA processes and whether the approvals required for the project will ultimately be issued by the applicable regulatory agencies.
  10. This scope of work does not include work related to permit appeals. Should support for permit appeals be required, a separate scope of work will need to be developed.
  11. The Public Works Department will be responsible for installation/construction of the Project including the beach and any modifications to the stormwater outfall, and planting or other landscape and erosion measures. The Project will not be publicly bid for installation by a contractor.
-



12. The City will coordinate with its Public Works Department on the requirements for the 18 inch stormwater outfall extension design. Anchor QEA will include any outfall modification design information provided by Public Works into the permit level and final design drawings.
13. The Public Works Department will provide the materials and installation costs.
14. Final design drawings will be 11x17 format with notes on the drawings describing materials and installation. A separate specification document will not be provided.
15. The scope of work defines the number of meetings. If additional meetings with the City are required beyond the meetings specified, the additional meeting time shall be negotiated as additional work.
16. Irrigation system design is not included for landscape areas.
17. If the hours for construction support exceed the 8 hours included in Task 3, the additional time shall be negotiated as additional work.

Please contact me if you have any questions about this proposal. We look forward to working with you on this project!

Sincerely,



Peter Hummel, ASLA, LEED®AP  
Anchor QEA, LLC

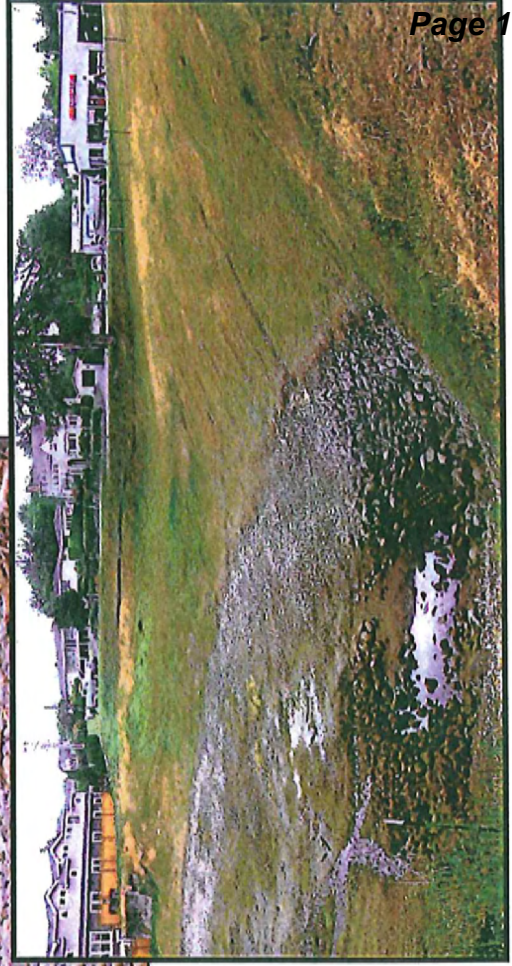
Cc: Anna Spooner, Anchor QEA  
David Templeton, Anchor QEA  
Attachments

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**Myrtle Beach, Seattle**  
(Design by Anchor Environmental)



**Eddon Boat Park Today**  
(Post Clean-Up)



**Subject: Resolution Opposing the Reduction of the Pierce County Council From Seven to Five Members.**

**Proposed Council Action:**

Adopt the attached Resolution.

**Dept. Origin:** City Council

**Prepared by:** Councilmember Derek Young

**For Agenda of:** July 25, 2011

**Exhibits:** Resolution  
Initial & Date

**Concurred by Mayor:** \_\_\_\_\_

**Approved by City Administrator:** \_\_\_\_\_

**Approved as to form by City Atty:** by e-mail

**Approved by Finance Director:** \_\_\_\_\_

**Approved by Department Head:** \_\_\_\_\_

Expenditure	Amount	Appropriation	
Required \$0	Budgeted \$0	Required	\$0

**INFORMATION / BACKGROUND**

Proposal Number 2011-53 to amend the County Charter to reduce the number of County Council seats from seven to five is before Pierce County Council Rules Committee on July 25th and full Council on August 9<sup>th</sup>, 2011. If approved, the proposal will be presented to the voters of Pierce County at the general election on November 8, 2011.

