

**Americans For Safe Access**

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS, AND PATIENTS HELPING PATIENTS

# **MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION**



Advancing Legal Medical Marijuana Therapeutics and Research

# MEDICAL CANNABIS DISPENSING COLLECTIVES AND LOCAL REGULATION

February 2011

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## EXECUTIVE SUMMARY

California's original medical cannabis law, the Compassionate Use Act of 1996 (Prop. 215), encouraged state and federal governments to develop programs for safe and affordable distribution of medical cannabis (marijuana). Although self-regulated medical cannabis dispensing collectives (dispensaries) have existed for more than 14 years in California, the passage of state legislation (SB 420) in 2003, court rulings in *People v. Urziceanu* (2005) and *County of Butte v. Superior Court* (2009), and guidelines from the state Attorney General, all recognized and affirmed their status as legal entities under state law. With most of the 300,000 cannabis patients in California relying on dispensaries for their medicine, local officials across the state are developing regulatory ordinances that address business licensing, zoning, and other safety and operational requirements that meet the needs of patients and the community.

Americans for Safe Access, the leading national organization representing the interests of medical cannabis patients and their doctors, has undertaken a study of the experience of those communities that have dispensary ordinances to act as a guide to policy makers tackling dispensary regulations in their communities. The report that follows details those experiences, as related by local officials; it also covers some of the political background and current legal status of dispensaries, outlines important issues to consider in drafting dispensary regulations, and summarizes a recent study by a University of California, Berkeley researcher on the community benefits of dispensaries. In short, this report describes:

Benefits of regulated dispensaries to communities include:

- providing access for the most seriously ill and injured,
- offering a safer environment for patients than having to buy on the illicit market,
- improving the health of patients through social support,
- helping patients with other social services, such as food and housing,
- having a greater than average customer satisfaction rating for health care.

Creating dispensary regulations combats crime because:

- dispensary security reduces crime in the vicinity,
- street sales tend to decrease,
- patients and operators are vigilant; any criminal activity is reported to police.

Regulated dispensaries are:

- legal under California state law,
- helping revitalize neighborhoods,
- bringing new customers to neighboring businesses,
- not a source of community complaints.

This report concludes with a section outlining the important elements for local officials to consider as they move forward with regulations for dispensaries. ASA has worked successfully with officials across the state to craft ordinances that meet the state's legal requirements, as well as the needs of patients and the larger community.

Please contact us if you have questions:  
888-929-4367.

## OVERVIEW OF MEDICAL CANNABIS DISPENSARIES

*"As the number of patients in the state of California who rely upon medical cannabis for their treatment continues to grow, it is increasingly imperative that cities and counties address the issue of dispensaries in our respective communities. In the city of Oakland we recognized this need and adopted an ordinance which balances patients' need for safe access to treatment while reassuring the community that these dispensaries are run right. A tangential benefit of the dispensaries has been that they have helped to stimulate economic development in the areas where they are located."*

—Desley Brooks, Oakland City Councilmember

### ABOUT THIS REPORT

Land-use decisions are now part of the implementation of California's medical marijuana, or cannabis, laws. As a result, medical cannabis dispensing collectives (dispensaries) are the subject of considerable debate by planning and other local officials. Dispensaries have been operating openly in many communities since the passage of Proposition 215 in 1996. As a compassionate, community-based response to the problems patients face in trying to access cannabis, dispensaries are currently used by more than half of all patients in the state and are essential to those most seriously ill or injured. Since 2003, when the legislature further implemented state law by expressly addressing the issue of patient collectives and compensation for cannabis, more dispensaries have opened and more communities have been faced with questions about business permits and land use options.

In an attempt to clarify the issues involved, Americans for Safe Access has conducted a survey of local officials in addition to continuously tracking regulatory activity throughout the state (see [AmericansForSafeAccess.org/regulations](http://AmericansForSafeAccess.org/regulations)). The report that follows outlines some of the underlying questions and provides an overview of the experiences of cities and counties around the state. In many parts of California, dispensaries have operated responsibly and provided essential services to the most needy without local intervention,

but city and county officials are also considering how to arrive at the most effective regulations for their community, ones that respect the rights of patients for safe and legal access within the context of the larger community.

### ABOUT AMERICANS FOR SAFE ACCESS

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists, and concerned citizens promoting safe and legal access to cannabis for therapeutic use and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 50,000 active members with chapters and affiliates in all 50 states.

### THE NATIONAL POLITICAL LANDSCAPE

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor. The two largest physician-based professional organizations in the U.S., the American Medical Association and the

American College of Physicians, have urged the federal government to reconsider its regulatory classification of cannabis.

For decades, the federal government has maintained the position that cannabis has no medical value, despite the overwhelming evidence of marijuana's medical efficacy and the broad public support for its use. Not to be deterred, Americans have turned to state-based solutions. The laws passed by voters and legislators are intended to mitigate the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference.

Fifteen states have adopted medical marijuana laws in the U.S. Beginning with California in 1996, voters passed initiatives in nine states plus the District of Columbia—Alaska, Arizona, Colorado, Maine, Michigan, Montana, Nevada, Oregon, and Washington. State legislatures followed suit, with elected officials in Hawaii, Maryland, New Jersey, New Mexico, Rhode Island, and Vermont taking action to protect patients from criminal penalty. Understanding the need to address safe and affordable access to medical cannabis, Arizona, California, Colorado, Maine, New Jersey, New Mexico, and Rhode Island all adopted local or state laws that regulate its production and distribution.

Despite *Gonzales v. Raich*, a U.S. Supreme Court ruling in 2005 that gave government the discretion to enforce federal cannabis laws even in medical cannabis states, more states continue to adopt laws each year.

With the election of President Barack Obama, a new approach to medical cannabis is taking shape. In October 2009, the Justice Department issued guidelines discouraging U.S. Attorneys from investigating and prosecuting medical cannabis cases. While this new policy specifically addresses enforcement, ASA continues to work with Congress and the President to push for expanded research and protection for all medical cannabis in the U.S. The public advocacy of well-known cannabis

patients such as the Emmy-winning talk show host Montel Williams and music artist Melissa Etheridge has also increased public awareness and helped to create political pressure for changes in state and federal policies.

