

MEDICAL MARIJUANA DISPENSARIES

A Time for Regulation

SUMMARY

The passage of Senate Bill 420 in 2003 clarified the Compassionate Use Act of 1996, which legalized the use of marijuana for medical reasons. Santa Barbara City's Measure P in 2006 declared the use of marijuana the lowest priority for law enforcement. As a result, the number of local marijuana dispensaries jumped from five to more than 20. This prompted citizen concern, and on October 2007, the City adopted an Interim Zoning Control Ordinance Relating to Medical Marijuana Dispensaries, which called for a suspension of business licenses for new medical marijuana dispensaries. This interim ordinance will expire in April 2008. In the meantime, City Council ordered the preparation of a permanent ordinance.

The 2007-2008 Santa Barbara County Civil Grand Jury investigated the draft of a new ordinance, and while it found the draft contained much to be applauded, it also discovered there was little will to regulate beyond zoning. The Grand Jury believes the City can and should do more, and found support for this from dispensary owners.

INTRODUCTION

The Compassionate Use Act of 1996 (Section 11362.5 of the California Health and Safety Code) allows patients with a valid doctor's recommendation, or the patient's designated Primary Caregiver, to possess and cultivate marijuana for personal medical use. Dispensaries can be designated Primary Caregivers.

Senate Bill 420, signed into law in 2003, addresses the vague provisions of the Compassionate Use Act, (also known as Proposition 215) including:

- Allows patients to grow up to six mature and 12 immature plants; they may grow these collectively or cooperatively
- Allows patients to possess up to eight ounces of dried processed marijuana
- Requires counties to implement a voluntary patient identification card system
- Disallows marijuana smoking
 - ✓ in no smoking zones
 - ✓ within 1000 feet of a school or youth center, except in private residences
 - ✓ on school buses
 - ✓ in a motor vehicle that is being operated
 - ✓ while operating a boat
- Protects patients and caregivers from arrest for transportation and other miscellaneous charges not covered in Proposition 215
- Allows probationers, parolees, and prisoners to apply for permission to use medical marijuana

- Makes it a crime
 - ✓ to fraudulently provide misinformation to obtain a medical marijuana county identification card
 - ✓ to steal or misuse the card of another
 - ✓ to counterfeit a card
 - ✓ to breach the confidentiality of patient records in the card program.

The law also allows cities and counties to enact their own regulations.

At the time of passage of Measure P, the City of Santa Barbara required only the purchase of a business license by a potential dispensary operator. In response to neighborhood concerns, Santa Barbara City Council adopted a six-month Interim Medical Marijuana Dispensary Control Ordinance, which prohibits the issuance of new business licenses for dispensary operations. Jurors were told the interim ordinance probably will not be extended beyond April 2008.

In the meantime, City Council instructed its Ordinance Committee, consisting of three council members, to direct the Community Development staff, and the City Attorney's office to prepare an ordinance establishing regulations and procedures for medical cannabis dispensaries. A draft ordinance was presented to City Council on December 4, 2007. By and large the Jury believes staff did a comprehensive job of addressing citizens' concerns. However, in its memo to the Ordinance Committee, the Planning Division of the Community Development Department states the draft features a "locational control" approach based on proximity to sensitive land uses. It states further:

Throughout the discussion...Staff have stated that the permanent ordinance approval could require a use permit...based on location requirements. Upon further review... it may be that a permit is not necessary and that the medical marijuana dispensaries could be regulated either without discretionary review (similar to adult entertainment businesses) or with a Special Use Permit that is heard by the Staff Hearing Officer and appealable to the Planning Commission.

The reasons that Staff believes that the sort of subjective discretionary review which occurs for a CUP (Conditional Use Permit) may not be necessary are: 1. in allowing medical marijuana dispensaries, the City is merely imposing zoning regulations on something which is otherwise allowed by state law; 2. the locational and operational limitations are such that they ensure compatibility with neighborhoods and are not detrimental to public health, safety and welfare; and 3. most likely, medical marijuana dispensaries will occupy existing buildings and parking won't be an issue because parking for a medical marijuana dispensary is the same as for other retail uses.

This memo ignores the question of additional regulations.

METHODOLOGY

During the Grand Jury's investigation, it toured medical marijuana dispensaries and interviewed operators as well as their staff. At these visits, patients were observed coming in to make purchases, although these transactions were conducted in private. Security measures were observed both inside the facility as well as outside in adjacent parking areas. Attorneys for the dispensary owners were interviewed as well as an attorney representing the owner of a building housing a dispensary. The Grand Jury met with doctors who explained their backgrounds and understanding of the benefits of medical cannabis. A Santa Barbara city council member provided the proposed draft ordinance and answered questions from the Jurors. This draft ordinance cited the various laws relevant to marijuana dispensaries. Law enforcement personnel provided statistics that aided in the Grand Jury's study.

OBSERVATIONS AND ANALYSIS

The Federal Government does not allow the prescription of marijuana, but California allows a physician to write a recommendation. Locally there are only a few doctors who give their patients marijuana recommendations. There are no regulations for doctors regarding marijuana recommendations, and marijuana is being recommended for a variety of ailments ranging from cancer and AIDS to migraines. One doctor interviewed said that he always conducts a complete physical exam before recommending marijuana and makes sure that the patient knows the pros and cons of using the drug. Many of the patients for whom he recommends marijuana have used it on their own for some time and found it useful prior to coming to him. He also stated that a patient could take the doctor's recommendation to multiple dispensaries.

