

ANNOTATED AGENDA

for
January 8, 2013

CITY COUNCIL MEETING
Regular Meeting
Including the Antioch City Council
acting as Successor Agency
to the Antioch Development Agency

Order of Council vote: AYES:

Council Members Wilson, Rocha, Tiscareno, Agopian and
Mayor Harper

Notice of Availability of Reports

This agenda is a summary of the actions proposed to be taken by the City Council. For almost every agenda item, materials have been prepared by the City staff for the Council's consideration. These materials include staff reports which explain in detail the item before the Council and the reason for the recommendation. The materials may also include resolutions or ordinances which are proposed to be adopted. Other materials, such as maps and diagrams, may also be included. All of these materials are available at the City Clerk's Office, located on the 3rd Floor of City Hall, 200 H Street, Antioch, CA 94509, during normal business hours for inspection and (for a fee) copying. Copies are also made available at the Antioch Public Library for inspection. Questions on these materials may be directed to the staff member who prepared them, or to the City Clerk's Office, who will refer you to the appropriate person.

Notice of Opportunity to Address Council

The public has the opportunity to address the Council on each agenda item. To address the Council, fill out a yellow Speaker Request form, available on each side of the entrance doors, and place in the Speaker Card Tray. See the Speakers' Rules on the inside cover of this Agenda. Comments regarding matters not on this Agenda may be addressed during the "Public Comments" section.

5:45 P.M. ROLL CALL for Closed Sessions – *All Present*

PUBLIC COMMENTS for Closed Sessions – *None*

CLOSED SESSIONS:

- 1) **CONFERENCE WITH LEGAL COUNSEL ANTICIPATED LITIGATION** – Significant exposure to litigation pursuant to California Government Code §54956.9 (b): Letter dated November 13, 2012 from the Law Office of Jack Silver on behalf of River Watch and entitled "Notice of Violations and Intent to file suit under the Clean Water Act."
Direction given to Staff
- 2) **PUBLIC EMPLOYEE PERFORMANCE EVALUATIONS** – This Closed Session is authorized by California Government Code §54957 – City Manager.
Direction given to Staff
- 3) **PUBLIC EMPLOYEE PERFORMANCE EVALUATIONS** – This Closed Session is authorized by California Government Code §54957 – City Attorney.
Direction given to Staff

7:03 P.M. ROLL CALL for Council Members/City Council Members acting as Successor Agency to the Antioch Development Agency – *All Present*

PLEDGE OF ALLEGIANCE

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS

PUBLIC COMMENTS—*Only unagendized issues will be discussed during this time*

CITY COUNCIL SUBCOMMITTEE REPORTS

MAYOR'S COMMENTS

1. **COUNCIL CONSENT CALENDAR**

- A. APPROVAL OF COUNCIL MINUTES FOR DECEMBER 11, 2012 AND DECEMBER 18, 2012
12/11/12 Minutes – Approved, 4/1-T Abstain
12/18/12 Minutes – Approved, 5/0

Recommended Action: Motion to approve the minutes

MINUTES

MINUTES

- B. APPROVAL OF COUNCIL WARRANTS

Recommended Action: Motion to approve the warrants

Approved, 5/0

STAFF REPORT

- C. APPROVAL OF TREASURER'S REPORT FOR NOVEMBER 2012

Recommended Action: Motion to approve the report

Approved, 5/0

STAFF REPORT

- D. AUTHORIZATION TO EXTEND CONTRACT FOR COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM SERVICES

Recommended Action: Motion to authorize the City Manager to extend the contract with Teri House

Approved, 5/0

STAFF REPORT

END OF COUNCIL CONSENT CALENDAR

COUNCIL REGULAR AGENDA

2. ADOPTION OF AN ORDINANCE PROHIBITING MEDICAL MARIJUANA FACILITIES

Recommended Action: 1. Motion to read the ordinance by title only;

2. Motion to introduce an ordinance amending Title 5 of the Antioch Municipal Code by adding a new Chapter 21 pertaining to the prohibition of Medical Marijuana Facilities *To 01/22/13 for adoption, 4/1-T*

STAFF REPORT

3. CITY COUNCIL DISCUSSION OF STRATEGIC PLAN, PRIORITIES, GOALS AND OBJECTIVES

Direction given to Staff

Recommended Action: Motion to provide direction to Staff related to Strategic Planning, Priorities, Goals and Objectives

STAFF REPORT

4. **CITY OF ANTIOCH AS SUCCESSOR AGENCY TO THE ANTIOCH DEVELOPMENT AGENCY**

- A. REPAYMENT SCHEDULE FOR HOUSING DEFERRED SET-ASIDE

SA Reso No. 2013/05, 5/0

Recommended Action: Motion to adopt the resolution approving the repayment schedule for the Housing Deferred Set-Aside

STAFF REPORT

PUBLIC COMMENT

STAFF COMMUNICATIONS

COUNCIL COMMUNICATIONS

ADJOURNMENT – 8:18 *p.m.*

CITY COUNCIL MEETING

Regular Meeting
7:00 P.M.

December 11, 2012
Council Chambers

6:00 P.M. - CLOSED SESSION

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** [Gov't Code section 54956.9(a); 54956.96] and **ANTICIPATED LITIGATION** [Gov't Code section 54956.9(b) – significant exposure to litigation]: Transplan Committee and East Contra Costa Regional Fee and Financing Authority v. City of Pittsburg et al., Contra Costa County Superior Court Case No. MSN11-0395.
2. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION** [Gov't Code section 54956.9(a)]; In re Eva Quesada Romero and Gilbert Romero, United States Bankruptcy Court Northern District Case No. 12-44668.
3. **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION** Gov't Code section 54956.9(b) – significant exposure to litigation]: Letter dated November 13, 2012 from the Law Office of Jack Silver and entitled, "Notice of Violations and Intent to File Suit under the Clean Water Act.
4. **CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION** Gov't Code section 54956.9(b) – significant exposure to litigation]: Letters dated July 21, 2012 and October 24, 2012 from Paul B. Justi representing Kelly's Cardroom

City Attorney Nerland reported the City Council had been in Closed Session and gave the following report: **#1 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**, No action taken, **#2 CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**, No action taken, **#3 CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**, No action taken, **#4 CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION**, Direction given to staff.

Mayor Harper called the meeting to order at 7:13 P.M., and City Clerk Skaggs called the roll.

Present: Council Members Wilson, Rocha, Agopian and Mayor Harper

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Rocha led the Council and audience in the Pledge of Allegiance.

ANNOUNCEMENTS OF CIVIC AND COMMUNITY EVENTS - None

PUBLIC COMMENTS

James Holland, Pittsburg resident, spoke in regards to his father's death at Kaiser Hospital in Antioch and requested the City Council direct the Antioch Police Department to conduct an investigation.

Mayor Harper reported he had discussed this issue with Mr. Holland and the Antioch Police Department had looked into the matter. He advised Mr. Holland to consider filing an appeal and seek the advice of an Attorney.

April Phillips, Antioch resident, reported her son had been robbed at gunpoint and stated she felt the skate park and the conduct of some of the police officers were a liability to the City. She asked how the City would be addressing crime issues within the City.

Mayor Harper responded Chief Cantando was present this evening, would provide contact information, and review her complaint.

Mayor Harper read written comment from Jake Mouton, Antioch resident, indicating he had been the victim of a robbery and urged the Council to address crime in the community.

Libby Willis, Antioch resident, requested City Council change the way Council vacancies are filled. She suggested if the next highest vote is within a certain percentage, that person should automatically fill the vacancy.

Scott Lenhart, Antioch resident and Neighborhood Watch Block Captain, reported residents in their neighborhood had been the victims of burglaries due to access being gained from the trail behind their properties. He questioned what could be done to eliminate access from the area and make the neighborhood safe.

Mayor Harper discussed the importance of promoting the Neighborhood Watch Program and encouraged Mr. Lenhart to remain involved in forums to reduce crimes.

Daniel Loey, Antioch resident, representing Neighborhood Watch for Traskmore/ARDARA, voiced his support for taxing rental property owners to generate revenue for the Antioch Police Department. He requested the City consider to eliminate access to their properties from the trail system.

Julie Young and Brittney Gougeon, Antioch residents, spoke in support of filling the vacated Council seat with the person who received the third highest vote. Ms. Young stated she had a petition signed by 20-30 people who agreed with her on this matter.

COUNCIL SUBCOMMITTEE REPORTS

Councilmember Agopian thanked everyone who spoke regarding crime in Antioch. He stated the Council would be looking at ways to improve and enhance the Police Department to reduce crime and make Antioch safe. He reported on his attendance at the Water Emergency Transportation Authority (WETA) meeting.

Councilmember Rocha announced *Future Build* pre-apprenticeship training application deadline was December 21, 2012.

MAYOR'S COMMENTS

Mayor Harper reported on his attendance at the Water Emergency Transportation Authority (WETA) meeting.

PRESENTATION

City Attorney Nerland, on behalf of staff and the City Council, thanked City Clerk Denise Skaggs and presented her with flowers and a certificate in recognition of her service.

1. **COUNCIL CONSENT CALENDAR**
 - A. **APPROVAL OF COUNCIL MINUTES FOR NOVEMBER 13, 2012 AND NOVEMBER 27, 2012**
 - B. **APPROVAL OF COUNCIL WARRANTS**
 - C. **APPROVAL OF TREASURER'S REPORT FOR OCTOBER 2012**
 - D. **CONSIDERATION OF BIDS FOR THE COUNCIL CHAMBERS AUDIO AND VISUAL SYSTEM RENOVATION (P.W. 247-0)**
 - E. **RESOLUTION NO. 2012/72 APPROVING AMENDMENTS TO THE CLASSIFICATION AND COMPENSATION PLANS TO IMPLEMENT THE PUBLIC WORKS DEPARTMENT REORGANIZATION AS ADOPTED BY THE CITY COUNCIL JUNE 26, 2012**
 - F. **RESOLUTION NO. 2012/73 ACCEPTING WORK AND AUTHORIZING THE CITY ENGINEER TO FILE A NOTICE OF COMPLETION FOR THE HAMLIN COURT SEWER IMPROVEMENTS (P.W. 249-13S)**

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the City Council unanimously approved the Council Consent Calendar.

COUNCIL REGULAR AGENDA

2. **ACTIONS RELATING TO THE NORTHEAST ANTIOCH ANNEXATION CONCERNING 1) A CORRECTED RESOLUTION INITIATING ANNEXATION APPLICATIONS FOR AREA 2A AND 2B, 2) REQUEST FOR WAIVER OF LAFCO'S INDEMNITY REQUIREMENT, AND 3) DIRECTION TO PROCEED ON AN AGREEMENT WITH THE COUNTY FOR CITY SERVICES AND INFRASTRUCTURE TO ANNEXATION AREA 2B**

Consultant of the City of Antioch, Victor Carniglia, presented the staff report dated December 5, 2012, recommending the City Council: 1) Adopt the updated resolution directing City staff to

submit reorganization applications to LAFCO for Subareas 2a and 2b of the Northeast Antioch Area. 2) Request that LAFCO not impose its indemnity requirement on the City in the event that LAFCO makes the decision to waive the protest proceedings, as provided for under Government Code Section 56375.3, for Northeast Antioch Annexation Area 2b. 3) Request that LAFCO direct City and the County staffs to resume working together on an agreement to form a JPA or similar administrative mechanism, as agreed upon by both parties, for the purpose of providing Northeast Antioch Annexation Area 2b with City services and key infrastructure (water and sewer based on available funding) in the event LAFCO makes the decision not to waive the protest proceedings for Area 2b, and as a result of such protest proceedings Area 2b voters decide to remain in the County.

RESOLUTION NO. 2012/74

On motion by Councilmember Rocha, seconded by Councilmember Wilson, the Council unanimously adopted the updated resolution directing City staff to submit reorganization applications to LAFCO for Subareas 2a and 2b of the Northeast Antioch Area.

Councilmember Agopian gave a brief history of the Northeast Antioch Annexation and the subcommittee process.

Mayor Harper spoke in support of the annexation and discussed its importance to economic development in Antioch.

Consultant, Victor Carniglia, clarified the request to LAFCO on an agreement to form a JPA would also apply to area 2A, depending on the results of the votes.

On motion by Councilmember Agopian, seconded by Councilmember Rocha, the Council unanimously 1) Requested that LAFCO not impose its indemnity requirement on the City in the event that LAFCO makes the decision to waive the protest proceedings, as provided for under Government Code Section 56375.3, for Northeast Antioch Annexation Area 2b. 2) Requested that LAFCO direct City and the County staffs to resume working together on an agreement to form a JPA or similar administrative mechanism, as agreed upon by both parties, for the purpose of providing Northeast Antioch Annexation Area 2b with City services and key infrastructure (water and sewer based on available funding) in the event LAFCO makes the decision not to waive the protest proceedings for Area 2b, and as a result of such protest proceedings Area 2b voters decide to remain in the County.

3. CITY COUNCIL APPOINTMENTS TO COMMITTEES AND BOARDS

City Attorney Nerland presented the supplemental staff report dated December 10, 2012.

Mayor Harper made the following appointments to committees and boards:

- ABAG - Mayor Harper/Councilmember Rocha
- AUSD/City Council Subcommittee – Councilmember Agopian/ Councilmember Wilson
- BUDGET - Reserved

- CDBG – Councilmember Wilson/Reserved
- Chamber of Commerce – Councilmember Agopian
- Committee on Aging – Councilmember Rocha
- Community Advisory Board – S.F. Bay Water Transit Authority – Mayor Harper
- Community Facilities District – Councilmember Agopian/Councilmember Wilson
- Delta Diablo Sanitation District – Mayor Harper/Councilmember Rocha
- East Bay Division (League of California Cities) – Councilmember Wilson
- East Contra Costa Regional Fee and Financing Authority – Mayor Harper/Councilmember Agopian
- East County Regional Library Board - Reserved
- East County Water Management Association – Councilmember Agopian
- Eastern Contra Costa Transit Authority (Tri Delta) – Mayor Harper/Councilmember Rocha
- Graffiti Subcommittee - Reserved
- Historic Preservation – Councilmember Rocha
- ICLEI (International Council for Local Environmental Initiatives) - Reserved
- Lone Tree Golf Course - Reserved
- Mayors' Conference – Mayor Harper/Councilmember Rocha
- Northeast Antioch Annexation – Councilmember Agopian/Councilmember Rocha
- Public Art Subcommittee for Lone Tree/Hillcrest Assessments Districts – Councilmember Wilson
- Quality of Life Forum Subcommittee – Councilmember Agopian
- State Route 4 By-Pass Authority – Mayor Harper/Councilmember Agopian
- Sycamore Subcommittee (*New*) - Reserved
- TRANSPLAN – Mayor Harper/Councilmember Agopian

On motion by Councilmember Rocha, seconded by Councilmember Wilson, the Council unanimously approved the appointments for Mayor Harper.

On motion by Councilmember Agopian, seconded by Councilmember Wilson, the Council unanimously approved the appointments for Councilmember Rocha.

On motion by Councilmember Rocha, seconded by Councilmember Wilson, the Council unanimously approved the appointments for Councilmember Agopian.

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously approved the appointments for Councilmember Wilson.

The conclusion of the remaining appointments to the Committees and Boards would occur after appointing a person to fill the City Council vacancy at a Special Meeting on December 18, 2012.

Mayor Harper requested adding a Sycamore subcommittee.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel announced the following meeting schedule:

- December 18, 2012 at 6:00 P.M. – City Council meeting to fulfill the vacancy with limited agenda items
- December 27, 2012 at 6:00 P.M. – City Council meeting to consider urgency matter related to PERS

He announced City Hall would be closed on December 24 and 25, 2012, and January 1, 2013. He noted they would also be closed at 12:00 P.M. on December 31, 2012.

COUNCIL COMMUNICATIONS - None

ADJOURNMENT

With no further business, Mayor Harper adjourned the meeting at 8:07 P.M. to the next Council Special Meeting on December 18, 2012.

Respectfully submitted:

DENISE SKAGGS, City Clerk

CITY COUNCIL MEETING

Special Meeting
6:00 P.M.

December 18, 2012
Council Chambers

Mayor Harper called the meeting to order at 6:02 P.M., and welcomed newly elected City Clerk Simonsen. City Clerk Simonsen called the roll.

Present: Council Members Wilson, Rocha, Agopian and Mayor Harper

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Rocha led the Council and audience in the Pledge of Allegiance.

Mayor Harper announced a vigil would be held for the Sandy Hook Elementary School victims of Newtown, Connecticut at 5:30 P.M. on December 19, 2012. He led the Council and audience in a moment of silence.

City Attorney Nerland presented the staff reports dated December 13, 2012, recommending the City Council Action: 1) Adopt a resolution appointing a person to fill the City Council vacancy or take other action as appropriate; or 2) Adopt a resolution calling for a special election for the position of City Council Member on June 4, 2013. She reviewed the options available for the Council to consider for the selection process this evening.

Following discussion, the Council agreed to the following process:

- Three minute presentations by each applicant, random draw
- Hear public comment
- Each Councilmember selects applicants to advance
- Vote on those applicants to advance to the next round
- Question and answer round – (optional)

PRESENTATIONS FROM CITY COUNCIL APPLICANTS

Presentations of the City Council applicants were drawn at random in the following order:

1. Jonathan M. Hernandez
2. Donald Freitas
3. Tony Tiscareno
4. Debra Vinson
5. Vincent Gregory Manuel
6. Sean Wright
7. James Davis
8. Robert A. Miller
9. Manuel "Manny" Louis Soliz, Jr.

A

01-08-13

PUBLIC COMMENT

Mayor Harper read written comment from Antioch resident, Martin Fernandez, in support of Don Freitas or Jim Davis being appointed to the vacant seat on the City Council.

Jim Conley, Antioch resident, spoke in support of Don Freitas being appointed the vacant seat on the City Council.

Ralph Hernandez, Antioch resident representing the Citizens for Democracy, spoke in support of Manuel Vincent or Tony Tiscareno being appointed to the vacant seat on the City Council.

Charles Richard and Angel Luevano, Antioch residents, spoke in support of Tony Tiscareno being appointed to the vacant seat on the City Council.

Fred Hoskins, Antioch resident, spoke in support of Debra Vinson being appointed to the vacant seat on the City Council.

Sherry Starks, Julie and Megan Young, Antioch residents, spoke in support of former Mayor Davis being appointed to serve for the remaining two years of the vacant term since he received the next highest vote count. Julie Young also stated she had a petition signed by 50 people who supported this position.

Willie Mims, Black Political Association and the NAACP, voiced his support for the decision to be made by the Council this evening and he encouraged them to follow the process they had agreed upon. He questioned why there was an option on the agenda to adopt a resolution calling for a Special Election since that was not the direction of the Council when this item was previously discussed.

City Attorney Nerland clarified if the Council could not reach a majority agreement, then the item would call for a Special Election.

Kenneth Gardner, representing Deer Valley High School on behalf of the administrative staff, teachers, and students, thanked the Antioch Fire and Police Departments for their professionalism.

The Council selected two candidates to advance in the process. Those not selected would be eliminated.

- Councilmember Wilson: Donald Freitas and Tony Tiscareno
- Councilmember Agopian: James Davis and Donald Freitas
- Councilmember Rocha: Tony Tiscareno and Donald Freitas
- Mayor Harper: Vincent Manuel and Tony Tiscareno

Applicants, Donald Freitas, Tony Tiscareno, James Davis, and Vincent Manuel advanced. Council consensus was to vote on these candidates and those receiving three or more votes advance.

- James Davis – Agopian (eliminated)
- Donald Freitas – Rocha, Wilson, Agopian (advanced)
- Vincent Manuel - Harper (eliminated)
- Tony Tiscareno – Harper, Rocha, Wilson (advanced)

2. FILLING THE CITY COUNCIL VACANCY

Speaking to the following motion, Councilmember Agopian discussed Donald Freitas' vast experience and requested the City Council reconsider and appoint him to fill the Council vacancy.

RESOLUTION NO. 2012/75

On motion by Councilmember Rocha, seconded by Mayor Harper, the Council adopted the resolution appointing Tony Tiscareno to fill the City Council vacancy. The motion carried the following vote:

Ayes: Wilson, Rocha, and Mayor Harper

Noes: Agopian

Mayor Harper thanked everyone who participated and submitted applications. He encouraged everyone to stay involved and continue to serve the community.

Councilmember Agopian amended his vote; the motion was unanimous to adopt the resolution appointing Tony Tiscareno to fill the City Council vacancy.

The Oath of Office was administered to Tony Tiscareno by City Clerk Simonsen.

Mayor Harper declared a recess at 7:28 P.M. The meeting reconvened at 7:42 P.M. and City Clerk Simonsen called the roll.

Present: Council Members Wilson, Rocha, Tiscareno, Agopian and Mayor Harper

Mayor Harper welcomed Councilmember Tiscareno to the City Council.

Councilmember Tiscareno thanked his supporters, friends, and family. He stated he looked forward to working with Council toward positive changes for Antioch. He introduced his family in attendance this evening.

PUBLIC COMMENTS

Brittney Gougeon, representing Take Back Antioch, updated the community on the rebuilding City Park fundraiser project. She announced a press conference would be held at 10:00 A.M. at City Park on December 21, 2012.

Fred Hoskins, Antioch resident, requested the City file an appeal to the State of California for the Hard House property and provided Council with documentation regarding the property.

Willie Mims, representing East County NAACP and the Black Political Association, congratulated Councilmember Tiscareno on his appointment to the City Council. He wished everyone good luck in 2013. He questioned why the Council had not asked questions of final candidates for the City Council vacancy.

Mayor Harper clarified, the question and answer round was only an option available to Council.

Angel Luevano, Antioch resident, welcomed Councilmember Tiscareno, wished the entire Council good luck, and offered his support.

3. COUNCIL CONSENT CALENDAR

A. APPROVAL OF COUNCIL MINUTES FOR DECEMBER 4, 2012

Councilmember Tiscareno reported he had read the agenda, reviewed the minutes, and was prepared to vote on agenda items this evening.

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council unanimously approved the Council Consent Calendar with the exception of Item B, which was pulled.

B. REQUEST FOR TRAINING AND TRAVEL – LEAGUE OF CALIFORNIA CITIES CONFERENCE – NEW COUNCIL MEMBERS ACADEMY

On motion by Councilmember Rocha, seconded by Councilmember Agopian, the Council approved travel for Councilmember Wilson. The motion carried the following vote:

Ayes: Wilson, Rocha, Agopian, and Mayor Harper

Abstain: Tiscareno

4. APPOINTMENTS TO COMMITTEES AND BOARDS

- Budget – Mayor Harper and Councilmember Agopian
- CDBG – Councilmember Wilson and Councilmember Tiscareno
- East County Library Board – Councilmember Tiscareno
- Graffiti Subcommittee – Councilmember Tiscareno
- ICLEI – Councilmember Tiscareno
- Lone Tree Golf Course – Mayor Harper and Councilmember Tiscareno
- Sycamore Subcommittee (*New*) – Mayor Harper and Councilmember Wilson

Mayor Harper stated it was his intent the Sycamore Subcommittee would be an adhoc committee to meet with the community to address crime.

Councilmember Tiscareno agreed that the Sycamore area is a major concern and a safety committee is important for the area. He stated he would be willing to participate to improve the quality of life for residents in the area.

Councilmember Agopian suggested starting with the Sycamore area and then expanding beyond the area to address crime in general, in Antioch. He also suggested changing the name to the crime committee or something similar.

Councilmember Rocha stated she supports Councilmember Agopian suggestion to change the name.

City Manager Jakel stated the committee would begin as an adhoc committee focused on Sycamore Public Safety with the first step to define tasks. He noted best practices could be developed to be replicated in other parts of the City.

Mayor Harper welcomed all recommendations.

On motion by Councilmember Rocha, seconded by Councilmember Wilson, the City Council unanimously approved the appointments to Committee Assignments.

PUBLIC COMMENTS - None

STAFF COMMUNICATIONS

City Manager Jakel announced the City Council would be meeting on Thursday, December 27, 2012, at 6:00 P.M. with Closed Session, immediately following. The next Regular City Council Meeting would be January 8, 2013. He reported an appeal related to the Hard House and other parcels had already been made with the State and the Friends of the Roswell Butler Hard House are aware of that appeal.

COUNCIL COMMUNICATIONS

Councilmember Wilson stated she was happy to be a full Council that would work hard and be successful.

Councilmember Rocha welcomed Councilmember Tiscareno and stated she was pleased Councilmember Agopian and Councilmember Wilson were serving on the AUSD/City Council Subcommittee. She stated she hoped youth programs developed through the partnership with the School District.

Councilmember Tiscareno stated he looks forward to working with the City Council to make a better Antioch and thanked the City Council for the appointment.

Councilmember Agopian stated he felt the Council could work together in a professional manner to address the needs of the community. He welcomed Councilmember Tiscareno and wished everyone a Merry Christmas.

Mayor Harper reminded the community a vigil would be held at 5:30 P.M. on December 19, 2012, at The Commons at Dallas Ranch in remembrance of the Sandy Hook victims. He announced his

current office hours at City Hall were Tuesday – Thursday, 10:00 A.M. – 2:00 P.M. In addition, he noted residents could contact him by telephone and email.

ADJOURNMENT

With no further business, Mayor Harper adjourned the meeting at 8:14 P.M. to the next Council Special Meeting on December 27, 2012.

Respectfully submitted:

Kitty Eiden

KITTY EIDEN, Minutes Clerk

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 DECEMBER 4, 2012 - JANUARY 2, 2013
 FUND/CHECK#

100 General Fund

Non Departmental

202046	CONTRA COSTA COUNTY	NOD HOLY CROSS CEMETARY	50.00
342666	DEER PACIFIC LP	DEPOSIT REFUND	36,030.75
342670	DELTA PACIFIC LP	DEPOSIT REFUND	11,000.00
342773	CONTRA COSTA COUNTY	HOLY CROSS FILING FEES	2,101.50
342829	MENDES, AURELIANO M	CHECK REPLACEMENT	39.50
342844	PERISCOPE HOLDINGS INC	LICENSE RENEWAL	87.50
342887	BURKE WILLIAMS AND SORENSEN LLP	LEGAL SERVICES	1,239.00
342903	CONTRA COSTA WATER DISTRICT	FACILITY RESERVE FEES	68,222.00
342904	CONTRA COSTA WATER DISTRICT	TREATED WATER CAPACITY FEE	15,699.32
342917	DOUGLAS HERRING AND ASSOCIATES	PROFESSIONAL SERVICES	3,809.00
342920	ECC REG FEE AND FIN AUTH	ECCRFFA-RTDIM	130,718.00
343026	LOEWKE PLANNING ASSOCIATES	CONSULTING SERVICES	2,618.00
918607	ZUMWALT ENGINEERING GROUP INC	ENGINEERING SERVICES	600.00

City Attorney

342853	SHRED IT INC	SHRED SERVICES	51.41
342887	BURKE WILLIAMS AND SORENSEN LLP	LEGAL SERVICES	4,236.50
342930	JARVIS FAY AND DOPORTO LLP	LEGAL SERVICES	2,583.75
342969	STATE BAR OF CALIFORNIA	ANNUAL DUES	410.00
342983	WENDEL ROSEN BLACK AND DEAN	LEGAL SERVICES	6,372.65
343024	LEXISNEXIS	ONLINE LEGAL RESEARCH	76.50

City Manager

202140	AMERICAN TROPHIES	PICTURE PLATE & BADGE	27.87
202141	BANK OF AMERICA	MEETING EXPENSE	55.10
202142	RICKS ON SECOND	MEETING EXPENSE	72.00
202143	AMERICAN TROPHIES	NAME PLATE	12.23
202144	AMERICAN TROPHIES	NAME PLATE	31.12
202145	DS WATERS OF AMERICA	WATER	28.41
342690	KARSTE CONSULTING INC	CONSULTANT SERVICES	480.00
342786	BAGEL STREET CAFE	MEETING EXPENSE	459.76
342837	OFFICE MAX INC	OFFICE SUPPLIES	73.23
342888	CA SHOPPING CART RETRIEVAL CORP	SHOPPING CART RETRIEVAL	84.00

City Clerk

201733	AMERICAN TROPHIES	SUPPLIES	70.36
201734	UNLIMITED GRAPHIC & SIGN NETWORK	NAME PLATES	43.30
202143	AMERICAN TROPHIES	NAME PLATE	17.00
342744	SKAGGS, DENISE A	EXPENSE REIMBURSEMENT	21.65
342891	CCAC	ANNUAL DUES	200.00
342921	EIDEN, KITTY J	MINUTES CLERK	756.00
342948	OFFICE MAX INC	OFFICE SUPPLIES	47.10
342998	CONTRA COSTA COUNTY	STATEMENT REIMBURSEMENT	9,200.01

City Treasurer

342679	GARDA CL WEST INC	ARMORED CAR PICK UP	208.37
342726	PFM ASSET MGMT LLC	ADVISORY SERVICES	7,188.30

Prepared by: Georgina Meek
 Finance Accounting

1/3/2013

CITY OF ANTIOCH
 CLAIMS BY FUND REPORT
 FOR THE PERIOD OF
 DECEMBER 4, 2012 - JANUARY 2, 2013
 FUND/CHECK#

Human Resources

202401 CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	53.57
342711 MUNICIPAL POOLING AUTHORITY	DOT PROGRAM	596.55
342713 OFFICE MAX INC	OFFICE SUPPLIES	356.65
342720 PARS	PROFESSIONAL SERVICES	2,153.38
342760 EMPLOYEE	EMPLOYMENT RECOGNITION	300.00
342776 AMERICAN TROPHIES	SERVICE AWARD PINS	1,372.61
342786 BAGEL STREET CAFE	MEETING EXPENSE	180.00
342828 EMPLOYEE	EMPLOYMENT RECOGNITION	350.00
342853 SHRED IT INC	SHRED SERVICE	44.59
342864 EMPLOYEE	EMPLOYMENT RECOGNITION	350.00
342881 BANK OF AMERICA	ANNUAL CARD FEE	25.00
342908 CPS HUMAN RESOURCE SERVICES	WRITTEN EXAM CONTRACT	813.50
342909 CREATIVE SUPPORTS	KEYBOARD TRAYS	1,179.80
342935 LADUE, DONALD	TUITION REIMBURSEMENT	800.00
342947 OCCUPATIONAL HEALTH CENTERS	PREEMPLOYMENT MEDICAL	1,787.60

Economic Development

342700 LAFCO	REORGANIZATION APPLICATION	3,885.00
342833 MUNICIPAL RESOURCE GROUP LLC	CONSULTANT SERVICES	10,944.00
342866 CONTRA COSTA COUNTY	2B REORGANIZATION APP FEE	1,100.00
918611 BERNICK, MICHAEL	PROFESSIONAL SERVICES	3,300.00

Finance Administration

342787 BANK OF AMERICA	GFOA MEMBERSHIP-MERCHANT	110.00
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Finance Accounting

202401 CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	22.20
202404 CMRTA	MEMBERSHIP RENEWAL	50.00
342653 CASTRO, JOSEPHINE A	EXPENSE REIMBURSEMENT	42.66
342787 BANK OF AMERICA	PAYROLL LAW-CASTRO/CLINE	578.00
342789 BAY AREA NEWS GROUP	LEGAL AD	664.08
342817 FRED PRYOR SEMINARS	TRAINING-CASTRO	398.00
342837 OFFICE MAX INC	OFFICE SUPPLIES	10.94
342844 PERISCOPE HOLDINGS INC	LICENSE RENEWAL	62.50
342853 SHRED IT INC	SHRED SERVICE	51.42

Finance Operations

342653 CASTRO, JOSEPHINE A	EXPENSE REIMBURSEMENT	29.08
342857 TYLER TECHNOLOGIES	MONTHLY INSITE FEES	1,360.00
342858 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	6.00
342948 OFFICE MAX INC	OFFICE SUPPLIES	96.31
342976 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00
343043 PROGRESSIVE SOLUTIONS INC	BUSINESS LICENSE ON LINE	5,297.50
343045 PERS	PAYROLL DEDUCTIONS	67.04

Non Departmental

202397 CHURCH OF CHRIST WITHIN	BUS LIC APP FEE REFUND	25.00
202398 SNUGGLE BUGS FAMILY CHILD CARE	BUS LIC APP FEE REFUND	30.00
202399 M & G CUSTOM SHOES & ORTHOTICS	BUS LIC APP FEE REFUND	30.00
202400 1080 VISUAL LLC	BUS LIC OVERPAYMENT REFUND	31.88

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202402 GERONIMO INTEGRAL HEALTH CASE	STICKER FEE REFUND	5.00
202403 INTERMOUNTAIN SLURRY SEAL	BUS LIC APP FEE REFUND	30.00
342848 RAINS LUCIA STERN PC	SETTLEMENT	3,975.00
342942 MANUAL DIAZ-PEREZ, ALEXIS	LIABILITY CLAIM	280.00
342946 MUNICIPAL POOLING AUTHORITY	INSURANCE PREMIUM	38,587.59
342981 WAGeworks	125 PLAN DEC12 ADMIN FEES	150.00
343020 LEAGUE OF CALIF CITIES	MEMBER DUES	25,288.00
343045 PERS	PAYROLL DEDUCTIONS	1,166.77
918677 RETIREE	MEDICAL AFTER RETIREMENT	1,643.21
Public Works Maintenance Administration		
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	221.92
342883 BAY CITIES PYROTECTOR	FIRE SYSTEM CERTIFICATION	250.00
Public Works General Maintenance Services		
343047 QUESADA CHIROPRACTIC	DMV PHYSICAL	75.00
Public Works Street Maintenance		
342669 DELTA GRINDING CO INC	EQUIPMENT RENTAL	9,025.00
342779 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	18,143.56
342824 L SERPA TRUCKING INC	TRUCK RENTAL	2,427.20
342826 LOWES COMPANIES INC	SUPPLIES	55.62
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	141.94
342912 DELTA GRINDING CO INC	EQUIPMENT RENTAL	2,625.00
342989 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	22,702.02
918605 TELFER OIL COMPANY	BASE REPAIRS	552.83
918737 TELFER OIL COMPANY	SUPPLIES	33.83
Public Works-Signal/Street Lights		
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	4,688.88
342768 WESCO RECEIVABLES CORP	STREET LIGHTS	7,605.65
342774 AMERICAN GREENPOWER USA INC	LIGHTING MATERIALS	9,190.77
342784 AT AND T MCI	PHONE	568.34
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	659.68
342858 UNITED PARCEL SERVICE	SHIPPING	113.36
342984 WESCO RECEIVABLES CORP	SUPPLIES	978.76
342997 CONTRA COSTA COUNTY	TRAFFIC SIGNAL MAINTENANCE	111,275.44
343059 STATE OF CALIFORNIA	SIGNAL LIGHT MAINTENANCE	3,880.20
918598 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	7,309.52
918629 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	2,904.68
Public Works-Striping/Signing		
202314 TCSA	WORKSHOP	60.00
342713 OFFICE MAX INC	OFFICE SUPPLIES	182.28
342719 PACIFIC PRODUCTS AND SERVICES INC	SUPPLIES	570.27
342738 SHERWIN WILLIAMS CO	PAINT SUPPLIES	363.99
342826 LOWES COMPANIES INC	SUPPLIES	204.83
342827 MANERI SIGN COMPANY	SIGN HARDWARE	373.46
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	334.38
342884 BIG B LUMBER	BARRICADE REPAIR	201.00
343027 MANERI SIGN COMPANY	STREET SIGNS	1,584.13

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343060 SUBURBAN PROPANE	PROPANE TANK RENTAL	75.00
918671 GRAINGER INC	SIGN & HARDWARE	146.40
Public Works-Facilities Maintenance		
342718 PACIFIC GAS AND ELECTRIC CO	GAS	10,382.45
342784 AT AND T MCI	PHONE	46.85
342826 LOWES COMPANIES INC	SUPPLIES	324.07
342838 OMEGA INDUSTRIAL SUPPLY	CLEANING SUPPLIES	628.65
342850 ROGERS ROOFING	ROOF REPAIR	850.00
342869 ACE HARDWARE, ANTIOCH	SUPPLIES	3.20
342883 BAY CITIES PYROTECTOR	ANNUAL TEST	1,350.00
342926 HONEYWELL INTERNATIONAL INC	HVAC SERVICE	13,857.86
342928 HUNT AND SONS INC	FUEL	1,074.97
342963 ROGERS ROOFING	ROOF REPAIRS	850.00
343005 DREAM RIDE ELEVATOR	ELEVATOR SERVICE	240.00
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	375.00
343032 OAKLEYS PEST CONTROL	PEST CONTROL SERVICE	280.00
918693 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	2,494.82
Public Works-Parks Maint		
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	731.79
342738 SHERWIN WILLIAMS CO	PAINT	172.53
342784 AT AND T MCI	PHONE	81.32
342807 DARQUEST INDUSTRIES CORP	CONVEYOR BELT	428.00
342830 MIRACLE PLAY SYSTEMS INC	PLAYGROUND EQUIPMENT	542.36
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	718.95
342911 DELTA FENCE CO	BARRIER FENCE	733.94
342952 PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	39,092.82
342984 WESCO RECEIVABLES CORP	SUPPLIES	7,562.56
918599 JOHN DEERE LANDSCAPES PACHECO	SPRINKLER & VALVES	996.31
918629 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	324.21
Public Works-Median/General Land		
342715 ORCHARD SUPPLY HARDWARE	SUPPLIES	14.05
342717 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	1,797.00
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,483.63
342728 PRINTEX CONCRETE PRODUCTS INC	SOUNDWALL REPAIRS	12,200.00
342755 TARGET SPECIALTY PRODUCTS	CHEMICAL SUPPLIES	2,139.67
342784 AT AND T MCI	PHONE	150.39
342841 PACIFIC COAST LANDSCAPE MGMT INC	LANDSCAPE SERVICES	2,420.00
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	61.79
342869 ACE HARDWARE, ANTIOCH	PVC FITTINGS	5.35
342944 MT DIABLO LANDSCAPE CENTERS INC	GARDEN SUPPLIES	121.69
343061 TARGET SPECIALTY PRODUCTS	SUPPLIES	3,878.90
918599 JOHN DEERE LANDSCAPES PACHECO	IRRIGATION SUPPLIES	1,871.70
918616 JOHN DEERE LANDSCAPES PACHECO	CONTROLLER INSTALLATION	1,076.01
Public Works-Work Alternative		
342692 KELLY MOORE PAINT CO	PAINT AND SUPPLIES	208.97
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	187.64

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Police Administration

202290 CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	23.60
342641 AGUINAGA, DIANE	PER DIEM/CAR RENTAL	546.06
342646 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	317.50
342648 BANK OF AMERICA	SUPPLIES	3,218.04
342655 CONCORD POLICE ASSOCIATION	TRAINING RENTAL	375.00
342656 CONCORD UNIFORMS LLC	UNIFORMS	326.95
342657 CONTRA COSTA COUNTY	RANGE USE FEES	565.00
342658 CONTRA COSTA COUNTY	TRAINING-BLEDSOE/BOSTICK	688.00
342662 COPWARE INC	SITE LICENSES	1,025.00
342665 CSI FORENSIC SUPPLY	EVIDENCE SUPPLIES	489.19
342677 FUHRMANN, THOMAS J	PER DIEM	213.00
342678 FUHRMANN, THOMAS J	EXPENSE REIMBURSEMENT	64.00
342683 HILTON	LODGING-MCMANUS WK1	453.00
342684 HILTON	LODGING-MCMANUS WK2	453.00
342685 HILTON	LODGING-KOCH WK1	453.00
342686 HILTON	LODGING-KOCH WK2	453.00
342695 KOCH, MATTHEW T	PER DIEM	610.00
342701 LANGUAGE LINE SERVICES	TRANSLATION SERVICES	9.25
342702 LAW OFFICES OF JONES AND MAYER	LEGAL FEES	4,161.00
342703 LEE, JENNIFER L	PER DEIM	280.00
342705 MC MANUS, ERIC A	PER DIEM	610.00
342713 OFFICE MAX INC	OFFICE SUPPLIES	612.27
342716 ORMAN, LEONARD A	EXPENSE REIMBURSEMENT	149.21
342727 PORAC LAW ENFORCEMENT NEWS	ADVERTISEMENT	1,550.00
342737 SHERATON INN	LODGING-FUHRMANN	283.68
342739 SHRED IT INC	SHRED SERVICES	259.90
342741 SILICON VALLEY HOTEL	LODGING-KIMONELLI	693.45
342742 SILICON VALLEY HOTEL	LODGING-LEE	693.45
342743 SIMONELLI, KORINA M	PER DIEM	280.00
342745 SOUTH BAY TRAINING CONSORTIUM	TRAINING-SIMONELLI	150.00
342746 SOUTH BAY TRAINING CONSORTIUM	TRAINING-LEE	150.00
342762 UNITED STATES POSTAL SERVICE	POSTAGE	2,000.00
342780 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	405.00
342788 BANK OF AMERICA	LODGING-MORTIMER	451.99
342812 DOUBLETREE HOTEL	LODGING-AGUINAGA	477.42
342879 BANK OF AMERICA	MEMBERSHIP FEES	620.60
342896 COMMERCIAL SUPPORT SERVICES	CAR WASHES	504.00
342905 CORTEZ, ANA E	EXPENSE REIMBURSEMENT	58.15
342932 JOHNSON, VIRGINIA L	MILEAGE REIMBURSEMENT	286.38
342948 OFFICE MAX INC	OFFICE SUPPLIES	299.57
342959 PORAC LAW ENFORCEMENT NEWS	ADVERTISEMENT	1,550.00
342961 REACH PROJECT INC	REACH SERVICES	48,175.00
342964 SCHNEIDER, MICHAEL	COURT REIMBURSEMENT	486.72
342970 STATE OF CALIFORNIA	FINGERPRINTING	1,114.00
342976 UNITED PARCEL SERVICE	SHIPPING	69.08

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342979	VERIZON WIRELESS	AIR CARDS	76.02
342980	VINCELET, JOSHUA P	EXPENSE REIMBURSEMENT	263.60
343002	D PREP LLC	TRAINING-MARTIN	146.00
343019	LAMOTHE CLEANERS	DRY CLEANING	7.00
343042	PRO FORCE LAW ENFORCEMENT	TASERS SUPPLIES	799.91
343054	SAN DIEGO POLICE EQUIPMENT CO	AMMUNITION	7,913.34
343073	XEROX CORPORATION	COPIER LEASE/USAGE	420.43
918591	ARATA PRINTING	BUSINESS CARDS	167.79
918597	HUNTINGTON COURT REPORTERS INC	TRANSCRIPTION SERVICES	2,133.12
918600	MOBILE MINI LLC	STORAGE CONTAINERS	213.52
918601	NATIONAL EMBLEM INC	PATCHES	426.26
918633	3M AOSAFETY EYEWARE	SAFETY GLASSES-VANDERKLUPT	247.29
918682	HUNTINGTON COURT REPORTERS INC	TRANSCRIPTION SERVICES	3,625.64
918704	MOBILE MINI LLC	STORAGE CONTAINERS	457.85
Police Community Policing			
202290	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	48.15
202291	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	92.62
202292	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	87.15
202293	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	85.50
202294	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	98.25
202295	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	59.80
202296	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	87.15
342667	DELTA ANIMAL CLINIC	VETERINARY SERVICES	175.66
342681	HARGER, MATTHEW J	DOG ALLOWANCE	150.00
342689	JOANNIDES, JASON M	DOG ALLOWANCE	150.00
342723	PERKINSON, JAMES A	DOG ALLOWANCE	150.00
342765	VALLIERE, CHRISTOPHER J	DOG ALLOWANCE	150.00
342770	WHITE, RYAN K	DOG ALLOWANCE	150.00
342846	PERS	PAYROLL DEDUCTIONS	35.84
342928	HUNT AND SONS INC	FUEL	54.78
343009	HARGER, MATTHEW J	PER DIEM	56.00
343030	MOORE K9 SERVICES	K9 TRAINING	500.00
343045	PERS	PAYROLL DEDUCTIONS	1,912.40
343056	EMPLOYEE	PENSION PAYMENT	3,882.50
343063	EMPLOYEE	PENSION PAYMENT	3,882.50
Police Investigations			
202290	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	19.19
202292	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	6.05
202295	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	34.50
202296	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	10.00
342642	AGUINAGA, DIANE	EXPENSE REIMBURSEMENT	30.45
342664	COURT SERVICES INC	PRISONER TRANSPORTATION	4,200.00
342696	KOCH, MATTHEW T	EXPENSE REIMBURSEMENT	115.06
342708	MORTIMER, MICHAEL P	EXPENSE REIMBURSEMENT	151.30
342733	SAC CTY DEPT OF HEALTH SERVICES	INTERVIEW SERVICES	250.00
342757	THOMSON WEST	ONLINE DATABASE	310.91

