Remarks to City Council June 29, 2010

Introduction—GNG—ACLU—our constituency is civil liberties and constitutional principles. And we are attempting to assist in preparing better regulation as a matter of law and policy. We have submitted written materials for your consideration. And due to time constraints this evening, I have made copies of these remarks for reference.

First, my compliments to the Planning Commission for its thoughtful consideration and of public comments and decision-making, and thanks to City Staff for being so helpful as I have tried to navigate local procedures and practices.
I want to ask the Council to take up no more than the Planning Commission's proposed ordinance tonight. It has had adequate review, thought and input from the public including our individual members. An urgent e-mail notification of these proposed provisions was sent from ACLU-NC in San Francisco to our membership this morning.

The Administrative and Operational Guidelines are of whole cloth and have only been available for review a few days. The more scrutiny the provisions receive, the more problems appear. And there are significant requirements in these guidelines. Arguably, in terms of civil liberties and potentially unlawful proscriptions, the Guidelines are much more fraught with problems than the Zoning Ordinance.
For instance, it was only thanks to review by the litigation director of our National Drug Law Reform Project that it became clear that you would be creating a crime with these guidelines: in 5.100.250 makes it a misdemeanor to violate any of those guidelines: the Police make it a crime to not comply with what they demand be done, lawful or not, if you were to pass this Amendatory Ordinance as it has been proposed. Not obstruction or interfering with a police officer, just not complying with records requirements or opening the records to inspection at any time for any reason. What would other businesses think of such? Creation of a crime is a very important decision. And making it a crime to not do whatever the police tell you to do is particularly significant.
It is excessive—what was a municipal code civil infraction is made into a crime. And it is unwarranted. It is about power not preferred public policy.

As you can tell from the written materials, our primary concern is patient privacy and records confidentiality. Some accommodation was made in the Land Use Ordinance—acknowledgement and reference to patient records confidentiality under state law—but the Guidelines are directly contrary and create inconsistency.

The Police demand access to all records, regardless of Cal. Const. Art. 1, sec. 1 on personal privacy and case law on confidentiality of patient records; allowing this is creating a
playground for litigation, a denial of individual liberties and is just bad public policy.

Neither the identities of individual patients or their records, particularly the recommendations from physicians, should be available without a warrant based on probable cause to believe a crime has or is being committed. This provision is overreaching and quite likely unconstitutional under both the California Constitution and the US Constitution’s Fourth Amendment.

An analogy is whether you believe it would be good policy to provide that the Police Department has complete, unfettered access without probable cause to believe there was
anything wrong to individual's prescriptions due
to City licensing requirements of pharmacies.

Then there are issues of **accessibility** for low-
income and disabled persons. Areas where
dispensaries would be allowed are very limited
due to the small number of dispensaries allowed,
limited zones, excessive separation
requirements, that only one can be sited in any
Council Districts. Finding sites with easy
access to public transportation will be
difficult.

There is the issue of **fees**. They seem awfully
high. I suggest that they should be equivalent
to a permit for a bar, a liquor store, a
pharmacy or a gun shop. (I don't know what those
amounts are).
No matter what one thinks of marijuana, it is empirically true that alcohol, amphetamines and guns are demonstrably more dangerous and more likely to lead to criminal behavior if the measures are danger to society or potential criminality.

Remember this is about business licenses not underlying concerns about marijuana or disagreement with the decision made by Californians in the Compassionate Use Act—that is in the Constitution—like it or not, like Proposition 13.

Finally, trying to single out those dispensaries that operated before these ordinances for denial of application for permits/license suggests
constitutional considerations of making activities of specific persons criminal and *retroactive*, after-the-fact making activities unlawful.

**Thank you** for your consideration of our concerns.