## HISTORY OF MEDICAL CANNABIS IN CALIFORNIA

Since 1996, when 56% of California voters approved the Compassionate Use Act (CUA), public support for safe and legal access to medical cannabis has steadily increased. A statewide Field poll in 2004 found that "three in four voters (74%) favors implementation of the law." In 2003, the state legislature recognized that the Compassionate Use Act (CUA) gave little direction to local officials, which greatly impeded the safe and legal access to medical cannabis envisioned by voters.

Legislators passed Senate Bill 420, the Medical Marijuana Program (MMP) Act, which provided a greater blueprint for the implementation of California's medical cannabis law. Since the passage of the MMP, ASA has been responsible for multiple landmark court cases, including *City of Garden Grove v. Superior Court*, *County of San Diego v. San Diego NORML*, and *County of Butte v. Superior Court*. Such cases affirm and expand the rights granted by the CUA and MMP, and at the same time help local officials better implement state law.

In August 2008, California's Attorney General issued a directive to law enforcement on state medical marijuana law. In addition to reviewing the rights and responsibilities of patients and their caregivers, the guidelines affirmed the legality of storefront dispensaries and outlined a set of requirements for state law compliance. The attorney general guidelines also represent a roadmap by which local officials can develop regulatory ordinances for dispensaries.

## WHAT IS A MEDICAL CANNABIS DISPENSING COLLECTIVE?

The majority of medical marijuana (cannabis) patients cannot cultivate their medicine for

themselves and cannot find a caregiver to grow it for them. Most of California's estimated 300,000 patients obtain their medicine from a Medical Cannabis Dispensing Collective (MCDC), often referred to as a "dispensary." Dispensaries are typically storefront facilities that provide medical cannabis and other services to patients in need. As of early 2011, ASA estimates there are approximately 2,000 medical cannabis dispensaries in California.

Dispensaries operate with a closed membership that allows only qualified patients and primary caregivers to obtain cannabis, and only after membership is approved (upon verification of patient documentation). Many dispensaries offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number of dispensaries offer additional services for their patient membership, including such services as: massage, acupuncture, legal trainings, free meals, or counseling. Research on the social benefits for patients is discussed in the last section of this report.

#### RATIONALE FOR MEDICAL CANNABIS DISPENSING COLLECTIVES

While the Compassionate Use Act does not explicitly discuss medical cannabis dispensaries, it calls for the federal and state governments to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana" (Health & Safety Code § 11362.5). This portion of the law has been the basis for the development of compassionate, community-based systems of access for patients in various parts of California. In some cases, that has meant the creation of patient-run growing collectives that allow those with cultivation expertise to help other patients obtain medicine. In most cases, particularly in urban settings, that has meant the establishment of medical cannabis dispensing collectives, or dispensaries. These dispensaries are typically organized and run by groups of patients and their caregivers in a collective model of patient-

directed health care that is becoming a prototype for the delivery of other health services.

#### MEDICAL CANNABIS DISPENSARIES ARE LEGAL UNDER STATE LAW

In an effort to clarify the voter initiative of 1996 and aid in its implementation across the state, the California legislature passed the Medical Marijuana Program Act (MMP), or Senate Bill 420, in 2003, establishing that qualified patients and primary caregivers may collectively or cooperatively cultivate and distribute cannabis for medical purposes (Cal. Health & Safety Code section 11362.775). The Act also exempts collectives and cooperatives from criminal sanctions associated with "sales" and maintaining a place where sales occur.

In 2005, California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in the landmark case of *People v. Urziceanu*, which held that the MMP provides collectives and cooperatives a defense to marijuana distribution charges. Another landmark decision from the Third District Court of Appeal in the case of *County of Butte v. Superior Court* (2009) not only affirmed the legality of collectives but also found that collective members could contribute financially without having to directly participate in the cultivation.

In August 2008, the State Attorney General issued guidelines declaring that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law." The Attorney General provided law enforcement with a list of operational practices for collectives to help ensure compliance with state law. By adhering to a set of rules—including not-for-profit operation, the collection of sales tax, and the verification of patient status for collective members—dispensaries can operate lawfully and maintain legitimacy. In addition, local officials can use the Attorney General guidelines to help them adopt local regulatory ordinances.

In September 2010, the California Legislature

enacted Assembly Bill 2650, which states that medical marijuana dispensaries must be located further than 600-ft from a school. By recognizing "a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license," the Legislature has expressed its intent that storefront dispensaries and delivery services are legal under California law.

### WHY PATIENTS NEED CONVENIENT DISPENSARIES

While some patients with long-term illnesses or injuries have the time, space, and skill to cultivate their own cannabis, the majority of patients, particularly those in urban settings, do not have the ability to produce it themselves. For those patients, dispensaries are the only option for safe and legal access. This is all the more true for those individuals who are suffering from a sudden, acute injury or illness.

Many of the most serious and debilitating injuries and illnesses require immediate relief. A cancer patient, for instance, who has just begun chemotherapy will typically need immediate access for help with nausea, which is why a Harvard study found that 45% of oncologists were already recommending cannabis to their patients, even before it was legal in any state. It is unreasonable to exclude those patients most in need simply because they are incapable of gardening or cannot wait months for relief.

### WHAT COMMUNITIES ARE DOING TO HELP PATIENTS

Many communities in California have recognized the essential service that dispensaries provide and have either tacitly allowed their operation or adopted ordinances regulating them. Dispensary regulation is one way in which the cities can exert local control and ensure that the needs of patients and the community at large are being met. As of

January 2011, 42 cities and nine counties have enacted regulations, and many more are considering doing so soon.

Officials recognize their duty to implement state laws, even in instances where they may not have previously supported medical cannabis legislation. Duke Martin, former mayor pro tem of Ridgecrest said during a city council hearing on a local dispensary ordinance, "it's something that's the law, and I will uphold the law."

This understanding of civic obligation was echoed at the Ridgecrest hearing by then-Councilmember Ron Carter, now mayor pro tem, who said, "I want to make sure everything is legitimate and above board. It's legal. It's not something we can stop, but we can have an ordinance of regulations."

