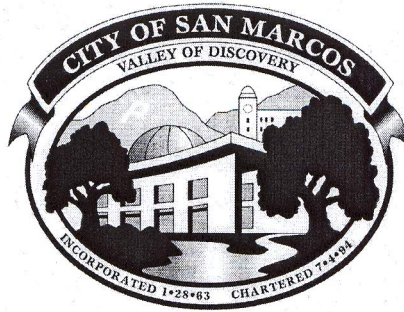


med marijuana



1 Civic Center Drive  
San Marcos, CA 92069-2918

Telephone  
760.744.1050  
FAX: 760.744.7543

August 17, 2010

RECEIVED

AUG 26 2010

Honorable Kevin A. Enright, Presiding Judge  
Superior Court of California, County of San Diego  
Main Courthouse, Department P  
220 W. Broadway  
San Diego, CA 92101

Re: Response to Grand Jury Report, "Medical Marijuana in San Diego"

Dear Judge Enright:

The City of San Marcos ("City") hereby submits its response to the Grand Jury Report entitled "Medical Marijuana in San Diego," filed on June 7, 2010 ("Report"), which has been reviewed and carefully considered by the City Council.

Findings Number 1, 2, 4, 9 and 10 are directed to the operations and functions of the District Attorney's Office, the City of San Diego and/or other municipalities, and are therefore not included in the City's response. Recommendations 10-107 through 10-116, inclusive, and 10-120 through 124, inclusive, are directed to the operations and functions of the District Attorney's Office, the City of San Diego and/or other municipalities, and are likewise not included in the City's response.

Finding Number 3:

*There are no clear and uniform guidelines for law enforcement personnel in San Diego County which would protect the rights of legitimate qualified medical marijuana patients.*

Response to Finding Number 3:

The City, whose law enforcement services are provided on a contract basis by the County of San Diego, partially disagrees with Finding Number 3. While law enforcement agencies within San Diego County may not have developed common or uniform guidelines protecting the rights of legitimate qualified medical marijuana patients, the City believes that the Proposition 215, the Compassionate Use Act ("CUA"), the California Health & Safety Code provisions adopted by the Legislature in response to the CUA, and the guidelines promulgated by the California Attorney General ("AG Guidelines") do represent guidelines that protect the rights of legitimate qualified medical marijuana patients. Further, the CUA and Section 11362.765 of the Health & Safety Code clearly provide that qualified patients and primary caregivers who meet the definitional requirements of the CUA and the Health & Safety Code are provided with a defense against criminal prosecution.

The City has reviewed the Report, and in the event common or uniform guidelines are developed by law enforcement personnel in San Diego County, it will take actions in future as the City Council deems appropriate.

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Finding Number 5:

*Adopting cost neutral zoning and land use ordinances is an effective method for licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the unincorporated areas and eighteen cities of San Diego County.*

Response to Finding Number 5:

The City has insufficient information or documentation substantiating or documenting the conclusory statement contained in Finding No. 5, and on that basis disagrees with the Finding. It is the City's understanding that municipalities that have licensing and permitting schemes to regulate medical marijuana distribution have done so at a significant cost, and that licensing and permitting fees have not made those cities whole. Additionally, it is noted that Finding No. 11 provides that regulatory fees could constitute a financial hardship for distributors. Accordingly, it appears the Grand Jury has recognized that having the full cost of such regulatory schemes be borne by the medical marijuana distributors may not be desirable or feasible.

The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Finding Number 6:

*The recommendations of the City of San Diego's Medical Marijuana Task Force for zoning and land use ordinances for cooperatives and collectives may serve as a model for adoption by other cities in the County.*

Response to Finding Number 6:

The City disagrees partially with this Finding. It is not clear to the City whether regulatory provisions applicable to the City of San Diego would be appropriate for a community such as the City. In the event the City determines to proceed with such a regulatory scheme, the actions taken by the City of San Diego in response to its Medical Marijuana Task Force would be reviewed by the City, as would other regulatory structures adopted in areas that may more fully resemble the City in population, demographics, density and development structure. The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Finding Number 7: *Annual financial reporting and periodic auditing of cooperatives and collectives, predominantly of cash operations, are not currently required in San Diego County.*



Response to Finding Number 7:

The City does not audit cooperatives and collectives; and is not aware of any other agency or governmental entity that is conducting such auditing practices. Accordingly, to the extent of its knowledge the City agrees with Finding No. 7. The City has reviewed the Report, and in the event it determines that adoption of ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Finding Number 8:

*The current ban on the opening of medical marijuana collectives in the Cities of El Cajon, Escondido, San Marcos and Vista deprives some qualified medical marijuana patients of access to marijuana in their communities.*

Finding Number 8:

The City's response to Finding No. 8 pertains to those qualified medical marijuana patients within its jurisdictional boundaries. The City does not agree that its ban on medical marijuana dispensaries deprives some qualified medical marijuana patients access to marijuana, and the Report did not identify any qualified patient meeting the definitional standards who suffered any such deprivation within its jurisdictional boundaries. California law provides that qualified patients and primary caregivers who meet the definitional requirements are able to possess and cultivate marijuana for the personal medical purposes of the patient. Neither the CUA nor the Health & Safety Code requires municipalities to adopt land use or zoning regulations regarding distribution of medical marijuana.