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342772 XEROX CORPORATION	COPIER LEASE/USAGE	495.29
342865 XEROX CORPORATION	COPIER LEASE/USAGE	934.16
342901 CONTRA COSTA COUNTY	SART EXAMS	4,000.00
342902 CONTRA COSTA COUNTY	LAB TESTING	54,024.90
342907 COURT SERVICES INC	PRISONER TRANSPORTATION	750.00
Police Special Operations Unit		
342648 BANK OF AMERICA	SUPPLIES	7.64
342707 MOREFIELD, ANTHONY W	NARCOTICS BUY FUND	1,000.00
Police Communications		
342783 AT AND T MCI	PHONE	655.27
342784 AT AND T MCI	PHONE	1,190.53
342846 PERS	PAYROLL DEDUCTIONS	37.47
342897 CONTRA COSTA COUNTY	RADIO SERVICES	240.00
342924 GLOBALSTAR	SATELLITE PHONE SERVICE	87.49
342988 AMERICAN TOWER CORPORATION	TOWER RENTAL	216.12
Office Of Emergency Management		
342784 AT AND T MCI	PHONE	299.81
342826 LOWES COMPANIES INC	SUPPLIES	191.41
Police Community Volunteers		
918593 CRYSTAL CLEAR LOGOS INC	UNIFORMS	91.03
Police Facilities Maintenance		
342652 CAMALI CORP	MAINTENANCE SERVICES	345.00
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	16,502.95
342784 AT AND T MCI	PHONE	383.11
342826 LOWES COMPANIES INC	SUPPLIES	70.34
342834 NEXTEL SPRINT	CELL PHONE	2,490.83
342870 AMERICAN ALARM COMPANY INC	SECURITY DOOR SERVICE	250.00
342889 CAMALI CORP	MAINTENANCE SERVICES	345.00
342926 HONEYWELL INTERNATIONAL INC	HVAC SERVICE	7,608.20
343005 DREAM RIDE ELEVATOR	ELEVATOR SERVICE	460.00
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	75.00
918693 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	4,411.17
Community Development Administration		
342865 XEROX CORPORATION	COPIER LEASE/USAGE	283.54
Community Development Land Planning Services		
342672 DYETT AND BHATIA	CONSULTING SERVICES	3,513.57
342882 BAY AREA NEWS GROUP	LEGAL AD	204.40
343033 OFFICE MAX INC	OFFICE SUPPLIES	31.80
Community Development Neighborhood Improvement		
342688 INTERWEST CONSULTING GROUP INC	CONSULTANT SERVICES	4,080.00
342761 TURNAGE II, KEN	ABATEMENT SERVICES	3,654.05
342826 LOWES COMPANIES INC	SUPPLIES	63.10
342948 OFFICE MAX INC	OFFICE SUPPLIES	102.30
343064 TURNAGE II, KEN	ABATEMENT SERVICES	2,242.54
PW Engineer Land Development		
342784 AT AND T MCI	PHONE	30.80

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342834 NEXTEL SPRINT	CELL PHONE	474.61
342865 XEROX CORPORATION	COPIER LEASE	110.23
Community Development Building Inspection		
342650 BOCCIO, MICHAEL L	SAFETY BOOTS REIMBURSEMENT	190.00
342834 NEXTEL SPRINT	CELL PHONE	261.86
342948 OFFICE MAX INC	OFFICE SUPPLIES	42.54
343033 OFFICE MAX INC	OFFICE SUPPLIES	336.74
918608 3M AOSAFETY EYEWARE	SAFETY GLASSES-BOCCIO	311.16
Capital Imp. Administration		
201670 DS WATERS OF AMERICA	WATER	24.89
Community Development Engineering Services		
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	164.74
212 CDBG Fund		
CDBG		
342649 BAY AREA LEGAL AID	CDBG SERVICES	1,773.29
342654 CITY DATA SERVICES	CDBG SERVICES	675.00
342687 HOUSE, TERI	CONSULTANT SERVICES	3,300.00
342688 INTERWEST CONSULTING GROUP INC	CONSULTANT SERVICES	8,925.00
342694 KENNEDY, JANET	CONSULTANT SERVICES	525.00
342802 CONTRA COSTA COUNTY	CDBG SERVICES	1,053.48
342927 HOUSE, TERI	CONSULTANT SERVICES	3,630.00
CDBG NSP		
342694 KENNEDY, JANET	CONSULTANT SERVICES	682.50
213 Gas Tax Fund		
Streets		
342704 MARK THOMAS AND CO INC	PROFESSIONAL SERVICES	7,070.00
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	21,926.37
342722 PARSONS BRINCKERHOFF INC	PROFESSIONAL SERVICES	8,009.02
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	120.93
214 Animal Control Fund		
Animal Control		
200277 MEREDITH, MARTA	DEPOSIT REFUND	60.00
342643 AMERICAN PLUMBING INC	PLUMBING SERVICES	125.00
342674 EAST HILLS VETERINARY HOSPITAL	VETERINARY SERVICES	1,158.25
342682 HILLS PET NUTRITION	ANIMAL FOOD	758.26
342697 KOEFRAN SERVICES INC	ANIMAL DISPOSAL SERVICES	1,850.00
342712 MWI VETERINARY SUPPLY CO	MEDICAL SUPPLIES	51.27
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	868.58
342834 NEXTEL SPRINT	CELL PHONE	244.34
342918 EAST BAY VETERINARY EMERGENCY	VETERINARY SERVICES	458.18
342919 EAST HILLS VETERINARY HOSPITAL	VETERINARY SERVICES	2,387.73
342948 OFFICE MAX INC	OFFICE SUPPLIES	72.02
342987 AMERICAN PLUMBING INC	PLUMBING SERVICES	125.00
343011 HILLS PET NUTRITION	ANIMAL FOOD	212.17
343031 MWI VETERINARY SUPPLY CO	VETERINARY PHARMACEUTICALS	1,405.29
343033 OFFICE MAX INC	OFFICE SUPPLIES	175.33

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343039 PFIZER ANIMAL HEALTH	ANIMAL CARE SUPPLIES	476.10
918587 A AND B CREATIVE TROPHIES	PLAQUES	92.82
918628 HAMMONS SUPPLY COMPANY	SUPPLIES	773.19
918693 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	435.75
219 Recreation Fund		
Non Departmental		
342797 CHARWAY, HARRY	DEPOSIT REFUND	500.00
342839 ORNELAS, HELEN	DEPOSIT REFUND	1,000.00
342940 LUCAS, SUSAN	CHECK REPLACEMENT	166.00
343012 HUDSON, REBECCA	DEPOSIT REFUND	500.00
343041 PRIMUS, CANDACE	DEPOSIT REFUND	500.00
343055 SANTANA, MARGARITE IBARRA	DEPOSIT REFUND	1,000.00
343068 VICTORY OUTREACH	DEPOSIT REFUND	200.00
Recreation Admin		
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,721.55
342783 AT AND T MCI	PHONE	63.10
342926 HONEYWELL INTERNATIONAL INC	HVAC SERVICE	5,706.44
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	150.00
Senior Programs		
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,147.70
342784 AT AND T MCI	PHONE	95.46
342804 COSTCO	SUPPLIES	140.29
Recreation Classes/Prog		
202358 MCCLAIN, MARIA	CLASS REFUND	26.00
202359 CORDOVA, BLANCA	CLASS REFUND	24.00
202360 WILLIAMS, ANNA	CLASS REFUND	29.00
202361 HEROLD, BRIAN	CLASS REFUND	29.00
202362 CZARNOWSKI, CAROL	CLASS REFUND	29.00
342671 DISCOUNT SCHOOL SUPPLY	PAPER	118.52
342804 COSTCO	SUPPLIES	134.47
342814 EDUCATION TO GO	CONTRACTOR PAYMENT	311.25
342855 STARGAZERS/TRACI MARTIN	CONTRACTOR PAYMENT	1,209.50
342890 CARIASO, ANGELICA	CONTRACTOR PAYMENT	266.64
342941 MAD SCIENCE OF MT DIABLO	CONTRACTOR PAYMENT	375.00
342982 WE ARE ONE PRODUCTIONS	CONTRACTOR PAYMENT	1,081.80
Recreation Sports Programs		
202363 MORALES, ROMAN	FIELD DEPOSIT REFUND	100.00
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	2,541.27
342793 BIG SKY LOGOS AND EMBROIDERY	SPORTS SUPPLIES	624.73
342800 CONCORD SOFTBALL UMPIRES	UMPIRE FEES	546.00
342822 KIDZ LOVE SOCCER INC	YOUTH SOCCER CAMP	4,587.60
Recreation Special Needs		
202358 MCCLAIN, MARIA	CLASS REFUND	10.00
202362 CZARNOWSKI, CAROL	CLASS REFUND	4.15
Recreation Concessions		
342804 COSTCO	SUPPLIES	574.88

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Recreation-New Comm Cntr

342749	STATE OF CALIFORNIA	FINGERPRINTING	32.00
342804	COSTCO	SUPPLIES	361.57
342826	LOWES COMPANIES INC	SUPPLIES	402.24
342836	OAKLEYS PEST CONTROL	PEST CONTROL SERVICES	200.00
342843	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	7,577.83
342880	BANK OF AMERICA	INK CARTRIDGE	75.95
342895	COMCAST	CONNECTION SERVICE	1,586.93
342939	LSA ASSOCIATES INC	MONITORING SERVICES	315.00
342943	MARLIES CLEANING SERVICE	CLEANING SERVICE	270.00
342962	REAL PROTECTION INC	SYSTEM SERVICE	600.00
342984	WESCO RECEIVABLES CORP	SUPPLIES	399.71
342986	ACME SECURITY SYSTEMS	MONITORING	300.00
342987	AMERICAN PLUMBING INC	PLUMBING SERVICES	152.28
343035	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	2,818.34
343070	WESCO RECEIVABLES CORP	SUPPLIES	361.12
918595	GRAINGER INC	SUPPLIES	234.86

220 Traffic Signalization Fund

Traffic Signals

342933	KIMLEY HORN AND ASSOCIATES INC	ENGINEERING SERVICES	2,790.00
918738	TESTING ENGINEERS INC	SAMPLE TESTING	1,860.00

222 Measure C Fund

Streets

342676	FEDERAL ADVOCATES INC	ADVOCACY SERVICES	5,000.00
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226 Solid Waste Reduction Fund

Solid Waste

342691	KATHY KRAMER CONSULTING	GARDEN TOUR CONTRIBUTION	1,000.00
342767	WEISENBACH SPECIALTY PRINTING INC	SUPPLIES	677.75
343001	CRRA	MEMBER DUES	200.00

229 Pollution Elimination Fund

Channel Maintenance Operation

202313	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	9.87
342709	MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	906.26
342785	ATLANTIS DIVING AND SALVAGE CO	GATE INSPECTION	2,500.00
342792	BENCHMARK CONSULTANTS	FIELD SURVEY	1,365.00
342834	NEXTEL SPRINT	CELL PHONE EQUIPMENT	136.81
342916	DEPT OF FISH AND GAME	ANNUAL PROJECT FEES	216.00
342923	FURBER SAW INC	EQUIPMENT PARTS	412.97
342954	PACIFIC COAST SEED INC	EROSION CONTROL SEED	779.40
918610	ANKA BEHAVIORAL HEALTH INC	LANDSCAPE SERVICES	11,040.00
918617	TELFER OIL COMPANY	SUPPLIES	1,775.30

Storm Drain Administration

342752	STATE WATER RESOURCES BOARD	ANNUAL PERMIT FEE	1,943.00
342753	STATE WATER RESOURCES BOARD	ANNUAL PERMIT FEE	24,263.00

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236 CDBG Revolving Loan Fund

CDBG

342861 US DEPT OF HOUSING & URBAN DEV REMIT CDBG INTEREST 530.87

238 PEG Franchise Fee Fund

Non Departmental

342882 BAY AREA NEWS GROUP LEGAL AD 301.06

342965 SMITH FAUSE MCDONALD INC AUDIO/VISUAL SERVICE 2,593.00

251 Lone Tree SLLMD Fund

Lonetree Maintenance Zone 1

342717 PACIFIC COAST LANDSCAPE MGMT INC LANDSCAPE SERVICES 968.00

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 709.84

342784 AT AND T MCI PHONE 64.20

Lonetree Maintenance Zone 2

342717 PACIFIC COAST LANDSCAPE MGMT INC LANDSCAPE SERVICES 484.00

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 654.23

342784 AT AND T MCI PHONE 124.37

342840 PACHECO BROTHERS GARDENING INC LANDSCAPE SERVICES 3,700.00

342953 PACIFIC COAST LANDSCAPE MGMT INC LANDSCAPE SERVICES 1,452.00

Lonetree Maintenance Zone 3

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 1,083.25

342784 AT AND T MCI PHONE 47.51

342840 PACHECO BROTHERS GARDENING INC LANDSCAPE SERVICES 3,700.00

342843 PACIFIC GAS AND ELECTRIC CO ELECTRIC 56.94

Lonetree Maintenance Zone 4

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 289.46

252 Downtown SLLMD Fund

Downtown Maintenance

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 340.64

253 Almondridge SLLMD Fund

Almondridge Maintenance

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 192.88

342869 ACE HARDWARE, ANTIOCH IRRIGATION CONTROLLER FUSE 13.62

254 Hillcrest SLLMD Fund

Hillcrest Maintenance Zone 1

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 659.07

342784 AT AND T MCI PHONE 32.10

Hillcrest Maintenance Zone 2

342717 PACIFIC COAST LANDSCAPE MGMT INC LANDSCAPE SERVICES 1,797.00

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 673.89

342784 AT AND T MCI PHONE 126.80

342953 PACIFIC COAST LANDSCAPE MGMT INC LANDSCAPE SERVICES 968.00

Hillcrest Maintenance Zone 4

342718 PACIFIC GAS AND ELECTRIC CO ELECTRIC 569.62

342784 AT AND T MCI PHONE 93.73

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255 Park 1A Maintenance District Fund

Park 1A Maintenance District

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	83.78
342784	AT AND T MCI	PHONE	16.10
342843	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	37.34
342856	STEWARTS TREE SERVICE	TREE REMOVAL	650.00
342952	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	160.00

256 Citywide 2A Maintenance District Fund

Citywide 2A Maintenance Zone 3

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	70.01
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Citywide 2A Maintenance Zone 4

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	268.18
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Citywide 2A Maintenance Zone 5

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	407.59
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Citywide 2A Maintenance Zone 6

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	203.03
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Citywide 2A Maintenance Zone 8

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	273.25
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Citywide 2A Maintenance Zone 9

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	437.92
342784	AT AND T MCI	PHONE	64.20

Citywide 2A Maintenance Zone 10

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	108.13
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257 SLLMD Administration Fund

SLLMD Administration

202313	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	21.64
342713	OFFICE MAX INC	OFFICE SUPPLIES	93.55
342769	WESTERN CHAPTER ISA	ANNUAL MEETING	105.00
342834	NEXTEL SPRINT	CELL PHONE EQUIPMENT	596.05
342948	OFFICE MAX INC	OFFICE SUPPLIES	10.67

259 East Lone Tree SLLMD Fund

Zone 1-District 10

342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	23.07
342843	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	146.50

311 Capital Improvement Fund

Energy Efficiency

202401	CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	17.50
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Public Buildings & Facilities

342690	KARSTE CONSULTING INC	CONSULTING SERVICES	540.00
342789	BAY AREA NEWS GROUP	LEGAL AD	281.56
342791	BEALS ALLIANCE INC	DESIGN SERVICE	7,329.62
342933	KIMLEY HORN AND ASSOCIATES INC	ENGINEERING SERVICES	180.00
343036	PARSONS BRINCKERHOFF INC	PROFESSIONAL SERVICES	18,494.08
343040	PLATINUM PIPELINE INC	MARKLEY CREEK PROJECT	163,419.00
918738	TESTING ENGINEERS INC	SAMPLE TESTING	1,330.00

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376 Lone Diamond Fund		
Assessment District		
343046 PUBLIC STORAGE	STORAGE FEES	532.00
569 Vehicle Replacement Fund		
Equipment Maintenance		
343072 WONDRIES FLEET GROUP	VEHICLE PURCHASES	151,420.68
570 Equipment Maintenance Fund		
Non Departmental		
342818 HUNT AND SONS INC	FUEL	23,036.76
342928 HUNT AND SONS INC	FUEL	16,776.25
Equipment Maintenance		
202315 WINTER CHEVROLET CO	SUPPLIES	54.83
342640 AFFORDABLE TIRE CENTER	SMOG TESTING	373.10
342644 ANTIOCH AUTO PARTS	DOOR LIFT	90.91
342645 ANTIOCH GLASS	WINDOWS	370.63
342673 EAST BAY TRUCK CENTER	TURN SIGNAL SWITCH	35.50
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	457.70
342725 PETERSON	SUPPLIES	130.17
342758 TRED SHED, THE	TIRES	5,098.91
342766 WALNUT CREEK FORD	AUTO PARTS STOCK	1,961.90
342778 ANTIOCH AUTO PARTS	AUTO PARTS STOCK	286.10
342780 ARROWHEAD 24 HOUR TOWING INC	TOWING SERVICES	47.50
342801 CONTRA COSTA COUNTY	TELECOMMUNICATIONS SERVICE	420.00
342813 EAST BAY WELDING SUPPLY	WELDING WIRE	67.52
342826 LOWES COMPANIES INC	BATTERIES	4.73
342845 PETERSON	RADIATOR & PARTS	1,504.22
342851 ROYAL BRASS INC	HOSE ASSEMBLY	206.83
342852 SCOTTOS AUTO BODY INC	BODY WORK	10,315.84
342854 SPRAYER SALES COMPANY	TUBES & VALVE	217.61
342863 WALNUT CREEK FORD	SHIFT TUBE	91.38
342869 ACE HARDWARE, ANTIOCH	FLASHLIGHT	45.53
342876 ANTIOCH AUTO PARTS	WATER TRAP STOCK	1,606.20
342878 APEX INDUSTRY SERVICE INC	RADIOS	4,537.89
342923 FURBER SAW INC	AIR FILTER	26.29
343010 HARLEY DAVIDSON	VEHICLE SERVICE	536.78
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	75.00
343038 PETERSON	GREASE & KEYS	73.30
343069 WALNUT CREEK FORD	BRAKE PARTS	664.38
918588 A1 TRANSMISSION	REBUILT TRANSMISSION	2,164.89
918638 BAYSIDE SMOG	SMOG TESTING	143.50
918664 ECONOMY AUTO PAINT & BODYWORK	BODY SHOP SERVICES	566.30
573 Information Services Fund		
Non Departmental		
342787 BANK OF AMERICA	EE COMPUTER PURCHASE	1,424.68
918590 ALTURA COMMUNICATION SOLUTIONS	ANNUAL SUPPORT	20,198.84

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Information Services

342784 AT AND T MCI	PHONE	59.14
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	188.48
342858 UNITED PARCEL SERVICE	SHIPPING	16.11
342862 VERIZON WIRELESS	AIR CARD	35.11
343033 OFFICE MAX INC	OFFICE SUPPLIES	154.34

Network Support & PCs

342784 AT AND T MCI	PHONE	450.21
342799 COMCAST	INTERNET SERVICE	78.27
342806 CREATIVE SUPPORTS	CHAIR	401.25
342811 DIGITAL SERVICES	WEBSITE MAINTENANCE	2,080.00
342815 EMBERLIN, DAVID C	EXPENSE REIMBURSEMENT	301.20
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	289.25
342874 AMS DOT NET INC	TECHNICAL SUPPORT	2,000.00
342894 COMCAST	INTERNET SERVICE	111.66
342895 COMCAST	CONNECTION SERVICE	1,048.75
918612 CDW GOVERNMENT INC	IPAD	1,707.41

Telephone System

202252 AMERICAN MESSAGING	PAGER	31.33
342782 AT AND T MCI	PHONE	16.38
342783 AT AND T MCI	PHONE	168.63
342784 AT AND T MCI	PHONE	2,221.55
918590 ALTURA COMMUNICATION SOLUTIONS	ANNUAL BILLING	20,198.84

GIS Support Services

342713 OFFICE MAX INC	OFFICE SUPPLIES	14.62
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577 Post Retirement Medical-Police Fund

Non Departmental

342819 KAISER PERMANENTE	MEDICAL AFTER RETIREMENT	3,668.64
343014 KAISER PERMANENTE	MEDICAL AFTER RETIREMENT	1,339.26
343021 RETIREE	MEDICAL AFTER RETIREMENT	842.00
343045 PERS	MEDICAL AFTER RETIREMENT	3,180.84
343052 RETIREE	MEDICAL AFTER RETIREMENT	219.32
343071 RETIREE	MEDICAL AFTER RETIREMENT	461.74
918634 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918637 RETIREE	MEDICAL AFTER RETIREMENT	1,111.84
918640 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918648 RETIREE	MEDICAL AFTER RETIREMENT	1,088.53
918649 RETIREE	MEDICAL AFTER RETIREMENT	973.00
918653 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918662 RETIREE	MEDICAL AFTER RETIREMENT	1,090.04
918666 RETIREE	MEDICAL AFTER RETIREMENT	219.32
918674 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918679 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918680 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918681 RETIREE	MEDICAL AFTER RETIREMENT	130.73
918689 RETIREE	MEDICAL AFTER RETIREMENT	173.37

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918703 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918706 RETIREE	MEDICAL AFTER RETIREMENT	553.63
918714 RETIREE	MEDICAL AFTER RETIREMENT	352.26
918715 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918717 RETIREE	MEDICAL AFTER RETIREMENT	887.95
918726 RETIREE	MEDICAL AFTER RETIREMENT	553.63
918735 RETIREE	MEDICAL AFTER RETIREMENT	161.21
918739 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918742 RETIREE	MEDICAL AFTER RETIREMENT	553.63
918750 RETIREE	MEDICAL AFTER RETIREMENT	553.63

578 Post Retirement Medical-Misc Fund

Non Departmental

342994 RETIREE	MEDICAL AFTER RETIREMENT	239.69
343003 RETIREE	MEDICAL AFTER RETIREMENT	239.69
343004 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343006 RETIREE	MEDICAL AFTER RETIREMENT	594.38
343034 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343045 PERS	MEDICAL AFTER RETIREMENT	6,419.33
343048 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343049 RETIREE	MEDICAL AFTER RETIREMENT	594.38
343051 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343057 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918619 RETIREE	MEDICAL AFTER RETIREMENT	8,512.56
918635 RETIREE	MEDICAL AFTER RETIREMENT	255.43
918636 RETIREE	MEDICAL AFTER RETIREMENT	146.32
918642 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918644 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918646 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918652 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918654 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918657 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918661 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918665 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918668 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918672 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918676 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918678 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918684 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918685 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918688 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918691 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918695 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918698 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918710 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918711 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918721 RETIREE	MEDICAL AFTER RETIREMENT	239.69

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918725 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918730 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918741 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918744 RETIREE	MEDICAL AFTER RETIREMENT	709.38
918749 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918751 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918752 RETIREE	MEDICAL AFTER RETIREMENT	121.69

579 Post Retirement Medical-Mgmt Fund

Non Departmental

342992 RETIREE	MEDICAL AFTER RETIREMENT	239.69
342995 RETIREE	MEDICAL AFTER RETIREMENT	898.90
343000 RETIREE	MEDICAL AFTER RETIREMENT	179.69
343007 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343008 RETIREE	MEDICAL AFTER RETIREMENT	239.69
343013 RETIREE	MEDICAL AFTER RETIREMENT	400.00
343023 RETIREE	MEDICAL AFTER RETIREMENT	358.38
343037 RETIREE	MEDICAL AFTER RETIREMENT	121.69
343045 PERS	MEDICAL AFTER RETIREMENT	9,005.28
343062 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918639 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918641 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918643 RETIREE	MEDICAL AFTER RETIREMENT	179.70
918645 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918647 RETIREE	MEDICAL AFTER RETIREMENT	898.90
918650 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918651 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918655 RETIREE	MEDICAL AFTER RETIREMENT	625.86
918656 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918658 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918659 RETIREE	MEDICAL AFTER RETIREMENT	474.38
918660 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918663 RETIREE	MEDICAL AFTER RETIREMENT	255.43
918667 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918669 RETIREE	MEDICAL AFTER RETIREMENT	898.90
918670 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918673 RETIREE	MEDICAL AFTER RETIREMENT	1,184.56
918675 RETIREE	MEDICAL AFTER RETIREMENT	461.74
918683 RETIREE	MEDICAL AFTER RETIREMENT	376.24
918686 RETIREE	MEDICAL AFTER RETIREMENT	724.38
918687 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918690 RETIREE	MEDICAL AFTER RETIREMENT	255.43
918692 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918694 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918696 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918697 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918699 RETIREE	MEDICAL AFTER RETIREMENT	239.69

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918700 RETIREE	MEDICAL AFTER RETIREMENT	159.02
918701 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918702 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918705 RETIREE	MEDICAL AFTER RETIREMENT	964.95
918707 RETIREE	MEDICAL AFTER RETIREMENT	173.37
918708 RETIREE	MEDICAL AFTER RETIREMENT	255.43
918709 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918712 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918713 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918716 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918718 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918719 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918720 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918722 RETIREE	MEDICAL AFTER RETIREMENT	239.69
918723 RETIREE	MEDICAL AFTER RETIREMENT	146.32
918724 RETIREE	MEDICAL AFTER RETIREMENT	379.69
918727 RETIREE	MEDICAL AFTER RETIREMENT	898.90
918728 RETIREE	MEDICAL AFTER RETIREMENT	594.38
918729 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918731 RETIREE	MEDICAL AFTER RETIREMENT	258.43
918732 RETIREE	MEDICAL AFTER RETIREMENT	625.86
918733 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918734 RETIREE	MEDICAL AFTER RETIREMENT	1,222.26
918736 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918740 RETIREE	MEDICAL AFTER RETIREMENT	255.43
918743 RETIREE	MEDICAL AFTER RETIREMENT	2,051.22
918745 RETIREE	MEDICAL AFTER RETIREMENT	358.38
918746 RETIREE	MEDICAL AFTER RETIREMENT	121.69
918747 RETIREE	MEDICAL AFTER RETIREMENT	1,623.44
918748 RETIREE	MEDICAL AFTER RETIREMENT	255.43

611 Water Fund

Non Departmental

342731 ROBERTS AND BRUNE CO	SUPPLIES	13,678.40
342808 DELTA DIABLO SANITATION DISTRICT	SRF LOAN PAYMENT	252,026.18
342816 FASTENAL CO	INDUSTRIAL SUPPLIES	832.52
342876 ANTIOCH AUTO PARTS	SUPPLIES	1,609.35
343033 OFFICE MAX INC	OFFICE SUPPLIES	1,701.69
343050 ROBERTS AND BRUNE CO	SUPPLIES	2,443.74
343070 WESCO RECEIVABLES CORP	SUPPLIES	199.00
918596 HAMMONS SUPPLY COMPANY	SUPPLIES	350.92
918613 CRYSTAL CLEAR LOGOS INC	SUPPLIES	5,794.90
918615 HAMMONS SUPPLY COMPANY	SUPPLIES	1,375.25
918627 GRAINGER INC	SUPPLIES	1,326.02
918628 HAMMONS SUPPLY COMPANY	SUPPLIES	123.15

Water Supervision

342732 RT LAWRENCE CORP	LOCKBOX PROCESSING FEE	1,506.89
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342734 SAHNIC, ALMIR	CHECK REPLACEMENT	58.95
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	240.85
342886 BRANSON, SHARON	CHECK REPLACEMENT	25.88
342951 ORTEGA, LINDA AND WILLIAM	CHECK REPLACEMENT	62.84

Water Production

202343 DEPT OF PESTICIDE REGULATION	LICENSE RENEWAL	60.00
202344 ARAMARK UNIFORM SERVICES	SUPPLIES	68.28
202345 GENERAL PLUMBING SUPPLY CO	SUPPLIES	8.47
342639 ACE HARDWARE, ANTIOCH	PAINT	16.87
342644 ANTIOCH AUTO PARTS	FAN BELT	9.73
342680 HACH CO	LAB SUPPLIES	1,301.50
342693 KELLY MOORE PAINT CO	PAINT	131.16
342698 KOFFLER ELECTRICAL MECH	PUMP REBUILD	12,345.52
342699 KRUGER INC	REPAIR KITS	3,356.21
342713 OFFICE MAX INC	OFFICE SUPPLIES	271.66
342718 PACIFIC GAS AND ELECTRIC CO	GAS	99,006.31
342730 REINHOLDT ENGINEERING CONSTR	REPAIR SERVICE	2,324.23
342731 ROBERTS AND BRUNE CO	PIPE & FITTINGS	116.24
342747 SPAULDING, ANN B	CONSULTING SERVICES	3,093.77
342748 STATE BOARD OF EQUALIZATION	WATER RIGHTS FEES	152.88
342764 USA BLUE BOOK	WINDSOCK	325.38
342768 WESCO RECEIVABLES CORP	750 KVA TRANSFORMER	21,025.40
342777 ANIMAL DAMAGE MANAGEMENT	PEST CONTROL SERVICE	125.00
342778 ANTIOCH AUTO PARTS	BELT	19.46
342783 AT AND T MCI	PHONE	126.20
342784 AT AND T MCI	PHONE	66.47
342794 BIGGE CRANE AND RIGGING CO INC	CRANE SERVICE	3,103.00
342795 BORGES AND MAHONEY	ANALYZER PARTS	134.25
342798 CMC INCORPORATED	FILTER NOZZLES	2,462.81
342803 CONTRA COSTA WATER DISTRICT	RAW WATER	711,399.57
342805 COULTER GRADALL INC	EQUIPMENT RENTAL	24,220.00
342820 KARL NEEDHAM ENTERPRISES INC	EQUIPMENT RENTAL	20,083.84
342826 LOWES COMPANIES INC	WINDOW TAPE	91.60
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	187.56
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	20.37
342847 QUESADA CHIROPRACTIC	DMV PHYSICAL	75.00
342858 UNITED PARCEL SERVICE	SHIPPING	32.68
342860 UNIVAR USA INC	CAUSTIC	6,217.90
342869 ACE HARDWARE, ANTIOCH	ROOF PATCH	195.98
342875 ANCHOR CONCRETE CONSTRUCTION	PROFESSIONAL SERVICES	9,685.00
342876 ANTIOCH AUTO PARTS	GREASE GUN	59.50
342922 FLOW SCIENCE INCORPORATED	PROFESSIONAL SERVICES	18,537.16
342925 HARRINGTON INDUSTRIAL PLASTICS	NEEDLE VALVES	243.83
342936 LAW OFFICE OF MATTHEW EMRICK	LEGAL SERVICES	4,479.00
342948 OFFICE MAX INC	OFFICE SUPPLIES	170.65
342958 POLYDYNE INC	POLYMER	5,060.00

Prepared by: Georgina Meek
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CITY OF ANTIOCH
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342973 TAP PLASTICS INC	ACRYLIC PANELS	1,200.19
342977 UNIVAR USA INC	CAUSTIC	12,620.93
343015 KELLY MOORE PAINT CO	PAINT	160.81
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	150.00
343028 MCCAMPBELL ANALYTICAL INC	SAMPLE TESTING	146.70
343058 SOUTHWEST VALVE LLC	VALVE SPRING	324.85
343066 UNIVAR USA INC	CAUSTIC	6,249.75
343070 WESCO RECEIVABLES CORP	SUPPLIES	76.78
343073 XEROX CORPORATION	COPIER LEASE/USAGE	68.05
918589 AIRGAS SPECIALTY PRODUCTS	AMMONIA	1,203.60
918594 GENERAL CHEMICAL CORP	ALUM	12,705.53
918604 SIERRA CHEMICAL CO	CHLORINE	4,055.37
918609 AIRGAS SPECIALTY PRODUCTS	AMMONIA	1,247.80
918618 VINCENT ELECTRIC MOTOR CO	MOTOR REPAIR	7,484.19
918620 AIRGAS SPECIALTY PRODUCTS	AMMONIA	1,803.70
918626 GENERAL CHEMICAL CORP	ALUM	17,090.84
918627 GRAINGER INC	SUPPLIES	111.00
918629 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	352.14
918631 THYSSEN KRUPP ELEVATOR CORP	ELEVATOR SERVICE	120.00
918693 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	658.60
Water Distribution		
202313 CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	31.70
342639 ACE HARDWARE, ANTIOCH	SMALL TOOLS	834.24
342663 COUNTY ASPHALT	ASPHALT	660.91
342690 KARSTE CONSULTING INC	CONSULTANT SERVICES	2,400.00
342706 MCCAMPBELL ANALYTICAL INC	MONITORING	146.70
342709 MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	101.57
342713 OFFICE MAX INC	OFFICE SUPPLIES	264.34
342729 RED WING SHOE STORE	SAFETY SHOES-CORDAWAY	215.93
342731 ROBERTS AND BRUNE CO	PIPE & FITTINGS	2,149.36
342784 AT AND T MCI	PHONE	770.20
342796 CDPH OCP	RENEWAL-CHADWICK	120.00
342821 KEN KELLER SALES	PAVEMENT BREAKER	2,718.73
342826 LOWES COMPANIES INC	SUPPLIES	325.34
342834 NEXTEL SPRINT	CELL PHONE	1,123.60
342847 QUESADA CHIROPRACTIC	DMV PHYSICAL	75.00
342849 ROBERTS AND BRUNE CO	PIPE & FITTING	21.83
342858 UNITED PARCEL SERVICE	SHIPPING	90.11
342859 UNITED STATES POSTAL SERVICE	POSTAGE	5,000.00
342869 ACE HARDWARE, ANTIOCH	SUPPLIES	8.27
342877 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	5,821.90
342906 COUNTY ASPHALT	ASPHALT	637.78
342948 OFFICE MAX INC	OFFICE SUPPLIES	35.49
342990 ATLANTIC MACHINERY INC	2012 HYDRO-EXCAVATION TRUCK	307,929.03
342991 BACKFLOW APPARATUS & VALVE CO	BACKFLOW PARTS	1,127.93
343028 MCCAMPBELL ANALYTICAL INC	SAMPLE TESTING	259.20

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343033 OFFICE MAX INC	OFFICE SUPPLIES	26.73
343045 PERS	PAYROLL DEDUCTIONS	301.63
343050 ROBERTS AND BRUNE CO	PIPE & FITTINGS	15,551.20
918624 COMPUTERLAND	EQUIPMENT	134.23
918627 GRAINGER INC	SMALL TOOLS	248.98
Water Meter Reading		
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	110.48
342871 AMERICAN CASTING AND MFG CORP	SUPPLIES	1,824.90
918592 BADGER METER INC	REGISTERS	5,897.21
918623 BADGER METER INC	REGISTERS	8,844.26
Public Buildings & Facilities		
342789 BAY AREA NEWS GROUP	LEGAL AD	302.00
342843 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	1,436.37
342966 SMITH, LOZANO	LEGAL SERVICES	8,647.68
918603 NICHOLS CONSULTING ENGINEERS	CONSULTING SERVICES	3,084.85
Warehouse & Central Stores		
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	139.22
342858 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	6.00
342976 UNITED PARCEL SERVICE	WEEKLY PRINTER SERVICE FEE	2.00
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	150.00
612 Water Line Expansion Fund		
Water Systems		
342858 UNITED PARCEL SERVICE	SHIPPING	6.43
621 Sewer Fund		
Sewer-Wastewater Supervision		
342834 NEXTEL SPRINT	CELL PHONE EQUIPMENT	59.50
918624 COMPUTERLAND	COMPUTER EQUIPMENT	134.23
Sewer-Wastewater Collection		
202313 CITY OF ANTIOCH	EXPENSE REIMBURSEMENT	35.82
202317 CITY OF ANTIOCH	HARD DRIVE	97.41
202318 STAPLES	DIGITAL CAMERA	92.53
202319 STAPLES	CAMERA CARDS	42.17
202320 COSTCO	SUPPLIES	46.38
342663 COUNTY ASPHALT	ASPHALT	660.91
342709 MT DIABLO LANDSCAPE CENTERS INC	CONCRETE MIX	273.40
342713 OFFICE MAX INC	OFFICE SUPPLIES	195.93
342784 AT AND T MCI	PHONE	32.51
342821 KEN KELLER SALES	EQUIPMENT	6,198.76
342826 LOWES COMPANIES INC	SUPPLIES	72.95
342832 MUNICIPAL MAINT EQUIPMENT INC	COUPLERS	124.25
342834 NEXTEL SPRINT	CELL PHONE	499.88
342859 UNITED STATES POSTAL SERVICE	POSTAGE	5,000.00
342877 ANTIOCH BUILDING MATERIALS	ASPHALT MATERIALS	5,821.91
342880 BANK OF AMERICA	COMPUTER EQUIPMENT	740.69
342906 COUNTY ASPHALT	ASPHALT	637.79
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	375.00

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343045 PERS	PAYROLL DEDUCTIONS	301.63
918627 GRAINGER INC	SUPPLIES	785.47
Wastewater Collection		
342675 ENGEO INC	PROFESSIONAL SERVICES	2,158.40
342910 D R LEMINGS CONSTRUCTION	SEWER PROJECT	39,212.10
918603 NICHOLS CONSULTING ENGINEERS	CONSULTING SERVICES	3,084.84
622 Sewer Facilities Expansion Fund		
Wastewater Collection		
342993 BEAR ENGINEERING GROUP INC	SEWER REHAB PROJECT	9,365.00
342999 CONTRA COSTA TRANS AUTHORITY	SEWER DESIGN	20,000.00
631 Marina Fund		
Non Departmental		
342651 BROWN, CARL	BERTH DEPOSIT REFUND	97.20
342735 SCOTT, ROSEMARY	BERTH DEPOSIT REFUND	155.25
342771 WRIGHT, MARK	BERTH DEPOSIT REFUND	261.00
342885 BOSCIA, TED	BERTH DEPOSIT REFUND	138.00
Marina Administration		
342718 PACIFIC GAS AND ELECTRIC CO	ELECTRIC	2,907.39
342735 SCOTT, ROSEMARY	CREDIT BALANCE REFUND	55.25
342784 AT AND T MCI	PHONE	64.85
342789 BAY AREA NEWS GROUP	LEGAL AD	56.72
342915 DEPARTMENT OF MOTOR VEHICLES	LIEN VESSEL REGISTRATION	217.00
343022 LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	75.00
343073 XEROX CORPORATION	COPIER LEASE/USAGE	68.05
Marina Maintenance		
202316 DEPT OF PESTICIDE REGULATION	RENEWAL-JEFFERSON	60.00
342713 OFFICE MAX INC	OFFICE SUPPLIES	11.90
342775 AMERICAN PLUMBING INC	PLUMBING SERVICES	156.25
342790 BAY CITIES PYROTECTOR	FIRE HOSE REPLACEMENT	6,854.46
342872 AMERICAN PLUMBING INC	PLUMBING SERVICES	125.00
342883 BAY CITIES PYROTECTOR	ANNUAL TEST	375.00
343045 PERS	PAYROLL DEDUCTIONS	1,151.17
918614 FRED'S WELDING	GATE REPAIR	2,725.00
918625 FRED'S WELDING	WELDING SERVICES	285.00
918627 GRAINGER INC	GFCI TOOL	59.04
918629 ICR ELECTRICAL CONTRACTORS	ELECTRICAL SERVICES	1,146.45
918693 LEES BUILDING MAINTENANCE	JANITORIAL SERVICES	1,355.14
Marina Boat Launch		
342873 AMERICAN TROPHIES	2013 LAUNCH PASSES	341.80
641 Prewett Water Park Fund		
Non Departmental		
342781 ASSOCIATION OF UGANDAN COMMUNITY	DEPOSIT REFUND	500.00
342809 DEPT OF CONSERVATION	DEPOSIT REFUND	500.00
342831 MORENO, MARISOL	DEPOSIT REFUND	500.00
342835 NILO, WHELMA	DEPOSIT REFUND	500.00
342868 ABEJUELA, RIA	DEPOSIT REFUND	500.00

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342931	JOHNSON, ANDREA	DEPOSIT REFUND	1,000.00
343029	MOBILE MINDS TUTORING INC	DEPOSIT REFUND	500.00
343065	UNITED PENTECOSTAL CHURCH	DEPOSIT REFUND	500.00
343067	URHOBO PROGRESSIVE UNION	DEPOSIT REFUND	500.00
343074	ZARATE, KITZIA	DEPOSIT REFUND	1,000.00
Rec - Prewett Admin			
342784	AT AND T MCI	PHONE	46.37
Recreation Aquatics			
342710	MUIR, ROXANNE	AEROBIC INSTUCTOR	35.00
342880	BANK OF AMERICA	SUPPLIES	364.24
Recreation Water Park			
202267	CITY OF NEWARK	CHEMICAL TRAINING	60.00
202271	KEEP U NEAT CLEANERS	DRY CLEANING	85.00
202273	PRAXAIR DISTRIBUTION INC	OXYGEN TANK RENTAL	94.24
342668	DELTA FENCE CO	GATE REPAIR	3,240.00
342693	KELLY MOORE PAINT CO	SUPPLIES	1,249.74
342718	PACIFIC GAS AND ELECTRIC CO	ELECTRIC	10,322.52
342736	SHARP BUSINESS SYSTEMS	TONER	170.60
342749	STATE OF CALIFORNIA	FINGERPRINTING	32.00
342754	STERICYCLE INC	BIO CHEMICAL	168.23
342823	KNORR SYSTEMS INC	CARBON DIOXIDE	579.37
342826	LOWES COMPANIES INC	SUPPLIES	1,673.93
342872	AMERICAN PLUMBING INC	PLUMBING SERVICES	485.00
342893	COMCAST	MONTHLY DMX SERVICE	48.56
342934	KNORR SYSTEMS INC	CHEMICALS SUPPLIES	531.84
342957	PITCHER, JUSTIN WILLIAM	EXPENSE REIMBURSEMENT	107.45
342962	REAL PROTECTION INC	BATTERY REPLACEMENT	254.00
342996	COLE SUPPLY CO INC	SUPPLIES	799.15
343015	KELLY MOORE PAINT CO	SUPPLIES	19.96
343016	KELLY MOORE PAINT CO	SUPPLIES	68.81
343017	KELLY MOORE PAINT CO	SUPPLIES	1,364.68
343018	KNORR SYSTEMS INC	CHEMICALS	549.95
343022	LENHART ALARM AND SECURITY	ALARM SYSTEM MONITORING	450.00
343025	LINCOLN EQUIPMENT INC	MSDS HOLDER & SIGN	384.29
343035	PACHECO BROTHERS GARDENING INC	LANDSCAPE SERVICES	1,879.16
343053	ROYAL ELECTRIC	WIRE	173.85
918595	GRAINGER INC	SUPPLIES	17.13
Rec Prewett Concessions			
202272	KAMPS PROPANE	CYLINDER RENTAL	12.99
342784	AT AND T MCI	PHONE	46.53
721 Employee Benefits Fund			
Non Departmental			
342659	CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	400.00
342660	CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	50.00
342714	OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	786.63
342721	PARS	PAYROLL DEDUCTIONS	1,329.27