When patients receive a recommendation from a doctor, the Penal Code suggests, but does not require, that they go to the County Health Department for an ID card which costs \$162. The purpose of the ID card is to make law enforcement personnel aware that the individual is authorized by the State of California to be in possession of marijuana. When patients go to a dispensary they may or may not receive another ID card which is shown when purchasing marijuana at that location only. Before dispensing marijuana, the operator is required by the Penal Code to contact the issuing doctor's office to verify that the purchaser actually received the recommendation from that doctor.

Patients may legally purchase up to eight ounces at one time. One-eighth to one ounce is the usual amount of marijuana sold by dispensaries at one time and may last from one day to one month depending on the patient's use. The Jury has been informed that for the typical patient that amount will last approximately one week. Some operators keep records of how often a patient purchases cannabis, but there is no requirement to do so. One operator told the Grand Jury that his staff watches for a pattern which may indicate the product is being resold outside the facility, but they cannot control what the patient does with the cannabis after leaving.

Under California law, anyone with a doctor's recommendation is entitled to have up to six mature plants and 12 immature plants. Some operators told the Jury they buy marijuana grown by their clientele, but other dispensaries grow their own. An operator purchases marijuana for \$2800 to \$6000 per dried pound (\$175-\$375 per ounce). These operators have no way of knowing under what conditions the cannabis was grown, but believe their personal inspection of the product is adequate. However, when inspecting the marijuana, they have no way of knowing what kind of fertilizers or pesticides were used. It was learned there are different strains of marijuana that affect the pricing, and edible goods containing marijuana are available for purchase.

During its investigation, the Jury found many unverifiable inconsistencies. In one instance the Jury was told marijuana purchases from a dispensary may be more expensive than that purchased on the street. In another instance Jurors were told the price of medical cannabis is competitive locally. This holds the price down, encouraging the use of dispensaries. One ounce from a dispensary may cost \$350-\$600, depending upon the season and the strain of marijuana. Some dispensaries deal only in cash, while others also accept personal checks. The Jury also learned from law enforcement that areas around marijuana dispensaries have been the scenes of crime. There is a concern that patients carrying large amounts of cash and/or marijuana tend to attract crime, especially robbery.

Operators were very open and willing to talk to Jurors and were in favor of controls for dispensaries. They were eager for a permanent ordinance and made several suggestions for this ordinance including at least the following:

- Limits on the amount of marijuana sold to a patient during one transaction
- A criminal background check of dispensary operators and employees
- Audits of inventory and sales
- Establishment of a testing program for quality control
- A secure central database used by all dispensaries to prevent abuses of the recommendations.

Some of these suggestions have been included in the draft ordinance presented to the City Council on December 4, 2007 by city staff for comment. This draft includes recommendations for a review process, background checks of operators, regular inspections of dispensaries, and periodic renewals of permits, as well as zoning and operating procedures. It also sets standards for the background checks by requiring fingerprints and photographs. Furthermore, it states that applicants shall not have been convicted of a felony, or of a misdemeanor involving moral turpitude, or be on probation or parole for a criminal drug offense. The draft has no plans to audit dispensaries, nor for tracking patients to prevent them from going from one dispensary to another. The draft requires this ordinance be dealt with through the Community Development Department. It also cites State law to clarify the scope of the Compassionate Use Act of 1996, which allows cities and other governing bodies to adopt and enforce rules and regulations consistent with the Medical Cannabis Program.

The Jury has been informed that the City Council instructed the Ordinance Committee to give direction to the Planning Commission to recommend a permanent ordinance dealing with the licensing of dispensaries. The Interim Medical Marijuana Dispensing Control Ordinance expires shortly. Failure to enact a permanent ordinance by April 2008 will result in an absence of municipal oversight. Only a business license would be required to operate a dispensary. To date, the Santa Barbara City Council has not approved a permanent ordinance.

CONCLUSION

The 2007-2008 Santa Barbara Civil County Grand Jury concluded from its investigation that the Santa Barbara City Council needs to establish a broader medical marijuana ordinance for the protection and benefit of the citizens of the community, as well as dispensary operators.

FINDINGS AND RECOMMENDATIONS

Finding 1

The only regulation of medical dispensaries by the City of Santa Barbara is a business license.

Recommendation 1

The Santa Barbara City Council should adopt a permanent medical marijuana ordinance, which as a minimum requires a Dispensary Use Permit (DUP) that would be renewed on a regular basis. This ordinance should require fingerprinting, photographing, and background checks of operators, as well as inventory and sales audits.

Finding 2

Patients can have a single marijuana recommendation filled by more than one dispensary.

Recommendation 2

The City of Santa Barbara should establish a secure central database which insures patients do not abuse their recommendations, while protecting their privacy.

Finding 3

There is increased criminal activity around medical marijuana dispensaries.

Recommendation 3

The City of Santa Barbara should include a requirement in the Dispensary Use Permit (DUP) that dispensaries take measures to ensure the safety of patients both inside and outside the dispensaries.

Finding 4

There are no health or safety standards in place which regulate the quality of marijuana sold at dispensaries.

REQUEST FOR RESPONSE

In accordance with Section 933(c) of the California Penal Code, each agency and government body affected by or named in this report is requested to respond in writing to the findings and recommendations in a timely manner. The following are the affected agencies for this report, with the mandated response period for each:

Santa Barbara City Council - 90 days

Findings 1, 2, 3, 4
Recommendations 1, 2, 3

Santa Barbara Community Development Department - 90 days

Findings 1, 2, 3, 4
Recommendations 1, 2, 3