Similarly, Whittier Planning Commissioner R.D. McDonnell spoke publicly of the benefits of dispensary regulations at a city government hearing. "It provides us with reasonable protections," he said. "But at the same time provides the opportunity for the legitimate operations."

Whittier officials discussed the possibility of an outright ban on dispensary operations, but Councilmember Greg Nordback said, "It was the opinion of our city attorney that you can't ban them; it's against the law. You have to come up with an area they can be in." Whittier passed its dispensary ordinance in December 2005.

Placerville Police Chief George Nielson commented that, "The issue of medical marijuana continues to be somewhat controversial in our community, as I suspect and hear it remains in other California communities. The issue of 'safe access' is important to some and not to others. There was some objection to the dispensary ordinance, but I would say it was a vocal minority on the issue."

## IMPACT OF DISPENSARIES AND REGULATORY ORDINANCES ON COMMUNITIES IN CALIFORNIA

### DISPENSARIES REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Some reports have suggested that dispensaries are magnets for criminal activity and other undesirable behavior, which poses a problem for the community. But the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a dispensary. And complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

This trend has led multiple cities and counties to consider regulation as a solution. Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary-related crime has not been a problem for the county, the regulations will help law enforcement determine the legitimacy of dispensaries and their patients.

The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement problems or secondary effects for at least one year. As a result, the focus of the proposed Ordinance is narrowed to insure Dispensary compliance with the law" (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006).

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security

for their members and staff more seriously than many businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff, but also for neighbors and businesses in the surrounding area.

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland city administrator Barbara Killey, who was responsible for the ordinance regulating dispensaries, noted that "The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed."

Likewise, former Santa Rosa Mayor Jane Bender noted that since her city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens or from neighboring businesses."

Neighboring Sebastopol has had a similar experience. Despite public opposition to medical cannabis dispensaries, Sebastopol Police Chief Jeffrey Weaver admitted that for more than two years, "We've had no increased crime associated [with Sebastopol's medical cannabis dispensary], no fights, no loitering, no increase in graffiti, no increase in littering, zip."

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"The parade of horrors that everyone predicted has not materialized. The sky has not fallen. To the contrary...California jurisdictions have shown that having medical cannabis in place does not impact...public safety." —San Francisco Supervisor David Campos

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Those dispensaries that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Many local officials surveyed by ASA said dispensaries operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted.

Several officials said that regulatory ordinances had significantly improved relations with other businesses and the community at large. An Oakland city council staff member noted that prior to adopting a local ordinance, the city had received reports of break-ins. However, the council staff member said that with the adoption of Oakland's dispensary ordinance, "That kind of activity has stopped. That danger has been eliminated." Assistant City Administrator Arturo Sanchez, a nuisance enforcement officer, affirmed that since 2004 he has "never received a nuisance complaint concerning lawfully established medical marijuana dispensaries in Oakland...[or] had to initiate an enforcement action."

The absence of any connection between dis-

pensaries and increased local crime can be seen in data from Los Angeles and San Diego. During the two-year period from 2008 to 2010 in which Los Angeles saw the proliferation of more than 500 dispensaries, the overall crime rate in the city dropped considerably. A study commissioned by Los Angeles Police Chief Charlie Beck, comparing the number of crimes in 2009 at the city's banks and medical marijuana dispensaries, found that 71 robberies had occurred at the more than 350 banks in the city, compared to 47 robberies at the more than 500 medical marijuana facilities. Chief Beck observed that, "banks are more likely to get robbed than medical marijuana dispensaries," and that the claim that dispensaries attract crime "doesn't really bear out." In San Diego, where some officials have made similar allegations about increased crime associated with dispensaries, an examination of city police reports by a local paper, the San Diego CityBeat, found that as of late 2009 the number of crimes in areas with dispensaries was frequently lower than it was before the dispensary opened or, at worst, stayed the same.

#### WHY DIVERSION OF MEDICAL CANNABIS IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But the experience of those cities that have instituted ordinances is that such problems, which are rare in the first place, quickly disappear. In addition to being monitored by law enforcement, dispensaries universally have strict rules about how members are to behave in and around the facility. Many have "good neighbor" trainings for their members that emphasize sensitivity to the concerns of neighbors, and all dispensaries absolutely prohibit the resale of cannabis. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

As Oakland's city administrator for the regulatory ordinance explains, "dispensaries themselves have been very good at self policing

against resale because they understand they can lose their permit if their patients resell."

In the event of an illegal resale, local law enforcement has at its disposal all of the many legal penalties provided by the state. This all adds up to a safer street environment with fewer drug-related problems than before dispensary operations were permitted in the area. The experience of the City of Oakland is a good example of this phenomenon. The city's legislative analyst, Lupe Schoenberger, stated that, "...[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced."

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"The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc. since the ordinance passed."

—Barbara Killey, Oakland

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Dispensaries operating with the permission of the city are also more likely to appropriately utilize law enforcement resources themselves, reporting any crimes directly to the appropriate agencies. And dispensary operators and their patient members tend to be more safety conscious than the general public, resulting in greater vigilance and better preemptive measures. The reduction of crime in areas around dispensaries has been reported anecdotally by law enforcement in several communities.

#### DISPENSARIES CAN BE GOOD NEIGHBORS

Medical cannabis dispensing collectives are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area.

Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses in the surrounding area sim-

ply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit. Even if patients are not immediately utilizing the services or purchasing the goods offered by neighboring businesses, they are more likely to eventually patronize those businesses because of convenience.

ASA's survey of officials whose cities have passed dispensary regulations found that the vast majority of businesses either adjoining or near dispensaries had reported no problems associated with a dispensary opening after the implementation of regulations.

Kriss Worthington, longtime councilmember in Berkeley, said in support of a dispensary there, "They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Mike Rotkin, councilmember and former mayor of the City of Santa Cruz, said about the dispensary that opened there last year, "The immediately neighboring businesses have been uniformly supportive or neutral. There have been no complaints either about establishing it or running it."

