

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



FROM: Supervisor Benoit, Supervisor Stone
Sheriff Sniff

SUBMITTAL DATE: September 1, 2010

SUBJECT: Initiation of Ordinance and Ordinance Amendment Regulating the Collective or Cooperative Cultivation of Marijuana for Medical Purposes.

RECOMMENDED MOTION: That the Board of Supervisors:

1. Adopt an order initiating an ordinance that would regulate the collective or cooperative cultivation of marijuana for medical purposes;
2. Adopt an order initiating an amendment to Ordinance No. 348 that would regulate the collective or cooperative cultivation of marijuana for medical purposes; and
3. Invite the Sheriff's Department, the Planning Department, the Code Enforcement Department, and the District Attorney's Office to work collaboratively with County Counsel to prepare and process the ordinances.

BACKGROUND:


The Compassionate Use Act, Medical Marijuana Program Act, and Attorney General's Guidelines

In 1996, California voters approved Proposition 215-The Compassionate Use Act of 1996 ("the CUA"), which allows the cultivation, possession and use of marijuana by patients and primary caregivers with a physician's recommendation.

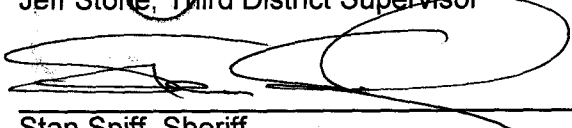
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John J. Benoit, Fourth District Supervisor



Jeff Stone, Third District Supervisor



Stan Sniff, Sheriff

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BACKGROUND: (continued)

In 2004, the California Legislature passed the Medical Marijuana Program Act (“the MMPA”) to clarify the scope of the CUA. (See Health & Safety Code sections 11362.7 et seq.) The MMPA establishes residency requirements for patients and primary caregivers, establishes a voluntary identification card program and limits the quantity of marijuana that can be possessed. The MMPA also provides in pertinent part that: “qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order **collectively or cooperatively to cultivate marijuana for medical purposes**, shall not solely on the basis of that fact be subject to state criminal sanctions” (Health & Safety Code section 11362.775.) In all other respects, the cultivation, possession and use of marijuana remain illegal under both state and federal law.

While the individuals specified in the MMPA are allowed to “collectively or cooperatively cultivate marijuana”, the Legislature provided no guidance as to what this phrase, or the terms therein, mean.

At the direction of the Legislature, the California Attorney General issued a document entitled: “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use” (“the Guidelines”). The Guidelines, which are advisory only and not legally binding, suggest how collective or cooperative cultivation might be defined. The Guidelines also suggest that medical marijuana dispensaries do not have the same protected status as collective or cooperative cultivation because the term “dispensary” is not used in the CUA or the MMPA.

Proposed County Ordinance and Ordinance Amendment

Currently, the County’s Land Use Ordinance (Ordinance No. 348) expressly prohibits medical marijuana dispensaries in all zones. Despite this ban, an alarmingly high number of storefront medical marijuana establishments have opened up throughout the unincorporated area of the County. Additionally, numerous mobile dispensaries are operating in the County as well. None of these storefront establishments has County land use approvals and many claim to be “collectively cultivating marijuana.” Because collective cultivation is not defined or regulated by either the state or the County, law enforcement officials have a difficult time determining whether such establishments are in fact collectively cultivating marijuana or whether they are simply illegal dispensaries.

A collaborative multi-department ordinance planning and preparation strategy is recommended. Departments such as the Sheriff’s Department, the Planning Department, the Code Enforcement Department, the District Attorney’s Office and County Counsel will likely each be required to enforce or process some provision of the

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ordinances once effective. For this reason, it is important that each of these departments be fully involved during the ordinance preparation process. The final outcome of the ordinances developed must ensure that any impacts on County department resources have been properly assessed and mitigated with regard to the application/inspection processing and the regulation, processing, and monitoring of medical marijuana collectives and cooperatives.

If adopted, the proposed ordinance and ordinance amendment would regulate the collective and cooperative cultivation of medical marijuana in order to ensure the health, safety and welfare of County residents. Such regulation is allowed by the MMPA which expressly provides that nothing in the Act "shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article." (Health & Safety Code section 11362.83.) The proposed ordinance and ordinance amendment would more specifically do each of the following:

- Define collective and cooperative cultivation in a manner consistent with the Attorney General's Guidelines and all other applicable legal authorities.
- Establish a maximum number of collectives and cooperatives in the County.
- Establish a maximum size of collectives and cooperatives.
- Require that collectives and cooperatives register annually with the Sheriff's Department.
- Establish documentation and book-keeping standards for collectives and cooperatives, including documentation of sources and quantities of acquisition and quantities dispensed.
- Establish location and zoning requirements for collectives and cooperatives.
- Establish development standards for store-front collectives and cooperatives, including but not limited to: setbacks, parking, signage, lighting and security standards.
- Establish conditions of operation for store-front collectives and cooperatives, including but not limited to:
 - Service hours
 - Web-based closed-circuit monitoring
 - Centrally-monitored fire and burglar alarm systems
 - Cultivation visibility prohibitions.
 - Alcohol sale and consumption prohibitions
- Establish storage requirements for dried medical marijuana.
- Require an inspection by the Fire and Code Enforcement Departments when medical marijuana is cultivated indoors.
- Establish visibility prohibitions and require security measures to prevent non-patient access when medical marijuana is cultivated outdoors.
- Prohibit for profit operations and on-site sales.