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342724 PERS LONG TERM CARE	PAYROLL DEDUCTIONS	97.27
342750 STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	214.00
342751 STATE OF FLORIDA DISBURSE UNIT	PAYROLL DEDUCTIONS	150.00
342756 TEXAS CHILD SUPPORT DISBURSE UNIT	PAYROLL DEDUCTIONS	422.77
342759 RECIPIENT	PAYROLL DEDUCTIONS	69.24
342763 US DEPT OF EDUCATION	PAYROLL DEDUCTIONS	299.98
342810 EMPLOYEE	CHECK REPLACEMENT	7.38
342846 PERS	PAYROLL DEDUCTIONS	303,335.28
342892 CLAYTON FITNESS CENTER	PAYROLL DEDUCTIONS	34.00
342899 CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	50.00
342900 CONTRA COSTA COUNTY	PAYROLL DEDUCTIONS	400.00
342913 DELTA PARK ATHLETIC CLUB	PAYROLL DEDUCTIONS	74.00
342914 DELTA VALLEY ATHLETIC CLUB	PAYROLL DEDUCTIONS	54.00
342929 IN SHAPE HEALTH CLUBS	PAYROLL DEDUCTIONS	966.00
342938 LINA	PAYROLL DEDUCTIONS	4,563.90
342945 MUNICIPAL POOLING AUTHORITY	PAYROLL DEDUCTIONS	2,181.69
342949 OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	2,109.00
342950 OPERATING ENGINEERS LOCAL NO 3	PAYROLL DEDUCTIONS	809.80
342955 PARS	PAYROLL DEDUCTIONS	1,598.23
342956 PERS LONG TERM CARE	PAYROLL DEDUCTIONS	97.27
342960 PUBLIC EMPLOYEES UNION LOCAL 1	PAYROLL DEDUCTIONS	2,157.32
342967 SOLAR SWIM AND GYM	PAYROLL DEDUCTIONS	27.00
342968 STANDARD LIFE INSURANCE	PAYROLL DEDUCTIONS	924.50
342971 STATE OF CALIFORNIA	PAYROLL DEDUCTIONS	214.00
342972 STATE OF FLORIDA DISBURSE UNIT	PAYROLL DEDUCTIONS	150.00
342974 TEXAS CHILD SUPPORT DISBURSE UNIT	PAYROLL DEDUCTIONS	422.77
342975 RECIPIENT	PAYROLL DEDUCTIONS	69.24
342978 US DEPT OF EDUCATION	PAYROLL DEDUCTIONS	242.82
342985 XTREME FITNESS	PAYROLL DEDUCTIONS	104.00
343044 PERS	PAYROLL DEDUCTIONS	280,306.47
343045 PERS	PAYROLL DEDUCTIONS	270,224.19
918602 NATIONWIDE RETIREMENT SOLUTIONS	PAYROLL DEDUCTIONS	40,555.46
918606 VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTIONS	2,187.48
918621 ANTIOCH PD SWORN MGMT ASSOC	PAYROLL DEDUCTIONS	681.25
918622 APOA	PAYROLL DEDUCTIONS	11,857.17
918630 NATIONWIDE RETIREMENT SOLUTIONS	PAYROLL DEDUCTIONS	38,987.35
918632 VANTAGEPOINT TRANSFER AGENTS	PAYROLL DEDUCTIONS	2,187.48

752 Storm Drain Deposits Fund

Non Departmental

342898 CONTRA COSTA COUNTY	DRAINAGE FEES	215.67
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STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE COUNCIL MEETING OF JANUARY 8, 2013

SUBMITTED BY: Donna Conley, City Treasurer

DATE: January 2, 2013

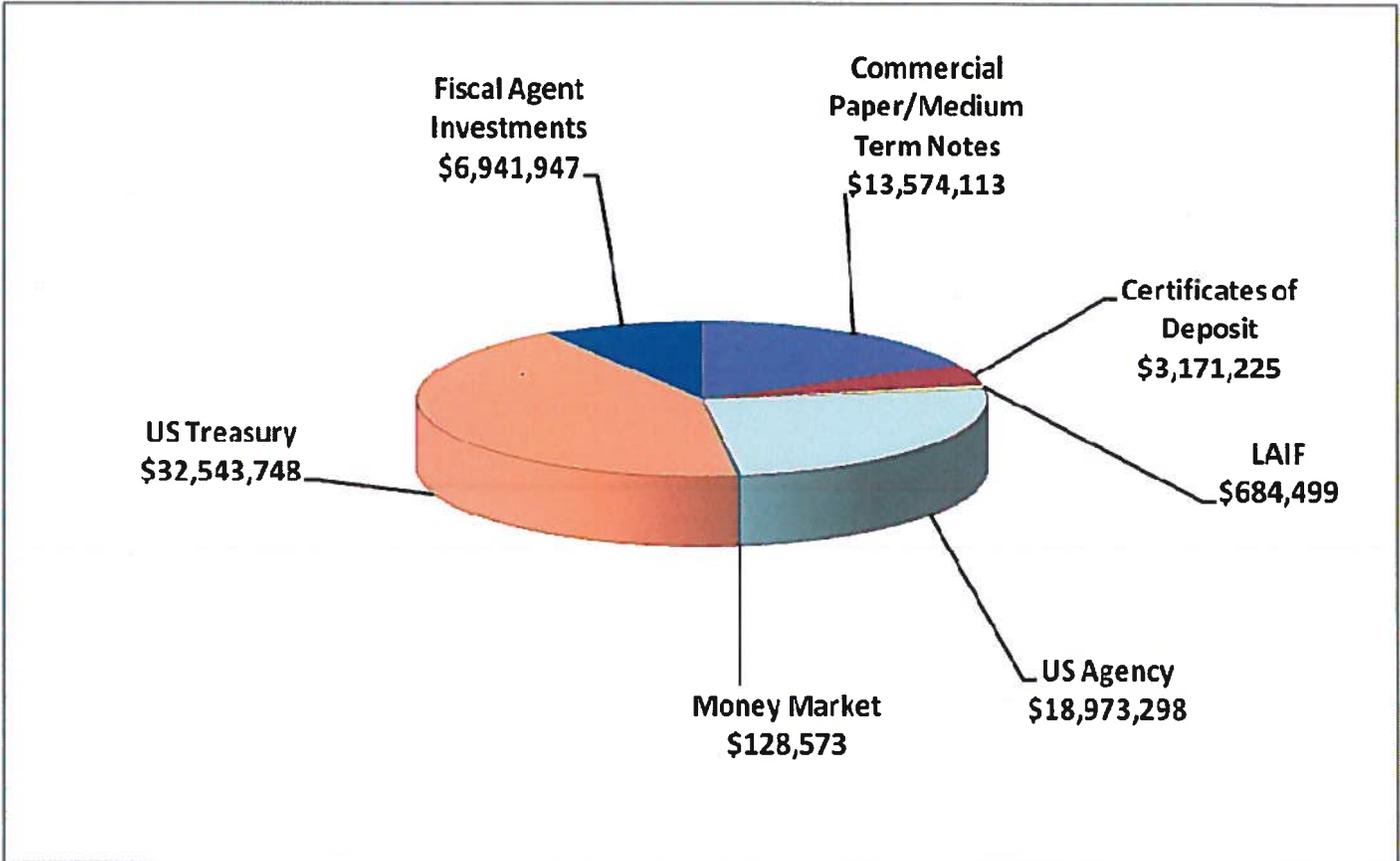
SUBJECT: Treasurer's Report – NOVEMBER 2012

RECOMMENDATION: Review and file.

C
1-8-2013

**CITY OF ANTIOCH
SUMMARY REPORT ON THE CITY'S INVESTMENTS**

NOVEMBER 30, 2012



Total of City and Fiscal Agent Investments = \$76,017,403

All City investments are shown above and conform to the City Investment Policy. All investment transactions during this period are included in this report. As Treasurer of the City of Antioch and Finance Director of the City of Antioch, we hereby certify that sufficient investment liquidity and anticipated revenue are available to meet the next six (6) months' estimated expenditures.


Donna Conley
Treasurer


Dawn Merchant
Finance Director

**Summary of Fiscal Agent Balances by
Debt Issue**

	<u>Amount</u>
Antioch Public Financing Authority 2003 Water Revenue Bonds	1,084,420
Antioch Public Financing Authority 2002 Lease Revenue Bonds	8,763
Antioch Public Financing Authority 1998 Reassessment Revenue Bonds	5,187,165
Antioch Development Agency 2009 Tax Allocation Bonds	146,037
Antioch Development Agency 2000 Tax Allocation Bonds	83,024
ABAG Lease Revenue Bonds	<u>432,537</u>
	<u><u>\$6,941,947</u></u>



Managed Account Issuer Summary

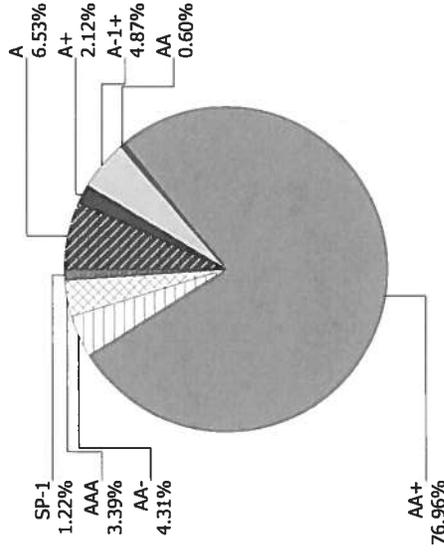
For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Issuer Summary

Issuer	Market Value of Holdings	Percent
BANK OF NEW YORK	1,449,780.38	2.12
BERKSHIRE HATHAWAY INC	859,282.85	1.26
CA ST DEPT OF WATER REV BONDS	500,740.00	0.73
CATERPILLAR INC	784,189.88	1.15
DEERE & COMPANY	959,449.35	1.40
FANNIE MAE	7,038,745.92	10.30
FEDERAL HOME LOAN BANKS	3,033,426.00	4.44
FREDDIE MAC	6,824,108.91	9.99
GENERAL ELECTRIC CO	2,220,926.28	3.25
IBM CORP	1,129,962.05	1.65
JOHNSON & JOHNSON	1,012,497.00	1.48
JP MORGAN CHASE & CO	2,715,640.02	3.98
MET WATER DISTRICT OF SOUTHERN CA	800,612.25	1.17
PROCTER & GAMBLE CO	503,377.50	0.74
STANDARD CHARTERED BANK	1,651,407.62	2.42
STATE OF CALIFORNIA	835,056.75	1.22
TOYOTA MOTOR CORP	1,672,857.68	2.45
UNITED STATES TREASURY	32,598,582.61	47.73
WAL-MART STORES INC	412,116.26	0.60
WESTPAC BANKING CORP NY	1,312,844.00	1.92
Total	\$68,315,603.31	100.00%

Credit Quality (S&P Ratings)



PFM Asset Management LLC



Managed Account Detail of Securities Held

For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Security Type/Description	Dated Date/Coupon/Maturity	CUSIP	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value	
U.S. Treasury Bond / Note												
US TREASURY NOTES	912828KF6	2,500,000.00	AA+	Aaa	04/30/12	05/01/12	2,573,339.84	0.27	11,912.98	2,549,926.15	2,550,977.50	
DTD 03/02/2009 1.875% 02/28/2014												
US TREASURY NOTES	912828KJ8	3,000,000.00	AA+	Aaa	10/27/11	10/31/11	3,098,085.94	0.39	8,942.31	3,054,109.56	3,060,000.00	
DTD 03/31/2009 1.750% 03/31/2014												
US TREASURY NOTES	912828OM5	3,750,000.00	AA+	Aaa	03/27/12	03/29/12	3,799,511.72	0.38	1,657.46	3,783,898.31	3,791,310.00	
DTD 05/16/2011 1.000% 05/15/2014												
US TREASURY NOTES	912828OU7	575,000.00	AA+	Aaa	11/02/11	11/07/11	579,492.19	0.33	1,357.42	577,716.55	578,526.48	
DTD 07/15/2011 0.625% 07/15/2014												
US TREASURY NOTES	912828OU7	2,825,000.00	AA+	Aaa	06/20/12	06/21/12	2,841,552.73	0.34	6,669.07	2,838,007.94	2,842,325.73	
DTD 07/15/2011 0.625% 07/15/2014												
US TREASURY N/B	912828TF7	250,000.00	AA+	Aaa	10/23/12	10/26/12	249,287.11	0.29	104.45	249,326.58	249,492.25	
DTD 07/31/2012 0.125% 07/31/2014												
US TREASURY NOTES	912828RG7	1,150,000.00	AA+	Aaa	10/12/11	10/14/11	1,140,701.17	0.53	611.53	1,144,292.58	1,149,910.16	
DTD 09/15/2011 0.250% 09/15/2014												
US TREASURY NOTES	912828RV4	1,200,000.00	AA+	Aaa	01/05/12	01/06/12	1,195,312.50	0.38	1,385.25	1,196,744.66	1,199,625.60	
DTD 12/15/2011 0.250% 12/15/2014												
US TREASURY NOTES	912828SE1	1,500,000.00	AA+	Aaa	02/22/12	02/27/12	1,492,207.03	0.43	1,100.54	1,494,195.59	1,499,062.50	
DTD 02/15/2012 0.250% 02/15/2015												
US TREASURY NOTES	912828MR8	1,500,000.00	AA+	Aaa	06/20/12	06/21/12	1,578,457.03	0.42	9,053.87	1,565,492.79	1,569,961.50	
DTD 03/01/2010 2.375% 02/28/2015												
US TREASURY NOTES	912828MR8	2,500,000.00	AA+	Aaa	04/30/12	05/01/12	2,639,453.13	0.39	15,089.78	2,610,734.83	2,616,602.50	
DTD 03/01/2010 2.375% 02/28/2015												
US TREASURY NOTES	912828SK7	170,000.00	AA+	Aaa	03/13/12	03/15/12	169,428.91	0.49	135.60	169,563.85	170,371.96	
DTD 03/15/2012 0.375% 03/15/2015												
US TREASURY NOTES	912828SK7	825,000.00	AA+	Aaa	06/27/12	06/28/12	824,355.47	0.40	658.06	824,456.83	826,805.10	
DTD 03/15/2012 0.375% 03/15/2015												
US TREASURY NOTES	912828NP1	325,000.00	AA+	Aaa	10/23/12	10/26/12	337,098.63	0.39	1,900.99	336,672.70	337,365.23	
DTD 08/02/2010 1.750% 07/31/2015												





Managed Account Detail of Securities Held

For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Security Type / Description Dated Date / Coupon / Maturity	CUSIP	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
U.S. Treasury Bond / Note										
US TREASURY NOTES DTD 08/02/2010 1.750% 07/31/2015	912828NP1	AA+	Aaa	08/22/12	08/23/12	483,418.36	0.39	2,719.87	481,723.11	482,691.80
US TREASURY NOTES DTD 08/02/2010 1.750% 07/31/2015	912828NP1	AA+	Aaa	09/06/12	09/10/12	3,772,832.03	0.33	21,203.29	3,761,477.48	3,762,919.92
US TREASURY NOTES DTD 11/30/2010 1.375% 11/30/2015	912828PJ3	AA+	Aaa	11/01/12	11/05/12	2,815,981.64	0.40	103.31	2,814,119.75	2,818,759.38
US TREASURY NOTES DTD 11/30/2010 1.375% 11/30/2015	912828PJ3	AA+	Aaa	11/29/12	12/05/12	3,091,289.06	0.35	566.62	3,091,289.06	3,091,875.00
Security Type Sub-Total						32,681,804.49	0.37	85,172.40	32,543,748.32	32,598,582.61

Municipal Bond / Note										
CA ST REV BONDS DTD 08/23/2012 2.500% 06/20/2013	130638BB68	SP-1	MIG1	08/17/12	08/23/12	839,033.25	0.43	5,650.68	834,371.04	835,056.75
METRO WTR DIST AUTH, CA REV BONDS DTD 06/28/2012 0.616% 07/01/2014	59266THP9	AAA	Aa1	06/21/12	06/28/12	575,000.00	0.62	1,475.83	575,000.00	575,270.25
METRO WTR DIST AUTH, CA REV BONDS DTD 06/28/2012 0.943% 07/01/2015	59266THO7	AAA	Aa1	06/21/12	06/28/12	225,000.00	0.94	884.06	225,000.00	225,342.00
CA ST DEPT OF WATER REV BONDS DTD 09/27/2012 0.650% 12/01/2015	13066KX87	AAA	Aa1	09/19/12	09/27/12	500,000.00	0.65	577.78	500,000.00	500,740.00
Security Type Sub-Total						2,139,033.25	0.59	8,588.35	2,134,371.04	2,136,409.00

Federal Agency Bond / Note										
FNMA NOTES DTD 07/18/2011 0.875% 08/28/2014	3135G0BY8	AA+	Aaa	09/29/11	09/30/11	578,588.00	0.66	1,299.74	577,154.99	580,836.25
FHLMC NOTES DTD 08/12/2011 0.500% 09/19/2014	3134G2YJ5	AA+	Aaa	09/20/11	09/21/11	1,597,863.68	0.55	1,600.00	1,598,711.81	1,605,891.20
FREDDIE MAC GLOBAL NOTES DTD 08/05/2011 0.750% 09/22/2014	3134G2WG3	AA+	Aaa	09/28/11	09/30/11	911,820.00	0.68	1,308.13	911,109.66	917,441.98



PFM Asset Management LLC



For the Month Ending November 30, 2012

Managed Account Detail of Securities Held

CITY OF ANTIOCH, CA - 04380500

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
Federal Agency Bond / Note										
FREDDIE MAC GLOBAL NOTES DTD 08/05/2011 0.750% 09/22/2014	3134G2WG3	AA+	Aaa	08/30/11	08/31/11	2,462,838.00	0.58	3,521.88	2,457,616.93	2,470,036.10
FHLB NOTES DTD 11/08/2010 0.875% 12/12/2014	313371PC4	AA+	Aaa	01/19/12	01/19/12	3,028,170.00	0.55	12,322.92	3,019,791.75	3,033,426.00
FANNIE MAE GLOBAL NOTES DTD 04/19/2012 0.500% 05/27/2015	3135G0KM4	AA+	Aaa	04/17/12	04/19/12	1,376,011.80	0.59	76.67	1,376,797.24	1,384,820.34
FNMA NOTES (CALLABLE) DTD 08/07/2012 0.500% 08/07/2015	3135G0NG4	AA+	Aaa	08/02/12	08/07/12	3,399,660.00	0.50	5,383.33	3,399,695.67	3,399,806.20
FREDDIE MAC GLOBAL NOTES DTD 07/11/2012 0.500% 08/28/2015	3134G3ZA1	AA+	Aaa	07/30/12	07/31/12	1,827,129.78	0.46	2,357.29	1,826,899.83	1,830,739.63
FANNIE MAE GLOBAL NOTES DTD 11/16/2012 0.375% 12/21/2015	3135G0S80	AA+	Aaa	11/14/12	11/16/12	1,671,097.25	0.45	261.72	1,671,149.18	1,673,283.13
Security Type Sub-Total						16,853,178.51	0.54	28,131.68	16,838,927.06	16,896,280.83

Corporate Note										
BANK OF NEW YORK MELLON SR NOTES DTD 08/27/2008 5.125% 08/27/2013	06406HBK4	A+	Aa3	04/05/11	04/08/11	678,912.50	1.43	8,363.72	641,884.59	646,481.25
JOHN DEERE CAPITAL CORP NOTE DTD 03/03/2011 1.600% 03/03/2014	2442ZERA9	A	A2	02/28/11	03/03/11	499,505.00	1.63	1,955.56	499,789.98	507,189.00
CATERPILLAR FINANCIAL SE CORP NOTE DTD 04/01/2011 1.650% 04/01/2014	14912L4T5	A	A2	03/24/11	04/01/11	250,197.50	1.62	687.50	250,088.93	253,351.75
WAL MART STORES INC. CORP NOTES DTD 04/18/2011 1.625% 04/15/2014	931142DA8	AA	Aa2	04/11/11	04/18/11	403,906.50	1.72	840.94	404,491.52	412,116.26
IBM CORP GLOBAL NOTES DTD 05/12/2011 1.250% 05/12/2014	459200GW5	AA-	Aa3	05/09/11	05/12/11	814,233.90	1.28	537.67	814,626.80	824,909.59
JOHNSON & JOHNSON GLOBAL NOTE DTD 05/20/2011 1.200% 05/15/2014	478160AX2	AAA	Aaa	05/17/11	05/20/11	998,830.00	1.24	533.33	999,424.10	1,012,497.00
CATERPILLAR FINANCIAL SE NOTES DTD 05/20/2011 1.375% 05/20/2014	14912L4V0	A	A2	05/17/11	05/20/11	274,854.25	1.39	115.54	274,927.86	278,411.38



PFM Asset Management LLC



For the Month Ending November 30, 2012

Managed Account Detail of Securities Held

CITY OF ANTIOCH, CA - 04380500

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
Corporate Note										
JP MORGAN CHASE & CO NOTES DTD 05/18/2009 4.650% 06/01/2014	46625HHN3	A	A2	12/19/11	12/22/11	1,062,853.30	2.43	23,482.50	1,042,846.92	1,066,663.02
PROCTER & GAMBLE CO CORP NOTES DTD 08/15/2011 0.700% 08/15/2014	742718DU0	AA-	Aa3	08/10/11	08/15/11	497,945.00	0.84	1,030.56	498,825.54	503,377.50
BERKSHIRE HATHAWAY INC (FLOATING) NOTES DTD 08/15/2011 1.010% 08/15/2014	084670BA5	AA+	Aa2	08/10/11	08/15/11	850,000.00	0.98	381.56	850,000.00	859,282.85
GENERAL ELEC CAP CORP GLOBAL NOTES DTD 01/09/2012 2.150% 01/09/2015	36962G5M2	AA+	A1	05/23/12	05/29/12	1,061,434.50	1.72	8,904.58	1,059,265.59	1,077,123.60
GENERAL ELEC CAP CORP GLOBAL NOTES DTD 01/09/2012 2.150% 01/09/2015	36962G5M2	AA+	A1	01/04/12	01/09/12	1,113,840.40	2.19	9,455.82	1,114,178.42	1,143,802.68
IBM CORP GLOBAL NOTES DTD 02/06/2012 0.550% 02/06/2015	459200HB0	AA-	Aa3	02/01/12	02/06/12	303,508.55	0.72	535.87	303,912.87	305,052.46
BANK OF NEW YORK MELLON (CALLABLE) NOTES DTD 02/21/2012 1.200% 02/20/2015	06406HCC1	A+	Aa3	02/13/12	02/21/12	374,658.75	1.23	1,262.50	374,746.12	379,170.38
CATERPILLAR FIN CORP NOTES DTD 05/30/2012 1.100% 05/29/2015	14912L5D9	A	A2	05/22/12	05/30/12	249,920.00	1.11	15.28	249,933.22	252,426.75
JOHN DEERE CAPITAL CORP GLOBAL NOTES DTD 06/29/2012 0.950% 06/29/2015	24422ERS0	A	A2	06/26/12	06/29/12	449,878.50	0.96	1,805.00	449,895.40	452,260.35
JP MORGAN CHASE & CO GLOBAL NOTES DTD 10/18/2012 1.100% 10/15/2015	46623ER1	A	A2	10/15/12	10/18/12	1,649,323.50	1.11	2,167.92	1,649,350.05	1,648,977.00
BANK OF NEW YORK MELLON (CALLABLE) DTD 10/25/2012 0.700% 10/23/2015	06406HCD9	A+	Aa3	10/18/12	10/25/12	424,562.25	0.73	297.50	424,576.73	424,128.75
Security Type Sub-Total						11,958,364.40	1.44	62,373.35	11,902,764.64	12,047,221.57

Commercial Paper



PFM Asset Management LLC



Managed Account Detail of Securities Held

For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Security Type/Description Dated Date/Coupon/Maturity	CUSIP	Par	S&P Rating	Moody's Rating	Trade Date	Settle Date	Original Cost	YTM at Cost	Accrued Interest	Amortized Cost	Market Value
Commercial Paper											
TOYOTA MOTOR CREDIT CORP COMM PAPER	89233GSH0	1,675,000.00	A-1+	P-1	08/22/12	08/23/12	1,669,161.23	0.47	0.00	1,671,348.03	1,672,857.68
- 0.000% 05/17/2013											
Security Type Sub-Total		1,675,000.00					1,669,161.23	0.47	0.00	1,671,348.03	1,672,857.68
Certificate of Deposit											
STANDARD CHARTERED BANK NY CERT DEPOS	85325BOV9	1,650,000.00	A-1+	P-1	09/19/12	09/21/12	1,650,000.00	0.65	2,115.21	1,650,000.00	1,651,407.62
DTD 09/21/2012 0.650% 03/18/2013											
WESTPAC BANKING CORP NY (FLOAT) CD DTD 02/16/2012 1.260% 02/14/2014	96121TLT3	1,300,000.00	AA-	Aa2	02/14/12	02/16/12	1,300,000.00	1.47	773.50	1,300,000.00	1,312,844.00
Security Type Sub-Total		2,950,000.00					2,950,000.00	1.01	2,888.71	2,950,000.00	2,964,251.62
Managed Account Sub-Total		67,310,000.00					68,251,541.88	0.64	187,154.49	68,041,159.09	68,315,603.31
Securities Sub-Total		\$67,310,000.00					\$68,251,541.88	0.64%	\$187,154.49	\$68,041,159.09	\$68,315,603.31
Accrued Interest											\$187,154.49
Total Investments											\$68,502,757.80

Bolded items are forward settling trades.





Managed Account Security Transactions & Interest

For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Transaction Type	Trade Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method
BUY										
	11/01/12	US TREASURY NOTES DTD 11/30/2010 1.375% 11/30/2015	912828PJ3	4,350,000.00	(4,478,800.78)	(25,820.70)	(4,504,621.48)			
	11/14/12	FANNIE MAE GLOBAL NOTES DTD 11/16/2012 0.375% 12/21/2015	313560S80	1,675,000.00	(1,671,097.25)	0.00	(1,671,097.25)			
	11/29/12	US TREASURY NOTES DTD 11/30/2010 1.375% 11/30/2015	912828PJ3	3,000,000.00	(3,091,289.06)	(566.62)	(3,091,855.68)			
Transaction Type Sub-Total										
				9,025,000.00	(9,241,187.09)	(26,387.32)	(9,267,574.41)			
INTEREST										
	11/01/12	MONEY MARKET FUND	MONEY0002	0.00	0.00	0.35	0.35			
	11/12/12	IBM CORP GLOBAL NOTES DTD 05/12/2011 1.250% 05/12/2014	459200GW5	815,000.00	0.00	5,093.75	5,093.75			
	11/14/12	WESTPAC BANKING CORP NY (FLOAT) CD	96121TLL3	1,300,000.00	0.00	4,607.92	4,607.92			
	11/15/12	BERKSHIRE HATHAWAY INC (FLOATING) NOTES	084670BA5	850,000.00	0.00	2,464.39	2,464.39			
	11/15/12	US TREASURY NOTES DTD 08/15/2011 1.010% 08/15/2014	912828OM5	3,750,000.00	0.00	18,750.00	18,750.00			
	11/15/12	JOHNSON & JOHNSON GLOBAL NOTE DTD 05/20/2011 1.375% 05/20/2014	478160AX2	1,000,000.00	0.00	6,000.00	6,000.00			
	11/20/12	CATERPILLAR FINANCIAL SE NOTES DTD 05/20/2011 1.200% 05/15/2014	14912L4V0	275,000.00	0.00	1,890.63	1,890.63			
	11/27/12	FANNIE MAE GLOBAL NOTES DTD 04/19/2012 0.500% 05/27/2015	313560KM4	1,380,000.00	0.00	3,450.00	3,450.00			
	11/29/12	CATERPILLAR FIN CORP NOTES DTD 05/30/2012 1.100% 05/29/2015	14912L5D9	250,000.00	0.00	1,367.36	1,367.36			
	11/30/12	US TREASURY NOTES DTD 11/30/2010 1.375% 11/30/2015	912828PJ3	2,735,000.00	0.00	18,803.13	18,803.13			
Transaction Type Sub-Total										
				12,355,000.00	0.00	62,427.53	62,427.53			





Managed Account Security Transactions & Interest

For the Month Ending November 30, 2012

CITY OF ANTIOCH, CA - 04380500

Transaction Type Trade Settle	Security Description	CUSIP	Par	Principal Proceeds	Accrued Interest	Total	Realized G/L Cost	Realized G/L Amort Cost	Sale Method			
SELL												
11/01/12	11/05/12 FNMA GLOBAL NOTES DTD 02/01/2011 1.250% 02/27/2014	3135G0AP8	1,900,000.00	1,924,567.00	4,486.11	1,929,053.11	20,691.00	22,821.72	SPEC LOT			
11/01/12	11/05/12 FNMA GLOBAL NOTES DTD 02/01/2011 1.250% 02/27/2014	3135G0AP8	1,275,000.00	1,291,485.75	3,010.42	1,294,496.17	(1,989.00)	5,649.87	SPEC LOT			
11/01/12	11/05/12 FNMA NOTES DTD 06/17/2011 0.500% 08/09/2013	3135G0BR3	540,000.00	541,204.20	645.00	541,849.20	637.20	953.78	SPEC LOT			
11/01/12	11/05/12 ROYAL BANK OF CANADA NY CERT DEPOS	78009NDY9	700,000.00	700,532.00	2,562.97	703,094.97	532.00	532.00	SPEC LOT			
11/14/12	11/16/12 DTD 02/10/2012 0.490% 02/08/2013 US TREASURY NOTES	912828PJ3	1,615,000.00	1,665,027.15	10,253.71	1,675,280.86	2,208.01	2,673.02	SPEC LOT			
11/29/12	12/05/12 BANK OF TOKYO MITSUBISHI COMM PAPER -- 0.000% 12/24/2012	06538BMO3	850,000.00	849,910.28	0.00	849,910.28	1,100.99	94.21	SPEC LOT			
11/29/12	12/05/12 FNMA GLOBAL NOTES DTD 02/01/2011 1.250% 02/27/2014	3135G0AP8	2,175,000.00	2,201,991.75	7,401.04	2,209,392.79	(4,524.00)	9,677.88	SPEC LOT			
Transaction Type Sub-Total							9,055,000.00	9,174,718.13	28,359.25	9,203,077.38	18,656.20	42,402.48
Managed Account Sub-Total							(66,468.96)	(2,069.50)	64,399.46	(2,069.50)	18,656.20	42,402.48
Total Security Transactions							(\$66,468.96)	\$64,399.46	\$18,656.20	\$42,402.48		

Bolded items are forward settling trades.



**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF JANUARY 8, 2013**

Prepared by: Tina Wehrmeister, Community Development Director *JW*
Date: January 3, 2013
Subject: Authorization to Extend Contract for CDBG Program Services

RECOMMENDATION

It is recommended that the City Council authorize the City Manager to extend the contract with Teri House for Community Development Block Grant (CDBG) program management services.

DISCUSSION

The CDBG program is federally funded and provides communities with resources to address a wide range of community development needs. Antioch is an "Entitlement Community" which means that the City is able to develop its own programs and funding priorities under certain parameters. The City Council revisits these programs and priorities semi-annually after receiving recommendations from the Council sub-committee (Wilson, Tiscareno).

CDBG program requirements are complex and require a specialized knowledge base to run the program effectively. As such, Teri House began consulting with the City in October 2010 under the sole source provisions in the purchasing policy and has done an excellent job.

FISCAL IMPACT

No direct fiscal impact to the City. The CDBG program funding covers administrative costs. The hourly rate under this contract is \$65.

OPTIONS

Do not authorize the City Manager to extend the contract and direct staff to seek an alternative consultant to provide CDBG services.

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1-8-13

**STAFF REPORT TO THE CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF JANUARY 8, 2013**

Prepared by: Tina Wehrmeister, Community Development Director *TW*
Reviewed by: Jim Jakel, City Manager
Lynn Tracy Nerland, City Attorney
Date: January 3, 2013
Subject: Adoption of an Ordinance Prohibiting Medical Marijuana Facilities

RECOMMENDATION

It is recommended that the City Council:

1. Motion to read the ordinance by title only; and
2. Motion to introduce an ordinance amending Title 5 of the Antioch Municipal Code by adding a new Chapter 21 pertaining to the prohibition of Medical Marijuana Facilities.

BACKGROUND INFORMATION

On November 5, 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act of 1996" (CUA), which allowed persons to obtain and use marijuana for medical purposes under limited specified circumstances and not be subject to criminal prosecution. Specifically, criminal statutes regarding possession and cultivation of marijuana "shall not apply to a patient, or a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician". Proposition 215 did not legalize the sale of marijuana and never uses the term "medical marijuana dispensary" or describes storefront operations for distribution.

In 2003, the California Legislature adopted Senate Bill 420, entitled the "Medical Marijuana Program Act" (MMPA), which created a state-approved voluntary medical marijuana identification card program and provided for additional immunities from State marijuana laws. The MMPA does not use the term "medical marijuana dispensary" or describe storefront operations for distribution. While the MMPA intended to clarify the scope of the CUA, neither the State nor counties have implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and MMPA should be implemented, particularly in regard to the distribution of medical marijuana through collectives, cooperatives and dispensaries.

This leaves cities in a difficult position because the federal government, including the Department of Drug Enforcement, has consistently held that neither Proposition 215 nor the MMPA creates a defense to violations of the federal Controlled Substances Act and that marijuana continues to be a prohibited Schedule 1 drug for which there is no currently accepted medical use. Accordingly, it still remains a violation of federal law to possess, cultivate, sell or

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distribute marijuana regardless of its intended use or user or despite California's Compassionate Use Act and Medical Marijuana Program. *Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001). More recently, United States Attorneys in California have taken actions to enforce the federal CSA against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violate the federal CSA. Copies of these letters are provided as Attachment "B". Thus, the possession and use of marijuana remains a violation of federal law.

With these legal uncertainties and concerns about secondary impacts from medical marijuana dispensaries, the Antioch City Council adopted an interim ordinance prohibiting medical marijuana dispensaries in Antioch during an interim study period on April 26, 2011 and extended the moratorium on May 24, 2011. The staff reports and ordinances from these meetings are attached and incorporated into this staff report as Attachment "C".

DISCUSSION

The purpose of the moratorium currently in effect and due to expire in April was to allow staff time to study the issues associated with marijuana facilities and make recommendations regarding regulation of this use. Since the moratorium went into effect there continues to be concerns regarding the secondary effects of marijuana facilities including increased crime, such as burglary, robbery and sale of illegal drugs, including to minors, in the areas immediately surrounding medical marijuana dispensaries. See Attachment "C", White Paper from California Police Chiefs' Association dated April 22, 2009 for information on secondary impacts, as well as recent newspaper clippings from Northern California regarding the continuing problems with these secondary impacts (Attachment "D"). Also, as stated above, the United States Attorneys in California have stated that California cities and officials face possible criminal prosecution for enabling dispensaries to violate the federal CSA. Therefore, staff's recommendation is to prohibit marijuana facilities in the City of Antioch except for very limited situations such as a licensed clinic or hospice. The attached ordinance addresses fixed establishments commonly termed "dispensaries" as well as mobile delivery services and cultivation.

FISCAL IMPACT

There is no direct fiscal impact associated with the adoption of the proposed ordinance.

OPTIONS

The Council may choose not to adopt the ordinance and direct staff to prepare amendments to the Zoning Ordinance to permit and regulate marijuana facilities.

ATTACHMENTS

- A: Ordinance
- B: Letters from the United States Attorney's Office
- C: April 26 and May 24, 2011 staff reports and moratorium including the California Police Chief's Association White Paper (2009)
- D: Recent newspaper articles regarding secondary impacts from medical marijuana.

ATTACHMENT "A"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AMENDING TITLE 5 OF THE ANTIOCH MUNICIPAL CODE BY ADDING A NEW CHAPTER 21 PERTAINING TO THE PROHIBITION OF MEDICAL MARIJUANA FACILITIES

The City Council of the City of Antioch does ordain as follows:

SECTION 1. FINDINGS. In enacting this Ordinance, the City Council finds and takes legislative notice as follows:

1. In 1970, Congress enacted the Controlled Substances Act (CSA) (21 U.S.C. section 801 et seq.) which, among other things, makes it illegal to import, manufacture, distribute, possess or use marijuana for any purpose in the United States and further provides criminal penalties for marijuana use.

2. In 1996, the voters of the State of California approved Proposition 215, which was entitled the Compassionate Use of Act of 1996 (the "Act;" Health and Safety (H&S) Code Section 11362.5 et seq.).

3. California courts have held that the Act creates a limited exception from criminal liability for seriously ill persons who are in need of medical marijuana for specified medical purposes and who obtain and use medical marijuana under limited, specified circumstances.

4. On January 1, 2004, the "Medical Marijuana Program" (MMP), codified as H&S Code Sections 11362.7 to 11362.83, was enacted by the State Legislature to clarify the scope of the Act and to allow cities and other governing bodies to adopt and enforce rules and regulations consistent with the MMP. The MMP at H&S Code section 11362.765 prohibits the cultivation or distribution of medical marijuana for a profit.

5. Medical marijuana collectives, cooperatives and dispensaries (collectively "dispensaries") have opened to distribute medical marijuana, along with mobile or delivery dispensaries and large marijuana grow operations in warehouses and residences that remain illegal under the federal CSA and not fully addressed in the State Act and MMP.

6. The Act expressly anticipates the enactment of additional local legislation. It provides: "Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes." (H&S Code Section 11362.5.) The MMP similarly anticipates local regulation, providing: "Nothing in

this article shall prevent a city ... from adopting and enforcing ... local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective; ... civil and criminal enforcement of local ordinances; [and] ... other laws consistent with this article.” (H & S Code Section 11362.83.)

7. Several California cities and counties that have permitted the establishment of medical marijuana facilities and dispensaries have experienced serious adverse impacts associated with and resulting from such facilities and dispensaries. According to these communities, according to news stories widely reported and according to medical marijuana advocates, medical marijuana facilities and dispensaries have resulted in and/or caused an increase in crime, including burglaries, robberies, violence, illegal sales of marijuana to, and use of marijuana by, minors and other persons without medical need in the areas immediately surrounding such medical marijuana dispensaries. The City Council reasonably anticipates that the City of Antioch will experience similar adverse impacts and effects. A California Police Chiefs Association compilation of police reports, news stories and statistical research regarding such crimes and secondary impacts is contained in a 2009 white paper report located at the following website: http://www.californiapolicechiefs.org/nav_files/marijuana_files/files/MarijuanaDispensariesWhitePaper_04229.pdf. This compilation, as well as a compilation of other similar accounts, are on file with the City Clerk. It is reasonable to conclude that similar adverse impacts on the public health, safety and welfare will likely also occur in the City of Antioch if medical marijuana dispensaries are permitted.

8. News stories regarding adverse impacts of medical marijuana dispensaries were also attached to the staff reports presented to the City Council and more recent news stories are attached to the staff report presented to the City Council with this ordinance on January 8, 2013. These compilations are on file with the City Clerk and on the City's website at www.ci.antioch.ca.us. It is reasonable to conclude that similar adverse impacts on the public health, safety and welfare will likely also occur in the City of Antioch if medical marijuana dispensaries are permitted.

9. According to at least one recent compilation by a medical marijuana advocacy organization, 85 cities and 8 counties in California have adopted moratoria or interim ordinances prohibiting medical marijuana dispensaries. 121 cities and 8 counties have adopted prohibitions against medical marijuana dispensaries. The compilation is available at: <http://www.safeaccessnow.org>. Following duly noticed public hearings, the City of Antioch adopted a temporary moratorium on medical marijuana dispensaries as defined in 2011 pursuant to Ordinance No. ___ and 2048-C-S to allow Antioch staff time to: (1) address the community concerns regarding the establishment and operation of medical marijuana dispensaries, (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for medical marijuana dispensaries, (4) study and determine the appropriate zoning and location for medical marijuana dispensaries, if any, and (5) determine appropriate controls for protection of public health, safety and welfare.

10. The California Attorney General has adopted guidelines for the interpretation and implementation of the state's medical marijuana laws, entitled "GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE (August 2008)." (http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf.) The Attorney General has stated in the guidelines that "[a]lthough medical marijuana 'dispensaries' have been operating in California for years, dispensaries, as such, are not recognized under the law." This selected reference to the guidelines is not intended as the City Council's agreement with or acceptance of the correctness of other provisions and legal conclusions in the guidelines, which are not binding on cities or courts. (*People v. Hochanadel* (2009) 176 Cal. App. 4th 997.)

11. Concerns about nonmedical marijuana use arising in connection with Proposition 215 and the MMP, and the widespread abuse of those laws by persons desiring to sell and use marijuana for recreational, non-medical purposes, also have been recognized by state and federal courts. One example is *People v. Leal* (2012) 2012 Cal. App. LEXIS 1126, in which the First District Court of Appeal stated:

Not surprisingly, it seems that the enhanced protection from arrest has proven irresistible to those illegally trafficking marijuana, for if there is even rough accuracy in the anecdotal estimate by the arresting detective in this case—that nearly 90 percent of those arrested for marijuana sales possess either a CUA recommendation or a card—then there is obviously widespread abuse of the CUA and the MMP identification card scheme by illicit sellers of marijuana. Ninety percent far exceeds the proportion of legitimate medical marijuana users one would expect to find in the populace at large. For this and other reasons, it is impossible for us not to recognize that many citizens, judges undoubtedly among them, believe the CUA has become a charade enabling the use of marijuana much more commonly for recreational than for genuine medical uses.

Other courts have reached similar conclusions. (See, e.g., *Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1386 to 1387; *Gonzales v. Raich* (2005) 545 U.S. 1.) The Attorney General's 2008 guidelines also reflect that concern. (*People v. Hochanadel* (2009) 176 Cal. App. 4th 997.)

12. The courts have also issued the following rulings concerning the relationship between federal and state law and the medical use and distribution of marijuana:

- use, possession, distribution and sale of marijuana remain illegal under the federal CSA. (*Bearman v. California Medical Bd.* (2009) 176 Cal.App.4th 1588; *Ross v. RagingWire Telecommunications, Inc.* (2008) 42 Cal. 4th 920);

- despite California's Act and MMP, marijuana is deemed to have no accepted medical use under federal law. (*Gonzales v. Raich* (2005) 545 U.S. 1; *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 532 U.S. 483);
- medical necessity is not a defense to prosecution under the federal CSA (*United States v. Oakland Cannabis Buyers' Cooperative*, 532 U.S. 483); and the federal government properly may enforce the CSA despite the Act and MMP (*Gonzales v. Raich* (2005) 545 U.S. 1);
- doctor-recommended marijuana use permitted by state law, but prohibited by federal law, is an illegal use of drugs for purposes of the ADA. (*James v. City of Costa Mesa* (9th Cir. 2012) 684 F.3d 825);
- there is no fundamental right to obtain or use medical marijuana (*Raich v. Gonzalez* (2007) 500 F. 3d 850); *People v. Urziceanu* (2005) 132 Cal.App.4th 747;
- filling out a form that designates a commercial enterprise as the qualified patient's "primary caregiver" is insufficient to establish a caregiver status (*People ex rel. Lungren v. Peron*, 59 Cal.App.4th 1383 (1997): a "primary caregiver" status requires a specified showing of consistently providing care, independent of any assistance in taking medical marijuana, at or before the time of assuming the responsibility of assisting with medical marijuana (*People v. Mentch* (2008) 45 Cal. 4th 274;
- operators of a storefront dispensary which sold marijuana to individuals did not operate within the CUA and the MMPA, and did not constitute a primary caregiver such that it was entitled to protections of the CUA and MMPA (*People v. Hochanadel* (2009) 176 Cal.App.4th 997 (review denied by California Supreme Court));

13. Article XI, Section 7 of the California Constitution provides a city may make and enforce within in its limits all police, sanitary and other ordinances and regulations not in conflict with general laws. Two reported California decisions have specifically held that cities' zoning and land use laws prohibiting medical marijuana dispensaries are not preempted by either the Act or the MMP. (*City of Corona v. Naulls* (2008) 166 Cal.App.4th 418; *City of Claremont v. Kruse* (2009) 177 Cal.App.4th 1153.)