And Dave Turner, mayor of Fort Bragg, noted that before the passage of regulations there were "plenty of complaints from both neighboring businesses and concerned citizens," but since then, it is no longer a problem. Public officials understand that, when it comes to dispensaries, they must balance both the humanitarian needs of patients and the

concerns of the public, especially those of neighboring residents and business owners.

Oakland City Councilmember Nancy J. Nadel wrote in an open letter to her fellow colleagues across the state, "Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses, law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all inter-

ested parties in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Mike Rotkin of Santa Cruz stated that since the city enacted an ordinance for dispensaries, "Things have calmed down. The police are happy with the ordinance, and that has made things a lot easier. I think the fact that we took the time to give people who wrote us respectful and detailed explanations of what we were doing and why made a real difference."

## **BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY**

### **DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING**

Safe and legal access to cannabis is the reason dispensaries have been created by patients and caregivers around the state. For many people, dispensaries remove significant barriers to obtaining cannabis. Patients in urban areas with no space to cultivate cannabis, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness—all tend to rely on dispensaries as a compassionate, community-based solution as a preferable alternative to potentially dangerous illicit market transactions.

Many elected officials in California recognize the importance of dispensaries to their constituents. As Nathan Miley, former Oakland city councilmember and now Alameda County supervisor said in a letter to his colleagues, "When designing regulations, it is crucial to remember that at its core this is a healthcare

issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

West Hollywood Mayor John Duran agreed, noting that with the high number of HIV-positive residents in the area, "Some of them require medical marijuana to offset the medications they take for HIV."

Jane Bender, former mayor of Santa Rosa, says, "There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."

And Mike Rotkin of Santa Cruz said that this is also an important matter for his city's citizens: "The council considers it a high priority and has taken considerable heat to speak out and act on the issue."

It was a similar decision of social conscience

that lead to Placerville's city council putting a regulatory ordinance in place. Former Councilmember Marian Washburn told her colleagues that "as you get older, you know people with diseases who suffer terribly, so that is probably what I get down to after considering all the other components."

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"There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine." —Jane Bender, Santa Rosa

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While dispensaries provide a unique way for patients to obtain the cannabis their doctors have recommended, they typically offer far more that is of benefit to the health and welfare of those suffering from both chronic and acute medical problems.

Dispensaries are often called "clubs" in part because many of them offer far more than a clinical setting for obtaining cannabis. Recognizing the isolation that many seriously ill and injured people experience, many dispensary operators choose to offer a wider array of social services, including everything from a place to congregate and socialize to help with finding housing and offering meals. The social support patients receive in these settings has far-reaching benefits that also influences the development of other patient-based care models.

#### RESEARCH SUPPORTS THE DISPENSARY MODEL

A 2006 study by Amanda Reiman, Ph.D. of the School of Social Welfare at the University of California, Berkeley examined the experience of 130 patients spread among seven different dispensaries in the San Francisco Bay Area. Dr. Reiman's study cataloged the patients' demographic information, health status, consumer satisfaction, and use of services, while also considering the dispensaries' environment,

staff, and services offered. The study found that "medical cannabis patients have created a system of dispensing medical cannabis that also includes services such as counseling, entertainment and support groups, all important components of coping with chronic illness." She also found that levels of satisfaction with the care received at dispensaries ranked significantly higher than those reported for health care nationally.

Patients who use the dispensaries studied uniformly reported being well satisfied with the services they received, giving an 80% satisfaction rating. The most important factors for patients in choosing a medical cannabis dispensary were: feeling comfortable and secure, familiarity with the dispensary, and having a rapport with the staff. In their comments, patients tended to note the helpfulness and kindness of staff and the support found in the presence of other patients.

#### MANY DISPENSARIES PROVIDE KEY HEALTH AND SOCIAL SERVICES

Dispensaries offer many cannabis-related services that patients cannot otherwise obtain. Among them is an array of cannabis varieties, some of which are more useful for certain afflictions than others, and staff awareness of what types of cannabis other patients report to be helpful. In other words, one variety of cannabis may be effective for pain control while another may be better for combating nausea. Dispensaries allow for the pooling of information about these differences and the opportunity to access the type of cannabis likely to be most beneficial.

Cannabis-related services include making cannabis available in other forms for patients who cannot or do not want to smoke it. While most patients prefer to have the ability to modulate the dosing that smoking easily allows, for others, the effects of extracts or edible cannabis products are preferable. Dispensaries typically offer a wide array of edible products for those purposes. Many dispensaries also offer classes on how to grow your own

cannabis, classes on legal matters, trainings for health-care advocacy, and other seminars.

Beyond providing safe and legal access to cannabis, the dispensaries studied also offer important social services to patients, including counseling, help with housing and meals, hospice and other care referrals. Among the broader services the study found in dispensaries are support groups, including groups for women, veterans, and men; creativity and art groups, including groups for writers, quilters, crochet, and crafts; and entertainment options, including bingo, open mic nights, poetry readings, internet access, libraries, and puzzles. Clothing drives and neighborhood parties are among the activities that patients can also participate in through their dispensary.

Examples of health services offered at dispensaries across California:

- Naturopathic medicine
- Reiki
- Ayurvedic medicine
- Chinese medicine
- Chiropractic medicine
- Acupuncture
- Massage
- Craniosacral Therapy
- Rolfing Therapy
- Group & Individual Yoga Instruction
- Hypnotherapy
- Homeopathy
- Western Herbalists
- Individual Counseling
- Integrative Health Counseling
- Nutrition & Diet Counseling
- Limited Physical Therapy
- Medication Interaction Counseling
- Condition-based Support Groups

Social services such as counseling and support groups were reported to be the most commonly and regularly used, with two-thirds of patients reporting that they use social services at dispensaries one to two times per week. Additionally, life services such as free food and housing help were used at least once or twice a week by 22% of those surveyed.

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"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parties in advance of adopting an ordinance, while keeping the patients' needs foremost, problems that may seem inevitable never arise."