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- Prohibit minors at collective and cooperative locations, unless the minor is a qualified patient or person with an identification card and accompanied by his or her licensed physician, parent or legal guardian.
- Prohibit the cooking, preparation, or manufacturing of medical marijuana enhanced or edible or drinkable products.
- Prohibit the consumption of medical marijuana at collective and cooperative locations or in those areas restricted by law.
- Prohibit collectives and cooperatives from providing medical marijuana to any persons other than its members who actively participate in the cultivation of medical marijuana at the location designated for cultivation.
- Require proof of participation records to be maintained by the collective or cooperative for three years.
- Require managers of collectives and cooperatives to be a member of the collective or cooperative they are managing.
- Prohibit management by a person who has been convicted within the previous 10 years of a felony or a crime of moral turpitude, or who is currently on parole or probation for the sale or distribution of a controlled substance.
- Require that no qualified patient, person with an identification card, or primary caregiver may be a member, at the same time, of more than one collective or cooperative within the County.
- Prohibit collectives and cooperatives from storing more than \$200.00 in cash overnight and require twice daily bank drops that include all cash collected that day.
- Require collectives and cooperatives to have a state-licensed and uniformed security guard patrol a two-block radius during all hours of operation.
- Require collectives and cooperatives to maintain onsite a 24-hour telephone number for receiving complaints and inquiries and require management to receive, log, and respond to these complaints and inquiries.
- Require an annual audit of collectives and cooperatives by independent certified public accountants in accordance with generally accepted auditing and accounting principles.
- Require that the attending physician has a Drug Enforcement Administration license for recommending/prescribing a controlled substance.
- Require labeling of the medical marijuana, including the name of the patient, date dispensed and the potency on the prescription label inscribed with the following federal caution, "it is a violation of the law for anyone to utilize the prescription other than for whom it is prescribed."
- Require that only Allopathic physicians (M.D.'s), Osteopath physicians licensed in the State of California can approve recommendations/prescriptions and refills. Expiration of a recommendation/prescription shall occur when there has been a maximum of five refills or 6 months, whichever occurs first. Then, a new recommendation/prescription must be written and brought to the collective or cooperative.

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- Authorize County officials to enter and inspect collectives and cooperatives during business hours without a warrant to ensure compliance with the ordinance.

The ordinance and ordinance amendment preparation process may result in a need to create further restrictions in addition to those stated above.

Proposition 19 and its Legal Effect

The "Regulate, Control and Tax Cannabis Act of 2010" ("Proposition 19") is an initiative on the November ballot. If approved by the voters, it would, among other things, allow individuals 21 years or older to possess, process, share, or transport not more than one ounce of marijuana and to cultivate marijuana plants for personal consumption in a twenty-five square foot area per private residence or parcel.

Proposition 19 would also add section 11301 to the Health and Safety Code allowing state and local governments to regulate one-ounce commercial and retail sales of marijuana and adopt taxes, benefit assessments or fees to raise revenue or recoup its regulation costs.

Proposition 19 would not repeal or amend federal law. It is not known to what extent the federal government would continue to enforce federal prohibitions. Currently, no other states permit commercial marijuana-related activities for non-medical purposes.

Proposition 19 would not repeal or amend the CUA or the MMPA. As a result, collective or cooperative cultivation would still be allowed and would continue to occur. Although the passage of Proposition 19 may require the County to reconsider how it regulates collective or cooperative cultivation, regulation of such cultivation is necessary now to stem the tide of illegal dispensaries and control abuses.

This background discussion of Proposition 19 is provided merely for informational purposes and should not be construed as an endorsement of the proposition or as an endorsement of the legalization of marijuana.

FISCAL: It will cost approximately \$100,000.00 to prepare and process the ordinance and ordinance amendment. This estimate includes \$25,000.00 for Planning Department staff costs, costs associated with preparing an Environmental Assessment and Negative Declaration, advertising costs, and public hearing costs. This estimate also includes \$17,000.00 in County Counsel costs for researching and drafting the ordinance and ordinance amendment. The balance of the \$100,000.00 will be expended by the Sheriff's Department, Planning Department, County Counsel and other involved County departments for internal meetings and meetings with concerned citizens groups. If during the process it is determined that an Environmental Impact

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Report is required, or that further public hearings are required, the costs will be higher. These estimated costs are currently unbudgeted for Fiscal Year 2010/2011.

The costs of implementing and enforcing the ordinance and ordinance amendment will be covered by permit fees.