14. Despite the CUA and MMP, the United States Attorneys in California have taken actions to enforce the federal CSA against marijuana dispensaries, and have issued letters stating that California cities and officials face possible criminal prosecution for enabling dispensaries to violate the federal CSA. Copies of these letters are attached to the staff report presented to the City Council with this ordinance on January 8, 2013 and are on file with the City Clerk and on the City's website at www.ci.antioch.ca.us.

15. Allowing medical marijuana facilities, and issuing permits, business licenses or other applicable licenses or entitlements providing for the establishment and/or operation of medical marijuana facilities poses a threat to the public health, safety and welfare.

16. An ordinance prohibiting medical marijuana facilities, and prohibiting the issuance of any permits, licenses and entitlements for medical marijuana facilities, is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of Antioch.

17. Marijuana plants, when grown outdoors, especially as they mature prior to harvest, often produce a distinctive, strong odor that can be detectable and offensive beyond the borders of the property on which it is grown.

18. Cities, counties and air quality districts in which marijuana is grown outdoors have received large numbers of complaints of odors related to the cultivation of marijuana.

19. Marijuana even when grown for medicinal purposes, is extremely valuable and has a high market value. Many cities have experienced criminal activities

20. The strong smell of marijuana growing, as well as the knowledge of its cultivation, create an attractive nuisance that attracts persons to the growing marijuana, and creates the risk of burglary, trespassing, robbery and armed robbery, resulting often in serious injury or death, and requiring scarce police and public safety resources.

21. Regulating the cultivation of marijuana is necessary and appropriate to maintain and protect the public health, safety and welfare of the citizens of the City of Antioch.

SECTION 2. Title 5 of the Antioch Municipal Code is hereby amended by the addition of a new Chapter 21, to read as follows:

CHAPTER 21: MEDICAL MARIJUANA FACILITIES.

Sections:

5-21.01 Purpose.

5-21.02 Definitions and exceptions.

5-21.03 Prohibition of medical marijuana facilities.

§ 5-21.01. Purpose.

The purpose of this chapter is to prohibit the establishment, operation and location of medical marijuana facilities, as defined herein, in the City of Antioch.

§ 5-21.02. Definitions and exceptions.

A. For the purposes of this chapter, the following definitions shall apply:

1. "**Building**" means any structure having a roof supported by columns or walls, for the housing, shelter or enclosure of persons, animals, chattels, or property of any kind.

2. "**Cultivation**" means the planting, growing, harvesting, drying, or processing of marijuana plants, or any part thereof, for medical, non-recreational use.

3. "**Location**" means any parcel of land, whether vacant or occupied by a building, group of buildings, or accessory buildings, and includes the buildings, structures, yards, open spaces, lot width, and lot area.

4. "**Marijuana**" shall have the same meaning as set forth in California Health and Safety Code Section 11018 as of the effective date of this chapter and as subsequently amended. Currently under Section 11018, "**marijuana**" means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil or cake, or the sterilized seed of the plant which is incapable of germination. "**Marijuana**" shall also include

concentrated cannabis, the separated resin, whether crude or purified, obtained from marijuana, and any foodstuffs infused with marijuana or concentrated cannabis.

5. **"Medical marijuana facility"** means and includes (a) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code Section 11362.5 et seq., (b) any facility, building, structure or location where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to cultivate or distribute marijuana for medical purposes; or (c) any not-for-profit site, facility, building, structure or location where two or more qualified patients and/or persons with an identification card associate, meet or congregate in order collectively or cooperatively, to distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to Health and Safety Code Section 11362.5 et seq. and organized as a marijuana cooperative or collective as set forth in Health and Safety Code Section 11362.775.

Notwithstanding the foregoing, **"medical marijuana facility"** shall not include or mean the following facility, building or location, or use, which shall not be subject to enforcement for violation of this chapter, provided that the location of such facility, building or location, or use are otherwise regulated by applicable law, and further provided any such facility, building or location, or use complies strictly with applicable law, including, but not limited to, California Health and Safety Code Section 11362.5 et seq. and California Health and Safety Code Section 11362.7 et seq.:

(a) A clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code.

(b) A health-care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code.

(c) A residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code.

(d) A residential care facility for the elderly, licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code.

(e) A residential hospice, or a home health agency, licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code.

(f) Any dwelling unit where one (1) qualified patient, person with an identification card, and one other individual identified as the primary caregiver of that qualified patient, person with an identification card associate to collectively or cooperatively cultivate marijuana on-site for the personal medical use of the single qualified patient or person with an identification card Any such cultivation shall comply with all other City ordinances.

6. **"Primary caregiver," "qualified patient" and "person with an identification card"** shall be as defined in California Health and Safety Code Section 11362.7.

7. **"Structure"** means anything constructed or erected which is supported directly or indirectly on the earth, but not including any vehicle.

8. **"Vehicle"** means a device by which any person or property may be propelled, moved, or drawn upon a street, sidewalk or waterway, including but not limited to a device moved exclusively by human power.

B. Words and phrases not defined in this chapter shall be construed as defined in other parts of this Code. In the case of any conflict, the definitions provided in this chapter shall control.

§ 5-21.03. Prohibition of medical marijuana facilities.

A. Medical marijuana facilities, as defined herein, are prohibited in the City of Antioch. No person or entity shall operate, locate or otherwise permit or suffer a medical marijuana facility within the City of Antioch.

B. The City shall not issue, approve or grant any permit, license or other entitlement for the establishment or operation of a medical marijuana facility.

C. The prohibition in subsections A and B, above, includes, without limitation, renting, leasing, or otherwise permitting a medical marijuana facility to occupy or use a location, building, structure or vehicle.

D. The establishment, maintenance or operation of a medical marijuana facility as defined herein within the City limits of the City of Antioch is a public nuisance. Violations of this ordinance may be enforced by any applicable law, with criminal penalties limited if inconsistent with

the Compassionate Use Act of 1996 or California Health and Safety Code Section 11362.7 *et seq.*

SECTION 3. CEQA.

This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guideline section 15061 (b) (3) because it can be seen with certainty to have no possibility of a significant effect on the environment.

SECTION 4. CITY TO PREPARE CONSISTENT ZONING REGULATIONS.

This ordinance is intended as a Health and Safety ordinance, not a zoning ordinance. The City Council hereby directs staff to prepare for consideration by the Planning Commission and the Council amendments to the City's Zoning Ordinance consistent with this ordinance. This ordinance shall be effective as provided herein and by law, and the effectiveness of this health and safety ordinance shall not depend or be conditional upon the adoption of any such zoning amendments.

SECTION 5. NO VESTED RIGHTS.

This ordinance prohibits medical marijuana facilities. Neither this ordinance, nor any other provision of this Code or action, failure to act, statement, representation, certificate, approval, or permit issued by the City or its departments, or their respective representatives, agents, employees, attorneys or assigns, shall create, confer, or convey any vested or nonconforming right regarding any medical marijuana facility.

SECTION 6. SEVERABILITY.

If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 7. EFFECTIVE DATE.

This Ordinance shall be effective thirty (30) days from and after the date of its adoption.

SECTION 8. PUBLICATION; CERTIFICATION.

The City Clerk shall certify to the adoption of this Ordinance and cause same to be published in accordance with State law.

* * * * *

I do hereby certify that the foregoing ordinance was introduced by the City Council of the City of Antioch on _____ and passed and adopted by the City Council of the City of Antioch at a regular meeting held on the __ day of _____, 20__, by the foregoing vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Wade Harper, Mayor of the City of Antioch

ATTEST:

Arne Simonsen, City Clerk of the City of Antioch



*United States Attorney
Northern District of California*

Melinda Haag
United States Attorney

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

(415) 436-7200
FAX: (415) 436-7234

February 1, 2011

John A. Russo, Esq.
Oakland City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, California 94612

Dear Mr. Russo:

I write in response to your letter dated January 14, 2011 seeking guidance from the Attorney General regarding the City of Oakland Medical Cannabis Cultivation Ordinance. The U.S. Department of Justice is familiar with the City's solicitation of applications for permits to operate "industrial cannabis cultivation and manufacturing facilities" pursuant to Oakland Ordinance No. 13033 (Oakland Ordinance). I have consulted with the Attorney General and the Deputy Attorney General about the Oakland Ordinance. This letter is written to ensure there is no confusion regarding the Department of Justice's view of such facilities.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. Accordingly, while the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law as stated in the October 2009 Ogden Memorandum, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law. The Department's investigative and prosecutorial resources will continue to be directed toward these objectives.

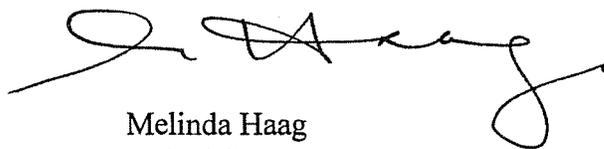
Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21 Section 841 making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21 Section 856 making it

unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21 Section 846 making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the Oakland Ordinance's creation of a licensing scheme that permits large-scale industrial marijuana cultivation and manufacturing as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Accordingly, the Department is carefully considering civil and criminal legal remedies regarding those who seek to set up industrial marijuana growing warehouses in Oakland pursuant to licenses issued by the City of Oakland. Individuals who elect to operate "industrial cannabis cultivation and manufacturing facilities" will be doing so in violation of federal law. Others who knowingly facilitate the actions of the licensees, including property owners, landlords, and financiers should also know that their conduct violates federal law. Potential actions the Department is considering include injunctive actions to prevent cultivation and distribution of marijuana and other associated violations of the CSA; civil fines; criminal prosecution; and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

I hope this letter assists the City of Oakland and potential licensees in making informed decisions regarding the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



Melinda Haag
United States Attorney
Northern District of California

cc: Kamala D. Harris, Attorney General of the State of California
Nancy E. O'Malley, Alameda County District Attorney



City Council Agenda Report

Meeting Date: August 2, 2011

TO: City Council

FROM: City Manager David Burkland (896-7201)

RE: Recommendation to Repeal Ordinance No. 2424, Adopted July 5, 2011, Amending Chapter 19.77 of the Chico Municipal Code Regarding Medical Marijuana

REPORT IN BRIEF:

Following almost 30 months of research, deliberations, discussions, and consideration, as well as public input at both the Planning Commission and Council level, the Council is being asked to reconsider its July 5, 2011 action adopting (4-3, Schwab, Evans, Sorensen dissenting) an ordinance amending Title 19 of the Chico Municipal Code (CMC) regarding cultivation and distribution of medical marijuana by collectives and cooperatives in the City of Chico.

Prior to the July 5, 2011 meeting, the City received letters from Deputy Attorney General James M. Cole (Attachment A) and United States Attorney Benjamin B. Wagner (Attachment B). The Wagner letter stated that if adopted, the ordinance would authorize conduct contrary to federal law and the enforcement of the Controlled Substances Act (CSA), and individuals who facilitate commercial cultivation activities are in violation of federal law. The Wagner letter was included in the packet of additional information provided to the Council at 6:30 p.m. on July 5, 2011.

Based on additional review of these letters, the City Manager, Chief of Police and City Attorney met with U.S. Attorney Wagner on July 14, 2011, to discuss the intentions of the U.S. Department of Justice (DOJ). As a result of that meeting, the City Manager became very concerned about the risk for Council and staff in relation to commercial marijuana activities, and is now recommending that the ordinance be repealed and the related resolutions be suspended. The City Attorney has prepared a memo (Attachment C) which sets forth in more detail the position of the DOJ, as it has been communicated over the past several years, and the discussions that occurred during the meeting with Mr. Wagner.

Recommendation:

The City Manager recommends that the City Council take the following actions:

- (1) Direct staff to draft an ordinance to repeal Ordinance No. 2424 - ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHICO AMENDING CHAPTER 19.77 OF THE CHICO MUNICIPAL CODE REGARDING MEDICAL MARIJUANA;
- (2) Direct the City Manager and Planning Services Director to suspend any development of the ranking criteria and establishment of fees; and
- (3) Direct staff to continue to monitor the positions of the Federal government in regards to this matter and bring an update back to the Council in six months.

FISCAL IMPACT: N/A

BACKGROUND:

Following staff review of letters received from U.S. Attorney Benjamin Wagner and Deputy Attorney General James Cole, a meeting was arranged for July 14, 2011 in the Sacramento office of U.S. Attorney Wagner. The City Manager, Chief of Police and City Attorney were in attendance. During this meeting, U.S. Attorney Wagner indicated that the DOJ wishes to correct the perception that the Federal Government will ignore illegal drug activity, and that it is committed to the enforcement of the Controlled Substances Act regardless of state law (Proposition 215). He indicated that the federal position on the enforcement of marijuana related activities

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Item # 4.1

has not changed. From the federal perspective, marijuana is a Schedule 1 controlled substance and it is illegal to cultivate, transport or sell a controlled substance under federal law. The DOJ is committed to the enforcement of the CSA in all states regardless of state law, which does not supersede federal law. Even if the City of Chico strictly met the guidelines within Prop 215, staff and elected officials would not be immune from prosecution.

It was further clarified that the intent will be to prosecute individuals growing, distributing and transporting marijuana. However, under conspiracy laws, all parties involved would be considered, including city officials. Staff and Council's involvement in implementing the marijuana ordinance could be interpreted as facilitating illegal activity associated with marijuana. U.S. Attorney Wagner also stated that although the DOJ may lack the resources to prosecute every case, it intends to prosecute the more significant cases to deter the activity of marijuana cultivation and unlawful distribution. In those cases, staff or elected officials will not be immune from prosecution under conspiracy or money laundering laws.

The City Manager believes that the portion of the ordinance related to the cultivation of marijuana in residential zones should be maintained. This section of the ordinance provides a useful tool for code enforcement when regulating marijuana activity associated with residential grows.

Based on the information received at the meeting with the U.S. Attorney, the City Manager recommends that Ordinance 2424 – "ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CHICO AMENDING CHAPTER 19.77 OF THE CHICO MUNICIPAL CODE REGARDING MEDICAL MARIJUANA" be rescinded and that Council direct staff not to proceed with the development of ranking criteria or a fee schedule as originally directed at its meeting of July 5, 2011. The City Manager will monitor the position of the DOJ and any action(s) it may take in relation to other jurisdictions, and will apprise the Council of any developments within six months.

PUBLIC CONTACT: See Attachment D.



David Burkland, City Manager

DISTRIBUTION:
City Clerk (18)

ATTACHMENTS:

- A - Letter dated June 29, 2011, from Deputy Attorney General James M. Cole, Washington, D.C., U.S. Department of Justice
- B - Letter dated July 1, 2011, from United States Attorney Benjamin B. Wagner, Eastern District of California, U.S. Department of Justice
- C - City of Chico Memorandum dated July 27, 2011 from City Attorney Lori Barker
- D - Distribution list for report and agenda

FILE: CM/Medical Marijuana



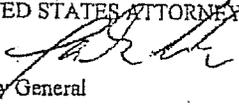
U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

June 29, 2011

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding the Ogden Memo in Jurisdictions
Seeking to Authorize Marijuana for Medical Use

Over the last several months some of you have requested the Department's assistance in responding to inquiries from State and local governments seeking guidance about the Department's position on enforcement of the Controlled Substances Act (CSA) in jurisdictions that have under consideration, or have implemented, legislation that would sanction and regulate the commercial cultivation and distribution of marijuana purportedly for medical use. Some of these jurisdictions have considered approving the cultivation of large quantities of marijuana, or broadening the regulation and taxation of the substance. You may have seen letters responding to these inquiries by several United States Attorneys. Those letters are entirely consistent with the October 2009 memorandum issued by Deputy Attorney General David Ogden to federal prosecutors in States that have enacted laws authorizing the medical use of marijuana (the "Ogden Memo").

The Department of Justice is committed to the enforcement of the Controlled Substances Act in all States. Congress has determined that marijuana is a dangerous drug and that the illegal distribution and sale of marijuana is a serious crime that provides a significant source of revenue to large scale criminal enterprises, gangs, and cartels. The Ogden Memorandum provides guidance to you in deploying your resources to enforce the CSA as part of the exercise of the broad discretion you are given to address federal criminal matters within your districts.

A number of states have enacted some form of legislation relating to the medical use of marijuana. Accordingly, the Ogden Memo reiterated to you that prosecution of significant traffickers of illegal drugs, including marijuana, remains a core priority, but advised that it is likely not an efficient use of federal resources to focus enforcement efforts on individuals with cancer or other serious illnesses who use marijuana as part of a recommended treatment regimen consistent with applicable state law, or their caregivers. The term "caregiver" as used in the memorandum meant just that: individuals providing care to individuals with cancer or other serious illnesses, not commercial operations cultivating, selling or distributing marijuana.

The Department's view of the efficient use of limited federal resources as articulated in the Ogden Memorandum has not changed. There has, however, been an increase in the scope of

commercial cultivation, sale, distribution and use of marijuana for purported medical purposes. For example, within the past 12 months, several jurisdictions have considered or enacted legislation to authorize multiple large-scale, privately-operated industrial marijuana cultivation centers. Some of these planned facilities have revenue projections of millions of dollars based on the planned cultivation of tens of thousands of cannabis plants.

The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law. Persons who are in the business of cultivating, selling or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act, regardless of state law. Consistent with resource constraints and the discretion you may exercise in your district, such persons are subject to federal enforcement action, including potential prosecution. State laws or local ordinances are not a defense to civil or criminal enforcement of federal law with respect to such conduct, including enforcement of the CSA. Those who engage in transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes and other federal financial laws.

The Department of Justice is tasked with enforcing existing federal criminal laws in all states, and enforcement of the CSA has long been and remains a core priority.

cc: Lanny A. Breuer
Assistant Attorney General, Criminal Division

B. Todd Jones
United States Attorney
District of Minnesota
Chair, AGAC

Michele M. Leonhart
Administrator
Drug Enforcement Administration

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

Kevin L. Perkins
Assistant Director
Criminal Investigative Division
Federal Bureau of Investigations



U.S. DEPARTMENT OF JUSTICE

*United States Attorney
Eastern District of California*

*Benjamin B. Wagner
United States Attorney*

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Phone 916/554-2700
Fax 916/554-2900
TTD 916/554-2855

July 1, 2011

Mayor Ann Schwab
City of Chico
PO Box 3420
Chico, CA 95927

Dear Mayor Schwab:

It has come to my attention that the City of Chico is considering an ordinance which would authorize permits for two medical marijuana cultivation facilities, each up to 10,000 square feet. This letter is written to ensure there is no confusion regarding the U.S. Department of Justice's position regarding municipal ordinances and state laws that purport to establish proposed marijuana cultivation or licensing programs.

Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities. The Department of Justice is firmly committed to enforcing the CSA in all states. As stated in the October 2009 memorandum from then Deputy Attorney General David Ogden, and in the memorandum issued yesterday by Deputy Attorney General James Cole, while the Department does not focus its limited resources on prosecuting seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law, we will enforce the CSA vigorously against individuals and organizations that participate in unlawful manufacturing and distribution activity involving marijuana, even if such activities are permitted under state law.

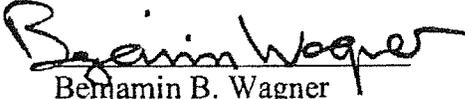
Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21, United States Code, Section 841, making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21, United States Code, Section 856, making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21, United States Code,

Section 846, making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes which prohibit a variety of different types of financial activity involving the movement of drug proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the proposed ordinance in the City of Chico, as it would authorize conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Individuals who elect to operate industrial marijuana cultivation facilities will be doing so in violation of federal law. Others who knowingly facilitate such industrial cultivation activities, including property owners, landlords, and financiers, should also know that their conduct violates federal law.

I hope this letter assists you in making informed decisions regarding a proposed ordinance which would permit the establishment of significant marijuana cultivation facilities in the City of Chico.

Very truly yours,


Benjamin B. Wagner
United States Attorney
Eastern District of California

cc: Kamala D. Harris, Attorney General of the State of California
Mike Ramsey, Butte County District Attorney
David Burkland, Chico City Manager
Lori J. Barker, Chico City Attorney

purposes of state law, including evidence of money laundering activity and or financial gains or excessive amounts of cash inconsistent with purported compliance with state or local law;

- amounts of marijuana inconsistent with purported compliance with state or local law
- illegal possession or sale of other controlled substances;
- ties to other criminal enterprises.

The memo also pointed out that compliance with state law was not a defense to prosecution for a violation of federal law and that investigation of prosecution of a federal violation was not precluded when there was a reasonable basis to believe that compliance with state law was being invoked as a pretext for the production or distribution of marijuana for purposes not authorized by state law, and that investigation and prosecution even when there was clear and unambiguous compliance with state law was not precluded in particular circumstances where investigation or prosecution otherwise served important federal interests.

The general interpretation of the Ogden memo, and I believe a fair interpretation, was that the federal government's policy was generally not to prosecute federal law violations involving marijuana where the actions at issue, including cultivation and distribution, were consistent with a state's medical marijuana statutes.

During our meeting with Mr. Wagner, he stated that the common understanding of the Ogden memo as described above was a misinterpretation. He reiterated the sentiment in the Ogden memo that it is not the intent of the federal government to expend resources prosecuting seriously ill individuals or their individual care givers who are complying with a state's medical marijuana laws, but that they do intend to prosecute people who engage in commercial scale cultivation and distribution of marijuana and those who facilitate their actions.

The position asserted by Mr. Wagner has also recently been expressed in a memo from Deputy Attorney General James Cole and in letters issued by various offices of the DOJ which have been sent to other cities and states with, or contemplating the enactment of, medical marijuana laws.

The Cole memo, issued this year, states that it was prepared in response to requests for guidance in relation to the enforcement of federal drug laws in jurisdictions that have legislation that allows and regulates commercial cultivation and distribution of marijuana for medical use and noted that a number of those jurisdictions have considered approving the cultivation of large quantities of marijuana or broadening the regulation and taxation of marijuana. The memo states that the position set forth in the Ogden memo has not been changed but clarifies that the Ogden memo was never intended to shield activities of a commercial scale from federal prosecution, even if they were compliant with state law, and that those who carried out activities involving the business of cultivating, selling or distributing marijuana and those who facilitated such activities are in violation of federal law. It further noted that any transactions involving the proceeds of such activity may also be in violation of federal money laundering statutes or other federal financial laws.

On July 14, 2011, the City Manager, Police Chief and I met with Mr. Wagner at his office in Sacramento. The purpose of the meeting was to discuss his letter to Mayor Schwab and to ask some questions to try and ascertain whether he could provide any guidance for how a local jurisdiction should draft a regulatory scheme for collectives and cooperatives. Both staff and the Council have always acknowledged that those persons who might operate a medical marijuana facility would be taking their chances as far as risking prosecution for violations of federal drug laws, therefore, the primary purpose of the meeting from our perspective was to focus on the nature and extent of any potential exposure to city public officials and employees to either criminal or civil sanctions brought by the DOJ as facilitators of those activities through the adoption and implementation of the ordinance.

Mr. Wagner indicated that as far as he knew, no public officials or employees had been prosecuted to date. He acknowledged that cities in California were in a difficult position as they tried to address land use issues arising from the State's medical marijuana laws. However, he indicated that he believed that public officials and employees could be prosecuted for conspiracy under the theory that public officials acting under a land use ordinance that permitted marijuana cultivation or distribution were knowingly facilitating the activity.

We then posed a number of questions to try and ascertain whether there were any parameters that a local agency could use to minimize the potential exposure of its officials and employees. We first asked if the DOJ would be less interested in prosecuting a case against public officials and employees if the agency's land use regulations tracked as closely as possible to the State Attorney General's guidelines. Mr. Wagner stated that many factors can go into a decision of who, and whether, to prosecute in any particular case and that while that might end up being one of the factors considered it would not offer any protection because the federal government considers the State AG guidelines as irrelevant in any way to a federal prosecution.

We also asked whether it would be a factor if a local regulation required collectives and cooperatives to operate in a very tight closed loop manner. For instance, the Butte County District Attorney has indicated that he believes it is acceptable under state law for a group of people to get together at the beginning of a growing season to jointly cultivate a crop of marijuana which is then divided between those same group members at the time that the crop is harvested, and which does not involve a system in which the number and identity of members varies over time.

We then asked whether it would be a factor if a local regulation had a limit on how many plants could be cultivated per each member in order to minimize the chances that marijuana from the collective and cooperative would be diverted to uses not contemplated by the Compassionate Use Act by ensuring that the amount cultivated was not more than would be reasonably expected to be needed by the members.

Finally, we asked if it would make a difference if a public official or employee was undertaking a ministerial action under the ordinance or was exercising discretion.

Again, the answer to all of these questions was somewhat vague, they might, in the overall consideration of whether to prosecute, be considered, but they would not be factors that would dissuade a decision to prosecute.

The basic message conveyed was that while no public officials or employees may have been prosecuted to date, they consider that such prosecution is possible. Of course they will not say affirmatively whether they intend to pursue such a case, or whether it might be Chico. However, they did point out that they believed bringing such a case would be an effective method of deterring other jurisdictions from affirmatively permitting commercial scale cultivation and distribution.

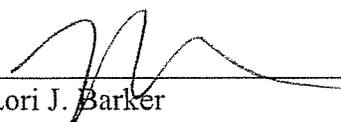
Based on the above, at this time, the position of the DOJ seems to indicate that there is a real, although unquantifiable, risk to public officials and employees being exposed to criminal or civil sanctions. Although we cannot say what the chances are of such an action being brought, we do know that the US Attorney for this district is aware of the actions Chico is taking.

Based on all of the above, it is my understanding that the City Manager will be recommending to the Council that the regulations recently adopted pertaining to the permitting of collectives and cooperatives be repealed while we continue to monitor the position of the DOJ and any actions they may take in relation to other jurisdictions, as well as any developments in the law that might provide guidance.

In my opinion that recommendation is sound. Unfortunately, local jurisdictions have ended up in the middle of the inconsistency between state and federal law as they attempt to deal with the land use implications of the state law. To the extent that a US Attorney may decide to bring an action against public officials or employees in California, it would be preferable to let that action involve a city other than Chico.

The issue of potential public official liability has recently come to the forefront not only in California but in other states with medical marijuana laws as well. Notably, the State of Arizona recently filed a declaratory relief action in federal court regarding its medical marijuana law. One of the questions which Arizona has specifically asked the court to respond to is whether compliance with its state law will provide a safe harbor from federal prosecution. Depending on the outcome of this case, it could be useful for formulating future actions by local jurisdictions in California and we will be closely monitoring this case.

As a separate issue from regulation, collectives and cooperatives, it should be noted that I believe the portions of the ordinance relating to the cultivation of medical marijuana in residential zoning districts is not of interest to the DOJ. The DOJ's position has consistently been that they are not interested in prosecuting ill individuals who are in compliance with state laws. Since the regulations for cultivation in the residential areas limits the amount that may be cultivated and requires it be for the personal use of a qualified patient, the regulation does not appear to facilitate the type of activity that the DOJ is currently interested in prosecuting.


Lori J. Barker

Medical Marijuana
Interested Parties Mailing List
Updated as of 03-08-11
S:\Planning\Interested Parties\Special
Interest Groups\Medical Marijuana.wpd

Michele Cooper
19 Glenbrook Court
Chico, CA 95973

Insu Hyams
366 Picholine
Chico, CA 95928

BC Health Officer Lundberg
202 Mira Loma Ave
Oroville, CA 95965
(via courier)

Chief of Police Maloney

Code Enforcement Officer Raimer

Randy Tenckhoff
640 Acacia Lane
Chico, CA 95926

Will Senn
2135 Lincoln Road
Yuba City, CA 95993

Mr. M. Max Del Real
California Capitol Solutions
1421 16th Street, Suite 205
Sacramento, CA 95814

California Capitol Solutions
M. Max Del Real
PO Box 60652
Sacramento, CA 95860

Mr. Ken Prather
Tehama Herbal Collective
711 Walnut Street
Corning, CA 96021

Dylan Tellesen
2315 Fern Avenue
Chico, CA 95926

Bobby Kenoyer
44 New Dawn Circle
Chico, CA 95928

Richard C. Micel
2388 Alba Avenue
Chico, CA 95926

North Valley Property Owners
Association
813 East 5th Ave
Chico, CA 95926-2702

Linda Litton
2750 South 5th Avenue, Suite 215
Oroville, CA 95965



U.S. Department of Justice

United States Attorney
Northern District of California

Melinda Haag
United States Attorney

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

(415) 436-7200
FAX: (415) 436-7234

August 15, 2011

Robert S. Wall
Director of Community Development
City of Eureka
531 K Street
Eureka, CA 95501-1146

RECEIVED

AUG 18 2011

DEPARTMENT OF
COMMUNITY DEVELOPMENT

Dear Mr. Wall:

I write in response to your letter dated August 8, 2011, seeking guidance regarding medical cannabis growing facilities in the City of Eureka, California.

As the Department has stated on many occasions, Congress has determined that marijuana is a controlled substance. Congress placed marijuana in Schedule I of the Controlled Substances Act (CSA) and, as such, growing, distributing, and possessing marijuana in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities.

The prosecution of individuals and organizations involved in the trade of any illegal drugs and the disruption of drug trafficking organizations is a core priority of the Department. This core priority includes prosecution of business enterprises that unlawfully market and sell marijuana. As stated in the October 2009 Ogden Memorandum and reiterated recently in the 2011 Cole Memorandum, the Department does not focus its limited resources on seriously ill individuals who use marijuana as part of a medically recommended treatment regimen in compliance with state law. However, individuals and organizations who are in the business of cultivating, selling, or distributing marijuana, and those who knowingly facilitate such activities, are in violation of the Controlled Substances Act and are subject to federal enforcement, even if such activities are permitted under state law.

Consistent with federal law, the Department maintains the authority to pursue criminal or civil actions for any CSA violations whenever the Department determines that such legal action is warranted. This includes, but is not limited to, actions to enforce the criminal provisions of the CSA such as Title 21 Section 841 making it illegal to manufacture, distribute, or possess with intent to distribute any controlled substance including marijuana; Title 21 Section 856 making it unlawful to knowingly open, lease, rent, maintain, or use property for the manufacturing, storing, or distribution of controlled substances; and Title 21 Section 846 making it illegal to conspire to commit any of the crimes set forth in the CSA. Federal money laundering and related statutes that prohibit a variety of different types of financial activity involving the movement of drug

B14

proceeds may likewise be utilized. The government may also pursue civil injunctions, and the forfeiture of drug proceeds, property traceable to such proceeds, and property used to facilitate drug violations.

The Department is concerned about the City of Eureka's creation of a licensing scheme that permits large-scale industrial marijuana cultivation, processing, and distribution, as it authorizes conduct contrary to federal law and threatens the federal government's efforts to regulate the possession, manufacturing, and trafficking of controlled substances. Individuals who elect to operate any such facilities will be doing so in violation of federal law. Others who knowingly facilitate the actions of these individuals, including property owners, landlords, and financiers should also know that their conduct violates federal law. If the City of Eureka were to proceed, this office would consider injunctive actions, civil fines, criminal prosecution, and the forfeiture of any property used to facilitate a violation of the CSA. As the Attorney General has repeatedly stated, the Department of Justice remains firmly committed to enforcing the CSA in all states.

I hope this letter assists the City of Eureka in making informed decisions regarding this matter.

Very truly yours,



Melinda Haag
United States Attorney
Northern District of California

cc: David Tyson, City Manager
Mike Knight, Assistant City Manager
City Attorney



U.S. Department of Justice

LAURA E. DUFFY
United States Attorney
Southern District of California

(619) 557-5690
Fax (619) 546-0720

San Diego County Office
Federal Office Building
880 Front Street, Room 6293
San Diego, California 92101-8893

Imperial County Office
516 Industry Way, Suite C
Imperial, California 92251-7501

July 17, 2012

Ms. Leslie Devaney
City Attorney
City of Del Mar
STUTZ ARTIANO SHINOFF & HOLTZ, APC
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106

Re: **The City of Del Mar Medical Marijuana Ballot Initiative**

Dear Ms. Devaney,

This letter acknowledges receipt of your office's request dated June 26, 2012, concerning the Department of Justice's guidance on investigations and prosecutions in states and cities that authorize the medical use of marijuana. This letter is written to clarify the U.S. Department of Justice's guidance on this issue.

The United States Congress has determined that marijuana is a controlled substance, and it has placed marijuana on Schedule I of the Controlled Substances Act, 21 U.S.C. § 801, *et. seq.* (the "CSA"). As such, growing, distributing, and possessing marijuana, in any capacity, other than as part of a federally authorized research program, is a violation of federal law regardless of state laws permitting such activities. Moreover, those who engage in financial transactions involving the proceeds of such activities may also be in violation of federal money laundering statutes and other federal financial laws.

As stated in the October 2009 Ogden Memorandum, "the prosecution of significant traffickers of illegal drugs, including marijuana, and the disruption of illegal drug manufacturing and trafficking networks continues to be a core priority" of the Department. This Department's commitment to the enforcement of the CSA was reiterated in the June 2011 Cole Memorandum which advised that the prosecution of business enterprises that unlawfully cultivate, distribute, or sell marijuana remains a core priority, regardless of state law. The Cole Memorandum is consistent with, and a further explanation of, the Ogden memorandum.

Both the Ogden and Cole Memoranda state that the Department of Justice will likely not focus its limited resources on the prosecution of seriously ill individuals who use marijuana as part of a medically recommended treatment regimen consistent with state laws, or on their individual caregivers. The Cole Memorandum further clarifies that the "term 'caregiver'...means just that: *individuals* providing care to individuals with cancer or other serious illnesses." (Emphasis added).

Ms. Leslie Devaney
City Attorney
Re: The City of Del Mar Medical Marijuana Ballot Initiative
July 17, 2012
Page 2

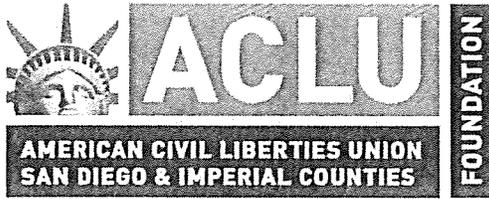
You raised concerns with respect to the citizen-drafted City of Del Mar Compassionate Use Dispensary Regulation and Taxation Ordinance ("Ordinance") which has qualified with sufficient signatures to be placed on the November 2012 ballot in the City of Del Mar, California. Although the Department does not offer advisory opinions, as indicated above, enterprises engaged in the cultivation, manufacture, and sale of marijuana directly violate federal law. Accordingly, individuals and organizations that participate in the unlawful cultivation and distribution of marijuana could be subject to civil and criminal remedies. State and City employees who conduct activities mandated by the Ordinance are not immune from liability under the CSA. The United States Attorney's Office (USAO) will evaluate all potential civil and criminal enforcement actions on a case-by-case basis in light of the priorities of the Department of Justice and the USAO's available resources.

I hope that this letter assists the City of Del Mar in making informed decisions about the cultivation, manufacture, and distribution of marijuana.

Very truly yours,



LAURA E. DUFFY
United States Attorney



PO Box 87131
San Diego, CA 92138-7131
T/ 619-232-2121
F/ 619-232-0036
www.aclusandiego.org

August 2, 2012

VIA U.S. MAIL AND ELECTRONIC MAIL

Laura E. Duffy, Esq.
United States Attorney
Southern District of California
880 Front Street, Room 6293
San Diego, CA 92101-8893

RE: City of Del Mar Medical Marijuana Ballot Initiative

Dear Ms. Duffy:

I write on behalf of the American Civil Liberties Union to express concern about your recent letter to the Del Mar City Attorney regarding the City's medical marijuana ballot initiative, especially the reference to potential liability of city employees under the Controlled Substances Act (CSA).¹ The letter declares that "State and City employees who conduct activities mandated by the [Del Mar] Ordinance are not immune from liability under the CSA." Such a statement is easily construed—and no doubt will be so construed by city employees and the public—as a threat of prosecution against city employees if they comply with an ordinance duly adopted by local voters. However, such a broad interpretation of liability under the CSA is unprecedented and amounts to unjustified interference in local legislative matters, if not thinly veiled intimidation of city officials and thus potentially of voters.

The citizen-drafted initiative, the Compassionate Use Dispensary Regulation and Taxation Ordinance ("Ordinance"), has qualified for the November ballot in the City of Del Mar. The Ordinance seeks "to ensure safe access to medical cannabis in the City of Del Mar for qualified patients and their primary caregivers in compliance with California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2003 through regulated compassionate use dispensaries in the City of Del Mar." The Ordinance primarily addresses the conduct of compassionate use dispensaries, qualified patients, and primary caregivers. It imposes additional restrictions on medical marijuana-related activity permissible under state law in order to "ensure safe access while protecting

¹ Letter from Laura Duffy, United States Attorney, U.S. Dep't of Justice, to Leslie Devaney, City Attorney, City of Del Mar (July 17, 2012).

Laura E. Duffy, Esq.
August 2, 2012
Page 2 of 2

public safety.” The Ordinance directs the activity of city employees to a limited extent in that if the compassionate use dispensary meets all of the Ordinance’s requirements, “the Planning and Community Development Department of the City of Del Mar must issue the Compassionate Use Dispensary Permit.”

Compliance with this ministerial duty cannot legitimately expose city employees to liability under the CSA. The courts have expressly rejected any conceivable aiding and abetting or conspiracy theory on which such liability could be based. In *Conant v. Walters*, 309 F.3d 629, 636 (9th Cir. 2002), the Court of Appeals determined that “[h]olding doctors responsible for whatever conduct the doctor could anticipate a patient *might* engage in after leaving the doctor’s office is simply beyond the scope of either conspiracy or aiding and abetting.” Similarly, in *City of Garden Grove v. Superior Court*, 157 Cal.App.4th 355, 368 (2007), the court held that an order requiring City officials to return improperly seized medical marijuana “would appear to be beyond the scope of either conspiracy or aiding and abetting.” Finally, and most directly on point, in *Qualified Patients Ass’n v. City of Anaheim*, 187 Cal.App.4th 734, 759-60 (2010), the same court held that “governmental entities do not incur aider and abettor or direct liability by complying with their obligations under the state medical marijuana laws.” Thus, it is clear that a ministerial requirement to issue a permit in compliance with the ordinance cannot subject city employees to liability under the CSA.

While the federal government may enforce federal law, it has no business attempting to interfere in local legislative decisions or influence local voters with unfounded insinuations about potential prosecution. The ACLU calls on you to either identify the specific elements of the citizen-drafted initiative which you assert would require city employees to violate federal law, or clarify or retract your inflammatory statement regarding city employees and assure local voters that the federal government has no interest in prosecuting city employees for performing duties contemplated by the Ordinance. We are glad to meet and discuss these issues if that would be helpful.

Sincerely,

David Loy
Legal Director
ACLU Foundation of San Diego & Imperial Counties

Novella Coleman
Criminal Justice and Drug Policy Fellow
ACLU of California

U.S. Attorney Shouldn't Be Threatening to Prosecute City Employees

CA ACLU Says Duffy Should Retract Threat to Prosecute City Employees over Medical Marijuana Ballot Initiative

Share

Tweet 4
The San Diego U.S. Attorney is treading dangerous legal ground with a legal opinion that seems to be threatening Del Mar city employees with prosecution if they comply with an ordinance on medical marijuana up for a vote in November. In a letter sent today, the ACLU of California called on Laura Duffy, U.S. Attorney for the Southern District of California, to assure voters that the federal government will not prosecute city employees for carrying out their duties if the local initiative passes in November.

The Compassionate Use Dispensary Act and Taxation Ordinance is a citizen-drafted initiative which seeks to ensure safe access to medical cannabis in the City of Del Mar for qualified patients, in compliance with California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2003. The Ordinance would impose additional restrictions on medical marijuana-related activities to ensure public safety. The ordinance would require modest cooperation from city employees, largely limited to the issuing of permits for buildings of compassionate use dispensaries.

“While the federal government may enforce federal law, it has no business attempting to interfere with local legislative decisions,” said David Loy, legal director of the San Diego ACLU. The letter expressed concerns about Duffy's recent threat of litigation to any city employee who followed the mandate of a ballot initiative.

Inaccurately relying on the Controlled Substance Act (CSA), Duffy sent a letter on July 18, 2012, to Del Mar's city attorney referring to potential

liability for city employees who conducted activities mandated by the ordinance if it passes. The letter states that both state and city employees would not be “immune from liability” under the CSA.

“This is just the latest in a series of misleading and inappropriate federal threats to state and local government officials across California and elsewhere,” said Allen Hopper, director of the ACLU of California’s Criminal Justice and Drug Policy Project. “Local and state officials seeking to responsibly regulate medical marijuana are not violating federal law and should never have to fear prosecution.”

The ACLU letter argues that compliance with the ordinance cannot legitimately expose city employees to liability under the CSA. The courts have expressly rejected the notion that employees are subject to any aiding and abetting or conspiracy theory on which the threatened liability could be based. Because of this legal precedent, the mere act of issuing a permit in compliance with the ordinance would not make Del Mar city employees vulnerable to prosecution.

ACLU representatives are seeking to meet with the U.S. Attorney to discuss the serious issues raised by this case.

PHOTOS: U.S. Attorney Shouldn’t Be Threatening to Prosecute City Employees

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ATTACHMENT "C"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF MAY 24, 2011

Prepared by: Tina Wehrmeister, Community Development Director 

Reviewed by: Jim Jakel, City Manager 
Lynn Tracy Nerland, City Attorney 

Date: May 19, 2011

Subject: Adoption of an Urgency Ordinance Extending a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Collectives, Cooperatives and Dispensaries

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance extending a temporary moratorium on the establishment and operation of medical marijuana collectives, cooperatives, and dispensaries (both at a fixed site and mobile) to become effective immediately.

BACKGROUND / DISCUSSION

On April 24, 2011 the City Council adopted an urgency ordinance establishing a temporary moratorium on the establishment and operation of medical marijuana collectives, cooperatives, and dispensaries. Pursuant to Government Code Section 65858 this moratorium is effective for 45 days and can be extended for up to a total of 2 years, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures for extension of the moratorium.

Due to staffing levels and the complexity of the issues to be studied it is recommended that the moratorium be extended for 22 months and 15 days. The attached local newspaper clippings just from April 24, 2011 to the date of this report are evidence of the challenges faced with the medical marijuana issue. Proper noticing procedures were followed in advance of this item being placed on the agenda.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. There will be staff time expended to prepare the ordinance addressing dispensaries.

OPTIONS

The Council may choose not to adopt the urgency ordinance extending the moratorium. This will leave the City without an ordinance specifically addressing medical marijuana dispensaries, beyond the current Municipal Code provision that permits or licenses only be granted for uses consistent with federal and state law. A letter from an attorney for the dispensary that previously opened in Antioch without City approvals is attached as an example of the argument that such a municipal code provision is insufficient to supersede the Medical Marijuana Program Act adopted by California Legislature. Although this is a legal debate for the courts, the letter

5-24-11

CI

does illustrate some of the complexities of the issue and difficult options facing cities and counties caught between state and federal law.

ATTACHMENTS

- A. April 24, 2011 staff report
- B. Newspaper clippings
- C. Correspondence

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH
EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND
OPERATION OF MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND
DISPENSARIES**

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Findings.

- A. On November 5, 1996 the voters of the state of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" ("CUA" or "Act"); and
- B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstance. The Act has led to the establishment of medical marijuana dispensaries in various communities throughout California; and
- C. The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program" to Division 10 of the California Health and Safety Code § 11362.7, *et seq.* ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws; and
- D. Health and Safety Code § 11362.765 prohibits the cultivation or distribution of medical marijuana for profit. While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana collectives, cooperatives and dispensaries (collectively "dispensaries" and defined in Section 2 of this Ordinance) and now mobile or delivery dispensaries and large grow operations in warehouses and residences far exceeding amounts that would be allowed for medical uses under CUA and MMPA.
- E. MMPA and specifically Health and Safety Code § 11362.83 authorizes cities to adopt and enforce rules and regulations consistent with the MMPA; and

- F. On August 25, 2008, then California Attorney General Edmund G. Brown, issued “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (“the Attorney General Guidelines”) which sets forth guidelines intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients; and
- G. The Attorney General Guidelines provide that cities and counties may adopt regulations that allow qualified patients or primary caregivers to possess more medical marijuana in amounts that exceed the MMPA’s possession guidelines; and
- H. In 2010, the Legislature amended the MMPA to add Health and Safety § 11362.768 which became effective January 1, 2011, and prohibits any “medical marijuana cooperative, collective, dispensary, operator, establishment, or provider from locating within 600 feet of a school”, which reaffirms the City’s ability to regulate the location of medical marijuana dispensaries; and
- I. The Federal Controlled Substances Act (“Controlled Substances Act” or “CSA”) 21 U.S.C. § 801 *et seq.*, enacted by Congress in 1970, provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and
- J. The United States Supreme Court held in Gonzalez v. Raich, 545 U.S. 1 (2005) that the Controlled Substances Act applied to an individual’s personal medical use of marijuana, and upheld the provisions of the Controlled Substance Act criminalizing the manufacture, distribution, or possession of marijuana to growers and users of marijuana for medical purposes and the Ninth Circuit further held that there is no fundamental right to use medical marijuana in Raich v. Gonzalez, 500 F.3d 850 (2007); and
- K. An October 19, 2009, memorandum from the U.S. Department of Justice indicated the Department’s intent to not use Federal resources on marijuana prosecution if an individual’s actions are “in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana;” and
- L. The Federal policy shift away from enforcement of the Controlled Substances Act has led to increased interest in the establishment and operation of medical marijuana dispensaries in the City, and has led to an increase in medical marijuana dispensaries throughout the State; and

M. The City Council, in adopting this Urgency Ordinance, takes legislative notice of the following cases that it finds to be relevant to its actions:

1. People ex rel. Lungren v. Peron, 59 Cal.App.4th 1383 (1997), the California Court of Appeal recognizing the limited scope of the Act and the Program, and holding that filling out a form that designates a commercial enterprise as the qualified patient's "primary caregiver" is insufficient to establish a caregiver status.
2. People v. Mower, 28 Cal. 4th 457 (2002), California Supreme Court holding that the defenses accorded by the Act are limited to "patients and primary caregivers" for the possession and cultivation of marijuana only.
3. People v. Urziceanu, 132 Cal.App.4th 747 (2005), California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and MMPA and recognizing that the Act did not create a constitutional right to obtain marijuana.
4. City of Garden Grove v. Superior Court, 157 Cal.App.4th 355 (2007), regarding the California Court of Appeal's limited holding that the return of marijuana to a qualified user is not preempted by the Federal Controlled Substances Act.
5. People v. Mentch, 45 Cal. 4th 274 (2008), regarding the California Supreme Court's analysis of the limited application and scope of the Act and the Program, and its holding that a "primary caregiver" status requires a specified showing of consistently providing care, independent of any assistance in taking medical marijuana, at or before the time of assuming the responsibility of assisting with medical marijuana.
6. County of San Diego v. NORML, 165 Cal.App.4th 798 (2008), California Court of Appeal holding that the provisions of the MMPA requiring California counties to issue identification cards to qualified medical marijuana patients are not preempted by the Federal Controlled Substances Act.
7. City of Corona v. Naulls, 166 Cal. App. 4th 418 (2008), California Court of Appeals holding that a use is generally deemed impermissible unless it is expressly permitted in a particular zone.
8. People v. Hochanadel, 176 Cal.App.4th 997 (2009) (review denied by California Supreme Court), California Court of Appeal concluding that the

operators of a storefront dispensary which sold marijuana to individuals did not operate within the CUA and the MMPA, and did not constitute a primary caregiver such that it was entitled to protections of the CUA and MMPA.

9. City of Claremont v. Kruse, 177 Cal.App.4th 1153 (2009) (review denied by California Supreme Court), California Court of Appeal holding that neither the Act nor the MMPA expressly or impliedly preempt local exercise of land use and zoning police powers.
 10. Qualified Patients Association v. City of Anaheim, 187 Cal. App. 4th 734 (2010), the California Court of Appeal addressed in *dictum* but refused to decide the allowable scope of municipal regulation of medical marijuana dispensaries and specifically whether cities and counties are barred by the CUA and MMPA from using nuisance abatement laws and penal regulation to prohibit the use of property for medical marijuana purposes.
 11. City of Lake Forest v. Moen, et al. (Case No. 30-2009-0029887-CU-MC-CJC), trial court granted Lake Forest's preliminary injunction and found that a city's power to enact land use or zoning laws, and a city's enforcement of existing local laws is not preempted by the Compassionate Use Act and MMPA.
 12. County of Los Angeles v. Hill, 192 Cal. App. 4th 861 (2011), the California Court of Appeal upheld a preliminary injunction issued against a medical marijuana dispensary that opened without county permits, finding that cities and counties can use local zoning authority and civil nuisance abatement laws to regulate and restrict the establishment and location of medical marijuana dispensaries.
- N. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and
- O. In April 2009, the California Police Chiefs' Association issued a "White Paper" which identifies that, throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders, as well as illegal use and sale of marijuana by minors. 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 collectives, cooperatives and

dispensaries, along with an illegal resale market. Grow operations in warehouses and residences have also led to fires, mold and illegal electrical use. Residences turned into large grow operations can be difficult to re-establish as the intended residential use. Outdoor grow operations have similar impacts, along with odor nuisances; and

- P. Based on changes in case and statutory law particularly in the past five years, the 2008 California Attorney General's Guidelines on medical marijuana, as well as new information about the adverse secondary impacts of fixed and mobile dispensaries experienced by other cities and counties, and most recently in Antioch when a dispensary opened without the required approvals and numerous large grow operations have been discovered, it is reasonable to conclude that negative effects on the public, health, safety and welfare may occur in the City as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and
- Q. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Antioch staff to study the possible adoption of amendments to the City's Municipal Code and Zoning Code regarding medical dispensaries. Staff needs time to study whether amendments to the City's Municipal Code are necessary to eliminate or minimize the negative secondary side effects resulting from medical marijuana dispensaries identified in the White Paper. Staff needs time to study whether to limit such businesses to certain zoning districts, and which zoning districts would be appropriate for such uses. Staff also needs to study the differences among medical marijuana collectives, cooperatives and dispensaries. Finally, staff needs time to study whether there should be a limit on the number of medical marijuana collectives, cooperatives and/or dispensaries in the City, whether the regulations should allow for more than one collective, cooperative and/or dispensary, and if so, whether there should be regulations as to their proximity to each other; and
- R. California Government Code Section 65858 subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be in effect 45 days from the date of adoption, and may be extended to have a maximum total duration of 2 years; and

- S. On April 26, 2011, following a duly noticed public hearing, the City Council adopted an ordinance establishing a temporary moratorium on the establishment and operation of medical marijuana cooperatives, collectives and dispensaries in order to (1) address the community concerns regarding the establishment and operation of medical marijuana dispensaries, (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for medical marijuana dispensaries, (4) study and determine the appropriate zoning and location for medical marijuana dispensaries, if any, and (5) determine appropriate controls for protection of public health, safety and welfare; and
- T. City staff has provided a staff report indicating that additional time is needed to study these complicated issues and noticed a public hearing for May 24, 2011 for the City Council's consideration of an extension of the temporary moratorium.

SECTION 2. Moratorium Imposed.

- A. Scope. In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, the moratorium adopted by the City Council on April 26, 2011 is extended for 22 months and 15 days from the date of this ordinance. No permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a medical marijuana dispensary in the City of Antioch. Additionally, medical marijuana dispensaries are hereby expressly prohibited in all areas and zoning districts of the City.
- B. Definitions.
 - 1. For purposes of this ordinance, "medical marijuana dispensary" or "dispensary" means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*, or (2) any facility, building, structure or location where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to cultivate or distribute marijuana for medical purposes; or (3) any not-for-profit site, facility or location where two or more qualified patients and/or

persons with an identification card associate, meet or congregate in order collectively or cooperatively, to distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to Health and Safety Code Section 11362.5 *et seq.* and organized as a marijuana cooperative or collective as set forth in the Attorney General Guidelines. The terms “primary caregiver,” “qualified patient,” and “person with an identification card” shall be as defined in California Health and Safety Code Section 11362.5 *et seq.*

2. For purposes of this ordinance, a “medical marijuana dispensary” shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 *et seq.*

- C. Statutory Findings and Purpose. This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Antioch set forth in the findings, incorporated into Section 1 of this Ordinance.

SECTION 3. Establishment, Operation and Maintenance of a Medical Marijuana Dispensary Declared a Public Nuisance.

The establishment, maintenance or operation of a medical marijuana dispensary as defined herein within the City limits of the City of Antioch is a public nuisance. Violations of this ordinance may be enforced by any applicable law, with criminal penalties limited if inconsistent with the Compassionate Use Act of 1996 or California Health and Safety Code Section 11362.7 *et seq.*

SECTION 4. Severability.

If any provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to

other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Antioch hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. CEQA.

- A. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- B. This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.
- C. This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

SECTION 6. Effective Date.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 22 months and 15 days unless superseded by a subsequent ordinance of the City Council.

The foregoing ordinance was introduced and adopted at a meeting of the City of Antioch held on the 24th of May 2011 by the following vote.

AYES:
NOES:
ABSTAINED:
ABSENT:

Mayor

ATTEST:

City Clerk

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ATTACHMENT "A"

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE MEETING OF APRIL 26, 2011

Prepared by: Tina Wehrmeister, Community Development Director *TW*

Reviewed by: Jim Jakel, City Manager *JJ*
Lynn Tracy Nerland, City Attorney *LTN*

Date: April 21, 2011

Subject: Adoption of an Urgency Ordinance Establishing a Temporary Moratorium on the Establishment and Operation of Medical Marijuana Collectives, Cooperatives and Dispensaries

RECOMMENDATION

It is recommended that the City Council adopt the attached urgency ordinance establishing a temporary moratorium on the establishment and operation of medical marijuana collectives, cooperatives, and dispensaries (both at a fixed site and mobile) to become effective immediately.

BACKGROUND INFORMATION

On November 5, 1996, California voters approved Proposition 215, entitled "The Compassionate Use Act of 1996" (CUA), which allowed persons to obtain and use marijuana for medical purposes under limited specified circumstances and not be subject to criminal prosecution. Specifically, criminal statutes regarding possession and cultivation of marijuana "shall not apply to a patient, or a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician". Proposition 215 did not legalize the sale of marijuana and never uses the term "medical marijuana dispensary" or describes storefront operations for distribution.

In 2003, the California Legislature adopted Senate Bill 420, entitled the "Medical Marijuana Program Act" (MMPA), which created a state-approved voluntary medical marijuana identification card program and provided for additional immunities from State marijuana laws. The MMPA does not use the term "medical marijuana dispensary" or describe storefront operations for distribution. While the MMPA intended to clarify the scope of the CUA, neither the State nor counties have implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and MMPA should be implemented, particularly in regard to the distribution of medical marijuana through collectives, cooperatives and dispensaries.

This leaves cities in a difficult position because the federal government, including the Department of Drug Enforcement, has consistently held that neither Proposition 215 nor the MMPA creates a defense to violations of the federal Controlled Substances Act and that marijuana continues to be a prohibited Schedule 1 drug for which there is no currently accepted medical use. Accordingly, it still remains a violation of federal law to possess, cultivate, sell or

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distribute marijuana regardless of its intended use or user or despite California's Compassionate Use Act and Medical Marijuana Program. *Gonzales v. Raich*, 545 U.S. 1 (2005); *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483 (2001). Thus, the possession and use of marijuana remains a violation of federal law.

With these legal uncertainties and concerns about secondary impacts from medical marijuana dispensaries, the Antioch City Council adopted an interim ordinance prohibiting medical marijuana dispensaries in Antioch during an interim study period on March 8, 2005. On June 13, 2006 the City Council adopted an ordinance adding Section 1-3.15 to the Municipal Code, which requires any use, entitlement, authorization, license, or permit allowed or issued under the Code to be consistent with both State and Federal law. The Council did not elect to direct staff to prepare an ordinance specifically prohibiting dispensaries; although, the Municipal Code generally only allows uses set forth in the Code.

DISCUSSION

Since the Council's action in 2006, there have been five years of changes to what constitutes a medical marijuana dispensary, to what secondary impacts have been seen from medical marijuana dispensaries where allowed to exist, and the business of medical marijuana. For example, medical marijuana dispensaries not only include storefronts but mobile delivery services not contemplated in 2006. In addition, large grow operations have occurred at residences and warehouses far exceeding amounts that would be allowed for personal or even "cooperative" medical uses under the CUA and MMPA.

During this time period, some California cities that have permitted the establishment of medical marijuana dispensaries and have experienced an increase in crime, such as burglary, robbery and sale of illegal drugs, including to minors, in the areas immediately surrounding medical marijuana dispensaries. Additionally, law enforcement agencies in California have identified secondary impacts from medical marijuana dispensaries including people smoking marijuana in public, loitering, vandalism, and inadequate property maintenance at the site of the dispensary. Large grow operations have lead to fires, mold, and illegal electrical alterations. Outdoor grow operations have similar impacts along with odor nuisances. See Attachment "B", White Paper from California Police Chiefs' Association dated April 22, 2009 for information on secondary impacts.

Further, Antioch Police Department, community members, and businesses in the City saw first-hand impacts when a medical marijuana dispensary opened on Hillcrest/Wild Horse Drive (now subsequently closed and apparently relocated to Pittsburg).

In addition, there have been 5 years of case law that have impacted how cities can respond to these issues. For example, medical marijuana advocates contend that a recent appellate case, (*Qualified Patients Association et al. v. City of Anaheim*) calls into question whether simply requiring a use to be consistent with both State and Federal law is sufficient authority for the City to ban a medical marijuana dispensary. The California Attorney General has also promulgated guidelines regarding medical marijuana (Attachment "C").

The operation of a dispensary storefront, warehouse/grow operation and/or mobile delivery service prior to the City having an opportunity to study and adopt medical marijuana regulations, including a prohibition if determined appropriate by the Council, could create conflicts among land uses or conflict with the City's long-term planning goals. In addition, as mentioned above, some jurisdictions have experienced criminal activities at or near dispensaries.

For all of these reasons, staff felt it appropriate to agendaize for the City Council's consideration the attached urgency ordinance. This urgency ordinance would establish a forty-five (45) day moratorium on the establishment and/or operation of medical marijuana dispensaries in the City, including any mobile delivery service, or warehouse/grow operation. A public hearing notice was published in the newspaper 10 days before the Council meeting.

Pursuant to Government Code Section 65858, the City may establish a moratorium prohibiting any use that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body, planning commission or the planning department is considering in order to protect and preserve the public safety, health and welfare. A moratorium may be extended for up to a total of two (2) years, provided that the current and immediate threat to the public safety, health and welfare still exists, and the City follows the public notice and hearing procedures for extension of the moratorium.

FISCAL IMPACT

There is no direct fiscal impact with the adoption of the proposed urgency ordinance. There will be staff time expended to prepare the ordinance addressing dispensaries.

OPTIONS

The Council may choose not to adopt the urgency ordinance.

ATTACHMENTS

- A: Urgency Ordinance
- B: California Police Chief's Association White Paper (2009)
- C: California Attorney General's Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use (2008)

ATTACHMENT "A"

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANTIOCH ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT AND OPERATION OF MEDICAL MARIJUANA COLLECTIVES, COOPERATIVES AND DISPENSARIES

The City Council of the City of Antioch does ordain as follows:

SECTION 1. Findings.

- A. On November 5, 1996 the voters of the state of California approved Proposition 215, codified as Health and Safety Code Section 11362.5 *et seq.* and entitled "The Compassionate Use Act of 1996" ("CUA" or "Act"); and
- B. The intent of Proposition 215 was to enable persons who are in need of medical marijuana for specified medical purposes to obtain and use it under limited, specified circumstance. The Act has led to the establishment of medical marijuana dispensaries in various communities throughout California; and
- C. The California Legislature adopted Senate Bill 420, effective January 1, 2004, adding Article 2.5, "Medical Marijuana Program" to Division 10 of the California Health and Safety Code § 11362.7, *et seq.* ("Medical Marijuana Program Act" or "MMPA"). The MMPA created a state-approved voluntary medical marijuana identification card program and provided for certain additional immunities from state marijuana laws; and
- D. Health and Safety Code § 11362.765 prohibits the cultivation or distribution of medical marijuana for profit. While the MMPA intended to clarify the scope of the Act, neither the Federal nor the State government has implemented a specific plan "to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana," leaving numerous questions unanswered as to how the CUA and the MMPA should be implemented, particularly in regard to the distribution of medical marijuana through facilities commonly referred to as medical marijuana collectives, cooperatives and dispensaries (collectively "dispensaries" and defined in Section 2 of this Ordinance) and now mobile or delivery dispensaries and large grow operations in warehouses and residences far exceeding amounts that would be allowed for medical uses under CUA and MMPA.
- E. MMPA and specifically Health and Safety Code § 11362.83 authorizes cities to adopt and enforce rules and regulations consistent with the MMPA; and

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- F. On August 25, 2008, then California Attorney General Edmund G. Brown, issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" ("the Attorney General Guidelines") which sets forth guidelines intended to ensure the security and non-diversion of marijuana grown for medical use by qualified patients; and
- G. The Attorney General Guidelines provide that cities and counties may adopt regulations that allow qualified patients or primary caregivers to possess more medical marijuana in amounts that exceed the MMPA's possession guidelines; and
- H. In 2010, the Legislature amended the MMPA to add Health and Safety § 11362.768 which became effective January 1, 2011, and prohibits any "medical marijuana cooperative, collective, dispensary, operator, establishment, or provider from locating within 600 feet of a school", which reaffirms the City's ability to regulate the location of medical marijuana dispensaries; and
- I. The Federal Controlled Substances Act ("Controlled Substances Act" or "CSA") 21 U.S.C. § 801 *et seq.*, enacted by Congress in 1970, provides that the manufacture, cultivation, distribution and dispensing of marijuana is illegal for any purpose, and further provides for criminal penalties for marijuana use; and
- J. The United States Supreme Court held in Gonzalez v. Raich, 545 U.S. 1 (2005) that the Controlled Substances Act applied to an individual's personal medical use of marijuana, and upheld the provisions of the Controlled Substance Act criminalizing the manufacture, distribution, or possession of marijuana to growers and users of marijuana for medical purposes and the Ninth Circuit further held that there is no fundamental right to use medical marijuana in Raich v. Gonzalez, 500 F.3d 850 (2007); and
- K. An October 19, 2009, memorandum from the U.S. Department of Justice indicated the Department's intent to not use Federal resources on marijuana prosecution if an individual's actions are "in clear and unambiguous compliance with existing state laws providing for the medical use of marijuana;" and
- L. The Federal policy shift away from enforcement of the Controlled Substances Act has led to increased interest in the establishment and operation of medical marijuana dispensaries in the City, and has led to an increase in medical marijuana dispensaries throughout the State; and

M. The City Council, in adopting this Urgency Ordinance, takes legislative notice of the following cases that it finds to be relevant to its actions:

1. People ex rel. Lungren v. Peron, 59 Cal.App.4th 1383 (1997), the California Court of Appeal recognizing the limited scope of the Act and the Program, and holding that filling out a form that designates a commercial enterprise as the qualified patient's "primary caregiver" is insufficient to establish a caregiver status.
2. People v. Mower, 28 Cal. 4th 457 (2002), California Supreme Court holding that the defenses accorded by the Act are limited to "patients and primary caregivers" for the possession and cultivation of marijuana only.
3. People v. Urziceanu, 132 Cal.App.4th 747 (2005), California Court of Appeal noting that courts consistently have rejected attempts to broaden the scope of the Act and MMPA and recognizing that the Act did not create a constitutional right to obtain marijuana.
4. City of Garden Grove v. Superior Court, 157 Cal.App.4th 355 (2007), regarding the California Court of Appeal's limited holding that the return of marijuana to a qualified user is not preempted by the Federal Controlled Substances Act.
5. People v. Mentch, 45 Cal. 4th 274 (2008), regarding the California Supreme Court's analysis of the limited application and scope of the Act and the Program, and its holding that a "primary caregiver" status requires a specified showing of consistently providing care, independent of any assistance in taking medical marijuana, at or before the time of assuming the responsibility of assisting with medical marijuana.
6. County of San Diego v. NORML, 165 Cal.App.4th 798 (2008), California Court of Appeal holding that the provisions of the MMPA requiring California counties to issue identification cards to qualified medical marijuana patients are not preempted by the Federal Controlled Substances Act.
7. City of Corona v. Naulls, 166 Cal. App. 4th 418 (2008), California Court of Appeals holding that a use is generally deemed impermissible unless it is expressly permitted in a particular zone.
8. People v. Hochanadel, 176 Cal.App.4th 997 (2009) (review denied by California Supreme Court), California Court of Appeal concluding that the

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operators of a storefront dispensary which sold marijuana to individuals did not operate within the CUA and the MMPA, and did not constitute a primary caregiver such that it was entitled to protections of the CUA and MMPA.

9. City of Claremont v. Kruse, 177 Cal.App.4th 1153 (2009) (review denied by California Supreme Court), California Court of Appeal holding that neither the Act nor the MMPA expressly or impliedly preempt local exercise of land use and zoning police powers.
 10. Qualified Patients Association v. City of Anaheim, 187 Cal. App. 4th 734 (2010), the California Court of Appeal addressed in *dictum* but refused to decide the allowable scope of municipal regulation of medical marijuana dispensaries and specifically whether cities and counties are barred by the CUA and MMPA from using nuisance abatement laws and penal regulation to prohibit the use of property for medical marijuana purposes.
 11. City of Lake Forest v. Moen, et al. (Case No. 30-2009-0029887-CU-MC-CJC), trial court granted Lake Forest's preliminary injunction and found that a city's power to enact land use or zoning laws, and a city's enforcement of existing local laws is not preempted by the Compassionate Use Act and MMPA.
 12. County of Los Angeles v. Hill, 192 Cal. App. 4th 861 (2011), the California Court of Appeal upheld a preliminary injunction issued against a medical marijuana dispensary that opened without county permits, finding that cities and counties can use local zoning authority and civil nuisance abatement laws to regulate and restrict the establishment and location of medical marijuana dispensaries.
- N. Article XI, Section 7 of the California Constitution provides a city may make and enforce within its limits all local police, sanitary and other ordinances and regulations not in conflict with general laws; and
- O. In April 2009, the California Police Chiefs' Association issued a "White Paper" which identifies that, throughout California, many violent crimes have been committed that can be traced back to the proliferation of marijuana dispensaries, including armed robberies and murders, as well as illegal use and sale of marijuana by minors. 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 collectives, cooperatives and dispensaries, along with an illegal resale market. Grow operations in warehouses

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and residences have also led to fires, mold and illegal electrical use. Residences turned into large grow operations can be difficult to re-establish as the intended residential use. Outdoor grow operations have similar impacts, along with odor nuisances; and

P. Based on changes in case and statutory law particularly in the past five years, the 2008 California Attorney General's Guidelines on medical marijuana, as well as new information about the adverse secondary impacts of fixed and mobile dispensaries experienced by other cities and counties, and most recently in Antioch when a dispensary opened without the required approvals and numerous large grow operations have been discovered, it is reasonable to conclude that negative effects on the public, health, safety and welfare may occur in the City as a result of the proliferation of medical marijuana dispensaries and the lack of appropriate regulations governing the establishment and operation of such facilities; and

Q. In order to address both community and statewide concerns regarding the establishment of medical marijuana dispensaries, it is necessary for the City of Antioch staff to study the possible adoption of amendments to the City's Municipal Code and Zoning Code regarding medical dispensaries. Staff needs time to study whether amendments to the City's Municipal Code are necessary to eliminate or minimize the negative secondary side effects resulting from medical marijuana dispensaries identified in the White Paper. Staff needs time to study whether to limit such businesses to certain zoning districts, and which zoning districts would be appropriate for such uses. Staff also needs to study the differences among medical marijuana collectives, cooperatives and dispensaries. Finally, staff needs time to study whether there should be a limit on the number of medical marijuana collectives, cooperatives and/or dispensaries in the City, whether the regulations should allow for more than one collective, cooperative and/or dispensary, and if so, whether there should be regulations as to their proximity to each other; and

R. California Government Code Section 65858 subdivision (a) provides: that city legislative bodies may, to protect public safety, health and welfare, adopt as an urgency measure an interim ordinance prohibiting any uses that may be in conflict with a contemplated general plan, specific plan, or zoning proposal that the legislative body is considering or studying or intends to study within a reasonable time; that adoption of such urgency measures requires a four-fifths vote of the legislative body; that such measures shall be of no effect 45 days from the date of adoption, and may be extended to have a maximum total duration of 2 years; and

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- S. The City Council desires to (1) address the community concerns regarding the establishment and operation of medical marijuana dispensaries, (2) study the potential impacts the medical marijuana dispensaries may have on the public health, safety and welfare, (3) study and determine what local regulations may be appropriate or necessary for medical marijuana dispensaries, (4) study and determine the appropriate zoning and location for medical marijuana dispensaries, if any, and (5) determine appropriate controls for protection of public health, safety and welfare; and

SECTION 2. Moratorium Imposed.

- A. Scope. In accordance with the authority granted the City of Antioch under Article XI, Section 7 of the California Constitution and California Government Code Section 65858, from and after the effective date of this ordinance, no permit or any other applicable license or entitlement for use, including, but not limited to, the issuance of a business license, business permit, building permit, conditional use permit, or zoning text amendment shall be approved or issued for the establishment or operation of a medical marijuana dispensary in the City of Antioch. Additionally, medical marijuana dispensaries are hereby expressly prohibited in all areas and zoning districts of the City.
- B. Definitions.
1. For purposes of this ordinance, “medical marijuana dispensary” or “dispensary” means (1) any facility, building, structure or location, whether fixed or mobile, where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana to two or more of the following: a qualified patient or a person with an identification card, or a primary caregiver in strict accordance with California Health and Safety Code Section 11362.5 *et seq.*, or (2) any facility, building, structure or location where qualified patients and/or persons with identification cards and/or primary caregivers meet or congregate to cultivate or distribute marijuana for medical purposes; or (3) any not-for-profit site, facility or location where two or more qualified patients and/or persons with an identification card associate, meet or congregate in order collectively or cooperatively, to distribute, sell, dispense, transmit, process, deliver, exchange or give away marijuana for medicinal purposes pursuant to Health and Safety Code Section 11362.5 *et seq.* and organized as a marijuana cooperative or collective as set forth in the Attorney General Guidelines. The terms “primary caregiver,” “qualified patient,”

and "person with an identification card" shall be as defined in California Health and Safety Code Section 11362.5 *et seq.*

2. For purposes of this ordinance, a "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the California Health and Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the California Health and Safety Code; a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the California Health and Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the California Health and Safety Code; a residential hospice, or a home health agency licensed pursuant to Chapter 8 of the California Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, California Health and Safety Code Section 11362.5 *et seq.*

- C. Statutory Findings and Purpose. This ordinance is declared to be an interim ordinance as defined under California Government Code Section 65858. This ordinance is deemed necessary based on the findings of the City Council of the City of Antioch set forth in the findings, incorporated into Section 1 of this Ordinance.

SECTION 3. Establishment, Operation and Maintenance of a Medical Marijuana Dispensary Declared a Public Nuisance.

The establishment, maintenance or operation of a medical marijuana dispensary as defined herein within the City limits of the City of Antioch is a public nuisance. Violations of this ordinance may be enforced by any applicable law, with criminal penalties limited if inconsistent with the Compassionate Use Act of 1996 or California Health and Safety Code Section 11362.7 *et seq.*

SECTION 4. Severability.

If any provision of this ordinance or the application to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable. The City Council of the City of Antioch hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 5. CEQA.

- A. This ordinance is not a project within the meaning of Section 15378 of the State CEQA (California Environmental Quality Act) Guidelines, because it has no potential for resulting in physical change in the environment, directly or ultimately.
- B. This ordinance is categorically exempt from CEQA under Section 15308 of the CEQA Guidelines as a regulatory action taken by the City pursuant to its police power and in accordance with Government Code Section 65858 to assure maintenance and protection of the environment pending the evaluation and adoption of contemplated local legislation, regulation and policies.
- C. This ordinance is not subject to CEQA under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. For the reasons set forth in subparagraphs (1) and (2) above, it can be seen with certainty that there is no possibility that this ordinance will have a significant effect on the environment.

SECTION 6. Effective Date.

This Ordinance shall become effective immediately upon passage and adoption if passed and adopted by at least four-fifths vote of the City Council and shall be in effect for 45 days unless extended by the City in accordance with California Government Code Section 65858.

The foregoing ordinance was introduced and adopted at a meeting of the City of Antioch held on _____ by the following vote.

AYES:
NOES:
ABSTAINED:
ABSENT:

Mayor

ATTEST:

City Clerk

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AB

ATTACHMENT "B"

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES

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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.

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April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

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

FEDERAL LAW

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

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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 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

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

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

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

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

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

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician . . .”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

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

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

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

1. Conduct

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

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

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2. Patients and Cardholders

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

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

3. Primary Caregivers

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

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

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

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

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

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

4. Cooperatives and Collectives

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

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

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

LAWS IN OTHER STATES

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

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

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

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

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

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

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

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

HOW EXISTING DISPENSARIES OPERATE

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

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

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

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

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

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

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

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

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

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

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

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

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

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

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

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

B. BURGLARIES

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

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

C. TRAFFIC, NOISE, AND DRUG DEALING

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

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

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

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

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

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

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

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

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

E. POISONINGS

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

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

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

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

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

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

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

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

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

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

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

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

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

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

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

D. INCREASED ORGANIZED GANG ACTIVITIES

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

E. EXPOSURE OF MINORS TO MARIJUANA

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

F. IMPAIRED PUBLIC HEALTH

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

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G. LOSS OF BUSINESS TAX REVENUE

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

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

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

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

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

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

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

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

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B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

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

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

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

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

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

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

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

“Categories:

1. Personal Use
2. Cooperatives or Collectives

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

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

Medical Marijuana Cooperatives or Collectives.

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

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- 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."

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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.

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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.

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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.

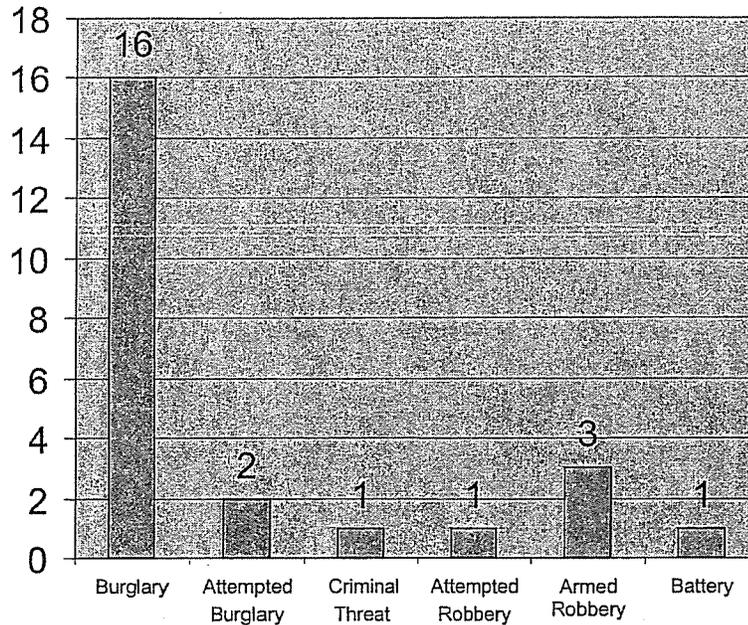
Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have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

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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

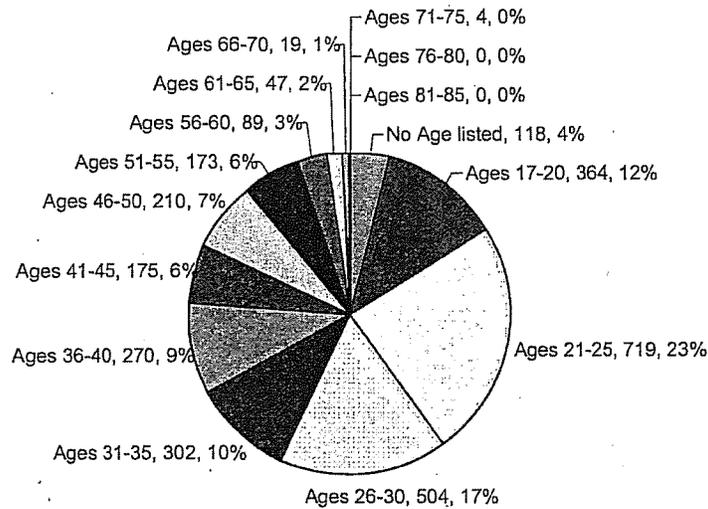
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- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

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

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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

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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

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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,

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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

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

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

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

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

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

4. SANTA BARBARA COUNTY

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

5. SONOMA COUNTY

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

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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.

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PENDING LEGAL QUESTIONS

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

QUESTION

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

ANSWER

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

ANALYSIS

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

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

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

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

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

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

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

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

QUESTION

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

ANSWER

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

ANALYSIS

A. *Federal Law*

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

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

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

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

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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

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

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

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

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

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

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

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B. *State Law*

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

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

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

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

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

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

QUESTION

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

ANSWER

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

ANALYSIS

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

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

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QUESTION

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

ANSWER

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

ANALYSIS

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

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

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

QUESTION

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

ANSWER

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

ANALYSIS

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

OVERALL FINDINGS

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

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

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

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CONCLUSIONS

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

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

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ENDNOTES

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- ² U.S. Const., art. I, sec. 8, cl. 3.
- ³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- ⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
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- ⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- ⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- ⁹ H&S Code sec. 11362.5(a).
- ¹⁰ H&S Code sec. 11362.7 *et. seq.*
- ¹¹ H&S Code sec. 11362.7.
- ¹² H&S Code secs. 11362.71–11362.76.
- ¹³ H&S Code sec. 11362.77.
- ¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
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- ¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
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- ²⁷ Israel Packel, 4-5. Italics added.
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ATTACHMENT "C"

EDMUND G. BROWN JR.
Attorney General



DEPARTMENT OF JUSTICE
State of California

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE *August 2008*

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

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

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

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

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

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

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

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

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

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

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

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

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

D. Taxability of Medical Marijuana Transactions.

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

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

E. Medical Board of California.

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

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

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

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

F. The Federal Controlled Substances Act.

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

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

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

II. DEFINITIONS

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

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

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

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

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III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

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

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

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

4. Possession Guidelines:

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

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

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

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

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

B. Enforcement Guidelines.

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

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

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

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

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

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

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

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

a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.

b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.

c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.

d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.

e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

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

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

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IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ATTACHMENT "B"

CONTRA COSTA TIMES

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South San Francisco bans medical-marijuana collectives

By Neil Gonzales
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Posted: 05/12/2011 12:03:28 PM PDT

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The South San Francisco City Council has decided to ban the establishment of medical marijuana dispensaries — a decision fueled in part by drug cases involving students from a local high school.

Late Wednesday, the council voted 3-2 to prohibit dispensaries after fielding strong community opposition against such operations. Mayor Kevin Mullin, Vice Mayor Richard Garbarino and Councilman Pedro Gonzalez supported the prohibition, while Councilwoman Karyl Matsumoto and Councilman Mark Addiego dissented.

The ban disappointed Scot Candell, a San Rafael-based attorney who represents a group that had been trying to establish a dispensary.

"It's unfortunate that patients in the South San Francisco community won't have a place locally to get their medicine," Candell said. "Their choice now is to procure it illegally in South San Francisco or travel distances to get it in compliance with the law. Unfortunately, some patients don't have the ability to travel distances."

Before the vote, the council heard from many community members opposed to having a collective in South San Francisco. The council also took into account concerns over recent incidents in which more than a dozen El Camino High students got drugs because they had connections to people with a card allowing the purchase of medical marijuana.

"It doesn't bring anything of value to our community," South San Francisco Unified board member Shirlee Hoch said of a collective.

"There are drugs that take care of pain. I'm not saying that medical marijuana is not needed by

some, but certainly it isn't needed by an 18-year-old that says, 'I have a headache (or) I have a backache that I can't get rid of.'"

In one of the El Camino High cases, police Chief Mike Massoni said, five students were caught with marijuana obtained by someone in their group who had turned 18 and obtained a medical marijuana card based on a complaint of wrist pain that he used to buy the drug in San Francisco.

In another case implicating about 10 youngsters, Massoni said, a student sold marijuana cookies and brownies to schoolmates. The student got the products from an older brother who had a medical marijuana card, Massoni said.

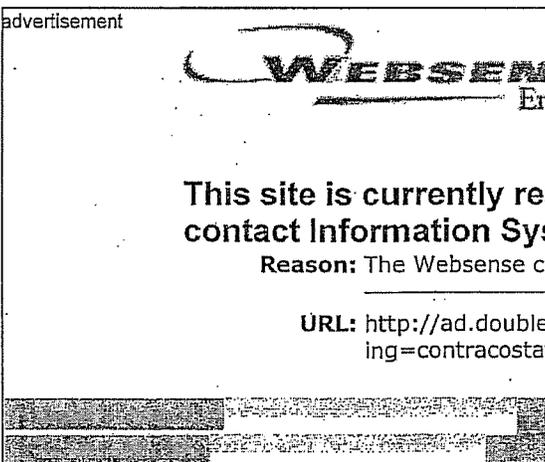
"This issue is coming to a head," Mullin said after hearing that report from Massoni.

The city has had a moratorium on dispensaries since October 2009. The council had been trying to decide whether to lift the moratorium before it was set to expire this October and pass rules governing dispensaries that would have been more stringent than those originally adopted in 2006.

The 2006 regulations were in response to the 1996 state initiative Proposition 215, which legalized medical marijuana.

The school-drug issues and other factors persuaded Garbarino to agree to a ban. "The community just didn't want this," said Garbarino. "They were pretty clear."

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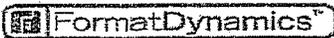
Matsumoto voted against a ban, saying, "I feel strongly that there is a need for medical marijuana. I know there's abuse. But I believe medical marijuana is less insidious than potent drugs."

Contact Neil Gonzales at 650-348-4338.

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Marijuana dispensary targeted by LA shuts down

The Associated Press

Posted: 05/12/2011 06:08:17 AM PDT

LOS ANGELES—A medical marijuana dispensary targeted for closure by the city of Los Angeles has shut down.

The city has been trying to put hundreds of medical pot distributors out of business and last week filed suit against seven of the marijuana dispensaries citing zoning code violations.

Cancare Collective in North Hollywood, one of the seven stores, has now decided to avoid costly litigation and close.

During a Wednesday hearing, the Los Angeles Times says a judge also issued an injunction barring the pot dispensary from operating in North Hollywood or any other location.

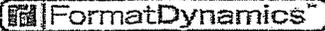
City lawsuits to close dispensaries on grounds they were violating California law by selling marijuana have been successful, but the process dragged on for months. The new zoning violation suits move faster through the courts.

Information from: Los Angeles Times, <http://www.latimes.com>

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East Palo Alto moves to shut down medical marijuana dispensary

By Jesse Dungan
Daily News Staff Writer

Posted: 05/05/2011 12:00:00 AM PDT

Updated: 05/05/2011 12:29:41 AM PDT

As East Palo Alto officials move to shut down a medical marijuana dispensary that has been operating in the city despite being denied a permit, the police chief said his department is investigating whether the facility has run afoul any state or federal laws.

Police asked the Peninsula Caregiver Collective at 1927 Pulgas Ave. on Tuesday to stop selling marijuana, but it refused, police Chief Ron Davis said. In response, police served the facility with a "cease and desist" letter Wednesday.

So far, police have determined only that the dispensary is violating city code because it does not have a permit, Davis said.

But authorities are probing whether Peninsula Caregiver Collective is complying with Proposition 215, the 1996 voter initiative that legalized medical cannabis in California, said Davis, who declined to discuss specifics of the investigation.

"If they're violating state law and federal law I will exercise every option available to the police department to hold them accountable," Davis told The Daily News in an interview Wednesday.

Dispensary owners Willie Beasley and Darren Powell say they are complying with the state law, despite getting the cold shoulder from the city since submitting their permit application about a year ago.

"It's very unfortunate that the city is taking this route to use the police force and its resources in, pretty much, what is a zoning and civil matter," Beasley said Tuesday.

Peninsula

Caregiver Collective's application was denied in April 2010, but the city council is scheduled to hear an appeal of that decision on June 2. Council members have held study sessions on possibly amending the zoning code to address medical marijuana dispensaries.

"There's nothing in the zoning code that states that it allows medical marijuana. ... but also there's nothing in there that states it does not allow medical marijuana," Beasley said.

Because the dispensary was never officially sanctioned, no conditions exist to monitor and ensure it does not pose a threat to the community, according to the police chief.

"In my professional opinion," Davis said, "their defiance of the city's rules and regulations has done nothing less than place this community at great risk."

But Beasley said, "We're a benefit to the community. And the members that come here tell us that. They're glad we're here."

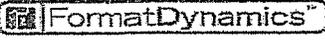
Peninsula Caregiver Collective has been operating for about 40 days, the co-owners said. If they ignore the cease and desist letter and don't close by Friday night, the dispensary could face daily fines.

Email Jesse Dungan at jdungan@dailynewsgroup.com.

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Santa Cruz County supervisors passes new medical marijuana rules

By Jason Hoppin
jhoppin@santacruzsentinel.com

Posted: 05/03/2011 02:30:33 PM PDT

Updated: 05/03/2011 02:30:35 PM PDT

SANTA CRUZ – After a year of debate, the Santa Cruz County board on Tuesday passed new medical marijuana laws that regulates but does not cap the number of local dispensaries and collectives.

The wide-ranging set of rules were welcomed by medical marijuana providers, who see them both as a way to weed out bad seeds and a sign of more widespread acceptance of their operations, 15 years after California voters passed Proposition 215.

The board approved the regulations 5-0. They include regulations requiring an 800-foot buffer between two pot clubs, and a 600-foot buffer between clubs and schools.

A moratorium on new clubs within the county's coastal zone remains in place until the Coastal Commission reviews the regulations, which could take several months.

It is not clear how many clubs are located in unincorporated areas of the county affected by Tuesday's vote, One advocate put to number countywide at 40.

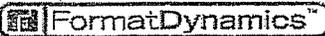
The city of Santa Cruz limits the number of pot clubs to two.

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Police probe suspected arson at NorCal pot co-op

The Associated Press

Posted: 05/01/2011 11:56:14 AM PDT

SOQUEL, Calif.—Santa Cruz County authorities are investigating a suspected arson at a medical marijuana cooperative after an early morning fire Saturday caused an estimated \$50,000 in damages.

Brianna Kovach, an owner of the Capitola Healing Association in Soquel, tells the Santa Cruz Sentinel that security cameras captured footage of two young males using a hammer to break the co-op's front window and then throwing a Molotov cocktail inside, setting off the burglar alarms.

Kovach says she and her co-owner Chris Morganelli, who live nearby, rushed to the scene and were able to put out most of the blaze with a garden hose before firefighters arrived.

Authorities say none of the surrounding businesses were damaged. No arrests have been made, and the co-op is closed until further notice.

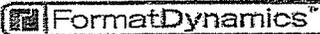
Information from: Santa Cruz Sentinel, <http://www.santacruzsentinel.com>

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Pot club firebombed in Soquel

Lt. Amy Christey with the Santa Cruz Sheriff's Office said deputies also responded to the scene and that deputies are still the investigating.

The business will be closed until further notice

By Kimberly White
Posted: 04/30/2011 05:45:00 PM PDT

Updated: 04/30/2011 10:03:45 PM PDT

SOQUEL -- A cannabis cooperative was damaged early this morning after a Molotov cocktail was tossed through its front door.

Security cameras captured video of two young male vandals -- their faces partially obscured by bandannas -- using a hammer to break the front window of the Capitola Healing Association and throwing the device inside about 2:15 a.m., said Brianna Kovach, who owns the business with her partner, Chris Morganelli.

When the device entered the business, it set off the motion detectors, causing all of the burglar alarms to go off at once.

Kovach and Morganelli, who live nearby, were contacted by the alarm company and rushed to the cooperative. They used a garden hose to put out the fire, then called 911.

A ladder truck and two engines responded to the scene after receiving a call about an unconfirmed structure fire, according to Owen Miller, battalion chief with Central Fire Protection District. But by the time they arrived, the fire had been mostly extinguished.

After viewing the video footage, he said it looked like the device "broke up instantaneously."

"It looked like one of the individuals may have had flame on him," he said, adding that the fire spread through the business and set aflame a seat cushion, part of the carpet and a nearby table.

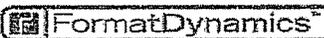
Firefighters had to take down the ceiling and a wall to get at the hot spots caused by the blaze, but none of the surrounding businesses were damaged.

Miller estimated damages at the cooperative at \$50,000.

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San Jose: Fire at now-vacant former pot club is second in four months

By Lisa Fernandez lfernandez@mercurynews.com
Contra Costa Times

Posted: 04/29/2011 06:42:39 AM PDT

San Jose firefighters put out a two-alarm blaze Friday morning at a now-vacant home that used to be a cannabis club. It was the second fire at this same address in four months, according to San Jose Fire Capt. Rob Brown.

Friday's fire was reported at 2:48 a.m. in the 400 block of Drake Street.

Brown said when fire crews arrived it was "pretty active," with "fire shooting 30 feet in the air."

Fire crews knocked the fire down by 3:12 a.m., Brown said, and had it under control by 4:19 a.m., he said.

The fire was so hot, it spread next door. The attic at that house caught on fire, Brown said, and those residents were evacuated and displaced from their severely damaged home.

No injuries were reported, however.

Brown said he did not know what caused the original fire. The neighbors told him the home had been vacant for several months, but they believed the power had been restored there a month ago.

In January, a two-alarm fire broke out at the same address, where the occupants ran the "Herb Appeal," which billed itself as a "compassionate medical cannabis collective" on its Facebook page.

That collective was not an illegal grow house, which throughout the nation were linked to fires caused when marijuana growers jury-rigged electrical wiring. At least eight of those fires erupted in San Jose in 2010, according to an analysis by the Mercury News. Often, officials say, that process overloads and short circuits electrical systems that can cause fires.

Staff writer Mark Gomez contributed to this report. Contact Lisa Fernandez at 408-920-5002.

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Calif grand jury probes small-town pot farm plan

The Associated Press

Posted: 04/27/2011 02:21:58 PM PDT

Updated: 04/27/2011 03:29:39 PM PDT

ISLETON, Calif.—Officials in the small California farming town of Isleton faced legal scrutiny Wednesday over their licensing of a medical marijuana growing operation to raise revenue for the struggling city.

The mayor, city manager, police chief and others were subpoenaed by Sacramento County prosecutors to testify before a grand jury.

A letter to the City Council from District Attorney Jan Scully's office said the decision to allow the farm likely breaks state and federal laws. Most officials were expected to plead the Constitution's Fifth Amendment against self-incrimination.

Marijuana is banned by U.S. law but allowed for medical use under a California measure.

"I have never seen anything like how the district attorney is treating us. It's over the top, downright hostile," City Manager Bruce Pope told the San Francisco Chronicle. "We're not going to just take it lying down."

The farm on the edge of the town of 800 people about 40 miles south of Sacramento is set to open this summer. The planned 4,000-square-foot facility would have 14 greenhouses when completed.

Delta Allied Growers agreed in a contract approved in October to pay the city the greater amount of \$25,000 a month or 3 percent of gross receipts in exchange for the permit to operate the farm. The city's annual budget is about \$1.3 million.

"This is a small-scale, secure, R&D-focused facility operating under a legal permit from the city of Isleton," said

Delta Allied spokesman Scott Hawkins.

The city of Oakland last summer approved a similar but larger-scale plan to license four industrial-scale pot-growing operations. That effort was placed on hold after warnings from prosecutors that city officials could face criminal charges and growers would not be immune from a federal crackdown.

Isleton has faced controversy before over other revenue-raising endeavors. The city made as much as \$400,000 annually in the 1990s from concealed weapons permits issued by the police chief, the Chronicle reported.

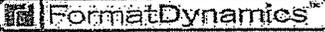
The state eventually shut down the program, and the police chief was fired.

A grand jury probe in 2008 called for the city to disband, claiming it was "in a state of perpetual crisis."

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Daly City could extend medical-marijuana moratorium again

By Neil Gonzales
ngonzales@bayareanewsgroup.com
San Jose Mercury News

Posted: 04/21/2011 07:31:10 PM PDT

Daly City might extend a moratorium on the establishment of medical marijuana collectives for almost another year.

The City Council originally approved a 45-day moratorium in March 2010 and later extended it for 12 months. With that extension set to expire May 6, the council on Monday is scheduled to consider tacking on another 10 months and 15 days to the moratorium.

In seeking another extension, city leaders say they simply need more time to research medical marijuana issues and sit down with all those concerned. A temporary ban can run for a maximum of two years under state law, according to a city staff report.

"We don't want to put something through until we get all the information," Mayor Carol Klatt said. "I haven't talked to the medical marijuana people, and I haven't talked to the patients."

But Scot Candell, a San Rafael-based attorney who represents medical marijuana interests, argued that the moratorium just hurts the people who legitimately need the drug for medical reasons.

"It's a disservice to prohibit patients from getting their medicine in Daly City – and any other city or county, for that matter," said Candell, citing Proposition 215, the 1996 state initiative that legalized medical marijuana.

Concerned about the potential increase in crime and other problems resulting from medical marijuana establishments, many cities have imposed moratoriums or bans on collectives.

Although South San Francisco has a moratorium, leaders there are leaning toward allowing a collective to set up shop.

But they first want to study developing a competitive process to review applications for such an enterprise.

The South San Francisco Planning Commission was slated to review that process Thursday night.

Contact Neil Gonzales at 650-348-4338.

if you go

What: Daly City Council meeting
Where: City Hall, 333 90th St.
When: 7 p.m. Monday



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CONTRA COSTA TIMES

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229 apply to be in LA medical marijuana lottery

The Associated Press

Posted: 02/24/2011 08:36:46 PM PST

LOS ANGELES—More than 200 medical marijuana collectives have applied to be in a lottery that will select 100 legal dispensaries in Los Angeles.

The city clerk's office said Thursday that 229 collectives submitted forms by the Feb. 18 deadline.

The lottery is the city's latest attempt to lower the number of dispensaries and separate legal from illegal ones.

It's unclear when the lottery will be held. The clerk's office must first review the forms to determine whether the applicants meet the criteria to be included in the drawing.

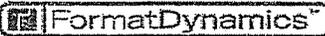
The collectives must submit proof that they've been in business since Sept. 14, 2007 and have at least one of the same operators since that time. City officials said they believe that fewer than 135 collectives can meet the requirements.

Information from: Los Angeles Times, <http://www.latimes.com>

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Lawsuits challenge Los Angeles pot clinic lottery

Associated Press

Posted: 04/21/2011 06:02:59 AM PDT

Updated: 04/21/2011 06:03:00 AM PDT

LOS ANGELES – Nearly two dozen medical marijuana dispensaries are suing Los Angeles over a planned lottery to determine which clinics remain in business.

The Los Angeles Times says 21 dispensaries sued last week to halt the lottery – a cornerstone in the city's efforts to stem the proliferation of dispensaries.

The lottery would randomly select 100 dispensaries to remain in business. The lawsuit calls the system arbitrary and unfair.

Dispensary owner Yamileth Bolanos says she could lose her business even though she followed all city directives.

Another suit challenging the lottery was filed in March by a dispensary that's been barred from participating. The lottery is only open to stores that were open in 2007.

Jane Usher, a special assistant city attorney, says the city disputes the claims in the lawsuits.

Information from: Los Angeles Times

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Santa Clara County District Attorney crafting guidelines to allow pot clubs

By Sean Webby swebby@mercurynews.com

Posted: 04/25/2011 06:19:46 PM PDT

Updated: 04/25/2011 08:07:29 PM PDT

Making a clear break from the hard-line attitude of his predecessor and other top state prosecutors, Santa Clara County District Attorney Jeff Rosen is expected to soon release guidelines that could allow marijuana collectives to operate legally in the county.

If approved, the guidelines could all but end the high-profile raids that shut down some collectives in the South Bay last year. Influential Los Angeles County District Attorney Steve Cooley, other DAs and commanders of a local narcotics task force have said such raids are justified because most collectives in San Jose and other cities sell marijuana in a way that is not allowed by the state's medical marijuana law.

But the local raids stopped late last year, after Rosen's office asked for a hiatus to review the laws. Now, his office is preparing guidelines that require them to operate as the law says they must — as nonprofits serving qualified patients — rather than treat them as illegal, for-profit businesses.

"We have to enforce what the law really is," chief assistant district attorney Jay Boyarsky said, "not what we might wish it to be."

In recent months, Santa Clara County has struggled with two questions posed by the state's marijuana law: Where marijuana collectives should be allowed, which is a decision for city councils, and how they must operate, which is a law enforcement issue. San Jose has borne the brunt of the struggle, with more than 100 clubs proliferating

across the city. The City Council decided last week to set a maximum of 10.

Direct communication

Rosen's proposed protocol, obtained by this newspaper, will provide a new legal road map for law enforcement to use in dealing with the clouded and highly controversial issue. Sometime in coming weeks, a draft is expected to be put out for public comment, after which revised guidelines are expected to be officially released.

The protocol emphasizes cooperation and communication over cop raids. For example, the protocol suggests that letters be sent to dispensaries detailing possible violations and asking that they be remedied. Last year's raids occurred without any warning and sparked protests from marijuana advocates.

"There will be times when there are arrests and investigations and search warrants," said James Sibley, who heads Rosen's narcotics unit and wrote the protocols after several months of investigation. "I think we can do it more efficiently and a lot more within the spirit of the law."

Sibley added: "If the (marijuana dispensaries) are genuinely trying to comply, then giving them opportunity to do so seems to better fulfill the public intent."

As the draft protocol states, some marijuana advocates "fight for complete legalization" and some in law enforcement "continue to argue that marijuana is simply a dangerous drug with no medical uses or benefits."

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Federal law outlaws all marijuana usage. California's medical marijuana law, first passed in 1996, allows nonprofits to distribute marijuana to qualified patients suffering from serious illnesses. And that has spawned a bewildering patchwork of local regulations and bans.

Meanwhile, in the past year or so, more than 100 dispensaries have sprouted throughout San Jose, exploiting a vacuum of regulations that existed until the City Council last week voted to reduce their quickly growing number to 10.

But how should they be operated under the law? While the state attorney general's guidelines are being revised, it has largely been left up to law enforcement to make the hard decisions.

As early as late last year, a prosecutor in Rosen's office and some law enforcement officials from the California Special Enforcement Team were publicly warning that any profitable sale of marijuana is illegal, and so were – by extension – virtually all the clubs. There were a series of narcotics raids and arrests that were largely based on this principle.

Police chiefs and the commander of a state narcotics task force have called dispensary owners "glorified drug dealers" out to make a buck. With the blessing of its top prosecutor, San Diego, for example, has recently raided some of its dispensaries based on the profit theory.

But Rosen's office calls this view "flawed."

"A limited number of jurisdictions and individual prosecutors have advanced a theory that all 'sales' are illegal. There is no legal precedent supporting this interpretation," the proposed protocol says.

Delivery possible

Another change to the county policy would be toward marijuana deliveries. Last year, close to two dozen were arrested for marijuana delivery services during a sting operation that the County Special Enforcement team dubbed "Up in Smoke."

Sibley said he would propose that such services are legal as long as the marijuana clubs do not advertise the service and deliver only to established patients.

When asked whether the new philosophy would affect the criminal cases still pending after the sting and the raids, Sibley said that it was possible, but that each case would be judged on its own merits.

Bob Cooke, the top state narcotics agent who oversaw the raids, said he disagreed with the new protocol's perspective on marijuana club profit and said it was a legitimate and legally supported rationale.

He said the state's marijuana law has been perverted. "I believe that people who are gravely ill should have it at their disposal. But I believe all these other people involved are in it just to make money," he said.

But Dave Hodges, who opened one of the city's first dispensaries in the latest wave, called the protocol "awesome."

"It clarifies a lot of the issues," Hodges said. "This is what a lot of advocates have been asking to see for a long time, it just hadn't been respected. It's great to hear that the DA is taking this approach."

Contact Sean Webby at 408-920-5003.

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Rio Vista bans pot dispensaries

By Roman Gokhman
Contra Costa Times

Posted: 04/22/2011 11:26:22 AM PDT

Updated: 04/23/2011 05:25:48 PM PDT

RIO VISTA -- City leaders last week banned medical marijuana dispensaries here.

The ban came nearly a year and a half after a resident applied to open a dispensary less than a block from the public swimming pool, in December 2009. The city adopted a 45-day moratorium prohibiting marijuana dispensaries in April 2010 while city planners prepared a report on how they would affect the city.

The moratorium was extended to a full year and due to expire this month.

Mayor Jan Vick said city leaders had discussed a dispensary ban before the permit application in 2009.

"It caused us to take action a little faster than we would have otherwise," she said.

Rio Vista police Chief Bill Bowen said the city does not want to deal with more applications for dispensaries.

Rio Vista's action comes after Isleton, a neighboring city in Sacramento County, approved a large marijuana farm, which will pay the city \$25,000 per month to operate.

The decision to approve the farm came under scrutiny, and city leaders, including the city manager and police chief, have been subpoenaed to testify before the Sacramento County grand jury next week.

Bowen said the Isleton operation is illegal, and he is concerned that it could lead to crime in his city.

"What they do over there could impact us," he said. "We could be dealing with issues associated with

their current grow in our city."

Isleton approved the Delta Allied Growers marijuana

farm in September. The company promised the cash-strapped town of about 800 residents either \$25,000 per month, or 3 percent of gross receipts -- whichever is greater.

Under the agreement, none of the locally grown marijuana would be sold within the town. Some of the money the city collects from the marijuana farm would be used to hire several additional police officers, and the company would install numerous security cameras that would be accessible by the Police Department.

"Short of these conditions, we would not have approved this," said Isleton City Manager Bruce Pope, who added that the city has denied the applications of several proposed marijuana dispensaries in the past. Isleton has only one such business.

The Sacramento County District Attorney's Office declined to comment on the grand jury investigation or the legality of the marijuana-growing operation.

Bowen said the dispensary ban in Rio Vista also reduces the potential for marijuana to be sold illegally to those who do not have a doctor's prescription.

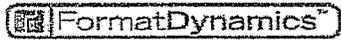
"We have been seeing an increase in marijuana usage among youths," he said.

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Rio Vista planners reviewed ordinances in Roseville, Rocklin, Folsom and Galt – which ban dispensaries – as well as those in Berkeley, Sacramento and Oakland – which conditionally permit them.

Vick said the application for the downtown dispensary has not resurfaced since it was denied in 2009, and the city has not dealt with any other permit requests.

Council members Thursday passed a second ordinance, in conjunction with the marijuana dispensary ban, that amends the zoning code to clarify that everything that is not permitted is also prohibited.

"It's a strengthening of the zoning ordinance," Councilman Fred Kogler said. "It gives the City Council more control."

Contact Roman Gokhman at 925-779-7189. Follow him at [Twitter.com/romithewriter](https://twitter.com/romithewriter).

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and
FIRST CLASS MAIL

March 18, 2011

Mr. Ryan Graham
Deputy Director of Community Development
City of Antioch
PO Box 5007
Antioch, California 94531

Re: Case Number CE1103-006
Address: 4373 Hillcrest Avenue
Antioch

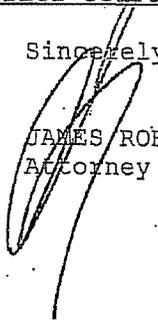
Dear Mr. Graham:

This is in response to your letter of March 7, 2011.

~~Please be advised that David Uwanawich does not occupy 4373 Hillcrest Ave Antioch, and that the entity with respect to which he is affiliated has vacated.~~

As an aside, your letter seems to suggest that even though California law explicitly permits this type of activity, that the city ordinances can simply ignore California law and point to Federal Law. Courts have already addressed this issue, and your assertion is incorrect. The City of Antioch is a subdivision of the sovereign State of California. As such, the City may not point to federal law to disregard the Medical Marijuana Program Act. See Qualified Patients Association v. City of Anaheim G040077, City of Garden Grove v. Sup Ct (Kha) (2007) 157 Cal.App.4th 355, 68 Cal.Rptr.3d 656 and County of Butte v. Sup.Ct (2009) 175 Cal.App.4th 729, 96 Cal.Rptr.3d 421. As pertinent here, the Courts held local entities operate under the color of State authority, and must follow state law. The California Constitution provides that a municipal ordinance is preempted by State Law and, therefore, void if it conflicts with state law. County of Butte v. Superior Court, supra, at 740.

Sincerely yours,


JAMES ROBERTS
Attorney at Law

JR:jye

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AT

Jeremy Petrell
St. Augustine's Collective
Oakley, CA 94561

March 15, 2011

Honorable Councilmembers
City Council, The City of Antioch
P.O. Box 5007
Antioch, CA 94531

Honorable Councilmembers:

This letter is intended to request that you investigate putting into place a local, regulatory framework that explicitly allows for the establishment of a small number of sanctioned, properly regulated storefront collectives within the City of Antioch.

In 1996, California voters passed Proposition 215 ('Prop 215')¹ which allowed for the use of medical cannabis by patients who had received a recommendation from their doctor in order to alleviate symptoms of various ailments, as codified in Section 11362.5² of the California Health and Safety Code. In 2003, Governor Gray Davis, signed into law California Senate Bill 420 ('SB420')³, which clarified the scope and purpose of Prop 215 as well as established the California Medical Marijuana Program. This program included as two of its stated goals: encouraging the development of "a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof", as well as the enhancement of "access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects."

In 2008, further clarification was provided by then Attorney General Jerry Brown in the form of a set of guidelines titled: "Guidelines For The Security And Non-Diversion Of Marijuana Grown For Medical Use."⁴ ('AG Guidelines') These guidelines included the following provisions:

Under California law, medical marijuana patients and primary caregivers may "associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes." (§ 11362.775.) [...] Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes.[...] A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a "cooperative" (or "coop") unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (Id. at § 12311(b).) Cooperative

¹ <http://vote96.sos.ca.gov/Vote96/html/BP/215text.htm>

² <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=hsc&group=11001-12000&file=11357-11362.9>

³ http://info.sen.ca.gov/pub/03-04/bill/sen/sb_0401-0450/sb_420_bill_20031012_chaptered.pdf

⁴ http://ag.ca.gov/cms_attachments/press/pdfs/n1601_medicalmarijuanaguidelines.pdf

C108
EZ

corporations are "democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons." (Id. at § 12201.) [...] Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed circuit (*sic*) of marijuana cultivation and consumption with no purchases or sales to or from non-members. [...] Marijuana grown at a collective or cooperative for medical purposes may be:

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

As a result of Prop 215, SB420 and the AG Guidelines, a suitable regulatory regime exists within the state of California on which to base a local framework that ensures the safe, proper, and legal operation of storefront cooperatives for the mutual benefit of their member patients, the local community and the city of Antioch at large. Many cities throughout California have successfully created and implemented such regulations and have experienced the benefits of allowing for controlled and monitored distribution of medical cannabis to patients in need. Conversely, cities in California that choose not to sanction sales or create regulatory structures, often face a growing number of non-sanctioned, unmonitored dispensaries that work to stifle any attempt to be shut down by the city by starting costly court battles which often drag out for months or years at the mutual expense of the defendants and the city⁵. For this reason, we encourage you to preempt this potential problem by allowing for a limited number of store-front cooperatives to operate with the city's blessing and oversight.

In addition to providing a better quality of life for those of your constituents who use marijuana medicinally, establishing rules for allowing medical cannabis collectives to operate can also be an important source of income for cities struggling financially during the current economic crisis. In 2007, the California Board of Equalization ('BOE') issued two special notices⁶⁷, affirming its policy of taxing medical marijuana transactions. The revenue from this taxation is divided between California's General Fund and the cities and counties where the transaction was made. In addition to sales tax revenue, more and more cities are opting to create additional excise taxes⁸, the proceeds

⁵ <http://www.marijuanalawverblog.com/2010/12/riversides-fight-against-medical-marijuana-dispensaries-includes-suing-banks-property-owners-mortgag.html>

⁶ <http://www.boe.ca.gov/news/pdf/medseller2007.pdf>

⁷ <http://www.boe.ca.gov/news/pdf/173.pdf>

⁸ <http://latimesblogs.latimes.com/lanow/2010/11/prop-19-fails-but-voters-approve-marijuana-taxes-in-several-california-cities.html>

C109
EB

of which go directly to the city levying them. This strategy has proven successful for offsetting some of the budget shortfalls that cities are facing in the current, harsh economic climate. Any additional costs associated with regulating and monitoring the operations of store-front cooperatives can be offset by the imposition of application, licensing and operating fees, effectively making the sanctioning of such cooperatives a net positive for the city budget.

Allowing regulated storefront cooperatives to operate in your jurisdiction can also reduce crime and the burden on local law enforcement by reducing income to illegal "street dealers", removing the need for patients to stockpile larger than normal quantities of medical cannabis for fear of issues with availability, and by eliminating the need of patients to associate with what are often less than reputable sources for the medicine that they need. Because of the transfer of these transactions from shady street corners to clean, safe, regulated facilities, most cities that institute a well thought out policy for cooperatives experience a drop in marijuana related crime. In addition, it makes it more difficult for minors to obtain the drug because of the strict verification procedures observed by regulated cooperatives.

For the reasons listed above, we respectfully ask the Antioch City Council to consider taking steps toward the creation of regulations designed to permit a small number of storefront cooperatives to operate within the city of Antioch to satisfy the medical needs of legitimate patients whose doctors have recommended the use of cannabis to alleviate their symptoms. After careful consideration, even the staunchest opponents to medical cannabis often come to the conclusion that medical cannabis should be made available to patients in need. This view is widely supported by a majority of Californians as well as many individuals and organizations in business, government and law enforcement. After hearing two years of testimony, the DEA's chief administrative law judge ruled that "Marijuana, in its natural form, is one of the safest therapeutically active substances known ... It would be unreasonable, arbitrary, and capricious for [law enforcement] to continue to stand between those sufferers and the benefits of this substance."⁹

Sincerely,



Jeremy Petrell
St. Augustine's Collective
925-382-6158

⁹ "In the Matter of Marijuana Rescheduling Petition," DEA Docket No. 86-22, September 6, 1988

C110
A4

Wehrmeister, Tina

From: St Augustines Collective [staugustines215@gmail.com]
Sent: Monday, April 25, 2011 4:04 PM
To: Davis, Jim; Harper, Wade; Agopian, Gary; Brian-Kalinowski; Rocha, Mary; Wehrmeister, Tina; Nunnally, Brian; Jakel, Jim; Nerland, Lynn Tracy
Subject: St. Augustines Collective
Attachments: Letter to Antioch Council.pdf

Honorable Council Members and City Officials,

Please find the attached letter, and links. I Thank You in advance for your time. Please don't hesitate to call me to discuss any questions or, concerns. I look forward to hearing from you. Our intentions are to work in partnership with the city, and police department to provide safe access, not to open any establishment without your blessing.

Regards,

Jeremy Petrell
925-382-6158

C111
AS



Americans For Safe Access

Advancing Legal Medical Marijuana Therapeutics and Research

City Ordinances (42)

Albany
 Angels Camp
 Berkeley
 Citrus Heights
 Cotati
 Diamond Bar
 Dunsmuir
 Eureka
 Fort Bragg
 Jackson
 La Puente
 Laguna Woods
 Long Beach
 Los Angeles
 Malibu
 Mammoth Lakes
 Martinez
 Napa
 Oakland
 Palm Springs
 Placerville
 Plymouth
 Redding
 Richmond
 Ripon
 Sacramento
 San Carlos
 San Francisco
 San Jose
 San Mateo
 Santa Barbara
 Santa Cruz
 Santa Rosa
 Sebastopol
 Selma
 South El Monte
 Stockton
 Tulare
 Visalia
 West Hollywood
 Whittier
 Yucca Valley

County Ordinances (9)

Alameda
 Calaveras
 Kern
 San Diego
 San Luis Obispo
 San Mateo
 Santa Barbara
 Santa Clara
 Sonoma

City Moratoriums (103)

Adelanto
 Aliso Viejo
 American Canyon
 Anderson
 Arcata
 Atwater
 Baldwin Park
 Banning
 Barstow
 Beaumont
 Beverly Hills
 Brea
 Calexico
 Calimesa
 Calistoga
 Carpinteria
 Carson
 Clearlake
 Coachella
 Colton
 Corning
 Corte Madera
 Chula Vista
 Daly City
 Danville
 Downey
 Dunsmuir
 El Centro
 Etna
 Fairfax
 Farmington Hills
 Fillmore

Fountain Valley
 Galt
 Glendale
 Greenfield
 Half Moon Bay
 Hemet
 Imperial Beach
 La Habra
 Lafayette
 Laguna Beach
 Laguna Niguel
 Lake Elsinore
 Livingston
 Lodi
 Loma Linda
 Loomis
 Los Altos
 Los Gatos
 Marin City
 Menifee
 Mill Valley
 Monterey
 Moreno Valley
 Morgan Hill
 Morro Bay
 Mount Shasta
 Mountain View
 National City
 Novato
 Oakdale
 Oceanside
 Orange
 Orinda
 Orland
 Paradise
 Perris
 Porterville
 Rancho Cordova
 Rancho Cucamonga
 Rancho Mirage
 Red Bluff
 Redlands
 Redwood City
 Rio Dell

Headquarters:

1322 Webster St, Suite 402, Oakland, CA 94612
 PHONE: 510.251.3856 FAX: 510.251.2036

National Office

1730 M Street NW, Washington DC 20036
 PHONE: 202.857.4272 FAX: 202.857.4273

General Information

WEB: www.AmericansForSafeAccess.org
 TOLL FREE: 1.888.939.4367

CI12
 66

Rosemead
Salinas
San Bruno
San Dimas
San Fernando
San Juan Bautista
San Ramon
Santee
Sausalito
Scotts Valley
Shasta Lake
Signal Hill
Soledad
Sonora
South Gate
South Lake Tahoe
South San Francisco
Tehachapi
Temple City
Vacaville
Ventura
Victorville
Walnut Creek
Watsonville
West Sacramento
Westlake Village
Yreka

County Moratoriums (15)

Butte
Colusa
Fresno
Glenn
Lake
Madera
Nevada
San Bernardino
San Joaquin
Santa Cruz
Shasta
Solano
Tehama
Trinity
Tulare

City Bans (143)

Alameda

Anaheim
Antioch
Arroyo Grande
Atascadero
Auburn
Azusa
Benicia
Blythe
Brawley
Brentwood
Buellton
Buena Park
Camarillo
Ceres
Chino
Claremont
Cloverdale
Clovis
Colma
Concord
Corona
Costa Mesa
Cypress
Davis
Dixon
Desert Hot Springs
Downey
Dublin
El Cerrito
Elk Grove
Emeryville
Escondido
Fairfield
Folsom
Fontana
Fortuna
Fremont
Fresno
Fullerton
Garden Grove
Gardena
Gilroy
Goleta
Grand Terrace
Grass Valley
Grover Beach
Guadalupe

Hawthorne
Hayward
Healdsburg
Hercules
Hermosa Beach
Hesperia
Highland
Hollister
Huntington Beach
Indian Wells
Indio
Inglewood
La Canada
La Mirada
La Palma
La Quinta
Laguna Hills
Lake Elsinore
Lake Forest
Lawndale
Livermore
Lincoln
Lompoc
Los Banos
Manhattan Beach
Manteca
Marina
Merced
Millbrae
Mission Viejo
Modesto
Montclair
Monterey Park
Moorpark
Murrieta
Nevada City
Newark
Norco
Oakdale
Oakley
Ontario
Pacific Grove
Palm Desert
Palos Verdes Estates*
Pasadena
Paso Robles
Patterson

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PHONE: 202.857.4272 FAX: 202.857.4273

General Information

WEB: www.AmericansForSaleAccess.org
TOLL FREE: 1.888.939.4367

C113
AT

Petaluma
Pico Rivera
Pinole
Pismo Beach
Pittsburgh
Placentia
Pleasant Hill
Pleasanton
Redondo Beach
Ridgecrest
Riverbank
Riverside
Rocklin
Rohnert Park
Roseville
San Bernardino
San Jacinto
San Juan Capistrano
San Leandro
San Luis Obispo
San Marcos
San Pablo
San Rafael
Santa Ana
Santa Clarita
Santa Maria
Seal Beach
Seaside
Simi Valley
Solvang
Sunnyvale
Susanville
Sutter Creek
Temecula
Torrance
Turlock
Tustin
Ukiah
Union City
Upland
Vista
Wildomar
Willits
Windsor
Woodland
Yountville
Yuba City

Yucaipa

County Bans (12)

Amador
Contra Costa*
El Dorado
Lassen
Los Angeles
Madera
Merced
Orange
Placer
Riverside
Stanislaus
Sutter

*Ban ordinance allows for one dispensary.

Headquarters 1322 Webster St, Suite 402, Oakland, CA 94612 PHONE: 510.251.1856 FAX: 510.251.2036	National Office 1730 M Street NW, Washington DC 20036 PHONE: 202.857.4272 FAX: 202.857.4273	General Information WEB: www.AmericansforSafeAccess.org TOLL FREE: 1.888.939.4367
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C114
68

ATTACHMENT "D"

Neighbors upset over Concord homeowner's backyard marijuana plants

By David DeBolt Contra Costa Times San Jose Mercury News

Posted:

ContraCostaTimes.com

CONCORD -- Neighbors of a backyard marijuana grow operation say while such a crop may be legal under state law, they fear it could attract crime -- a concern city officials share.

The marijuana plants are visible through the home's fence, and the potent smell has been wafting through the neighborhood, a neighbor told the City Council on Tuesday.

Mayor Ron Leone has asked administrators to present the City Council some options for regulating and potentially banning outdoor medical marijuana cultivation.

A group of neighbors uncovered the operation after smelling an odor resembling a skunk's and called police, said one neighbor, who gave her name as simply "Evelyn."

"I was really in shock when I received the news that they had the paperwork from the state that allowed them to cultivate marijuana in their backyard," Evelyn told the council. "A lot of the neighbors who are upset about this didn't want to come tonight because they are afraid They are afraid for their neighborhood."

Officials have confirmed that the people living in the home in question are following the guidelines set by Proposition 215, the state measure voters passed in 1996 that allows patients and their designated caregivers to possess and cultivate marijuana for medicinal purposes.

Officials would not release the location of the home, fearing that doing so would endanger the residents and neighbors.

The homeowner growing the marijuana could not be reached, but a man who lives there earlier told KTVU the house is part of a collective that sells its plants to dispensaries.

"A lot of these people are homeowners; they've probably been here 20-plus years," the man, who identified himself as "Joe," said of his neighbors. "Of course they are more than entitled to be concerned about their neighborhood."

Vice Mayor Bill Shinn, who spent 30 years with the Contra Costa County Sheriff's Office, said outdoor operations in residential neighborhoods, while rare, should not be allowed in Concord.

"They end up becoming victims of home invasions," said Shinn, adding that he supports patients' rights to use medical marijuana. "Unless we have an absolute ability to control it, it just gets out of hand."

Several cities around the state have enacted ordinances to regulate, restrict or ban medical marijuana dispensaries, but there is nothing on the books in Concord. A model for what Concord could adopt can be found in Moraga, where in 2011 the Town Council extended its ban on medical marijuana dispensaries to include banning outdoor grow operations after residents complained about one in a neighbor's yard.

"It's worked out well," said Moraga police Chief Robert Priebe. "We have had no issues."

DI

Concord City Attorney Mark Coon is preparing a memo to present to the City Council at a yet-to-be-decided meeting.

Leone said he sympathizes with the neighbors.

"It troubles me so that's why I've asked the city to look into the possibility of an ordinance that perhaps could restrict the growth to indoors," he said.

David DeBolt covers Concord and Clayton. Contact him at 925-943-8048. Follow him at [Twitter.com/daviddebolt](https://twitter.com/daviddebolt).

Debate over growing medical marijuana outdoors heads to Concord City Council

By David DeBolt Contra Costa Times Contra Costa Times
Posted:

ContraCostaTimes.com

CONCORD -- The question of whether to allow patients to grow medical marijuana outdoors has divided a residential street on the edge of the city and now is headed for a City Council discussion.

Council members Tuesday plan to take public comment before deciding whether the city should continue to allow patients to grow marijuana for medicinal purposes outdoors or move toward banning it citywide.

The issue received little attention until Evelyn Freitas approached the City Council in October, telling officials about a crop of marijuana in the backyard of a home across the street. Freitas said this year's crop was particularly potent, reeked like a "skunk" and posed a risk to safety in the Dana Estates neighborhood.

In the past few weeks, Freitas has dropped off fliers on neighborhood doorsteps warning residents about the problem and the upcoming council meeting. She said last week she is not against medical marijuana but is not convinced her neighbors are following the law.

"It makes me angry that people are taking advantage of this," Freitas said.

But the owner of the home, Chris Olsen, has maintained he has followed all laws and ran an operation that was peaceful and safe for years until a television news crew showed up at his house in October after neighbors invited them. The KTVU report did not identify Olsen or his address, but Olsen said two men broke into his backyard and tried to steal his plants a few days after the news report.

His grow operation is legal under state law, police officials have said.

"There's plenty of bigger and better issues that we could be spending our time on," Olsen, 24, said from his front porch last week.

In 2005, the city banned medical marijuana dispensaries, but the ordinance did not speak to medical marijuana patients and their caregivers growing marijuana inside and outside of homes.

Several California cities have either banned or limited outdoor cultivation, including Clovis, Elk Grove, Moraga, Rocklin and San Diego, plus Fresno, Kings, Lake and Nevada counties. Banning outdoor cultivation could move operations inside homes.

In a report released Thursday, City Attorney Mark Coon pointed to Elk Grove and Moraga -- two cities with strikingly different ordinances -- as examples of what Concord could adopt. Moraga has a broad ban, not allowing any outdoor cultivation or indoor cultivation that is visible from public space.

The more detailed Elk Grove ordinance sets regulations that, among other things, do not allow medical marijuana to be grown within 1,000 feet of schools, child care centers or public parks; set limits on how big enclosed grow structures can be; and require each grower to obtain a permit from the chief of police.

D3

If the council decides to move ahead with banning or limiting medical marijuana cultivation, Coon recommends it consider using the Moraga ordinance.

The issue has split neighbors. Tony Pirak, who lives next door to Olsen, said he isn't bothered by what Olsen is doing and described him as friendly.

"He's made the rounds and made peace offerings with several people who are upset about it," Pirak, 59, said. "The evidence is not there. You don't have people showing up being loud, fist fights, whatever."

Across the street, Michael Bryant remains skeptical. He said he has seen upward of 80 cars come and go from the home in a span of a day and said until the federal government legalizes marijuana for medicinal use, it remains criminal in his eyes.

The council Tuesday has the option to direct Coon to draft an ordinance, refer the matter to a council subcommittee or policy, or take no action. A ban on the growing of medical marijuana outdoors would require environmental and planning commission review.

David DeBolt covers Concord and Clayton. Contact him at 925-943-8048. Follow him at [Twitter.com/daviddebolt](https://twitter.com/daviddebolt).

if you go

What: Concord City Council meeting

When: 7 p.m. Tuesday

Where: City Hall, 1950 Parkside Drive

DH

Concord City Council moves to ban outdoor medical marijuana cultivation

Contra Costa Times San Jose Mercury News

Posted:

ContraCostaTimes.com

CONCORD -- City Council took steps Tuesday to ban the cultivation of medical marijuana outdoors after hearing impassioned pleas from residents on each side of the issue.

Council members directed City Attorney Mark Coon to draft an ordinance modeled after one in Moraga that, if ultimately approved, would force medical marijuana patients and caregivers to move their plants indoors or out of town.

"It is a balance," Councilman Ron Leone said. "We have to be considerate of our neighbors because your rights end at the tip of my nose and in this case literally."

All five council members said they supported the Moraga model, an ordinance that simply bans cultivation outdoors and is not as restrictive as other city ordinances. Coon and police Chief Guy Swanger each recommended the Moraga model, which officials said has worked since the town approved it in 2011.

The state allows qualified patients and caregivers to use and cultivate marijuana for medicinal purposes under laws passed by voters in 1996 and the state legislature in 2004. The laws do not guarantee the right to grow medical marijuana outdoors, Coon told the council.

The issue of outdoor medical marijuana operations was first brought to the council by Dana Estates residents in October, who complained about a neighborhood house they said smelled strongly of a "skunk" odor and threatened the safety of the neighborhood.

In public comment at Tuesday's meeting, residents revealed that other neighborhoods are home to backyard medical marijuana cultivation.

Supporters of the ban told the council they are afraid to let their children play outside. One woman said the pungent smell of a crop near her home triggers asthma attacks.

"I'm 100 percent against the cultivation of marijuana in a residential area," said Evelyn Freitas, who first brought the issue to the city's attention in October. "It has no place to be there. We are not breaking any laws if we ask them to bring it inside."

But medical marijuana patients and caregivers said moving their operations inside makes it more costly, entices thieves to enter their home and increases the risk of a structure fire because of the indoor lighting needed to grow the plants.

"Not only will PG&E be taking off your arm and your leg to pay for it, it's going to start a fire," one woman told council.

Bambi Yeley, a caregiver to her mother and father for more than a decade, said medical marijuana eased their slow and painful deaths.

"If I want to grow something in my backyard ... how dare you tell me I can't do it. It kept my parents alive. My dad would not have eaten for a year if he hadn't gotten high," she said.

Any ban requires further review by the Planning Commission before it comes back to City Council for approval.

"There comes a point when we have to come together and come up with a way that is right by everyone without taking away the rights of anyone," Vice Mayor Tim Grayson said.

David DeBolt covers Concord and Clayton. Contact him at 925-943-8048. Follow him at [Twitter.com/daviddebolt](https://twitter.com/daviddebolt).

Medical marijuana dispensaries could be banned in Pittsburg

By Eve Mitchell Contra Costa Times Contra Costa Times

Posted:

ContraCostaTimes.com

PITTSBURG -- The Pittsburg Planning Commission will consider a staff recommendation to ban medical marijuana dispensaries.

If commissioners on Tuesday approve the staff recommendation, the matter will go to the City Council as an ordinance for a vote.

In April of 2011, council members adopted a moratorium, which expires in April, that prohibited dispensaries from operating while staff studied whether to develop regulations to allow them to operate. The recommendation calls for making it official city policy to ban them outright.

Before the moratorium went into effect, East Bay Collective operated a dispensary without a permit, but it didn't stay open because the city got a court injunction to shut it down.

There are no requests before the city to operate a dispensary, and when the city considered the initial moratorium and two later extensions, no one showed up to protest the action.

If approved, the ban on dispensaries would not prevent a qualified patient from growing medical marijuana in his or her own home for personal use, City Attorney Ruthann Ziegler said in an email.

A staff report said the ban was needed in the interest of public safety and that the use of medical marijuana is prohibited under federal law, even though its medical use was approved by California voters in 1996. The report cited a white paper by the California Police Chiefs Association that said many violent crimes, including armed robbery and murder, have been associated with dispensaries.

Antioch has a moratorium on dispensaries, while Oakley and Brentwood have banned them.

"Unfortunately, (a ban) is not all that unusual," said Kris Hermes, spokesman for Americans for Safe Access, a national organization advocating for safe and legal use of medical marijuana. "While there are dozens of municipalities that have recognized their patients' needs for medical marijuana and regulate their activities, there are more than three times the number that have banned it outright."

Statewide, more than 50 cities and counties allow dispensaries, more than 70 cities have moratoriums against them, and 170 cities have banned them, according to Americans for Safe Access.

"California is still a patchwork of bans and regulatory ordinances," Hermes said. "That is still very problematic for a large number of patients who don't live anywhere near an operating dispensary."

Contact Eve Mitchell at 925-779-7189. Follow her at [Twitter.com/eastcounty_girl](https://twitter.com/eastcounty_girl).

if you go

What: Pittsburg Planning Commission meeting

When: 7 p.m. Tuesday

Where: City Council chamber, 65 Civic Ave., Pittsburg

D7

Pittsburg planners recommend permanent ban on pot clubs

By Eve Mitchell Contra Costa Times San Jose Mercury News

Posted:

ContraCostaTimes.com

PITTSBURG -- Planning commissioners have approved a recommendation to ban medical marijuana dispensaries from opening within city limits.

Four commissioners voted Tuesday for the staff recommendation, while Commissioner A.J. Fardella abstained from the vote over concerns that it was not constitutional after a spirited discussion of the matter.

"Its overreaching nature would be a violation of the constitution of the state because there is a referendum and law in place," said Fardella, referring to the 1996 state ballot measure passed by voters that approved the use of medical marijuana.

The recommendation now goes to the City Council on Jan. 22 as an ordinance for approval.

In April 2011, City Council members adopted a moratorium, which expires next April, that stopped dispensaries from operating while staff studied whether to permanently ban their operation. A staff report said the ban was needed in the interest of public safety and that the use of medical marijuana is banned under federal law, despite the state ballot measure.

The ban does not prevent qualified patients from growing medical marijuana at their home for personal use. Also, there are exceptions that allow for the use of medical marijuana in health-care facilities such as hospices and nursing homes for patients with chronic life-threatening illnesses.

Officer Sarah Spires urged commissioners to approve the ban, saying allowing dispensaries to operate would lead to more crime. Earlier this week, a medical marijuana caregiver delivering the drug to a Pittsburg resident from a dispensary outside of the city was robbed of several hundred dollars and beaten by three armed men, she said.

Commissioner Larry Wirick said he was voting for the ban for public safety reasons.

"We could probably make quite a bit of (sales tax) revenue out of the sale of (medical) marijuana within city limits, but having said that, I don't think the police departments needs further problems," he said.

Two commissioners were absent at Tuesday's meeting. One of them, David Fogleman, sent a letter in support of medical marijuana dispensaries operating in Pittsburg, provided stringent regulations were applied.

Before casting his vote in support of the ban, Commissioner Mark Gargalikis said he knew of family members with cancer who had benefited from using marijuana.

"It seemed to help them. I do feel there is good behind this," he said. "Government needs to figure out how to take care of this and have a lot of stringent rules."

If the Planning Commission recommendation is approved by the City Council, Pittsburg would become the latest East Contra Costa city to say no to marijuana dispensaries. Antioch has a moratorium on dispensaries while Oakley and Brentwood have banned them.

D8

Ex-Tahoe medical pot dispensary owner indicted

The Associated Press News Fuze

Posted:

ContraCostaTimes.com

SOUTH LAKE TAHOE, Calif.—The former owner of a South Lake Tahoe medical marijuana dispensary has been indicted on drug charges.

A federal grand jury on Wednesday indicted Gino DiMatteo on charges of conspiracy to manufacture at least 1,000 marijuana plants, possession with intent to distribute marijuana and manufacturing at least 100 marijuana plants.

His attorney, Robert Woelfel, didn't immediately return a call for comment.

DeMatteo's City of Angels II Collective closed this summer after his landlord sought his ouster and city officials would not allow him to move his operation.

Court documents allege DeMatteo committed the crimes after being convicted of felony conspiracy to distribute marijuana in New York in 2002. He also was convicted of felony possession of a handgun in New Jersey in 1999, prosecutors said.

The convictions could have prevented DeMatteo from obtaining a permit to operate the dispensary. City rules allow the city manager to revoke a dispensary permit if any employee is convicted of a felony related to operating a collective.