—Nancy Nadel, Oakland

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Dispensaries offer chronically ill patients even more than safe and legal access to cannabis and an array of social services. The study found that dispensaries also provided other social benefits for the chronically ill, an important part of the bigger picture:

Beyond the support that medical cannabis patients receive from services is the support received from fellow patients, some of whom are experiencing the same or similar physical/psychological symptoms... It is possible that the mental health benefits derived from the social support of fellow patients is an important part of the healing process, separate from the medicinal value of the cannabis itself.

Several researchers and physicians who have studied the issue of the patient experience with dispensaries have concluded that there are other important positive effects stemming from a dispensary model that includes a component of social support groups.

Dr. Reiman notes that, "support groups may have the ability to address issues besides the illness itself that might contribute to long-term physical and emotional health outcomes,

such as the prevalence of depression among the chronically ill."

For those who suffer the most serious illnesses, such as HIV/AIDS and terminal cancer, groups of people with similar conditions can also help fellow patients through the grieving process. Many patients who have lost or are losing friends and partners to terminal illness

report finding solace with other patients who are also grieving or facing end-of-life decisions. A medical study published in 1998 concluded that the patient-to-patient contact associated with the social club model was the best therapeutic setting for ill people.

Cannabis dispensaries have been operating successfully in California for more than 14

## CONCLUSION

After more than 14 years of existence, dispensaries are proving to be an asset to the communities they serve, as well as the larger community in which they operate. This is especially the case when public officials choose to implement local ordinances that recognize the lawful operation of dispensaries. Since the Medical Marijuana Program Act was enacted by the California legislature in 2004, more than 50 localities have adopted ordinances regulating dispensaries.

By surveying local officials and monitoring regulatory activity throughout the State of California, ASA has shown that once working regulatory ordinances are in place, dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries—now expressly legal under California state law—are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the

appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

Medical and public health studies have also shown that the social-club model of most dispensaries is of significant benefit to the overall health of patients. The result is that medical cannabis patients rate their satisfaction with dispensaries as far greater than the customer satisfaction ratings given to health care agencies in general.

Public officials across the state, in both urban and rural communities, have been outspoken in praise of the dispensary regulatory schemes they enacted and the benefits to the patients and others living in their communities.

As a compassionate, community-based response to the medical needs of more than 300,000 sick and suffering Californians, dispensaries, and the regulations under which they operate, are working.

## RECOMMENDATIONS FOR DISPENSARY REGULATIONS

years with very few problems. And, although the legislature and courts have acted to make dispensaries legal under state law, the question of how to implement appropriate zoning laws and business licensing is still coming before local officials all across the state. What follows are recommendations on matters to consider, based on adopted code as well as ASA's extensive experience working with community leaders and elected officials.

### COMMUNITY OVERSIGHT

In order to appropriately resolve conflict in the community and establish a process by which complaints and concerns can be reviewed, it can often be helpful to create a community oversight committee. Such committees, if fair and balanced, can provide a means for the voices of all affected parties to be heard, and to quickly resolve problems.

The Ukiah City Council created such a task force in 2005; what follows is how they defined the group:

The Ukiah Medical Marijuana Review and Oversight Commission shall consist of seven members nominated and appointed pursuant to this section. The Mayor shall nominate three members to the commission, and the City Council shall appoint, by motion, four other members to the commission...

Of the three members nominated by the Mayor, the Mayor shall nominate one member to represent the interests of City neighborhood associations or groups, one member to represent the interests of medical marijuana patients, and one member to represent the interests of the law enforcement community.

Of the four members of the commission appointed by the City Council, two members shall represent the interests of City neighborhood associations or groups, one member shall represent the interests of the medical marijuana community, and one member shall represent the interests of the public health community.

### ADMINISTRATION OF DISPENSARY REGULATIONS ARE BEST HANDLED BY HEALTH OR PLANNING DEPARTMENTS, NOT LAW ENFORCEMENT AGENCIES

Reason: To ensure that qualified patients, caregivers, and dispensaries are protected, general regulatory oversight duties—including permitting, record maintenance, and related protocols—should be the responsibility of the local department of public health (DPH) or planning department. Given the statutory mission and responsibilities of DPH, it is the natural choice and best-suited agency to address the regulation of medical cannabis dispensing collectives. Law enforcement agencies are ill-suited for handling such matters, having little or no expertise in health and medical affairs.

Examples of responsible agencies and officials:

- Angels Camp—City Administrator
- Citrus Heights—City Manager
- Cotati—City Manager
- Dunsuir—Planning Commission
- Eureka--Dept of Community Development
- Laguna Woods—City Manager
- Long Beach—Financial Management
- Los Angeles—Building and Safety
- Malibu—City Manager
- Napa—City Council
- Palm Springs—City Manager

- Plymouth—City Administrator
- Sebastopol—Planning Department
- San Francisco—Dept. of Public Health
- San Mateo—License Committee
- Santa Barbara—Community Development
- Selma—City Manager
- Stockton—City Manager
- Visalia—City Planner

### ARBITRARY CAPS ON THE NUMBER OF DISPENSARIES CAN BE COUNTER-PRODUCTIVE

Reason: Policymakers do not need to set arbitrary limitations on the number of dispensing collectives allowed to operate because, as with other services, competitive market forces and consumer choice will be decisive. Dispensaries that provide quality care and patient services to their memberships will flourish, while those that do not will fail.

Capping the number of dispensaries limits consumer choice, which can result in both decreased quality of care and less affordable medicine. Limiting the number of dispensing collectives allowed to operate may also force patients with limited mobility to travel farther for access than they would otherwise need to.

Artificially limiting the supply for patients can result in an inability to meet demand, which in turn may lead to unintended and undesirable effects such as lines outside of dispensaries, increased prices, and lower quality medicine, in addition to increased illicit-market activity.

Examples of cities and counties without numerical caps on dispensaries:

- Dunsmuir
- Fort Bragg
- Laguna Woods
- Long Beach
- Placerville
- Redding
- Ripon
- San Mateo
- Santa Barbara
- Selma
- Tulare

- Calaveras County
- Kern County
- City and County of San Francisco
- San Mateo County
- Sonoma County

### RESTRICTIONS ON WHERE DISPENSARIES CAN LOCATE ARE OFTEN UNNECESSARY AND CAN CREATE BARRIERS TO ACCESS

Reason: As described in this report, regulated dispensaries do not generally increase crime or bring other harm to their neighborhoods, regardless of where they are located. And since travel is difficult for many patients, cities and counties should take care to avoid unnecessary restrictions on where dispensaries can locate. Patients benefit from dispensaries being convenient and accessible, especially if the patients are disabled or have conditions that limit their mobility.

It is unnecessary and burdensome for patients and providers to restrict dispensaries to industrial corners, far away from public transit and other services. Depending on a city's population density, it can also be extremely detrimental to set excessive proximity restrictions (to residences, schools or other facilities) that can make it impossible for dispensaries to locate anywhere within the city limits, thereby establishing a de facto ban on dispensing. It is important to balance patient needs with neighborhood concerns in this process.

### PATIENTS BENEFIT FROM ON-SITE CONSUMPTION AND PROPER VENTILATION SYSTEMS

Reason: Dispensaries that allow members to consume medicine on-site have positive psychosocial health benefits for chronically ill people who are otherwise isolated. On-site consumption encourages dispensary members to take advantage of the support services that can improve their quality of life and, in some cases, even prolong it. Researchers have shown that support groups like those offered by dispensaries are effective for patients with a variety of serious illnesses. Participants active

in support services are less anxious and depressed, make better use of their time, and are more likely to return to work than patients who receive only standardized care, regardless of whether they have serious psychiatric symptoms. On-site consumption is also important for patients who face restrictions to off-site consumption, such as those in subsidized or other housing arrangements that prohibit smoking. In addition, on-site consumption provides an opportunity for patients to share information about effective use of cannabis and of specialized delivery methods, such as vaporizers, which do not require smoking.

Examples of localities that permit on-site consumption (many stipulate ventilation requirements):

- Alameda County
- Berkeley
- Kern County
- Laguna Woods
- Richmond
- San Francisco
- San Mateo County
- South El Monte

#### DIFFERENTIATING DISPENSARIES FROM PRIVATE PATIENT COLLECTIVES IS IMPORTANT

Reason: Private patient collectives, in which several patients grow their medicine collectively at a private location, should not be required to follow the same restrictions that are placed on retail dispensaries, since they are a different type of operation. A too-broadly written ordinance may inadvertently put untenable restrictions on individual patients and caregivers who are providing either for themselves or a few others.

Example: Santa Rosa's adopted ordinance, provision 10-40.030 (F):

"Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple "qualified patients"

and/or "primary care givers," are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, "retail" distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

#### PATIENTS BENEFIT FROM ACCESS TO EDIBLES AND MEDICAL CANNABIS CONSUMPTION DEVICES

Reason: Not all patients can or want to smoke cannabis. Many find tinctures (cannabis extracts) or edibles (such as baked goods containing cannabis) to be more effective for their conditions. Allowing dispensaries to

carry these items is vital to patients getting the best level of care possible. For patients who have existing respiration problems or who otherwise have an aversion to smoking, edibles and extracts are essential.

Conversely, for patients who do choose to smoke or vaporize, they need to procure the tools to do so. Prohibiting dispensaries from carrying medical cannabis consumption devices, often referred to as paraphernalia, forces patients to go elsewhere to procure these items. Additionally, when dispensaries do carry these devices, informed dispensary staff can explain their usage, and different functions, to new patients.

Examples of localities allowing dispensaries to carry edibles and delivery devices:

- Albany
- Angels Camp
- Berkeley
- Cotati

- Citrus Heights
- Eureka
- Laguna Woods
- Long Beach
- Los Angeles (city of)
- Malibu
- Napa
- Palm Springs
- Redding
- Richmond
- Santa Barbara
- Santa Cruz
- Sebastopol
- South El Monte
- Stockton
- Sutter Creek
- West Hollywood
- Alameda County
- Kern County
- Sonoma County

## RESOURCES FOR MORE INFORMATION

A downloadable PDF of this report is online at [AmericansForSafeAccess.org/DispensaryReport](http://AmericansForSafeAccess.org/DispensaryReport)

A model dispensary ordinance can be seen at [AmericansForSafeAccess.org/ModelOrdinance](http://AmericansForSafeAccess.org/ModelOrdinance).

A regularly updated list of ordinances, moratoriums, and bans adopted by California cities and counties can be found at [AmericansForSafeAccess.org/regulations](http://AmericansForSafeAccess.org/regulations).

You can find ASA chapters in your area at [AmericansForSafeAccess.org/Chapters](http://AmericansForSafeAccess.org/Chapters).

ASA Blog

[AmericansForSafeAccess.org/blog](http://AmericansForSafeAccess.org/blog)

ASA Forums

[AmericansForSafeAccess.org/forum](http://AmericansForSafeAccess.org/forum)

Medical and Scientific Information

[AmericansForSafeAccess.org/medical](http://AmericansForSafeAccess.org/medical)

Legal Information

[AmericansForSafeAccess.org/legal](http://AmericansForSafeAccess.org/legal)

Become a member of ASA

[AmericansForSafeAccess.org/join](http://AmericansForSafeAccess.org/join)

Contact ASA to order the DVD "Medical Cannabis in California"—interviews with elected officials and leaders who are implementing safe and effective regulations.

## APPENDIX A

### CALIFORNIA CITIES AND COUNTIES THAT HAVE ADOPTED ORDINANCES REGULATING DISPENSARIES

(as of February 2011)

For an updated list, go to:  
[AmericansForSafeAccess.org/regulations](http://AmericansForSafeAccess.org/regulations)

#### **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 Luis Obispo  
San Mateo  
Santa Barbara  
Santa Clara  
Sonoma

## APPENDIX B

### ASA'S QUICK GUIDE FOR EVALUATING PROPOSED MEDICAL MARIJUANA DISPENSARY ORDINANCES IN CALIFORNIA

This is a quick guide to what should and should not be in city and county ordinances to best support safe access for medical cannabis patients.

What the ordinance **MUST** include:

- Allowance for over-the-counter/storefront sales (sometimes called reimbursements, contributions, or not-for-profit sales)
- Allowance for patients to medicate on-site
- Allowance for sale of cannabis edibles and concentrated extracts
- Distinction between Medical Cannabis Dispensing Collectives (MCDCs) and private patient collectives or cooperatives

What to look out for in proposed ordinances:

Is the general language and focus framed as a medical or healthcare issue, rather than a criminal justice or law enforcement problem?

Does the ordinance affirm that MCDCs should be organized to serve patients and have a "not-for-profit" business model?

Is there a cap on the number of MCDCs allowed to operate that could negatively impact accessibility, affordability and quality?

- How was the MCDC cap number determined (per capita, per pharmacy)?
- What criteria will be used to approve and license MCDCs?
- Will quality through competition be supported?

Zoning considerations:

- Will each MCDC be required to apply for a conditional use permit, or does the ordinance specify MCDCs as an enumerated business?
- Are there proximity restrictions or "buffer zones" from so-called "sensitive uses" which will make locating a dispensary onerous?
- Has a map been prepared that shows where the ordinance will require MCDCs to locate?

Does the ordinance provide for a community oversight committee tasked with any licensing or appeals processes?

- Will the oversight committee include patients, activists, MCDC operators, and members of the local community?

What are the MCDC requirements for book-keeping and records disclosure?

- Does the ordinance allow MCDCs to keep identifying information about its members off-site, to protect patient identities?
- Does law enforcement have unfettered access to patient records or is a subpoena required?

Are there caps on the number of patient-members an MCDC can serve?

Is on-site cultivation prohibited for MCDCs?

## APPENDIX C

### ATTORNEY GENERAL, STATE OF CALIFORNIA, GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

August 2008

#### 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 "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 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 (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 (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 they are commonly defined as "a business, farm, etc., jointly owned and operated by the members of a group." 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 among members.

**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 Sellers' 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.

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 nonmedical 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.

**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.

# APPENDIX D — MODEL ORDINANCE

## MODEL ORDINANCE FOR COLLECTIVES

WHEREAS voters approved Proposition 215 in 1996 to ensure that seriously ill Californians have the right to obtain and use cannabis for medical purposes and to encourage elected officials to implement a plan for the safe and affordable distribution of medicine; and

WHEREAS the California State Legislature adopted Senate Bill 420, the Medical Marijuana Program Act, in 2003 to help clarify and further implement Proposition 215 in part by authorizing qualified patients and primary caregivers to associate within the State of California in order to collectively or cooperatively cultivate cannabis for medical purposes; and

WHEREAS the California Attorney General published "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Purposes" in 2008, acknowledging that "a properly organized and operated collective of cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with state law; and

WHEREAS crime statistics and the accounts of local officials surveyed by Americans for Safe Access indicate that crime is actually reduced by the presence of a Medical Cannabis Dispensing Collective (MCDC); and complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of sensible regulations; and

WHEREAS California courts have upheld the legality of MCDCs under state law, including *People v. Hochanadel*, 98 Cal.Rptr.3d 347, and *People v. Urziceanu*, 132 Cal.App.4th 747;

THEREFORE, BE IT RESOLVED That \_\_\_\_\_ does hereby enact the following:

### Purposes and Intent

- (1) To implement the provisions of California Health and Safety Code Sections 11362.5 and 11362.7, et seq., as described by the California Attorney General in "Guidelines For The Security And Non-diversion Of Marijuana Grown For Medical Use," published August 2008, which states in Section IV(C)(1) that "a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with the guidelines.
- (2) To help ensure that seriously ill \_\_\_\_\_ residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate by a physician in accordance with California law.
- (3) To help ensure that the qualified patients and their primary caregivers who obtain or cultivate cannabis solely for the qualified patient's medical treatment are not subject to arrest, criminal prosecution, or sanction.
- (4) To protect citizens from the adverse impacts of unregulated medical cannabis distribution, storage, and use practices.
- (5) To establish a new section in the \_\_\_\_\_ code pertaining to the permitted distribution of medical cannabis in \_\_\_\_\_ consistent with state law.

Nothing in this ordinance purports to permit activities that are otherwise illegal under state or local law.

### Definitions

The following phrases, when used in this Chapter, shall be construed as defined in California Health and Safety Code Sections 11362.5 and 11362.7:

- "Person with an identification card;"
- "Identification card;"
- "Primary caregiver;" and
- "Qualified patient."

The following phrases, when used in this Chapter, shall be construed as defined below:

"Medical Cannabis Dispensing Collective" or "MCDC". Qualified patients, persons with identification cards and designated primary caregivers of qualified patients and persons with identification cards who associate, as an incorporated or unincorporated association, within \_\_\_\_\_, in order to collectively or cooperatively provide medical marijuana from a licensed or permitted location pursuant to this Chapter, for use exclusively by their registered members, in strict accordance with California Health and Safety Code Sections 11362.5 and 11362.7, et seq.

"Director." The Director of Planning or other person authorized to issue a Conditional Use Permit pursuant to \_\_\_\_\_ code.

Cities and counties may issue a business license or a Conditional Use Permit (CUP) to regulate MCDCs. If a jurisdiction opts for a business license model, the language in the following sections may be replaced with language authorizing the issuance of a business license by amending the appropriate code Sections: Conditional Use Permit Required, Application Procedures, and Findings.

### Conditional Use Permit Required

A Conditional Use Permit shall be required to establish or operate a Medical Cannabis Dispensing Collective (MCDC) in compliance with the requirements of this Chapter when located in Commercial, Manufacturing, or Retail Zones.

### Application Procedure

- (1) In addition to ensuring compliance with the application procedures specified in Section \_\_\_\_\_, the Director shall send copy of the application and related materials to all other relevant City departments for their review and comment.
- (2) A disclaimer shall be put on the MCDC zoning application forms that shall include the following:
  - a. A warning that the MCDC operators and their employees may be subject to prosecution under federal law; and
  - b. A disclaimer that the City will not accept any legal liability in the connection with any approval and/or subsequent operation of an MCDC.

### Findings

In addition to the findings required to establish compliance with the provisions of Section \_\_\_\_\_, approval of a Conditional Use Permit for an MCDC shall require the following findings:

- (1) That the requested use at the proposed location will not adversely affect the economic welfare of the community in which it is located;
- (2) That the requested use at the proposed location is outside a Residential Zone;
- (3) That the exterior appearance of the structure will be consistent with the exterior appearance of structures already constructed or under construction within the immediate neighborhood, so as to prevent blight or deterioration, or substantial diminishment or impairment of property values within the neighborhood.

### Location

The location at which an MCDC distributes medical cannabis must meet the following requirements:

- (1) The location must be in a Non-Residential Zone appropriate for Commercial, Manufacturing, or Retail uses, including health care use;
- (2) The location must not be within a 600-foot radius of a school, as measured in Section 11362.768 of the California Health and Safety Code;
- (3) The location must not be within 1,000 feet of another MCDC.

## Police Department Procedures and Training

- (1) Within six months of the date that this Chapter becomes effective, the training materials, handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.
- (2) Medical cannabis-related activities shall be the lowest possible priority of the Police Department.
- (3) Qualified patients, their primary caregivers, and MCDCs who come into contact with law enforcement shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if they are in compliance with the provisions of this Chapter.
- (4) Qualified patients, their primary caregivers, and MCDCs who come into contact with law enforcement and cannot establish or demonstrate their status as a qualified patient, primary caregiver, or MCDC, but are otherwise in compliance with the provisions of this Chapter, shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if (1) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity; (2) the claim by a qualified patient, primary caregiver, or MCDC is credible; and (3) proof of status as a qualified patient, primary caregiver, or MCDC can be provided to the Police Department within three (3) business days of the date of contact with law enforcement.

## Operational Standards

- (1) Signs displayed on the exterior of the property shall conform to existing regulations;
- (2) The location shall be monitored at all times by a closed circuit video recording system for security purposes. The camera and recording system must be of adequate quality, color rendition, and resolution to allow the ready identification of any individual committing a crime anywhere on the site;
- (3) The location shall have a centrally-monitored alarm system;
- (4) Interior building lighting, exterior building lighting and parking area lighting must be in compliance with applicable regulations, and must be of sufficient brightness and color rendition so as to allow the ready identification of any individual committing a crime on site at a distance of no less than 40 feet (a distance that should allow a person reasonable reaction time upon recognition of a viable threat);
- (5) Adequate overnight security shall be maintained so as to prevent unauthorized entry;
- (6) Absolutely no cannabis product may be visible from the building exterior;
- (7) Any beverage or edible produced, provided, or sold at the MCDC containing cannabis shall be so identified, as part of the packaging, with a prominent and clearly legible warning advising that the product contains cannabis and that it is to be consumed only by qualified patients;
- (8) No persons under the age of 18 shall be allowed on site, unless the individual is a qualified patient and accompanied by his or her parent or documented legal guardian;
- (9) At any given time, no MCDC may possess more cannabis or cannabis plants than would reasonably meet the needs of its registered patient members;
- (10) A sign shall be posted in a conspicuous location inside the structure advising: "The diversion of cannabis (marijuana) for non-medical purposes is a violation of state law and will result in membership expulsion. Loitering at the location of a Medical Cannabis Dispensing Collective is also grounds for expulsion. The use of cannabis may impair a person's ability to drive a motor vehicle or operate heavy machinery;"
- (11) No MCDC may provide medical cannabis to any persons other than qualified patients and designated primary caregivers who are registered members of the MCDC and whose status to possess cannabis pursuant to state law has been verified. No medical cannabis provided to a primary caregiver may be

supplied to any person(s) other than the qualified patient(s) who designated the primary caregiver;

- (12) No outdoor cultivation shall occur at an MCDC location unless it is: a) not visible from anywhere outside of the MCDC property and b) secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;
- (13) No MCDC shall cause or permit the establishment or maintenance of the sale or dispensing of alcoholic beverages for consumption on the premises or off-site of the premises;
- (14) No dried medical cannabis shall be stored in structures without at least four walls and a roof, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical cannabis be stored in a safe or vault that is not bolted to the floor or structure of the facility; and
- (15) Medical cannabis may be consumed on-site only as follows:
  - a. The smoking or vaporizing of medical cannabis shall be allowed provided that appropriate seating, restrooms, drinking water, ventilation, air purification system, and patient supervision are provided in a room or enclosed area separate from other MCDC service areas.
  - b. The maximum occupancy of the on-site consumption area shall meet applicable occupancy requirements.
  - c. The MCDC shall use an activated charcoal filter, or other device sufficient to eliminate all odors associated with medical cannabis use from adjoining businesses and public walkways. The fan used to move air through the filter shall have the capacity sufficient to ventilate the square footage of the separate room or enclosed area in which medical cannabis use is permitted.
- (16) MCDCs must verify that each member (1) is legally entitled to possess or consume medical cannabis pursuant to state law; and (2) is a resident of the State of California.
- (17) All MCDC operators, employees, managers, members, or agents shall be qualified patients or the designated primary caregivers of qualified patients. MCDC operators, employees, managers, members, or agents shall not sell, barter, give away, or furnish medicine to anyone who is not a qualified patient or primary caregiver, registered as a member of the MCDC, and entitled to possess cannabis under state law.
- (18) MCDCs shall maintain accurate patient records necessary to demonstrate patient eligibility under the law for every MCDC member, including (1) a copy of a valid driver's license or Department of Motor Vehicle identification card, (2) a patient registration form, and (3) a current valid letter of recommendation for the use of medical cannabis written by a state-licensed physician. All patient records shall be kept in a secure location, regarded as strictly confidential, and shall not be provided to law enforcement without a valid subpoena or court order.
- (19) Operating hours for MCDCs shall not exceed the hours between 8:00 AM and 10:00 PM daily.
- (20) MCDCs must have at least one security guard with a Guard Card issued by the California Department of Consumer Affairs on duty during operating hours.

## Severability

If any section, sub-section, paragraph, sentence, or word of this Article is deemed to be invalid, the invalidity of such provision shall not affect the validity of any other sections, sub-sections, paragraphs, sentences, or words of this Article, or the application thereof; and to that end, the sections, sub-sections, paragraphs, sentences, and words of this Article shall be deemed severable.