The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Finding Number 11:

*The imposition of regulatory fees and associated costs could create a financial hardship for the smaller medical marijuana cooperatives and collectives.*

Response to Finding Number 11:

The City has insufficient information or documentation substantiating or documenting the conclusory statement contained in Finding No. 11, and on that basis disagrees with the Finding. The imposition of local regulatory fees and costs may create a financial hardship for certain medical marijuana distributors; however, as medical marijuana cooperatives and collectives are not currently audited it is not clear whether local regulatory fees and costs will in fact pose any hardship. Further, establishing a permitting, licensing and regulatory program would require significant expenditure of City funds. The City's current policy is that the burden of licensing, permitting and regulation be borne by the licensed,

permitted and regulated individuals or entities. The City is not able at this time to subsidize a regulatory program of this nature with its General Fund.

The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Recommendation Number 10-117:

*Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.*

Response to Recommendation No. 10-123:

The Recommendation will not be implemented by the City at this time because it is not warranted, for the following reasons. From and after 2006, the City has prohibited marijuana dispensaries within its jurisdictional limits. It also has a business licensing regulation that prohibits businesses that are not consistent with federal, state or local law.<sup>1</sup> The City's zoning ordinance prohibits uses unless they are permitted as a matter of right through a use permit. As a land use, medical marijuana collectives and cooperatives are not permitted either as a matter of right or through a use permit process.

California law provides that qualified patients and primary caregivers who meet the definitional requirements are able to possess and cultivate marijuana for the personal medical purposes of the patient. Neither the CUA nor the Health & Safety Code requires municipalities to adopt land use or zoning regulations regarding distribution of medical marijuana.

The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Recommendation No. 10-118:

*Adopt regulations which would allow for the closure of all unlicensed "dispensaries."*

Response to Recommendation No. 10-118:

The Recommendation will not be implemented by the City at this time because it is not warranted, for the following reasons. From and after 2006, the City has prohibited marijuana dispensaries within its jurisdictional limits. It also has a business licensing regulation that prohibits businesses that are not consistent with federal law. The City's zoning ordinance prohibits uses unless they are permitted as a matter of right through a use permit. As a land use, medical marijuana collectives and cooperatives are not permitted either as a matter of right or through a use permit process. The City has regulations in

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<sup>1</sup> San Marcos Municipal Code Chapter 5.54 and Chapter 5.04, section 5.04.090(a)(4)



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place that allow for the closure or abatement of all unlicensed dispensaries, as all dispensaries are unlicensed within its jurisdiction.

The City has reviewed the Report, and in the event it determines that adoption of further zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate. Such actions may include the adoption of regulations providing for the closure of any unlicensed facilities.

Recommendation No. 10-119:

*Upon the enactment of such an ordinance, rescind the current ban on the opening of medical marijuana collectives and cooperatives.*

Response to Recommendation No. 10-119:

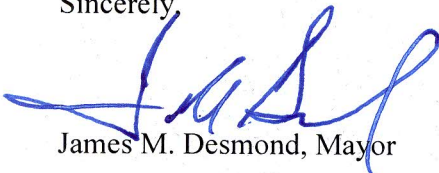
The Recommendation will not be implemented by the City at this time because it is not warranted, for the following reasons. Neither the CUA nor the Health & Safety Code requires municipalities to adopt land use or zoning regulations regarding distribution of medical marijuana. From and after 2006, the City has prohibited marijuana dispensaries within its jurisdictional limits. It also has a business licensing regulation that prohibits businesses that are not consistent with federal law. The City's zoning ordinance prohibits uses unless they are permitted as a matter of right through a use permit. As a land use, medical marijuana collectives and cooperatives are not permitted either as a matter of right or through a use permit process.

The City has reviewed the Report, and in the event it determines that adoption of zoning and land use ordinances to license, regulate and/or inspect distribution of medical marijuana by way of collectives and/or cooperatives is in the best interest of its citizens, it will take actions in future as the City Council deems appropriate.

Conclusion

The City thanks the Grand Jury for its Report, Findings and Recommendations, and will reconsider them in the event the City believes future regulatory activity in this area is appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Desmond", is written over the name of the signatory.

James M. Desmond, Mayor

cc: City Council