DeMatteo listed no criminal background on his permit application to the city, and the city failed to complete a required background check on him prior to issuing him a permit to operate the collective, the Tahoe Daily Tribune reported (<http://bit.ly/10moSIJ>).

DeMatteo gave police an inaccurate "originating agency identification number," or ORI, during the background check, Police Chief Brian Uhler told the Tribune.

The ORI number he provided was unassigned, and the results of the background check were never returned, Uhler said.

It was an oversight that DeMatteo's application was then allowed to move to the next phase of the city's dispensary permit process without the results, Uhler said, adding that several city departments were involved.

DeMatteo, 43, remained in custody at the Sacramento County Jail.

Declared a nuisance in Berkeley, medical marijuana collective ordered closed

By Doug Oakley Oakland Tribune Contra Costa Times
Posted:

ContraCostaTimes.com

BERKELEY -- The owner of a medical marijuana collective whose operation was declared a nuisance and ordered to close by the City Council on Tuesday night said he will take his business to Vallejo.

The council unanimously declared Perfect Plants Patients Group a nuisance without comment after a Nov. 11 hearing in which it said the collective was operating illegally.

Eric Thomas, president of Perfect Plants Patients Group at 2840 Sacramento Ave., said he already runs one collective in Vallejo and will attempt to open a second one there because the rules governing medical marijuana are easier.

"It looks like it will be a losing battle for us to stay open in Berkeley unless they are willing to rewrite the rules concerning collectives," Thomas said Wednesday.

But a member of the Sacramento Street Improvement Association who lives around the corner and who threatened to sue the group over allegations it brought crime, trash and street drug sales said he won't be convinced Thomas is gone until he sees the space empty.

"The sign is still up, everything is still in the office," Ryan Kerian said. "To me, they are still operating. We want the city to get a legal order telling them to vacate."

A number of issues contributed to the City Council action including the fact that Perfect Plants was a collective operating in a commercial area, where only licensed dispensaries are permitted to sell medical marijuana in Berkeley. The three licenses in Berkeley are already taken. Medical marijuana collectives, generally smaller, are allowed in residential areas in Berkeley.

In addition, the city contended the collective was violating a rule that medical marijuana outlets need to be more than 600 feet from any school. Longfellow Middle School is nearby.

Thomas said in the 15 months he was in business in Berkeley he had 4,000 members and was selling about \$15,000 to \$20,000 worth of marijuana every two months. A robbery in April cut revenues, he said.

Thomas said he has paid only \$2,000 out of \$25,000 in fines levied against him by the city over the last year. He said he is disappointed over the City Council action.

"Berkeley had a chance to step up and be leaders in medical marijuana," Thomas said, "but they've fallen behind over politics and money."

Doug Oakley covers Berkeley. Contact him at 510-843-1408. Follow him at [Twitter.com/douglasoakley](https://twitter.com/douglasoakley).

Seattle medical marijuana entrepreneur sentenced

Updated 11:42 am, Thursday, December 20, 2012

SEATTLE (AP) — Medical marijuana entrepreneur Brionne Corbray whose dispensaries were raided last year, was sentenced Wednesday in federal court to five years of probation and fined \$25,000, but he avoided prison time.

He's the first local dispensary owner to be sentenced on federal drug-dealing charges, The Seattle Times reported Thursday (<http://bit.ly/V8Tbdv>).

Corbray pleaded guilty in August to conspiracy to deal drugs, based on undercover drug buys at his three dispensaries. They were raided along with his home in November 2011 when federal agents seized 7 pounds of dried marijuana and \$1,700.

Federal prosecutors wanted a one-year sentence. Instead, U.S. District Court Judge Ricardo Martinez gave Corbray the probation, fine and a warning because "you were trying to skate on the legal side of things as much as you could."

Corbray operated G.A.M.E. Collective locations in West Seattle, White Center and North Seattle. The White Center site south of Seattle included a smoking lounge described as a bar without alcohol.

Corbray knew his dispensaries were clearly illegal under federal law and weren't consistent with "letter of state law ... or with even the spirit of state law," Assistant U.S. Attorney Vince Lombardi said at the sentencing.

"If we are going to have an intelligent discussion on reform — a discussion about what is the right way and the wrong way to deal with marijuana — you have to have consequences for people doing it wrong. And Mr. Corbray was doing it wrong," said Lombardi.

Corbray's attorney, Corey Endo, portrayed him as a devoted family man and entrepreneur operating in a legal gray area.

"Mr. Corbray doesn't need to bear the brunt — any more than he already has — for the mixed messages" sent by the local, state and federal handling of medical marijuana, he said.

"I didn't get into this to be a drug dealer. I got into this to provide a living for my family," said Corbray, who has a wife and four children.

At least two similar cases are pending. Former Seattle medical-marijuana dispensary owners Craig Dieffenbach and Jingjing Mo, who were also targeted in the November 2011 raid, have pleaded guilty to federal drug-dealing charges and are to be sentenced Jan. 10.

Lombardi indicated additional criminal cases involving the local medical-marijuana industry may be coming soon.

"Mr. Corbray will be the first to come before this court, but he won't be the last," he said.

Information from: The Seattle Times, <http://www.seattletimes.com>

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HEARST newspapers

D11

S.F. cops crack down on pot in Haight

Shoshana Walter, Bay Citizen

Updated 9:00 pm, Friday, December 21, 2012

San Francisco police Capt. Greg Corrales strolled down a dirt path in Golden Gate Park, wearing a pair of black jeans, a Giants cap and a jersey that read "Grumpy." He was looking for someone to arrest.

As Corrales, 64, approached Alvord Lake, a ragged young man caught his eye and pinched a finger and thumb between his lips.

Corrales knew the sign: weed for sale.

The undercover captain said he wanted \$20 worth of marijuana, pocketed his purchase and disappeared into the park. Moments later, a team of officers swooped in to arrest the unsuspecting seller.

The police operation was one of 50 undercover busts Corrales has led since transferring to the Haight-Ashbury district in June to lead a crackdown on street-level marijuana dealing. In a buy-bust operation, an undercover officer poses as a customer and buys drugs from an individual he or she suspects of selling them.

To many residents, the arrests are a welcome relief in a neighborhood they say is overrun by aggressive vagrants and dealers. But to marijuana legalization activists and residents who fondly recall the Haight of the 1960s, the campaign represents a return to a time of zero tolerance for peace, love and pot.

In the district that was the birthplace of the hippie revolution, police are jailing suspects for amounts of marijuana that, in a possession case, would amount to a \$100 ticket.

"The people of San Francisco have voted repeatedly they don't want marijuana laws enforced," said Dennis Peron, a longtime medical marijuana activist. "It's a waste of time."

Small-time busts

Some of the operations have netted repeat offenders, including several suspects with guns or outstanding warrants. But most of the suspects carried small amounts of marijuana. Some had medical marijuana ID cards. Corrales, a former head of the narcotics division, said he didn't care.

"It really doesn't matter," he said. "They can't sell."

Ted Loewenberg, president of the Haight Ashbury Improvement Association, is among those who approve of the crackdown. He moved into the neighborhood in 1989, in the midst of a crack epidemic.

"I got to see the everyday reality of what the drug culture did to people," Loewenberg said.

He and about 30 others formed a group called RAD - Residents Against Druggies. A few nights a week, they armed themselves with two-way radios and walked the streets, looking for buyers and dealers.

"If we saw someone we suspected of buying, we would circle around them and just make them so uncomfortable they didn't want to buy," recalled Susan Strolis, a waitress who moved to the neighborhood in 1985.

Easing pot laws

But others in the city wanted to decriminalize marijuana. In 1991, voters passed Proposition P, urging the state to legalize medical marijuana. Peron opened the Cannabis Buyers' Club, the country's first dispensary, in 1992.

Corrales, a former Marine, had made a name for himself as a young undercover officer in the 1970s. His specialty was the buy-bust targeting heroin dealers in the housing projects.

By 1994, he was a captain and headed the narcotics division. Corrales said he couldn't ignore Peron.

"He got so brazen, he went on the television show 'Hard Copy.' They had a segment with him showing the reporters around," Corrales recalled. "He was a marijuana dealer."

Peron was leading the statewide campaign for Proposition 215 to legalize medical marijuana. Corrales and his undercover investigators found evidence that Peron was selling marijuana to customers who were not ill. But then-District Attorney Terence Hallinan refused

to prosecute.

By then, Hallinan had visited Peron's medical marijuana club. "I thought it was great," he recalled. "There were people there with AIDS. Everyone had company and friends. It didn't make sense to me to go raiding that. So they went around me."

Raid backfired

Corrales took his case to then-Attorney General Dan Lungren, an aspiring Republican gubernatorial candidate and Prop. 215 opponent. In the summer of 1996, with voters considering the measure, Lungren led a raid on Peron's dispensary.

The raid, however, created sympathy for Peron's cause. Californians voted in favor of the initiative; the police chief banished Corrales from narcotics.

In the Haight, many merchants and residents now clamor for Corrales' aggressive strategies.

After residents complained to the Police Commission in February about open marijuana dealing, an impatient Chief Greg Suhr ordered a buy-bust team into the district and replaced the district's captain with Corrales.

Now the number of buy-busts in the Haight has more than tripled.

"I could see if it was crack cocaine or something harsh like meth," said 25-year-old Michael Fulmore, who is fighting two felony charges after giving an undercover officer a gram of marijuana in March. "But this is pot. A gram of weed. It's like a ticket. Not a felony."

Caught off guard

Corrales has no qualms about the buy-bust operations.

"When I first went out there, they were careless," he said. "I probably could have bought marijuana in a suit and tie because there had been no enforcement, so nobody was paranoid. Now they're more careful."

He was still wearing his "Grumpy" shirt on that day in June when he returned to the group of men at the lake.

"Got anything?" he asked.

"Not for you, we don't," one replied, muttering "pig" under his breath.

Corrales feigned outrage.

"I'm 75 damn years old," he yelled, adding more than a decade to his age. "How the hell am I going to be a cop?"

"Calm down," the young man said. "We gotta be careful. Our buddy just got busted. How much do you want?"

Corrales walked away with another \$20 worth of marijuana. And his officers made their second buy-bust arrest of the day.

This Bay Citizen is part of the nonprofit Center for Investigative Reporting. E-mail: swalter@baycitizen.org

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HEARST newspapers

D13

Mendocino moves to quash feds' marijuana subpoena

The Associated Press

Monday, Dec. 24, 2012 | 01:39 PM

UKIAH, CALIF. Mendocino County officials are trying to quash a federal grand jury subpoena seeking records about a county program that issued permits to medical marijuana growers.

A motion filed Friday argues that the information being sought represents an improper intrusion into local government affairs. The Ukiah Daily Journal reports (<http://bit.ly/ROVSIF>).

"The motion is based on the grounds that the scope of the subpoenas is overbroad and burdensome," County Counsel Tom Parker said.

The county is facing a Jan. 8 deadline to comply with the grand jury's order that it hand over all of its records about the now-canceled program that allowed certain marijuana growers to grow as many as 99 plants if they agreed to regular inspections.

The information being sought includes inspection records, permit applications, and financial information from the program, which generating more than \$1 million in fees for the county before it was canceled, the Daily Journal said. The county permitted 91 medical marijuana growing collectives in 2011, the newspaper said.

Mendocino supervisors ended the nearly two-year-old program in January after the U.S. attorney's office threatened legal action. Marijuana remains illegal in all forms under federal law.

A spokesman for U.S. Attorney Melinda Haag, whose office is overseeing the grand jury's work, could not immediately be reached for comment Monday.

D14

STAFF REPORT TO THE CITY COUNCIL FOR CONSIDERATION AT THE COUNCIL MEETING OF JANUARY 8, 2013

PREPARED BY: Jim Jakel, City Manager 

DATE: January 3, 2013

SUBJECT: CITY COUNCIL DISCUSSION OF STRATEGIC PLAN, PRIORITIES, GOALS AND OBJECTIVES

ACTION:

Provide direction to Staff related to Strategic Planning, Priorities, Goals and Objectives.

BACKGROUND:

Mayor Harper, at a previous City Council Meeting, requested that the City Council discuss this topic. On July 19, 2011, the City Council held a Goal Setting Workshop with the assistance of an outside Facilitator. The Agenda, Staff Report, and Minutes for that Study Session are attached.

For tonight, some examples of where City Council input at this point would be helpful are listed below:

- Desired outcomes
- Process and options
- Public input opportunities
- Outside facilitation or not
- Dates (i.e. a third Tuesday)
- Venues
- Agenda topics
- Use a subcommittee of the Council to plan (used for Quality of Life Forums in the past)
- Final work product desired
- Other thoughts and ideas

FISCAL IMPACT:

Some cost would be associated with the use of an outside Facilitator. Also some miscellaneous costs could be associated with the meeting for Minutes and Facilities.

ATTACHMENT:

Agenda, Staff Report, and Minutes from July 19, 2011 City Council Study Session.

Regular Meetings:
2nd and 4th Tuesday
of each month

Agenda prepared by:
Office of the City Clerk
(925) 779-7009



SPECIAL MEETING OF THE ANTIOCH CITY COUNCIL

**MAINTENANCE SERVICE CENTER
1201 West 4th Street**

**July 19, 2011
6:00 P.M. — 9:00 P.M. STUDY SESSION**

6:00 P.M. ROLL CALL *for Study Session*

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS *(up to 15 minutes)*

STUDY SESSION

1. BUDGET UPDATE, GOALS AND PRIORITY SETTING WORKSHOP

Recommended Action: Motion to direct staff

Staff Report

PUBLIC COMMENTS

COUNCIL COMMUNICATIONS/ STAFF COMMUNICATIONS

ADJOURNMENT

The City Council meetings are accessible to those with disabilities. Auxiliary aides will be made available for persons with hearing or vision disabilities upon request in advance at (925) 779-7009 or TDD (925) 779-7081.

ANTIOCH CITY COUNCIL

**Special Meeting
Maintenance Service Center**

**July 19, 2011
6:00 P.M.**

Mayor Davis called the meeting to order at 6:07 P.M. and Minutes Clerk Eiden called the roll.

Present: Council Members Kalinowski, Rocha, Harper, Agopian and Mayor Davis

PLEDGE OF ALLEGIANCE

Mayor Pro Tem Harper led the Council and audience in the Pledge of Allegiance.

PUBLIC COMMENTS - None

STUDY SESSION

1. BUDGET UPDATE, GOALS AND PRIORITY SETTING WORKSHOP

City Manager Jakel, Finance Director Merchant, Director of Public Works Bernal, and Director of Community Development Wehrmeister presented the staff report dated July 14, 2011, requesting the City Council provide direction to staff.

City Manager Jakel recognized the professional commitments and concessions made by City employees. He acknowledged the importance of being more accessible and improving communications with employees. He introduced Larry Bienati in attendance to facilitate the study session.

Larry Bienati, moderator, introduced himself and gave a brief history of his involvement in Community Life and Rebuilding Together Forums. He explained the purpose of the Special Meeting/Study Session and the manner in which it would be conducted. He provided the following list of the key building blocks for a strategic plan compiled from the employee Rebuilding meeting:

- Fiscal prudence with full transparency and accountability
- Improve communications internally and externally
- Public safety
- Economic vision
- Human resources - staffing, training and development

Councilmember Agopian thanked everyone for attending the meeting and provided the following input for consideration:

- Determine why Antioch's property tax assessed values declined 7.14% - obtain information from the Assessor's office

- Improve sales tax base – i.e. outlet mall and/or car dealership
- Increase revenue – i.e. explore the use of the City's pre 1914 water rights

Councilmember Rocha provided the following input for consideration:

- Development of the waterfront in conjunction with the ferry system
- Continued support of Recreation Programs, Arts and Cultural Events, and Prewett Park

Councilmember Harper thanked everyone in attendance. He provided the following input for consideration:

- Strengthen Public Safety – add positions to the APD, restore traffic division and Code Enforcement, explore grant funding opportunities
- Use of Mello Roos funds for Economic Development – i.e. soccer fields
- Take a proactive approach to economic development
- Market Antioch as a great business investment
- Develop brand specific to promote the City

Councilmember Kalinowski provided the following input for consideration:

- Reset expectations for staffing levels
- Look at permitting process to determine how to incentivize a process for commercial development
- Capitalize on different modes of transportation inbound and outbound
- Re-establish Code Enforcement – possible consultant model
- Project budget numbers 3-4 years out to understand impacts
- Explore what can be done with irrevocable trust funds
- Go to a zero base budget for every department

Mayor Davis thanked the City Council for their input and City Staff for participating in the rebuilding meeting in June and provided the following comment:

- Fiscal responsibility
- Leveraging irrevocable trust funds/use of water funds
- Improve communications
- Improve public safety and code enforcement
- Economic vision – improving the City image
- Training development, cross training and hiring from within
- Include the Antioch Unified School District in future discussions

Mayor Davis declared a recess at 7:27 P.M. The meeting reconvened at 7:49 P.M. with all Council Members present.

Mr. Bienati stated he had captured notes from the meeting with the makings for some goals and strategies. He suggested following up the meeting with an offsite meeting to create a vision and strategic plan for the future.

City Manager Jakel reported the meeting would be followed by a Senior Staff work session, full day strategic planning session with the City Council and his continued improvement of communication with the employees. He announced Mr. Bienati had committed to using his tool externally for the online community and potential focus group.

Following discussion, the City Council agreed to a Saturday strategic planning session which would include a discussion on community image, communications, and managing the media.

Mayor Davis encouraged staff to convey a positive message when dealing with the public.

City Manager Jakel felt staff temperament had improved since the employee rebuilding workshop and reiterated the importance of effective communication throughout the organization.

Mayor Davis voiced his appreciation to staff for attending the rebuilding meeting and he thanked City Manager Jakel for the recommendation to hold the workshop.

Councilmember Rocha suggested the City consider hiring volunteers to take messages on Fridays.

Councilmember Agopian thanked his fellow Council Members for their input this evening. He commented he was impressed with staff's honesty and City Manager Jakel's leadership. He felt the goal was to accept where the City is, while looking at ways to generate revenue to provide what the public expected. He looked forward to having a discussion on communication at the strategic planning session.

Councilmember Harper discussed the importance of managing the message to the public and encouraged every employee to become a resource officer as an effort to communicate effectively.

Councilmember Kalinowski discussed the possibility of the City having a designated spokesperson. He requested staff take a look at the water rights issue as it related to increasing the City's revenue and report back to the City Council in September. He suggested all decisions be made on the strategic plan, be considered, prior to next election season.

PUBLIC COMMENTS - None

COUNCIL COMMUNICATIONS / STAFF COMMUNICATIONS

City Manager Jakel announced the City Council meeting on July 26, 2011, would begin at 6:00 P.M. and there was a Northeast Area Annexation meeting on July 25, 2011.

Councilmember Agopian reported there had been work done on the ferry issue and recent communication he had received incorporated the Hovercraft idea into the EIR. He discussed the importance of creating a destination in Antioch for those who would be using the water transportation system.

Councilmember Rocha suggested including the Rivertown merchants in communications regarding the water transportation system.

Councilmember Agopian stated he would report back timelines for the project including the incorporation of the downtown merchants in the planning process.

Mayor Davis thanked everyone in attendance and the City Staff for their hard work, dedication, and participation in the rebuilding meeting. He requested City Manager Jakel convey the City Council does care about the employees. He thanked Mr. Bienati for his time and efforts in facilitating City meetings.

Mr. Bienati requested the City Council consider reading an article he wrote in 1995.

With no further business, Mayor Davis adjourned the meeting at 8:14 p.m. to the next regular Council meeting on July 26, 2011.

Respectfully submitted:

KITTY EIDEN, Minutes Clerk

**STAFF REPORT TO THE ANTIOCH CITY COUNCIL
FOR CONSIDERATION AT THE MEETING OF JULY 19, 2011**

Prepared by: Tina Wehrmeister, Community Development Director *TW*

Approved by: Jim Jakel, City Manager *JJ*

Date: July 14, 2011

Subject: **Priority and Goal Setting Study Session**

RECOMMENDATION / DISCUSSION

This will be a study session facilitated by Larry Bienati who has assisted the City over the years internally and at Quality of Life Forums. It is suggested that the City Council come to this meeting with three to four top priority areas for discussion. As background, attached are survey results and group breakout session notes from the employee Rebuilding Meeting in June as well as Measure P survey results. We have also included our current vision statement and updated budget projections.

The study session will be broken into three segments:

1. Update on budget and current state of the City
2. Priorities and goal setting
3. Communications and community image

We will then conclude with a discussion of next steps and strategic planning.

ATTACHMENTS

- A. Survey results and group breakout session notes from the employee Rebuilding Meeting
- B. Measure P survey results
- C. City Vision Statement
- D. Budget Projections Update

TOTAL OF SURVEYS

ATTACHMENT A

Are you an Antioch resident:
How many years employed with City?

145 Total Surveys

	RANK	High Medium Low					Percentage
		1	2	3	4	5	
1. COLA's (Cost of Living Adjustment)	1	59	47	19	5	7	27%
2. Establish minimum 20% reserve fund balance	4	15	11	28	35	44	16%
3. Restore vehicle and equipment replacement funds	5	1	6	27	49	48	13%
4. Restore 40 Hr work week:	2	41	30	24	25	16	23%
Five 8-hr Days (Mon-Fri)	5	10					
9/80 (every other Friday off)	2	28					
Four 10-hr days (Mon-Thur)	1	51					
Four 9-hr days + 4-hrs on Friday (close at Noon)	6	2					
Keep 36-Hr work week	3	13					
No Preference	4	11					
5. Hire more Employees	3	29	36	35	14	12	21%
Building	12	0	1	3	3	5	1.5%
City Attorney	13	0	2	0	2	1	0.8%
City Manager	14	0	1	0	1	2	0.5%
Code Enforcement	1	20	13	31	16	12	18.1%
Economic Development	7	1	4	6	9	12	4.3%
Engineering	11	3	0	2	4	3	2.0%
Finance	6	5	4	6	7	6	5.0%
Human Resources	13	1	0	0	2	4	0.8%
Information Systems	9	3	3	5	2	9	3.5%
Planning	6	5	5	4	8	8	5.1%
Police - NonSworn	5	3	32	4	8	4	11.0%
Police - Sworn Officers	2	34	10	8	5	6	15.7%
Public Works - Operatlons (Streets, Landscaping)	4	9	18	11	13	9	11.6%
Public Works - Utilities (Sewer, Water, Storm Drains)	3	22	15	11	10	10	14.6%
Recreation	8	4	5	3	1	0	3.2%
Other: Animal Services	10	6	0	1	0	0	2.1%
Other: Environmental Services	15	0	0	1	0	0	0.2%

Other: (in no particular order)

NON-ANTIOCH RESIDENT

Are you an Antioch resident:
How many years employed with City?

	No 76					
	≥5	≥10	≥15	≥20	≥25	26+
	12	23	20	4	10	1

76 Total Surveys

	High		Medium		Low	
RANK	1	2	3	4	5	
	Percentage					

1. COLA's (Cost of Living Adjustment)	1	31	23	10	2	7	26%
2. Establish minimum 20% reserve fund balance	4	9	7	14	16	23	16%
3. Restore vehicle and equipment replacement funds	5	1	4	17	23	24	13%
4. Restore 40 Hr work week:	3	15	16	13	18	10	20%

Five 8-hr Days (Mon-Fri)
9/80 (every other Friday off)
Four 10-hr days (Mon-Thur)
Four 9-hr days + 4-hrs on Friday (close at Noon)
Keep 36-Hr work week
No Preference

4	2				
3	9				
1	29				
4	1				
2	8				
2	8				

5. Hire more Employees	2	26	18	18	6	2	25%
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Building	12		1	2	2	1	1.8%
City Attorney	14		1		2		0.9%
City Manager	15		1				0.5%
Code Enforcement	2	8	7	23	7	5	18.2%
Economic Development	6	1	2	4	5	8	5.0%
Engineering	10	2			3	1	2.0%
Finance	9	3	2	1	1	3	3.6%
Human Resources	13	1			2		1.1%
Information Systems	8	3	2	2	1	3	4.0%
Planning	7	3	2	2	5	4	5.0%
Police - NonSworn	3	1	26	4	4	1	15.2%
Police - Sworn Officers	1	32	3	4	1	3	22.1%
Public Works - Operations (Streets, Landscaping)	5		6	3	10	6	6.9%
Public Works - Utilities (Sewer, Water, Storm Drains)	4	9	3	5	5	9	10.6%
Recreation	12		2	1	1		1.5%
Other: Animal Services	11	3					1.8%

Other: (in no particular order)

- Equipment Maintenance
- Hire a Supervisor for GIS
- Realize things are not the same in every city and we need to look at how some city's have kept from getting where we are at.
- City needs to remove itself from private industry.
- Move City Hall to Prewett Park.
- Restore PERS for current employees; have new employees pay their own PERS.
- We should look at the use of overtime funds vs. furlough savings.
- Develop Council spending guidelines (list priorities)
- Allow employees to rate/evaluate managers, a 360 degree evaluation (& turn in to City Manager)
- Stop looking at bottom line, look at the employees.
- Budget through 2013 makes these options look improbable/impractical.
- PERS

ANTIOCH RESIDENT

Are you an Antioch resident:
How many years employed with City?

		Yes 50			
≥5	≥10	≥15	≥20	≥25	26+
9	13	11	7	6	1

50 Total Surveys

	Rank	High Medium Low					Percentage
		1	2	3	4	5	
1. COLA's (Cost of Living Adjustment)	1	22	19	4	3		31%
2. Establish minimum 20% reserve fund balance	4	4	2	12	13	16	15%
3. Restore vehicle and equipment replacement funds	5		2	6	21	15	9%
4. Restore 40 Hr work week:	2	18	11	11	4	4	28%
Five 8-hr Days (Mon-Fri)	3	4					
9/80 (every other Friday off)	2	13					
Four 10-hr days (Mon-Thur)	1	20					
Four 9-hr days + 4-hrs on Friday (close at Noon)	5	1					
Keep 36-Hr work week	3	4					
No Preference	4	2					

5. Hire more Employees	3	1	13	11	6	7	17%
Building	13			1	1	4	1.1%
City Attorney	15		1				0.7%
City Manager	16					2	0.0%
Code Enforcement	1	10	6	5	5	7	18.4%
Economic Development	12		2	1	3	3	2.8%
Engineering	10	1		2	1	1	2.8%
Finance	7	2	1	3	4	2	5.9%
Human Resources	16					2	0.0%
Information Systems	11			3	1	5	2.8%
Planning	6	2	3	2	2	4	6.0%
Police - NonSworn	8	1	5		4	3	5.1%
Police - Sworn Officers	4	1	5	3	4	1	7.8%
Public Works - Operations (Streets, Landscaping)	3	5	11	5	3	2	17.2%
Public Works - Utilities (Sewer, Water, Storm Drains)	2	9	7	5	4	1	18.1%
Recreation	5	4	2	2			6.7%
Other: Animal Services	9	3		1			3.5%
Other: Environmental Services	14			1			0.9%

Other: (in no particular order)

Don't forget Animal Services

Don't spend money frivolously just because times are better.

Hiring more employees: Hire in order of preference as needed.

Code Enforcement should be a priority. Blight brings crime.

From my perspective, it is tough to know where the greatest need is; but my choices are in line with revenue.

Restore PERS for current employees and have new employees pay PERS. Since that was a hiring attraction.

Evaluate deductions of pay/work of a percentage/such as 10% across board citywide.

Don't prolong the acting/interim positions (as long as 3 years in some cases)

UNKNOWN ANTIOCH RESIDENT

Are you an Antioch resident:
How many years employed with City?

Unknown
Unknown

19 Total Surveys

	Rank	High 1	2	Medium 3	4	Low 5	Percentage
1. COLA's (Cost of Living Adjustment)	1	6	5	5			26%
2. Establish minimum 20% reserve fund balance	4	2	2	2	6	5	16%
3. Restore vehicle and equipment replacement funds	5			4	5	10	13%
4. Restore 40 Hr work week: (Chose One)	2	8	3		3	2	24%
Five 8-hr Days (Mon-Fri)	2	4					
9/80 (every other Friday off)	1	6					
Four 10-hr days (Mon-Thur)	3	2					
Four 9-hr days + 4-hrs on Friday (close at Noon)	5						
Keep 36-Hr work week	4	1					
No Preference	4	1					
5. Hire more Employees: (Rank 1-5)	3	2	5	6	2	3	22%
Building	12						0.0%
City Attorney	11					1	0.6%
City Manager	10				1		1.2%
Code Enforcement	3	2		3	4		15.8%
Economic Development	7			1	1	1	3.5%
Engineering	11					1	0.6%
Finance	5		1	2	2	1	8.8%
Human Resources	10					2	1.2%
Information Systems	8		1			1	2.9%
Planning	10				1		1.2%
Police - NonSworn	6	1	1				5.3%
Police - Sworn Officers	4	1	2	1		2	10.5%
Public Works - Operations (Streets, Landscaping)	2	4	1	3		1	19.9%
Public Works - Utilities (Sewer, Water, Storm Drains)	1	4	5	1	1		26.3%
Recreation	9		1				2.3%
Other: Animal Services	12						0.0%
Other: Environmental Services	12						0.0%

Other: (in no particular order)
Less upper management.

Team #1 – Ron Bernal

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Communicate
- Work well together/team approach
- Lots of programming for community
- Provide specialty venue i.e.: water park
- Involve businesses in community
- Visibility
- Finding solutions to problems more efficiently
- Creativity/innovative - employee inventions, goal to improve efficiency
- Adjustment to change
- Provide positive customer service
- Passionate about doing an excellent job/service
- Cohesive in a crisis
- Facilitate/administer our jobs well to Antioch in spite of increased work load
- Doing too good of a job of doing more with less - "hard work is rewarded by more hard work"
- Rise to high expectations of community/sustain our high standard with less

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Add Staff
- More focused on preventative maintenance
- Strive to improve communication at customer level and interdepartmentally
- Long term stable/sustainable revenue generation
- Take better care of our own
- Improved transparency especially when "dirty laundry"
- City website improved (more ease of use)
- Better top down communication eliminating silos, more interaction - avenue for staff input to move upward effectively
- Stay up with trends – i.e.: facebook, twitter, notification of projects/work, take advantage of technology, advocate better
- No single person has a patent on good ideas
- Improve pride we take in doing our work – incomplete work, low job satisfaction
- Re-establish and develop community events i.e.; 4th of July
- Work alongside employees in other departments: improve understanding and appreciation for fellow employees
- Find out what is important to the citizens
- Become more resourceful – options for community

- Be mindful of how we communicate our difficulties – more problem solver, positive demeanor
- Less disrespectful talk and behavior
- Marketing ourselves better
- Revisit mission statement
- Get to know our employees
- Motivate employees – recognize positives
- Remember that we are a family!

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Overcome internal - external resistance to change
- Need to know how we all interact/inter-relate with each other
- Recognize we're all pieces of a puzzle/all on the same team
- Not what was → going forward
- Market our services to pay for ourselves \$
- Manage money better
- Look at prevention to save \$
- Create environment to attract business and remove obstacles
- Change our reputation – PR campaign to improve our image
- Changing our image cost \$ - collaborate with business and non-profits
- Become more media friendly
- Stop accepting getting “second class” i.e.: Macy’s, eBART
- Develop our assets better i.e.: waterfront
- Councilmembers need to represent entire community – no special interest, honesty and integrity
- City need to take better care/value employees more
- Manage by walking around

What top three focus areas should our future strategic plan and vision for the City address?

- Reputation
- Sustainable resources
- Employee wellness
- Political agenda
- Manage \$ better
- Infrastructure
- Communication
- Remain flexible/ready to change

What will I do differently tomorrow?

- Nothing negative all day
- Call somebody don't work with
- Smile
- Keep/maintain momentum
- "What can I do for you?"
- Snap cup
- Share work
- Transferring to recreation
- Exchange lunches
- Not complain about my paycheck
- Skip in the gym
- Take a real day off
- Speak positively about city and hold each other accountably
- Take time to avail yourself to subordinates and colleagues
- Ask, "May I help you?" and mean it

What do we need to do to insure success as an organization?

- Accountability
- Follow-up "hold feet to fire"
- Genuinely believe that what I'm doing makes a difference
- Open communication
- Open mind – active listener
- Ok to agree to disagree
- Use positive word throughout day i.e.: "you're awesome!"
- Focused work ethic
- Employee of month
- Continue to solicit input from all employees value all opinions/experience
- Be accountable for yourself "man in mirror"
- Success is laughter – don't take everything seriously
- Go home with more energy

Team #2 –Alan Barton

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Maintain city structure with less
- Respond to citizen complaints/needs
- Coordinate emergency response
- Teamwork
- More responsibility/multi-task
- Employee sacrifice

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Public information
- Top down information in organization
- Citizen hotline
- Be more organized/communicate
- Tools/training/materials
- Better use of funds

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Locations of reoccurring nuisances/quality of life
- Poor decision makers
- Better oversight - funding, projects, programs....etc.
- Lack of vision/plan
- Government understanding limits of responsibility
- Minimize impacts of outside agency's on city resources
- Ordinance enforcement on panhandling/city image including blight

What top three focus areas should our future strategic plan and vision for the City address?

- Improving image/panhandling, blight, crime
- Safe river front
- Redevelopment private/government

Anything you wish to add?

- Sell and divert from private enterprise i.e. Golf course, Prewett Park, Marina
- Measured results/feedback from today's exercise

- Improve/update public forums
- Utilize today's technology

What will I do differently tomorrow?

- Positive attitude
- Recognize job well done in others
- Respect co-workers
- Self-appreciation

What do we need to do to insure success as an organization?

- Proper leadership/vision
- Set, measure, report goals
- Communication

Team #3 –Allan Cantando

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Committed, concerned and dedicated workforce
- Existing workforce works well together
- Work outside own job responsibility to get jobs done
- Prioritize and self-start well
- Empowerment (git-r-done)
- Doing more with less
- Strong work ethics
- Impromptu team accomplish tasks

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Utilize technology to the fullest
- Communication (realistic) to the public – what we can and can't do
- Invest in training
- Invest in employees
- Establish building permit enterprise fund and/or enterprise funds for revenue generating dept.
- Be more responsive
- Get/use more citizen involvement (volunteerism)

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Money
- Staff – need to increase staff
- Time
- Training/cross training/professional development
- Succession planning
- Institutional knowledge/retention
- Records management
- Public perception/not understanding or caring about problem by public
- Internal/external resistance to change
- Physical work environment

What top three focus areas should our future strategic plan and vision for the City address?

- Financial recovery
- Management restructuring – manage in your discipline
- Public education/civic responsibility
- Restoring/increasing staff levels

What will I do differently tomorrow?

- Casual Thursdays
- Take coworker to lunch
- Send thank you email to coworker
- Recognize another employees work performance to their supervisor
- Be part of the solution
- Partytime!

What do we need to do to insure success as an organization?

- Celebrate accomplishments/successes
- Recognize the work of other departments (chocolate = good)
- Casual Thursdays – theme Thursdays
- Department tours

Team #4 – Dawn Merchant

What do we do well in the City of Antioch?

- Do more with less
- Work well as team/camaraderie – better communication w/departments
- City has adapted well
- Quick to handle crisis/fight fires

What strengths do we have as a City that we need to build upon in your view?

- Need better communication
- Generate more income
- Try to find more ways to work smarter/be more innovative
- Need to work on getting better business base – longevity of business – bigger businesses

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Communication to citizens/newspapers
- Technology/web
- Better website
- Text message notifications
- Seek employee input on key decisions rather than just mandating changes
- Don't sugarcoat news to citizens/be upfront about reality of situation
- Clearly establish priorities

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Highway 4
- Money
- Communication – educate public/internal
- Vibrant downtown
- Staffing
- Pay – making whole
- Overcome Council to bring business in
- Council to realize we are no longer a small city
- Restore before we rebuild
- Aging infrastructure
- Morale
- Need managers that know staffs work
- Staffing/money
- Keep money internal for city – not outside organizations

- Promote new people and get fresh ideas
- Remove politics from getting job done
- Quit giving into “whiners”
- Don’t be afraid of change
- Staff being burned out
- Recognition for job well done
- Make something happen with this exercise – follow through

What top three focus areas should our future strategic plan and vision for the City address?

- Money
- Priorities
- Training
- Take care of employees we have
- Succession plan

Anything you wish to add?

- Address behavior of problem housing
- Clean up vacant houses/work with banks if need be
- Educate public on different funds of city/uses

What will I do differently tomorrow?

- Do something positive for a co-worker – “2 PER” idea – say thank you
- Customer appreciation
- Plork (Play/Work)

What do we need to do to insure success as an organization?

- Follow up – make sure not dropped
- Continue to seek input
- Keep employees informed
- Priorities make them and stick with them

Team #5 – Lonnie Karste

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- We do a lot with a little
- Customer service
- Multi-task
- Show up
- Loyal
- Problem solve
- Use of technology
- Dedication
- Team work
- Trust
- We continue to function in an atmosphere of betrayal
- Integrity/resilience
- Dependability
- We just get it done
- Ethics
- Job Knowledge/Experience 180 yrs
- Passion
- Compassion
- Desire to succeed
- Doing well under pressure
- Supporting each other
- Team
- It's personal

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Improve morale
- Acknowledge strengths
- Support
- Acknowledge our weaknesses - weaknesses can create a sense of appreciation
- Vision
- Open communication
- Positive attitude
- Compassion
- Patience
- Open communication/tell 'em how it is
- Focus on trust
- Develop and maintaining trust

- Change public perception/public
- Keep employees
- Change Antioch's reputation
- Get out of the box
- Money/employecs
- Leadership
- Vision to action
- Upper management has to share common vision
- We need policy makers understanding and creating common vision – realistic!
- Using technology
- Community involvement
- Citizen buy-in, employee buy-in, policy makers buy-in – common vision
- Outreach and education
- Creativity
- Change for more services

If we are to develop a successfull Strategic Plan for our future, what obstacles, challenges do we need to overcome?

Challenges -

- Financial
- Unreasonable expectations
- Public perception
- Negatively (employee, public)
- Low staffing
- Keeping good employees
- Resentment (personal)
- Us vs. them problem
- Honesty
- Common vision

Solutions -

- More businesses
- Business friendly
- Educate – management, public and City Council
- Honest
- Showcase community
- Develop trust
- Make city attractive to work at (economic vision)
- Flexibility
- Transparency

What top three focus areas should our future strategic plan and vision for the City address?

- Financial management/Accountability
- Quality of Service
- Crime
- Team building
- Economic Stability
- City Council – listen to employees/departments
- Realistic expectations service
- Belief is strategic plan (follow it)

What will I do differently tomorrow?

- Thank your staff
- How are you today?
- Be positive
- Smile on my face
- Embrace the positive changes of leader
- Lose the negative thoughts
- Patience
- Improve teamwork in the core group
- Treats in the AM

What do we need to do to insure success as an organization?

- Management needs to embrace this exercise
- Teamwork
- Show each other respect
- Remind yourself of the positives
- Listen to us – ask us- management needs to listen
- Honesty /trust – no retaliation, free thought, ability to express
- Follow thru taking our ideas and using them
- Acknowledgement/credit
- Focus on what we are doing right
- Having a voice, input credit, and ability to know why or why not!
- Responsive management

Team #6 – Lynn Tracy Nerland

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Work together well
- Facilitate customer needs
- Customer service
- Problem solvers
- Doing more with less
- Creatively working with less
- Better use of human resources
- Productivity
- Efficiency

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Team building events more often - more regular department meetings, more regular division meetings - allows field folks to communicate with management to discuss if policies are working
- Advancing skills - cross-training on equipment and skills, maintain required certificates on city-time not personal time – more support for educational needs
- Communicate with citizens better - e.g. new community center; Mello-Roos, communicating with changed demographic
- There is a limit to doing more with less so either – need more (e.g. fill positions) or do/settle for less
- Communication – in field/line folks need information so can answer residents' questions
- Opportunities to communicate as a division to management
- Leadership from front of line

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Communication – truth (earlier the better), up and down in organization – regular meetings, communication to community
- There is a limit to doing more with less so – need more (fill positions), city has to say “no” sometimes and stand by it
- Training – city-time, keep personal time, personal
- Retire and rehire program – loss promotional opportunities, new ideas
- Even out compensation – spread the wealth
- “City” has to say “no” sometimes and stand by it
- Trust in departments

- Clearer budget, priorities, policies – “tell it to us straight” sooner rather than later (e.g. budget messages; seemed like things going okay and then next month layoffs and furloughs)
- Explain promotions

What top three focus areas should our future strategic plan and vision for the City address?

- Redevelopment downtown (e.g. Pittsburg)
- More light industry – local jobs, tax base, less of bedroom community
- Community pride
- Hire more people in city
- Communications – all levels

What will I do differently tomorrow?

- Look for positive before suggesting changes
- Walk in with a smile
- Appreciate at least one other person’s hard work
- Try not to wreck a city car
- Take a personal day and go fishing
- Not be in the newspaper
- Give at least one compliment a day

Team #7 – Dr. Tom Steiner

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Training
- Line OFC training – not enough – need more
- Done more with hardly anything
- Camaraderie
- Crime down
- Priority setting
- Stress level high
- Good PR
- Good media relations

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Training
- Hiring new personnel
- Screening out poor employees
- Develop and train leadership
- Mentorship
- Consistency in supervisory
- Need a chief and ways to retain employees
- Educating all city employees on what tasks and duties each does (including Council)
- Burning employees out

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Stable funding source for PD - not General Fund
- Morale – low resources
- Need a direction/vision from Council and follow through
- Deal with political focus on public sector employees i.e. pensions
- Difficulty attracting new businesses because of high crime rate
- Council needs to be more open minded about how to bring business into the community
- City allowing problem business (Bars, smoke shops)
- Consideration of zoning issues – improved cohesion between planning residential vs. commercial
- Dialog between Council and PD about what we really can provide
- Reality check regarding the outcome of today's suggestions
- Better communication between HR & employees about benefits/rights

What top three focus areas should our future strategic plan and vision for the City address?

- Financial
- Staffing/training
- Attracting legit businesses
- Trust the Council will do the right thing without sacrificing it's city employees (again)

Anything you wish to add?

- Do something to stop everybody from jumping ship
- Raise vacation max – not realistic at this time
- Increase reserve account requirement

What will I do differently tomorrow?

- Stay positive
- Show co-workers appreciation
- Pick up trash
- Wave to each other
- Watch each other's back
- Be a listener
- Encourage co-workers
- Own the problem
- Look for solutions
- Ask for help when needed
- Be more active in the community

What do we need to do to insure success as an organization?

- Staying positive
- Organized
- Stay in shape
- Communicate
- Recognition – “job well done”
- Safety
- Encourage
- Boost morale
- Work smarter, not harder
- Right equipment
- Training

Team #8 – Phil Harrington

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Emergency response – immediate on the fly
- Teamwork
- Absorbing additional work assignments
- Multi-tasking
- Customer service
- Interaction between departments
- Job performance
- Safety
- Public relations
- Applied institutional knowledge
- Prioritize
- Address community needs
- Exceed basic service levels with limited resources
- Provide direction and coordination with contractors, constituents, outside agencies
- Share information
- Make do with what we have – old technology outdated equipment
- Manage depleting revenue sources
- Maintain high morale in tough economic climate and a demanding public

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- Improve public communication
- Electronic communication – e.g. Twitter, Facebook, webpage, e-bills (water), business license
- Re-install 40-hour work week
- Completion of past tasks i.e. job survey/classification study
- Fill vacant positions
- Increase all types of community participation
- Improve overall department communication
- Cross-training – job sharing (how do other jobs impact what you do)
- Define Council priorities
- Develop community needs based on constrained budgets
- Define overtime needs and approval process to work within parameters determined by Council goals and community needs
- Development of internal staff and reduce use of outside contractors

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Ability to hire personnel qualified to perform the tasks
- Complete market surveys – competitive salaries and job surveys
- Overcome change
- Full-staff i.e. fill vacant positions especially in fully-funded programs
- Consistent treatment of all employees
- Council needs to “walk-the-walk” – stay focused
- Information – how its saved for later retrieval
- Financial awareness – controlled spending

What top three focus areas should our future strategic plan and vision for the City address?

- Bring back NIS funding
- Rental programs – increase revenue opportunities
- Develop new and consistent funding streams – economic development, business incentives/friendly, streamline business application process
- Create opportunities and develop our funded programs to take full advantage of existing funding revenues

What will I do differently tomorrow?

- Encourage co-workers
- Positive attitude
- Energetic approach to tasks/projects
- Try to achieve one positive task within community

What do we need to do to insure success as an organization?

- Be accountable
- Appreciate your job/co-workers
- Treat your job with personal pride
- Be positive (look for the positive in others)
- Build relationships (community)
- Stretch your limits – go beyond your own job responsibility)
- Be a team player

Team #9 – Brian Nunnally

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- Keep the vehicles on the road
- Keep it on/turn it off
- More with less
- Locks/fire
- Marina
- Reactive
- Maintain streets
- Emergency response

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- More staffing
- Increase property taxes
- Communication – why we can't
- Marketing
- Finish projects
- Preventative maintenance
- Better tech
- Increase budget
- Policy updates based on staffing
- Adjust work hours/sleep
- Integrity
- Proactive
- Priorities
- Attitude
- Fund allocation
- OT vs. furlough – at straight pay
- Look at other cities
- Wants vs. needs
- Ramp up hiring
- More attractive jobs
- Employee quality of life
- Casino
- Outsourcing

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- City rep
- Cut red tape
- Attract business
- Redevelop downtown marina
- Revenue vs. use
- Code enforcement
- Who is hired
- Employee quality
- Crime down
- Appearance
- Education – what/why
- Youth actives/events

What top three focus areas should our future strategic plan and vision for the City address?

- Public safety
- Staffing
- Revenue
- Communications – internal, external
- Budget priorities
- Mediums
- Process improvement program
- Line worker input
- Accountability

Request for Feedback (written) on Strategic Plan Development 2015

What do we do well in the City of Antioch? What strengths do we have as a City that we need to build upon in your view?

- We do more with less. We care about our goals and our image.
- Teamwork. Multitasking. Loyal. Problem Solving. Work as Family. Trust. Dedication. Committed. Integrity. Resilience. Ethics. Knowledge of the job. Passion. Compassion. Desire to succeed.
- Customer Service. Teamwork. Multitasking. Problem Solving. Integrity. Functioning off little. Compassion. Dedication. Trust. Loyal. Committed. Resilience. Knowledge of the job. Morals.
- Communication!
- What would you do differently tomorrow?
- We sacrifice very well for the city. Pull together when times get tough. Try to give best customer service possible with these times. Spend money-need to re-evaluate more on large budget expenditures.
- Employees work hard and try to do the best job with the limited amount of training & resources. There is a family atmosphere among employees which helps us through trying times. However, we need more people delivering positive message's among employees to improve morale. Negativity grows like a cancer.
- Doing more with less.
- We have an effective police department for the amount of crime we face in the City of Antioch. Even through the PD is effective in solving crime; the staffing levels are not adequate for the population.
- Public Service! Customer Complaints! Work together as a team.
- Emergency response on the fly. Teamwork. Absorbing additional work assignments. Multi tasking. Customer Service. Interaction between departments. Job performance. Safety. Public Relations. Applied institutional knowledge.

What can we do even better (in how we serve our citizens) realizing some of the challenges we have faced in recent years with budgetary and other issues?

- When your boss tells you to do a job, he should have made sure we have the tools and materials to do the job; often that is not the case. After telling your boss we don't have the tools and or materials, you shouldn't be told to try and find them when they don't exist.
- Improve morale. Acknowledge our strengths. Vision. Positive attitude. Compassion. Patience. Honesty. Change Antioch's reputation. Employees. Common vision. Improving technology. Outreach/Education.
- Team moral. Acknowledgement. Support. Compassion. Stepping outside the box. More employees. Vision. Communication. Positive attitude. Honesty. \$\$\$\$. Vision v. Action.
- Make them realize how bad we are hurting as a city.

- Have a citizen hotline for suggestions. Have a place or phone # people can call if they don't know what department to call. Lessen City Hall run around. People should not be transferred.
- Focus on establishing priorities, education public and employees as to what those priorities are, set goals to meet those priorities, sincerely work towards those goals.
- Don't sugar coat things. More police officers to help prevent crime, work in problem areas. Financial planning. Long term improvements; \$\$\$ & new businesses.
- Cut unnecessary expenses. (i.e. \$18,000 being provided yearly to art and cultural foundation)
- Eliminate scheduled or planned overtime, especially in PD or departments that use excessive amounts of OT. Keep things fair.

If we are to develop a successful Strategic Plan for our future, what obstacles, challenges do we need to overcome?

- Money obstacles.

- SOLUTIONS

- More businesses
- Business friendly
- Educate – Public, Management, City Council
- Honest
- Showcase
- Develop Trust
- Transparency

- CHALLENGES

- Unreasonable expectations
- Public Plan
- Negativity
- Low Staffing
- Keeping good employees
- Resentment
- Honesty
- Common Vision

- \$\$\$

- Less Employees
- High expectations
- Public negativity

- Educate

- Honesty
- Business Management
- Flexibility

- Communication!
- Learn from past mistakes. Think outside the box. Less upper management-too many chiefs, not enough Indians. Management needs to listen to staff, without giving them the third degree.
- HWY4 prevents businesses from coming to Antioch. We do not seem to be business friendly. There is too much "us against them" mentality between management and staff. No real succession plan in place. Need to encourage new ideas and become more innovative.
- \$, Don't be afraid of change to include re-vamping old ways. Better city development.
- Increase revenue (big business). Highway 4 and BART. Restore downtown.
- Keep fiscally responsible reminder to prevent shortfalls continuing

What top three focus areas should our future strategic plan and vision for the City address?

A:

- Make it easy for businesses to come to Antioch & thrive. Streamline approved process!
- Better Communication internally.
- Increase revenue.
- Long term \$ plan. New big business, re-do downtown, look to other successful cities for ideas.
- Attract good viable businesses.
- Spend Antioch funds more wisely.
- Communication.
- \$\$\$/Financial
- Financial management accountability.
- Stop policy's that bring or invite bad elements to live our city.

B:

- Stay positive
- Highway 4 and BART
- Staff
- Set goals
- How to revitalize downtown-maybe office buildings which would generate need for restaurants, etc.
- Looking @ the big picture
- More employees
- Bad land deals, bad river boat deals, art work being commissioned like you're the Rockefellers. No more it's not your money to throw away. It's the tax payers money.

C:

- Train
- Restore downtown
- Re-invent
- More forward with technology and new ideas to improve the way we do things.
- The city's image-panhandlers off Somersville & near businesses put off customers. Crime-we are called Little "O" (Oakland)
- Actually plan for the future
- Quality of services
- Less work/employee burnout

Anything you wish to add?

- Streamline employee performance evaluations.
- Yes! Explore health care insurance options. Kaiser should not cost \$1200/mo for two people. There must be lower cost insurance out there, or negotiate better prices!! Get creative with this.
- Opt out of Dental Ins. Reduce Health Ins rates/plan.
- Any city that is going to survive these times needs to change –“re-invent” itself. The same old things aren’t working.
- Employee burnouts.
- Employee burnouts. Better attitude; Optimistic. More workshops; in-house.

Attendance Roster

- | | |
|-----------------------|------------------------|
| 1. Marvin Mayorga | 46. John Vanderklugt |
| 2. Phil Barlow | 47. Joe Pinckard |
| 3. Lori Haywood | 48. Ron Bernal |
| 4. Alicia Pato | 49. Jim Jakel |
| 5. Dawn Merchant | 50. Jimmy Wisecarver |
| 6. Tony Morefield | 51. Kiis Dee |
| 7. William Dee | 52. Rick Marten |
| 8. Trevor Schnitzius | 53. Santiago Castillo |
| 9. Lynn Tracy Nerland | 54. Diane Freicr |
| 10. Dean Pfeifer | 55. Dennis Perry |
| 11. Bryan Pitts | 56. Joe Carera |
| 12. James McMurry | 57. Steve Bias |
| 13. Mike Lowe | 58. Ron Krenz |
| 14. Jamie Olson | 59. Carol Cline |
| 15. Susan Vasquez | 60. Joanne Carera |
| 16. Oscar Ibarra | 61. Wally Wisner |
| 17. John Lawson | 62. Mike Schatz |
| 18. Bernie Abejuela | 63. Rod Ullmann |
| 19. Tom Haggard | 64. Brandon Chalk |
| 20. Dana Adams | 65. Ron Colefield |
| 21. Robert Stout | 66. John Dossey |
| 22. Larry Nash | 67. Shaun Connelly |
| 23. Pat Welch | 68. Shirley Head |
| 24. Pat Adair | 69. Benjamin Ambriz |
| 25. Mike Bechtholdt | 70. Mark Barnes |
| 26. James Stenger | 71. Robert Quintero |
| 27. Ana Cortez | 72. Carlos Zepeda |
| 28. Denise Haskett | 73. Daniel Arroyo |
| 29. Sandy Pereira | 74. Declan M. Hughes |
| 30. Steve McConnell | 75. Darryl Dodson |
| 31. Phil Hoffmeister | 76. Tim Coley |
| 32. Leonard Orman | 77. Salvador Rodriguez |
| 33. Ahmed Abu-aly | 78. Frank Lister |
| 34. Jeff Glover | 79. Alan Barton |
| 35. Scott Buenting | 80. Brian Rose |
| 36. Lisa Saunders | 81. Larry Noack |
| 37. Sharon Daniels | 82. Matthew Koch |
| 38. Dave Yoakum | 83. Mike Mortimer |
| 39. Cheryl Hammer | 84. Ryan Geis |
| 40. Mike Boccio | 85. Pam Vanzandt |
| 41. Christina Garcia | 86. Lisa Calvey |
| 42. Tammy Leach | 87. Jason Lewis |
| 43. Alan Alvarez | 88. Steacy Lucchesi |
| 44. Gary Agopian | 89. Eric Lujan |
| 45. Cleveland Porter | 90. Brandon Peters |

91. Duane Anderson
92. Jeannine Girard
93. Chris Raymond
94. Connie Friedrikson
95. Anita Nash
96. Monika Helgemo
97. T. Brooks
98. Lori Medeiros
99. Georgina Meek
100. Russ Burror
101. Joe Reese
102. Leroy Bloxsom
103. Jonathan Cordaway
104. Lori Chalifoux
105. Wardell Carter
106. David Emberlin
107. Robin Kelley
108. Al Anthony
109. Mindy Gentry
110. Rose Ramirez
111. Karen Rios
112. Dennis Celoni
113. Julie Haas-Wajdowicz
114. Gene Virgil
115. Michelle Walker
116. Chris Walters
117. Laura Garcia
118. Meghan Miller
119. Rob Green
120. Ed Padilla
121. Bert Ng
122. A?
123. Kory Bennett
124. Jeff Stanton
125. Mario Avitabile
126. Mike Mellone
127. Desmond Bittner
128. Miter Dugan
129. Mark Gutowski
130. Ronda Warren
131. Harold Jirousky
132. Virginia Johnson
133. Praynov Chaudhary
134. Rick Smith
135. Josh Vincelet
136. Steve Aiello
137. Emily Grigsby
138. Diane Aguinaga
139. Ryan Graham
140. Jo Castro
141. Todd Northam
142. Mark Harris
143. Danielle Joannides
144. Paulo deOliveira
145. Karen Rezentes
146. Gina Lombardi-Gravert
147. Tom Goss
148. Ada Romero
149. Brian Nunnally
150. Jim Powell
151. Wayne Burgess
152. Lori Sarti
153. Manuel Hicks
154. Annette Culpepper
155. Brandy Brooks
156. Danny Munn
157. Darlene Flournoy
158. Nicole Gackowski
159. Stephanie Lattuca
160. Andrea Sutherland
161. Gary Ellison
162. Phil Harrington
163. Phillip Jefferson
164. Brenda Perry
165. Daniel Kunkel
166. Jason Joannides
167. Ken Warren
168. Laura Parsley
169. William Medeiros
170. Lori Deeff
171. Jose Ureno



MARKET
& OPINION
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Columbus, OH 43214
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EMCresearch.com

Telephone Survey of City of Antioch Voters
n=400; margin of error=±4.9%
Interviews conducted June 21-24, 2010
EMC Research 10-4295

Hello, my name is _____, may I speak with (NAME ON LIST). MUST SPEAK WITH NAME ON LIST

Hello, my name is _____, and I'm conducting a survey for EMC Research to find out how people in Antioch feel about some of the different issues facing them. We are not trying to sell anything, and are collecting this information on a scientific and completely confidential basis.

-
- | | | |
|----|--|-----|
| 1. | Sex (record from observation) | |
| | Male | 46% |
| | Female | 54% |
| 2. | Age (from sample) | |
| | 18-29 | 10% |
| | 30-39 | 10% |
| | 40-49 | 18% |
| | 50-64 | 40% |
| | 65+ | 22% |
| | (Blank) | - |
| 3. | What would you say are the chances that you will vote in the November 2010 election for Governor, U.S. Senator, Congress, and other offices and measures? Are you almost certain to vote, will you probably vote, are the chances 50/50, or do you think you will not vote in the November election? | |
| | Certain → CONTINUE | 82% |
| | Probably → CONTINUE | 10% |
| | 50/50 Chance → CONTINUE | 8% |
| | Will not vote/(Don't know) → TERMINATE | |
| 4. | Do you think things in Antioch are generally going in the right direction, or do you feel that things are pretty seriously off on the wrong track? | |
| | Right direction | 20% |
| | Wrong track | 63% |
| | (Don't know) | 17% |

17. How would you rate the job that the City of Antioch is doing in managing the City's budget and finances? Would you say the City is doing an excellent, good, fair, or poor job?
- | | |
|--------------|-----|
| Excellent | 1% |
| Good | 17% |
| Fair | 37% |
| Poor | 32% |
| (Don't know) | 12% |
18. Would you say that the City of Antioch has a great need for additional funding, some need, a little need, or no real need for additional funding?
- | | |
|--------------|-----|
| Great need | 57% |
| Some need | 28% |
| Little need | 4% |
| No need | 6% |
| (Don't know) | 5% |
19. Have you heard or read anything recently about the City of Antioch making cuts to City services and laying off City workers? (IF YES ASK: Have you heard a lot about it or just a little?)
- | | |
|---------------------|-----|
| Yes, heard a lot | 31% |
| Yes, heard a little | 32% |
| No, haven't heard | 36% |
| (Don't know) | 1% |

For each of the following statements please tell me if you strongly agree, somewhat agree, somewhat disagree or strongly disagree with the statement.
 (RANDOMIZE) BEFORE EACH: The (first/next) one is...
 (IF NEEDED) Do you strongly agree, somewhat agree, somewhat disagree or strongly disagree with the statement?

SCALE:	Strongly Agree	Somewhat Agree	Somewhat Disagree	Strongly Disagree	(No Opinion/DK)
20. My property taxes have declined in recent years.	24%	21%	14%	28%	13%
21. Taxes are already high enough. I would vote against any tax increase regardless of how it might be used.	37%	21%	23%	17%	2%
22. The City of Antioch already has enough money, it is just not spent properly.	21%	27%	21%	19%	12%
23. Maintaining City services should be a high priority, even if it means raising taxes.	20%	42%	19%	17%	2%

24. There may be a measure on the ballot this November that would raise taxes in the City of Antioch to prevent further severe cuts to all Antioch city services including: preventing police layoffs and maintaining neighborhood police patrols; fixing potholes and maintaining local streets and sidewalks; restoring code enforcement services; and cleaning up abandoned and foreclosed properties. This measure would dedicate all funds to all Antioch city services and would require annual audits and citizen oversight of all funds. If the election were today, would you vote yes to approve or no to reject this ballot measure? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?
- | | | |
|------------------------|-----|------|
| Yes, approve | 52% | |
| (Lean yes, approve) | 6% | →59% |
| No, reject | 32% | |
| (Lean no, reject) | 2% | →34% |
| (Undecided/Don't know) | 7% | |
25. Would you vote yes to approve or no to reject this ballot measure if it were to expire in 8 years? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?
- | | | |
|------------------------|-----|------|
| Yes, approve | 48% | |
| (Lean yes, approve) | 5% | →53% |
| No, reject | 36% | |
| (Lean no, reject) | 1% | →37% |
| (Undecided/Don't know) | 10% | |
26. Let me ask you about a slightly different ballot measure. How would you vote on a measure that would raise taxes in the City of Antioch with all funds dedicated only to police services? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?
- | | | |
|------------------------|-----|------|
| Yes, approve | 35% | |
| (Lean yes, approve) | 6% | →41% |
| No, reject | 52% | |
| (Lean no, reject) | 2% | →53% |
| (Undecided/Don't know) | 5% | |

The final structure of a ballot measure has not yet been decided. I'm going to read you descriptions of some specific measures that may be on the ballot in Antioch this November. After each one, please tell me if you would vote yes to approve the measure or no to reject it.

(RANDOMIZE)

(IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?

BEFORE EACH: Would you vote yes to approve or no to reject...

SCALE:	Yes, approve	(Lean yes, approve)	(Lean no, reject)	No, reject	(Undecided/ Don't know)
27.	A <u>one half cent</u> local sales tax to fund essential city services, including police, street repairs and code enforcement?				
	55%	3%	2%	38%	3%
28.	A Utility Users Tax of 5 percent on gas, electricity, video and telecommunications services to fund essential city services, including police, street repairs and code enforcement?				
	25%	3%	1%	68%	3%
29.	An annual parcel tax of one hundred twenty dollars per parcel to fund essential city services, including police, street repairs and code enforcement?				
	42%	2%	1%	50%	4%
30.	An annual parcel tax of two hundred dollars per parcel to fund essential city services, including police, street repairs and code enforcement?				
	30%	3%	2%	62%	3%

I'm going to read you some things that have been said by supporters of a ballot measure that would raise taxes in the City of Antioch to prevent severe cuts to all Antioch city services including: preventing police layoffs and maintaining neighborhood police patrols; fixing potholes and maintaining local streets and sidewalks; restoring code enforcement services; and cleaning up abandoned and foreclosed properties. For each item, please tell me if hearing this makes you more likely to vote yes or more likely to vote no on the measure.

BEFORE EACH: The (first/next) one is...

AFTER EACH: ... does hearing this make you more likely to vote yes or more likely to vote no on this measure? (is that much or somewhat more/less likely?)

(RANDOMIZE)

SCALE:	Much more likely, yes	Somewhat more likely, yes	Somewhat more likely, no	Much more likely, no	(No difference)	(Don't know)
31.	Because of the weak economy and the state budget crisis, the City of Antioch has lost nearly one third of its revenues. The City has made severe cuts to services, laid off 25 percent of City workers, and required other workers to take unpaid days off; and the City still has an 8.5 million dollar budget deficit for the next year. Without new tax revenues, even more cuts to basic City services will be needed.					
	26%	27%	15%	18%	6%	8%
32.	If this ballot measure fails, there is a chance the City of Antioch may be forced to declare bankruptcy, like the City of Vallejo did recently.					
	32%	19%	16%	18%	8%	7%
33.	The City budget crisis has forced the Police Department to stop replacing officers who retire or leave the city, and the police department now has 20 fewer officers than it did 2 years ago. Without new tax revenue, the City will have to make additional cuts to the Police Department, which will increase 9-1-1 response times and make our streets more dangerous.					
	42%	23%	13%	14%	5%	3%
34.	The City budget crisis has led to the elimination of the entire City code enforcement department. This tax measure will allow the City to resume code inspections on foreclosed and abandoned properties and force property owners to clean up blight and fix dangerous conditions.					
	37%	29%	13%	14%	6%	2%
35.	Antioch is a great place to live and to raise a family. We should vote to keep our city safe and protect basic City services to preserve our community's quality of life.					
	39%	31%	10%	10%	6%	4%
36.	This measure requires annual public audits to ensure that all funds are spent as promised. All funds from this ballot measure will stay in Antioch, and not one dollar can be taken by the state.					
	53%	25%	7%	8%	6%	1%

37. Now that you've heard more about it, let me ask you again about a ballot measure that would raise taxes in the City of Antioch to prevent further severe cuts to all Antioch city services including: preventing police layoffs and maintaining neighborhood police patrols; fixing potholes and maintaining local streets and sidewalks; restoring code enforcement services; and cleaning up abandoned and foreclosed properties. This measure would dedicate all funds to all Antioch city services and would require annual audits and citizen oversight of all funds. If the election were today, would you vote yes to approve or no to reject this ballot measure? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?

Yes, approve	58%	
(Lean yes, approve)	5%	→63%
No, reject	30%	
(Lean no, reject)	2%	→31%
(Undecided/Don't know/Depends on measure)	6%	

38. Opponents of this measure say that families are struggling to make ends meet, and this is a terrible time to ask for a tax increase. The City Council and bureaucrats have caused this crisis with years of incompetence, waste and poor management; and the City should tighten its budget just like everyone else in these hard times. Now that you've heard more, would you vote yes to approve or no to reject a ballot measure that would raise taxes in the City of Antioch to prevent further severe cuts to all Antioch city services including: preventing police layoffs and maintaining neighborhood police patrols; fixing potholes and maintaining local streets and sidewalks; restoring code enforcement services; and cleaning up abandoned and foreclosed properties? (IF UNDECIDED) Well which way do you lean — toward voting yes to approve, or voting no to reject the measure?

Yes, approve	49%	
(Lean yes, approve)	4%	→53%
No, reject	39%	
(Lean no, reject)	3%	→42%
(Undecided/Don't know/Depends on measure)	6%	

39. It is possible that there might be two local tax measures on the ballot this November: a school parcel tax for neighborhood schools in the Antioch Unified School District and a city tax to fund City of Antioch city services including police, street repairs and code enforcement. If both of these measures were on the ballot in November, how would you vote: yes on both measures, yes on only one of the measures, or no on both measures? (IF YES ON ONLY ONE) Would you vote yes on the schools measure or the city measure?

Yes on both	35%
Yes on schools measure only	12%
Yes on city measure only	17%
No on both	27%
(Undecided/Don't know)	8%

Now I'd like to ask you a few questions for statistical purposes only.

40. Do you own or rent your home?
- | | |
|--------------------|-----|
| Own | 81% |
| Rent | 12% |
| (Other/DK/Refused) | 7% |
41. What is the last grade you completed in school?
- | | |
|-----------------------|-----|
| Some grade school | 0% |
| Some high school | 4% |
| Graduated High School | 21% |
| Technical/Vocational | 4% |
| Some College | 33% |
| Graduated College | 27% |
| Graduate/Professional | 8% |
| (Don't Know/Refused) | 3% |
42. In terms of your job status, are you employed, unemployed but looking for work, retired, a student or a homemaker?
- | | |
|--------------|-----|
| Employed | 54% |
| Unemployed | 9% |
| Retired | 28% |
| Student | 1% |
| Homemaker | 3% |
| (Other) | 2% |
| (Don't Know) | 2% |
43. Would you consider yourself to be Black or African-American, White, Hispanic or Latino, Asian or something else?
- | | |
|------------------------|-----|
| Black/African-American | 8% |
| White | 58% |
| Hispanic/Latino | 16% |
| Asian | 4% |
| Other | 14% |
| (Refused) | |
44. In what year were you born? (Do not read categories, code as appropriate)
- | | |
|-----------------------|-----|
| 1935 or earlier (75+) | 9% |
| 1936-1940 (70-74) | 5% |
| 1941-1945 (65-69) | 7% |
| 1946-1950 (60-64) | 13% |
| 1951-1955 (55-59) | 11% |
| 1956-1960 (50-54) | 14% |
| 1961-1965 (45-49) | 14% |
| 1966-1970 (40-44) | 7% |
| 1971-1975 (35-39) | 5% |
| 1976-1980 (30-34) | 5% |
| 1981-1985 (25-29) | 3% |
| 1986-1992 (18-24) | 5% |
| (Refused) | 4% |

THANK YOU!

Party Registration (from sample)

Democrat	56%
Republican	25%
DTS/Other	19%

Permanent Absentee Voter

Yes	51%
No	49%

THE CITY OF ANTIOCH

A COMMUNITY that is proud of its heritage;

A COMMUNITY that provides an opportunity to live, learn, work, worship, and play in a safe, stimulating and diverse community;

A COMMUNITY that is a responsible steward of its economic and natural resources;

A COMMUNITY that recognizes its responsibility to the larger Delta Region, and will be a pro-active advocate and leader in promoting regional cooperation.

City of Antioch Budget Information

The City received confirmation from Contra Costa County that our property tax assessed values have declined 7.14%. We had budgeted a 0% increase/decrease in fiscal year 2012. In addition, as a result of the State budget, VLF revenues allocated to Cities are being diverted to the state to fund law enforcement grants. The only upside to this action is that we budgeted for \$100,000 in SLESF funding from the State, and it is now estimated that the City will receive \$160,658 in fiscal year 2012 as a result. The result of these losses are devastating to the General Fund budget. Revised projections, highlighting the changes, are provided below.

	2011-2012 Adopted	2012-13 Projected
Beginning Balance, July 1	\$5,398,839	\$4,031,378
Revenue Source:		
Taxes	26,068,531	26,656,558
Property Tax Reduction	854,118	1,028,099
MVLF Reduction	370,000	400,000
Licenses & Permits	744,040	744,040
Fines & Penalties	130,000	140,000
Investment Income & Rentals	421,400	417,400
Revenue from Other Agencies	908,440	183,000
Current Service Charges	1,740,739	1,785,382
Other Revenue	370,520	310,520
Donation Revenue	100,000	0
Transfers In	3,772,071	3,757,904
SLESF Increase	60,658	60,658
Total Revenue	33,092,281	32,627,363
Expenditures:		
Legislative & Administrative	2,399,867	2,504,898
Finance	1,844,977	1,886,414
Nondepartmental	1,328,931	1,462,722
Public Works	4,902,344	4,982,665
Police Services	23,776,314	24,890,937
Police Services-Animal Support	436,226	441,317
Recreation/Community Services	496,295	399,705
Community Development	1,219,993	1,179,678
Capital Improvement	224,177	234,557
Interfund Charges	(2,169,382)	(2,159,608)
Total Expenditures	34,459,742	35,823,285
Ending Balance, June 30	\$4,031,378	\$835,456

*Fund Balance	4,031,378	835,456
Designated-Compensated Absences	115,000	130,000
Undesignated Reserve	3,916,378	705,456
Percentage of Revenue	11.83%	2.16%
Deficit	(1,367,461)	(3,195,922)

The property tax reduction in fiscal year 2013 assumes a zero percent change in property tax from the revised fiscal year 2012 estimate. While we are still projecting our fund balance undesignated reserve to be above 10% at the end of fiscal year 2012, the impact of property taxes and the state budget on fiscal year 2013 puts us at a very unhealthy reserve level and our budgeted expenditures are almost unsustainable.

It is crucial Council address this immediately. During the budget study sessions, Council requested some financial information as they move forward with priority setting and upcoming meet and confer processes.

- The total salary and benefit cost of the 145 vacant positions as of June 1st reported to Council (a vacancy list by position title as of June 1st is attached) - \$15,653,795.
- The cost difference to pay the full actuarial required contribution for medical after retirement verses the pay-go costs the City currently funds. The FY12 budget includes \$1,107,550 in pay-go medical after retirement costs. To fund the full actuarial contribution, the City would need to contribute an additional \$1,235,000 in FY12 towards medical after retirement costs.
- The total salary and benefit cost to reinstate furloughs and 10% wage reductions city wide- \$1,302,805.
- The cost to the General Fund as a result of redevelopment agency elimination – The legislation that passed in the budget contains two provisions, either voluntary contributions by redevelopments agencies beginning in FY12 to the state (amounts determined by a formula established in the legislature) or face total elimination. Preliminary estimates provided indicate that the City’s development agency will have to contribute \$3,161,202 in FY12 if this legislation is not successfully challenged. If the redevelopment agency were eliminated, not only would community programs suffer, but the following costs would revert to the General Fund:

	<u>FY12 Amount</u>
Personnel Costs	\$304,714
Marina subsidy	250,000
City Wide Cost Allocation	100,525
Monitoring Wells Capital Project	40,000
	<u>\$ 695,239</u>

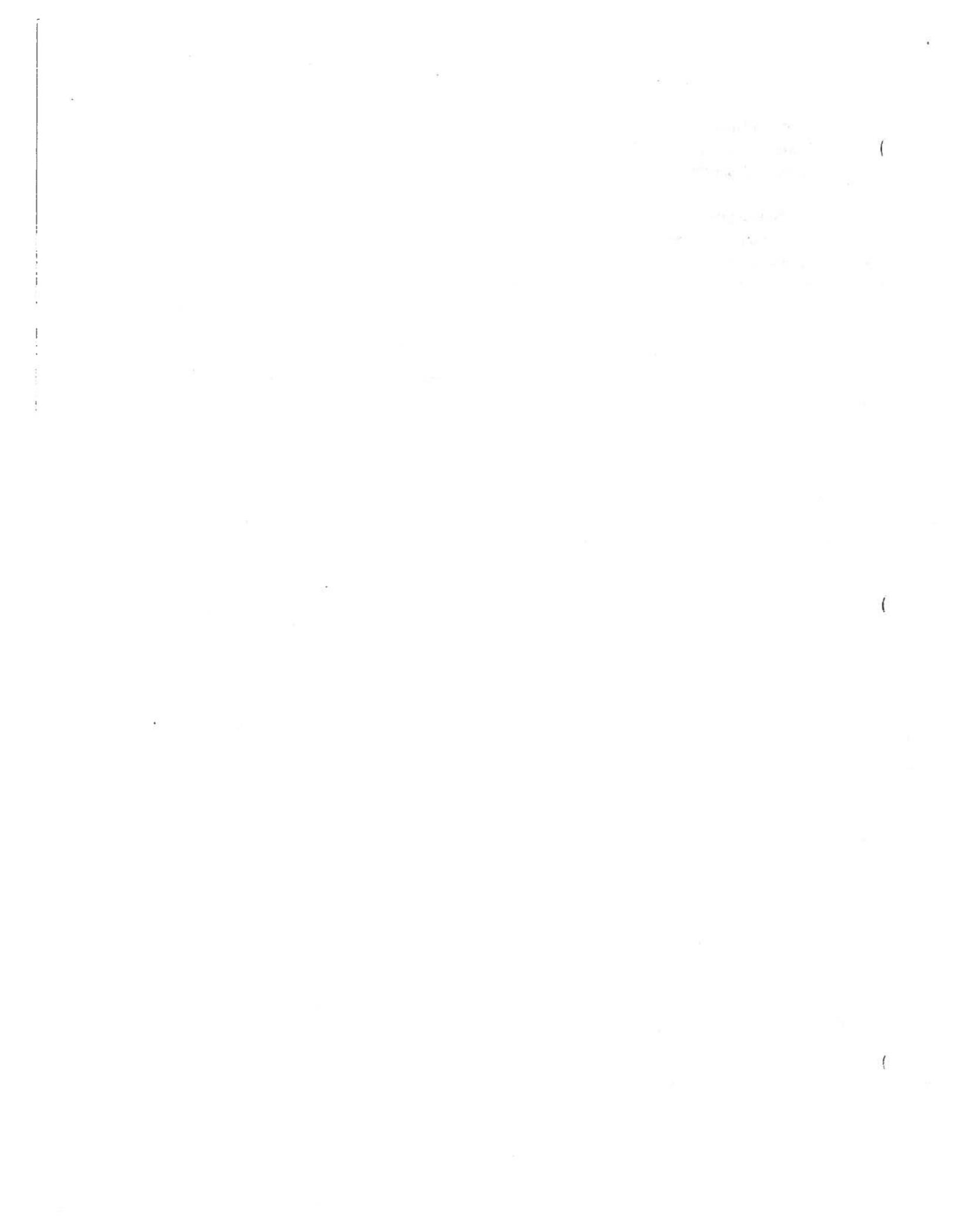
- Reserve fund balance levels – The City’s reserve policy establishes reserves for litigation, compensated absences, and replacement reserves for both office equipment (computers and phones) and vehicles. To aid in the budget process the last several years, reserves have been significantly reduced, if not fully depleted. Desired levels once sustainable are:
 - Litigation - \$500,000
 - Compensated absences – Currently this reserve is set at 5% of the prior year audited balance in the General Fund. This amount is still acceptable due to low staffing levels.
 - Office equipment – In FY10, the General Fund borrowed \$500,000 in office equipment replacement funds which represented approximately 50% of the balance at that time. The balance is estimated to be approximately \$770,000 at June 30, 2011 and will grow slightly with contributions of replacement funds over the next two fiscal years. This balance is more than adequate for budgeted purchases in FY12 and FY13. The \$500,000 will need to be repaid if the Council determines in the future that this is a priority.
 - Vehicle replacement – In FY10, the General Fund borrowed \$1M in vehicle replacement funds which represented approximately 50% of the balance at that time. The balance is estimated to be approximately \$869,000 at June 30, 2011 and will only grow slightly with contributions of replacement funds from non-general funds over the next two fiscal years. Public Works has been stretching vehicle lives as much as possible and deferring purchases. To meet vehicle needs in the future, it will be important to replenish the \$1M when we can, and reinstate contributions from the General Fund.

City of Antioch
Listing of Vacant Positions City Wide as of June 1, 2011

Department/Position Title	No. Vacant	Total by Dept.
Legislative		
Executive Secretary	1	
Secretary I/II	0.5	
Assistant City Manager	1	
Human Resources Director	1	
Project Manager	1	
Deputy City Attorney	1	
Deputy City Clerk	1	
Deputy Director of Community Dev/Long Range Planning	1	
Economic Development Director	1	
		8.5
Finance		
Administrative Analyst II	1	
Administrative Secretary	1	
Business License Representative	1	
Buyer II	1	
Mail Clerk	1	
Customer Service Rep I/II	2	
		7
Public Works		
Fleet Services Technician	1	
Equipment Mechanic	1	
Equipment Operator	2	
Facility Maintenance Leadworker	1	
General Laborer	2	
Landscape Maintenance Worker	1	
Landscape Maintenance Leadworker	1	
Pipefitter I/II	4	
Pipefitter Leadworker	3	
Street Maintenance Leadworker	1	
Street Maintenance Worker I/II	7	
Parks Maintenance Superintendent	1	
Street Maintenance Superintendent	1	
Water Treatment Plant Trainee	1	

Water Treatment Plant Supervisor	1	
Collections Systems Superintendant	1	
Collections Systems Supervisor	1	
Water Distribution Supervisor	1	
Park Maintenance Supervisor	1	
Public Works Inspector	1	
Senior Public Works Inspector	1	
Fleet Supervisor	1	
Community Development Tech	1	
Secretary I/II	1	
Asst Engineer w/certificate	1	
Assistant City Engineer	1	
Senior Traffic Engineer	1	
Harbormaster	1	
		41
Police Department		
CSO	20	
Corporal	2	
Dispatcher	4	
Police Officer	23	
Sergeant	2	
Captain	1	
Lieutenant	1	
Administrative Secretary	1	
Secretary I/II	3	
		57
Animal Services		
Secretary I/II	0.5	
Customer Service Rep I/II	1	
		1.5
Community Development		
Jr Planner	1	
Building Inspector	1	
Snr Building Inspector	1	
Code Enforcement Officer	6	
Community Development Tech	2	
Recycling Assistant	1	
Neighborhood Improvement Coordinator	1	
Neighborhood Improvement Manager	1	
Recreation Supervisor	2	
Aquatics Maintenance Worker	1	
Deputy Director of Leisure Services	1	
Senior Bus Driver	1	

Senior Planner	2	
Secretary I/II	4	
Chief Building Official	1	
		26
Information Services		
Director of Information Services	1	
Computer Tech I/III	2	
GIS Coordinator	1	
		4
Grand Totals	145	145



STAFF REPORT TO THE CITY OF ANTIOCH AS SUCCESSOR AGENCY TO THE ANTIOCH DEVELOPMENT AGENCY FOR CONSIDERATION AT THE MEETING OF JANUARY 8, 2013

Prepared By: Dawn Merchant, Finance Director

Date: December 18, 2012

Subject: Repayment Schedule for Housing Deferred Set-Aside

RECOMMENDED ACTION

Motion to adopt the resolution approving a repayment plan for the Housing Deferred Set-Aside of the former Antioch Development Agency Project Area #1 to the Housing Successor Fund.

DISCUSSION

In October 2000, the former Antioch Development Agency adopted Resolution No. ADA-373 establishing a deficit elimination plan to repay set-aside requirements under California Community Redevelopment Law Sections 33000 and following that had been previously deferred. This was known as the Housing Deferred Set-Aside and recognized on the former redevelopment agency's records as a liability of former Project Area #1 owed to the Low and Moderate Income Housing Fund.

The City as Successor Agency to the Antioch Development Agency included this obligation on the adopted Enforceable Obligation Payment Schedule in the amount of \$3,537,849 (Resolution 2012/08), representing the amount outstanding as of January 2012 prior to the official dissolution date of redevelopment.

The obligation was included on the subsequent Recognized Obligation Payment Schedule (ROPS) required to be prepared detailing obligations due for a six month period. On May 11, 2012, the Department of Finance disallowed the obligation for the Housing Deferred Set-Aside sighting that the requirement for a housing set-aside ended with the Dissolution Act. Successor Agency staff removed the obligation from ROPS that have been approved by both City Council as Successor Agency and the Oversight Board to the Successor Agency since that date.

In June 2012, AB X1 26 was amended by AB1484. As amended, Health and Safety Code Sections 34176 (e)(6)(A) and 34171 (d)(1)(G) specifically define a housing asset to include "Repayments of loans or deferrals owed to the Low and Moderate Income Housing Fund...which shall be used consistent with the

affordable housing requirements in the Community Redevelopment Law...”; and an enforceable obligation to include “Amounts borrowed from, or payments owing to, the Low and Moderate Income Housing Fund of a redevelopment agency, which had been deferred as of the effective date of the act adding this part; provided, however, that the repayment schedule is approved by the oversight board...”.

Successor Agency staff believes that the deferred Housing Set-Aside meets the definition of both a housing asset and enforceable obligation of the former redevelopment agency assumed by the City as both Housing Successor and Successor Agency. Pursuant to Health and Safety Code Section 34176 (e)(6)(B), loan or deferral repayments cannot be made prior to the 2013-14 fiscal year, therefore we are requesting the City Council to adopt a resolution approving a repayment plan to begin in fiscal year 2013-14 (as attached to the resolution). The repayment plan spreads the repayment of the outstanding balance evenly through fiscal year 2069 as this is the final repayment date of outstanding affordable housing loans and funds received under the repayment can be used towards administration of the existing loans. It is important to note that the amount proposed to be repaid each year may be adjusted annually by the Contra Costa County Auditor-Controller as the Health and Safety Code limits the maximum annual repayment equal to one-half of the increase between the amount distributed to taxing entities in any fiscal year and the amount distributed to taxing entities in the 2012-13 base year. Successor Agency staff is unable to determine what the allowable amount will be each year.

A similar resolution will be presented to the Oversight Board at a meeting on January 14, 2013 and the obligation will be included on the ROPS to be prepared for the July 2013-December 2013 period which is required to be approved by March 3, 2013.

ATTACHMENT

- A. Resolution Approving a Repayment Plan for the Housing Deferred Set-Aside Obligation of the City of Antioch as Successor Agency to the Antioch Development Agency.

ATTACHMENT A

SA RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANTIOCH AS THE SUCCESSOR AGENCY TO THE ANTIOCH DEVELOPMENT AGENCY APPROVING A REPAYMENT PLAN FOR THE HOUSING DEFERRED SET-ASIDE

Whereas, in October 2000 the former Antioch Development Agency adopted a Deficit Elimination Plan to repay deferred housing set-asides to the Low and Moderate Income Housing Fund of the Antioch Development Agency as required under Community Redevelopment Law Sections 33000 and following; and

Whereas, an obligation in the amount of \$3,537,849 to repay the deferred set-asides is included on the Enforceable Obligation Schedule of the City of Antioch as Successor Agency to the Antioch Development Agency as adopted by City Council in Resolution 2012/08; and a related housing asset for the amount is recognized in the Housing Successor Fund of the City of Antioch which assumed all assets of the former Low and Moderate Income Housing Fund of the Antioch Development Agency; and

Whereas, Health and Safety Code Section 34176 (e)(6)(A) recognizes repayments of deferrals owed to the Low and Moderate Income Housing Fund as housing assets provided that funds are used consistent with affordable housing requirements in the Community Redevelopment Law; and

Whereas, Health and Safety Code Section 34171 (d)(1)(G) defines enforceable obligations to include payments owing to the Low and Moderate Income Housing Fund of a redevelopment agency provided that the repayment is approved by the oversight board and used in a manner consistent with the affordable housing requirements of the Community Redevelopment Law (Part 1 commencing with Section 33000); and

NOW THEREFORE BE IT RESOLVED THAT:

1. The City Council of the City of Antioch as Successor Agency to the Antioch Development Agency approves the attached Housing Deferred Set-Aside Repayment Schedule.

The foregoing resolution was passed and adopted by the City Council of the City of Antioch as the Successor Agency to the Antioch Development Agency at a regular meeting thereof, held on the ____ day of _____, 2013 by the following vote:

ATTACHMENT A

**AYES:
NOES:
ABSENT:**

ARNE SIMONSEN, CITY CLERK

**City of Antioch as Successor Agency to
the Antioch Development Agency
Housing Deferred Set-Aside Repayment Plan**

Beginning Balance \$ 3,537,849.00

Repayment Dates	Balance After Payment	
January 2014	63,176.00	\$ 3,474,673.00
January 2015	63,176.00	3,411,497.00
January 2016	63,176.00	3,348,321.00
January 2017	63,176.00	3,285,145.00
January 2018	63,176.00	3,221,969.00
January 2019	63,176.00	3,158,793.00
January 2020	63,176.00	3,095,617.00
January 2021	63,176.00	3,032,441.00
January 2022	63,176.00	2,969,265.00
January 2023	63,176.00	2,906,089.00
January 2024	63,176.00	2,842,913.00
January 2025	63,176.00	2,779,737.00
January 2026	63,176.00	2,716,561.00
January 2027	63,176.00	2,653,385.00
January 2028	63,176.00	2,590,209.00
January 2029	63,176.00	2,527,033.00
January 2030	63,176.00	2,463,857.00
January 2031	63,176.00	2,400,681.00
January 2032	63,176.00	2,337,505.00
January 2033	63,176.00	2,274,329.00
January 2034	63,176.00	2,211,153.00
January 2035	63,176.00	2,147,977.00
January 2036	63,176.00	2,084,801.00
January 2037	63,176.00	2,021,625.00
January 2038	63,176.00	1,958,449.00
January 2039	63,176.00	1,895,273.00
January 2040	63,176.00	1,832,097.00
January 2041	63,176.00	1,768,921.00
January 2042	63,176.00	1,705,745.00
January 2043	63,176.00	1,642,569.00
January 2044	63,176.00	1,579,393.00
January 2045	63,176.00	1,516,217.00
January 2046	63,176.00	1,453,041.00
January 2047	63,176.00	1,389,865.00
January 2048	63,176.00	1,326,689.00
January 2049	63,176.00	1,263,513.00
January 2050	63,176.00	1,200,337.00
January 2051	63,176.00	1,137,161.00
January 2052	63,176.00	1,073,985.00
January 2053	63,176.00	1,010,809.00
January 2054	63,176.00	947,633.00
January 2055	63,176.00	884,457.00
January 2056	63,176.00	821,281.00
January 2057	63,176.00	758,105.00
January 2058	63,176.00	694,929.00
January 2059	63,176.00	631,753.00
January 2060	63,176.00	568,577.00
January 2061	63,176.00	505,401.00
January 2062	63,176.00	442,225.00
January 2063	63,176.00	379,049.00
January 2064	63,176.00	315,873.00
January 2065	63,176.00	252,697.00
January 2066	63,176.00	189,521.00
January 2067	63,176.00	126,345.00
January 2068	63,176.00	63,169.00
January 2069	63,169.00	-