If the County Charter is amended to reduce the number of County Council seats, approximately 45,000 new residents would be added to each Council District. This action would further dilute representation from the west side of the Tacoma Narrows Bridge which already struggles to have their voice heard by the County Council.

Approval would require the recent redistricting process to be performed again and precludes new elections for District 7 until 2014.

**FISCAL CONSIDERATION**

N/A

**BOARD OR COMMITTEE RECOMMENDATION**

N/A

**RECOMMENDATION / MOTION**

**Move to:** Adopt the attached Resolution.

**RESOLUTION NO.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, OPPOSING PIERCE COUNTY COUNCIL PROPOSAL NUMBER 2011-53, ENTITLED "AN ORDINANCE OF THE PIERCE COUNTY COUNCIL PROPOSING AMENDMENTS TO THE PIERCE COUNTY CHARTER REDUCING IN SIZE THE PIERCE COUNTY COUNCIL FROM SEVEN TO FIVE MEMBERS; PHASING IN THE REDUCTION OF COUNCILMEMBERS WITH ELECTIONS AND TERMS OF OFFICE; AMENDING SECTIONS 2.15 AND 10.55 OF THE PIERCE COUNTY CHARTER; ADDING A NEW SECTION 10.80 TO THE PIERCE COUNTY CHARTER; ESTABLISHING EFFECTIVE DATES; REQUESTING THE AUDITOR TO SUBMIT THESE AMENDMENTS TO THE VOTERS AT THE NOVEMBER 2011 GENERAL ELECTION; AND REQUESTING THE PROSECUTING ATTORNEY TO DRAFT AN APPROPRIATE BALLOT TITLE."**

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WHEREAS, Proposal Number 2011-53, after hearing on July 25<sup>th</sup>, 2011 before the Pierce County Council Rules Committee and full Council on August 9<sup>th</sup>, 2011, will be presented to the voters of Pierce County at the general election on November 8, 2011; and

WHEREAS, Proposal Number 2011-53 would submit a question to the voters to amend the County Charter to reduce the number of County Council seats from seven to five; and

WHEREAS, Proposal Number 2011-53 would add approximately 45,000 new residents to each Council District, further diluting representation from the west side of the Tacoma Narrows Bridge; and

WHEREAS, the peninsulas and more specifically, the City of Gig Harbor already struggle to have their voice heard by the County Council; and

WHEREAS, only the smallest of cities in Washington have five member councils; and

WHEREAS, 2011-53 would require the recently completed redistricting process to be performed again; and

WHEREAS, 2011-53 precludes new elections for the district representing the peninsulas until 2014; and

WHEREAS, 2011-53 did not come from the freeholder process of amending the County Charter which requires extensive public outreach and comment; and

WHEREAS, the cost savings achieved by reducing Council salaries would likely be reduced by the additional staff necessary to represent such large constituencies; and

WHEREAS, on July 25, 2011, the Gig Harbor City Council considered this Resolution during its regular City Council meeting, in the spirit of RCW 42.17.130(1), which permits a City Council to adopt a resolution in support, or in opposition to a ballot proposition as long as there is notice of the meeting and the public is afforded the opportunity to express opposing views; Now, Therefore,

**BE IT HEREBY RESOLVED BY THE GIG HARBOR CITY COUNCIL AS FOLLOWS:**

The City Council of the City of Gig Harbor opposes adoption of Pierce County Council Proposal Number 2011-53 due to the detrimental impacts outlined above.

PASSED THIS 25<sup>th</sup> day of July, 2011.

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MAYOR CHARLES HUNTER

ATTEST:

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Molly Towslee, City Clerk

APPROVED AS TO FORM:

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Angela Belbeck, City Attorney

Filed with the City Clerk: 07/21/11

Adopted: 07/25/11

Resolution No.: