MEMORANDUM

June 29, 2010

TO: The Honorable Mayor and City Council

FROM: Katherine Gong Meissner, City Clerk

SUBJECT: INFORMATION FOR CONCURRENT COUNCIL/REDEVELOPMENT AGENCY MEETING OF JUNE 29, 2010 AGENDA ITEMS 6.04 AND 9.02

The attached correspondence is being circulated around the bench for the Council’s information as it relates to the following items:

1. **Item 6.04** – Approve Findings and Authorize a Three-Year Agreement Valleycrest Golf Course Maintenance for maintenance of City’s Golf Courses: Attachment to the Resolution, Item X. Grounds Maintenance of Adjacent Premises, Subsections C, D, and E have been eliminated.

2. **Item 9.02** – City Initiated Code Amendment to Allow Cannabis Dispensaries:
   a) Comments regarding the Proposed Ordinance and Guidelines from Gary Gershon on behalf of the American Civil Liberties Union (ACLU).
   b) Correspondence from Robert Alejandre, on behalf of Earth’s Finest Medicine, Inc., containing letters of interest to allow opening of two marijuana dispensaries.
   c) Correspondence from the Law Offices of Patrick D. Goggin, representing a team who wishes to apply for a permit to operate a dispensary.

If you have any questions, please call me at 937-8459.

KATHERINE GONG MEISSNER
CITY CLERK

KGM:dms

Attachments

Emc: City Manager
     City Attorney
Attached to forward to City Council Members, please find three pieces: (1) the comments written today based upon brief review of the new language in the Administrative and Operational Guidelines (Amendatory language for Municipal Code); (2) comments after review of the videotape of the May 11 Study Session; and, the Comments submitted to the Planning Commission.

Thank you very much for your assistance in this matter. You and City Staff have uniformly been helpful throughout the process and my difficulties navigating it.

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Gary Gershon
Attorney at Law
20 N. Sutter St.
Stockton, CA 95202
209-662-2066
Comments to City Council on Proposed Marijuana Dispensaries Ordinances by American Civil Liberties Union ("ACLU")

Submitted by Gary Gershon, Board Member, June 28, 2010

Introduction

General Comment—Right of Ill Californians to Obtain and Use Medical Marijuana

Attitudes toward this entire process may be illustrated by the following introductory language from the Staff Report: "Essentially, the dispensaries will be providing what would otherwise be an illegal product under Federal law." There is passing comment about the Compassionate Use Act (Proposition 215; "CUA") and the State’s Medical Marijuana Act. There is no reference whatsoever to the CUA’s mandate that all ill Californians "have the right to obtain and use marijuana for medical purposes." This was passed fourteen years ago. To say that municipal compliance or even bare neutrality has been a long-time coming would be an understatement.

Additionally, it has been painfully clear that the Police Department opposes this initiative and has tried to place as many barriers as possible in the way of implementation notwithstanding Council instructions to move forward and put reasonable regulation in place making medical marijuana available in Stockton rather than being faced with no regulation no guidelines.
ACLU Involvement and Concerns.

ACLU has been participating in this process since its initiation. We have provided written comments and testified twice before the Planning Commission. One of our concerns, patient privacy and records, was more or less incorporated in the proposed land use ordinance from the Planning Commission: "Patient records shall remain confidential in compliance with state law...". However, that language has now been rendered irrelevant by, and is inconsistent, with language on Access to Records (the City of Police shall have unrestricted access all records including patient names, addresses, telephone numbers and the recommendation of the physician who recommended the medical marijuana—at Amendment to the Municipal Code, Proposed Section 5.100.230. All the specifics and language of the Proposed Amendatory language has been drafted without prior notification or opportunity for comment for input from the public. Suggestions from Council Members may be incorporated based upon discussions at the May 11 "Study Session." However, notice and opportunity for comment by the public was extremely limited based apparently upon practice regarding "study sessions." More on the Study Session is found below and in the following attachment which was written directly after reviewing the videotape recording of the Study Session.
The Major Concern.

Availability of patient names and personal information as well as the physician recommendation would violate rights to privacy under California Constitution, Art. 1, sec. 1. Medical marijuana patient records have been specifically held to be protected by that provision of the State Constitution. Bearman v. Superior Court, real party in interest Executive Director of State Medical Board, 117 Cal. A99.4th 463, 468-69 (2004).

The effort to completely abrogate these protections and to circumvent constitutional warrant requirements based on probable cause to believe a crime has been committed on the part of the patient is wholly untenable and must be rejected. Simply because provisions regarding patient privacy and records confidentiality were "unacceptable" to the Police Department is insufficient reason to pass unconstitutional regulation. It must be clear in both ordinances that patient names, addresses, telephone numbers, and physician recommendations or medical identification card are not available to anyone without a warrant based on probable cause issued by a judge. Those individuals would only otherwise be required to provide any such information if a police officer has suspicion that a crime is being committed. Those rights ought not be abridged because the information has been provided to a dispensary.
Opportunity for Meaningful Review and Comment.

There also is an unfortunate issue of lack of meaningful opportunity for review and comment on the proposed Administrative Guidelines. And these guidelines contain significant requirements and details that were not previously known.

The Staff Report and actual language of the "Administrative" and "Operational" Guidelines have not been widely available until quite recently. If the goal is thoughtful and meaningful input from the public, there is not enough time. Comments can be thrown together with some reference to authorities and sources but not much more. If the goal is bare minimum compliance with state law, then perhaps availability of materials in some storage bin in the basement of City Hall "24/7" is enough. If that is all that the Council requires, that is sad commentary on the desire of City Government to hear from its citizens.

Potential for Anti-Democratic Decision-Making

Also, of concern are comments made by some Council members during the May 11 "Study Session" (which apparently required and, in fact, provided little notice for citizen participation--ACLU was completely unaware of the "session" until later) to the effect that the Police Department should have the ordinance that
it wants—apparently without regard to the time, efforts, consideration and decisions of the Planning Commission, much less the many interested citizens who appeared and commented throughout that process. It would be distinctly anti-democratic elements to delegate decision-making to an agency which answers to elected officials.

Decisions of details of regulating dispensaries should not be put in the hands of an agency which has been largely opposed to the entire enterprise. There has been Police involvement throughout. Most of the Police Department’s recommendations were accepted and included; others were rejected. Examples of demands rejected are that dispensaries should not be able to place names or addresses on their buildings and that they should not be able to put information on the internet or elsewhere because “as they are collectives, the members should know where to find them,” or that dispensaries not be allowed to operate on weekends because the Narcotics Division is closed on weekends.

Allowing unrestricted access to patient identifying information and patient’s physician recommendations is inviting litigation and unwise public policy.

Other Attached Materials.

Included with this are two other sets of comments: the first is a summary of prior concerns and a discussion of
possibility of anti-democratic decision-making suggested by comments in passing at the Study Session and the Comments submitted to the Planning Commission. Other concerns and restatement of the issues described follow.

Specific Concerns.

Patient Privacy and Records Confidentiality.

The major concern, as expressed a number of times, is protection of patient privacy and records confidentiality. These must be addressed.

Accessibility by Low-Income and Disabled Persons.

The next consideration of importance is accessibility to dispensaries by low-income and disabled persons. Making them difficult to get to by public transportation is a significant matter. Banishing dispensaries to industrial zones, as the Police Department has constantly pressed for, was truly problematic. The Planning Commission attempted to address accessibility issues by adding two commercial zones to zones where dispensaries would be allowed. While that is an improvement, review of maps discloses there could still well be real difficulties.

There is the question of "unequal" distribution of dispensaries throughout the City. The Administrative Provisions attempt to address this by simply saying there will not be more
than one in any single City Council District. Does that satisfy concerns of accessibility, though? This is particularly problematic when the **total number of dispensaries** is limited to three and so many **separation requirements are 1000'**. Amelioration of these problems can be found in shorter separation requirements and no by allowing no fewer than 6 permitted dispensaries.

**Disqualification of Previously Operating Dispensaries as Retroactive Punishment of Particular Individuals.**

Disqualification of those dispensaries which operated prior to the passage of the proposed ordinances would present questions of retroactive and individualized application of requirements based on criminalizing past conduct. See proposed section 5.100.070 A.5. Efforts appear to have been taken to avoid this by making the language somewhat general but the intent, based upon comments from Council Members and Planning Commission Members throughout, has been clearly directed at the first or those few that started business: the Chief of Police shall (not may) deny a permit for "Evidence of current or prior unlawful or nuisance-creating operation as a permitted in this or another jurisdiction."

Actually, the City should be indebted to at least the first dispensary to open as that caused the City to finally be proactive and take the opportunity move towards thoughtful
implementing of the spirit of the Compassionate Use Act rather than simply trying to avoid the questions altogether—which, as has been demonstrated, was unrealistic.

Edibles.

Edibles should be allowed, particularly for those persons with respiratory illnesses or others who do not wish to smoke any substances.

Proposed Fees.

We are also concerned that the proposed fees are punitive at $30,000 and may not be consistent with other permits. For instance, what is the cost of permits for a bar, retail alcohol sales stores or pharmacies? These are ready similar examples. Fees ought to similar. And this means that in the first year, the applicant, then permittee, would have to pay no less than $33,500 for application and permit as well as the many costs of compliance with application requirements. This would amount to a substantial sum.

Further, if there is a suggestion these amounts reflect estimated actual costs of regulatory compliance by the City, those calculations should be made available for objective, third-party scrutiny. Fees must not be used as means to try to dissuade applications and perhaps a barrier to any permitting at all.
Moreover, there is a question of free-market competition. Presently, only applicants with proof of "adequate capitalization" (Staff Report at page 5) and minimum initial estimated gross receipts of $1,000,000 (Application Phase—Administrative Guidelines at page 1) seem to be eligible. There is no specification of criteria for or what specifically will be considered "adequate." And how was a million dollars chosen? Is it other than arbitrary? This appears discriminatory to small businesses and, at least theoretically, discriminatory to local enterprises—other than those whose corporate make up is composed of wealthy investors.

Conclusion.

These then are the on-going concerns of ACLU. Patient privacy and records protection is a matter of real significance, (Cal. Const. Art. 1, sec. 1, as are the requirements of the Fourth Amendment. They should not be neglected in efforts to placate the demands of the Police Department. Or to appear "tough on crime."

These decisions must be based upon sound information and realities, not mythology, anecdotes and political considerations. There never was any "Reefer Madness." The ideology and political perceptions that drove that silliness of the 30's and 70's was unsound then and is even more so today.
The only additional criminality occasioned by marijuana is a consequence of making it criminal in the first place: that forced growth, sale and use into the criminal netherworld and pushed innocents to deal with criminals. They became victims. It worked as well as prohibition ever has. And here the focus is much narrower: means to obtain and use medical marijuana by unwell persons.

There is now an opportunity for Stockton to be a part of one limited solution (in a limited context) and not continue exacerbating problems. While law enforcement is a consideration, it is not the only consideration. The rights of ill people to access to marijuana are also at stake. A medical marijuana patient should not be forced to forego privacy and confidentiality of records in order to obtain medical marijuana in Stockton. That requires the individual to give up one set of rights to engage another. That is just wrong.

Dated: 

Respectfully submitted,

ACLU-San Joaquin

By Gary Gershon, lawyer and Board Member
Draft Comments to Stockton City Council ("Council") on Proposed Marijuana Dispensaries Ordinance on Behalf of American Civil Liberties Union San Joaquin County Chapter ("ACLU")

Authored by Gary Gershon, lawyer and Board member

Introduction.

ACLU has been very involved in the development of the ordinance due to concerns about implementation of the 1996 voter initiative Compassionate Use Act and compliance with constitutional considerations, including respect for patient privacy and records confidentiality, attempts to avoid Fourth Amendment protections under the guise of "ensuring the dispensaries are actually collectives," accessibility on the part of low-income and disabled persons, and suggestions of efforts to retroactively criminalize and penalize actions taken by local dispensaries to provide medical marijuana which caused the City to finally address the questions.

An additional very troubling matter has arisen: the apparent willingness on the part of certain City Council ("Council") members to delegate decision-making to the Police Department and contradict changes made by the Planning Commission ("Commission") because the Police Department does not like the outcome.

Once pressed into action, the Council mandated that the Planning Commission take up the matter and provide a draft
ordinance. The Commission held hearings and took testimony from
dozens of witnesses.

ACLU provided written comments and testified twice. As a
consequence of the process, the draft improved. For instance,
acknowledgement of patient records confidentiality was
specifically added at the behest of ACLU. Two commercial zones
were added to allow for somewhat increased accessibility from
dispensaries being relegated to and isolated in industrial
zones.

The Police Department ("Department") was resistant and
insistently opposed improvements throughout the process. In
fact, some of its suggestions bordered absurd, e.g., that
dispensaries not be able to provide any information even on the
internet—notwithstanding the obvious First Amendment/free
speech implications and that dispensaries not be allowed to have
names or addresses on their buildings because if they were
"truly collectives, all the members would know where they are."
It reached a point of annoyance to most participants.

At the May 11 Study Session, two Council Members made
distressing comments after the Police Department represented
that it did not like the proposal and some provisions were
simply "unacceptable," e.g., not allowing the Department to
complete, unfettered access to all records, including patient
records, notwithstanding the broad protections of Cal. Const.
Art 1, sec. 1 on privacy. Those protections apply to marijuana medical records. See generally, Bearman v. Superior Court of Los Angeles, 117 Cal.App.4th 463 (2004) (marijuana patients' rights to privacy where medical board sought patient records because of suspicion that physician was indiscriminately recommending medical marijuana.\(^{1}\) All of this notwithstanding the hours and hours of effort and consideration on the part of the Commission, City staff and committed concerned citizens. To jettison the changes and even consider enacting that which the Department demands is patently anti-democratic and a failure to accept responsibility for independent, thoughtful decision-making based upon requirements of constitutions and law and the public interest—particularly the interest articulated in the Compassionate Use Act.

Failure to include provisions acknowledging and specifically requiring protections of patient privacy and records confidentiality will almost certainly breed litigation, particularly when the Police Department starts showing up demanding records without warrants. If there is probable cause to believe a crime has been, or is being committed, then a warrant can be obtained through constitutionally appropriate

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\(^{1}\) One Council member said, if the Police Department were "uncomfortable" with the ordinance, he would "likely" vote against it. Another said there would be an ordinance but the Department should have "carte blanche" to write in whatever provisions it wanted. And then the Council asked the Department to prepare a wish list of what it wanted/required in an ordinance.
means. The overreaching of the Department and demands to have power to avoid constitutional requirements is unacceptable.

Specific Concerns.

1. **Patient Privacy and Records Confidentiality** as already discussed.

2. **Lack of accessibility.** Relegating dispensaries to only industrial zones presents real questions of transportation and costs to low-income persons and the disabled. Moreover, there will be safety concerns for patients. Adding two commercial zones was a minimal accommodation; viewing maps of the expanded areas still demonstrates a lack of fair geographical distribution throughout the City as well as questionable access to public transportation.

3. Allowing **only three permits** is also an accessibility issue. Incidentally, questions of lack of competition are suggested

4. Allowance of **edible-products** is necessary for those patients who have respiratory or other problems which make smoking medical marijuana unwise or impossible.

5. Attempting to ensure that the dispensaries which opened and brought this matter into the light of day, have to potential of **constitutional implications** in so far as the proscription is designed to **eliminate certain applicants and/or retroactive application.**
Fuller explanation of ACLU considerations can be found in the comments provided to the Commission, attached hereto.

Conclusions.

ACLU continues to have significant concerns and objections to the apparent direction of this ordinance based upon the May 11 Study Session. The constitutional issues have been briefly expressed. The potentially anti-democratic process suggested by the May 11 especially troubling because of the potential anti-democratic direction and lack of sufficient notice to the Community.

The Council should carefully consider its actions. Decisions should be based on sound information and logic, not myth, misinformation or the desire to satisfy the Police Department. Council represents all of Stockton and must comply with law and apply the intent of state voter-approved policy, not just satisfy the demands of one agency. The Department presumably works for the Community and answers to the Council—not the other way round.

Respectfully submitted,

ACLU San Joaquin Chapter by Gary Gershon

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2 There are serious concerns about extremely notice periods for the Study Session. Without almost daily attention to the City website, such is easily missed. In point of fact, ACLU would have been present to testify but for lack of timely awareness of the session.
COMMENTS TO THE PLANNING COMMISSION ON PROPOSED DISPENSARIES ORDINANCE

Gary Gershon, 20 N. Sutter, on behalf of ACLU-San Joaquin County Chapter

I have provided copies of detailed concerns and comments for the Members and Staff.

Given the time limitations, I will briefly summarize the gist of these comments.

Generally, we encourage you to think about all the issues for yourselves and not rely on information or anecdotes supplied by others. So much of the marijuana debate for at least 80 years has been informed by inaccuracies, politicality, mythology and self-interests that it must be taken with a grain of salt. (See Discussion of history of marijuana debate in Justice Stevens' majority opinion in Raich v. Gonzales).

When you said that it is not your place to discuss or debate the underlying merits of marijuana generally or medical marijuana specifically, you are correct. The People of California spoke in the Compassionate Use Act 14 years ago. The City's job is to enact reasonable and sensitive regulation that implements the wishes of the People of the State. It should not be luke-warm, overly restrictive, excessive regulation but a balance of proven safety needs
and accessibility in obtaining and using medical marijuana.

The CUA made it clear the ill Californians have the "right to obtain and use marijuana for medical purposes." Making it very difficult to obtain won't end the right, it just makes it more difficult and can relegate it to illegal markets—which cause more trouble and danger.

That right is not acknowledged in the proposed Ordinance: what it does propose to say is that the use of cannabis is neither condoned or legitimized. OK but what of implementing the dictates of the CUA?

First, we are concerned about patient privacy. While there is no provision specifically saying the Police Department would have access to all records, including patient records, the Security Language at C.7 is too broad and general. It could well be used as a pretense of legality for rummaging through patient records and information. This has real constitutional ramifications. Particularly as the Police can get a search warrant based on probable cause to believe criminal activity is occurring anyway.

Accessibility is a real concern if dispensaries are limited to only industrial zones. This would present transportation considerations for low-income patients. Balancing here is needed to accommodate the needs of all patients with proven safety concerns. Do not rely on "common knowledge" because common knowledge in this
regard can well be wrong. Anecdotes are insufficient.

One of your members at the last meeting suggested placement of dispensaries in areas devoted to health-related facilities. This makes great sense as the basis for this is medical need.

While an amount of a deposit is not specified, at the last hearing, mention was made of at least six-figures. That would present all sorts of constitutional concerns: amounts not reasonably related to the actual costs of enforcement, disparate treatment of different entities without compelling reasons and demonstrated reasons.

1000' buffers and applied to many other uses could make placement very, very difficult. And why? Because we all know that dispensaries are dangerous places? No compelling evidence has been presented to support such assertions, only anecdotal tales. Again, accessibility is jeopardized.

And there is no obvious delegation of discretion for exceptions to account for differences, e.g., barriers like RR tracks or expressways.

Medical personnel is not defined. If the goal is to bar physicians from being able to write recommendations on site at the dispensary, that should be spelled out—presently medical personnel could be said to include chiropractors
or physical therapists. That is inconsistent with the health-care model which underlies this entire discussion.

**Edible products** restrictions while laudable to the extent that objections are based on food safety considerations present very difficult obstacles for certain patients, e.g., COPD—**respiratory diseases** where smoking anything is not a good idea. There are concerns under disability statutes presented here.

A retroactive ban on entities said have to "illegally" operated in the past would present constitutional questions, e.g., ex post facto and bills of attainder considerations. Moreover, there would not be a chance to positively address these issues if Pathways Health had not pressed the matter by starting up.

Generally, the Commission and then the Council should undertake this responsibility with eyes towards implementing the wishes of the People of the State and doing so in a sensitive and **thoughtful manner**—not based on myth and knee-jerk reactions founded in decades of false information and mythologies to suit particular extracurricular interests, e.g., establishing the giant government-private complex of the war on drugs.

Thank you.
EARTH'S
FINEST
MEDICINE
June 22, 2010

Earth’s Finest Medicine
17650 Basler Ave
Cottonwood, CA 96022

Ladies and Gentlemen:

We are asking that you allow us to open two Marijuana Dispensaries in your area as we believe that we can offer people alternative to the more dangerous drugs used for many conditions. Our hope is that we will take a percentage of drug transactions from the streets of your city to a safe legal environment where people can purchase their medications. We have studied this business for over a year and have watched Dispensaries come and go usually due to their opening without proper paper work and permits from the governing area. We feel we are ready to use the knowledge we have gained to operate this business under the guidelines of the state of California and Stockton city Ordinances. We will work closely with Law Enforcement and other agencies who over see these businesses. Our plan is to hire people who live in the area and have no criminal background; our first choice will be to hire veterans. We will offer a fair wage and in a short time hope to offer medical benefits for all our employees. We will take pride in our business by keeping the premises clean and devoid of refuse. People will not be allowed to loiter and if they are not there to purchase their medicine they will be escorted off the premises by the security guards. Our business hours will be from 10:30am to 7:30pm Monday thru Saturday and from 12:00pm to 8:00pm on Sundays.
Earth’s Finest Medicine

My name is Charlotte Strickland and I was born and raised in Glenn County. I have worked for Glenn County Mental Health for 29 years as a case manager to chronically mentally ill clients. I have seen the side effects that antipsychotic and mood stabilizer medications have on the clients I serve. Some clients are on 5 to 10 different medications with side effects for each one. Often clients stop taking their medications due to the side effects they are experiencing. The price they pay for this action is that they decompensate and may need a higher level of care. I have also worked with people with chronic pain and have watched as they become addicted and start abusing the pain medications and have to be treated for their addiction along with their other conditions. The problem with this is that the person still experiences pain and is limited to what can be used to treat the pain due to the addiction. I believe people can be treated effectively for specific illnesses and symptoms with medical marijuana without the side effects and addiction issues. Our purpose for opening a dispensary in your area is to offer a clean safe environment for patients to receive alternate medications for their varying medical and mental health conditions. We will employ a RN./Psych Tech who will be available for questions about the safe and effective way for our patients to use their Medical Marijuana in the way it is prescribed by their medical provider. We will also offer medication groups one time per week. If patients have questions or concerns about their medical conditions they will always be referred to their medical Dr’s. If a patient has a medical emergency 911 will be called, as we are not medical providers and cannot handle medical emergencies.

I hope to meet you on June 25th at the planning commission meeting and will be able to answer any questions you may have.

Sincerely,

Charlotte Strickland

EARTH’S FINEST MEDICINE INC
17650 Basler Road • Cottonwood, Ca 96022
My name is Robert Alejandre, I was born and raised in Stockton and my family still lives here. I graduated from high School in 1973 from Edison High School from there I joined the Army and served for five years. After boot camp I went to Germany where I was a police unit officer for 2 years. I was then transferred to Fort Lewis Washington where I was a Drug and Alcohol Specialist. I then transferred to Anchorage, Alaska where I taught Boxing and Martial Arts. I have studied the Art since I was seven years old. Many of my family have untreated mental health issues and a multitude of serious medical problems for which they self medicate through illegal drugs and alcohol. Many are addicted to pain medications and will go to any length to get it. I myself was diagnosed with PTSD after my five years in the service. Being a World Class Martial Art Instructor it was hard for me to accept I had a problem so I choose to ignore the recommendations of my M.D.. I continued to teach martial arts after leaving the service but there were many times I struggle to teach and had problems in my relationships. In 1980 I started smoking marijuana at night in moderation and found I was able to sleep. In short I have experienced the medical properties in marijuana but have never used to excess nor have I been in trouble with the law, in fact I taught boxing for the police activities league in Tehama County for 8 years and have owned businesses in Tehama County for the last 25 years. I have seen what drug addiction and side effects can do to families and I believe that if there were a safe effective alternative to treat their medical or mental health conditions they would chose it with the recommendation from their medical Dr’s or Psychiatrists ... Charlotte and I believe that the medical marijuana we will offer to our patients will help alleviate pain and suffering without side effects and stigma of buying medicine on the streets. We will have people on staff who can answer questions our patients may have about their alternative medicine, if we can’t answer their questions they will be referred to their prescribing Dr’s. Our hope is to open two dispensaries with the approval of the City Planning Commission and Board of Supervisors.

I look forward to meeting you Tuesday June 29th.

Sincerely,

Robert Alejandre
Our Mission

1. Our Primary Goal is to provide our members with the best knowledge, services and product available to us. You will always be treated with respect and acknowledge by name as you are our primary reason for being.

2. We will strive to provide a clean and safe environment along with high quality affordable medications. Thus eliminating the need for illegal and dangerous behaviors to purchase this medication.

3. To give back to our host city by donating a percentage of all profits the first year. After the first year we will donate fifty thousand dollars with the stipulation that part of these monies go to children’s programs.

4. To help our patients find comfort and relief from their pain and suffering with our diverse types of medicines and services offered to them.

5. We will always uphold the laws set forth by California and Ordinances adopted by Stockton regarding medical marijuana distribution.
Membership Qualifications

Earth’s Finest Medicine operates in strict compliance with California Health and Safety Code 11362.5 (Prop 215) and 11362.7 (SB 420). You must be at least eighteen (18) years old, have a state issued photo identification, and a doctor’s recommendation for medical cannabis to access dispensary services. Parents or court-appointed legal guardians must act as caregivers to obtain service on behalf of legally qualified patients who are younger than eighteen (18) years old. We serve only legally qualified patients and caregivers. Under no circumstances whatsoever are services provided to persons who are not qualified under California law. You must become a registered member to obtain services. Any person who is not a member or qualified patient, including minors, is not permitted within the dispensary area of Earth’s Finest Medicine.

To become a member of Earth’s Finest Medicine:

Present the original copy of your doctor’s recommendation for use of medical cannabis along with your state-issued photo ID to the staff at Earth’s Finest Medicine. We will make a copy of your recommendation and return the original to you. Your membership will be pending till an Earth’s Finest Medicine staff member verifies the validity of your recommendation. Upon verification, your membership and access to the dispensary services will become active. Your membership will be valid until the date your recommendation expires. Please note that we must verify your recommendation before dispensing medicine.

Designated Caregivers:

Earth’s Finest Medicine patient members may designate a primary caregiver who is authorized to receive medicine on the patient’s behalf. Please be advised that a primary caregiver is someone who has “consistently provided for the housing, safety, or welfare of the patient (CA H&S code 11362.5). Under no circumstances may a primary caregiver obtain services for himself or herself unless he or she is also a legally qualified patient and registered with Earth’s Finest Medicine. To designate a caregiver, a completed Primary Caregiver Designation Form is required. Forms are available from member services staff members.
Members Code of Conduct

Earth’s Finest Medicine members must abide by the following, and will be required to attest to this during the membership process. Earth’s Finest Medicine reserves the right to terminate membership for any violations of our code of conduct with no warnings or second chances.

- You must be at least eighteen (18) years old and have a state-issued identification to access dispensary services. Parents or court-appointed legal guardians must act as caregivers to obtain service on behalf of legally qualified patients who are younger than eighteen (18) years old.

- Any person who is not a member or qualified patient, including minors, is not permitted within the dispensary area of Earth’s Finest Medicine.

- All members are required to show state-issued identification and have their membership validated by Earth’s Finest Medicine personnel prior to accessing dispensary services.

- No cell phones, pagers, cameras or any other recording devices are allowed anywhere on Earth’s Finest Medicine premises. Please leave them in your car or at home.

- No alcohol, illegal drugs, or weapons are allowed in and around the Earth’s Finest Medicine premises.

- Members are limited to one dispensary visit per day.
Medical Speakers for a recent Hemp Expo

Dr. Robert Melamede is an associated professor and chairman of the Biology Department at the university of Colorado, Colorado Springs (UCCS). He is also the coordinator of the Master of Basic Science Program. Dr. Melamede’s work with cannabis has keyed on different areas of medical cannabis such as cannabinoid use its positive effect on the aging process and recently addressed the use of cannabis by veterans to treat PTSD. Dr. Melamede is also president and CEO of Cannabis Science, Inc. which he describes as a “patient oriented company” that is using the latest scientific techniques to develop standardized cannabis extracts used in a variety of ways to help patients.

Dr. Juan Sanchez-Ramos is a Neurologist with Tampa General Hospital and works with other medical care centers. He is a Professor of Neurology at the University of South Florida, the university’s Director of Huntington’s Disease Center of Excellence, and Director of Neurodegenerative Diseases Research Laboratory. Dr. Sanchez-Ramos is also a Movement Disorder Specialist at the Tampa Haley VA Medical Center. His work with Cannabis is concentrated on the distribution of the CB1 receptor in the brain, the effects of cannabinoid on normal and abnormal movement, the re-discovery of cannabinoids as treatment for movement disorders, and their potential as neuroprotective agents.

Mary Lynn Mathre is a Registered Nurse (RN), a Certified Addictions Registered Nurse (CARN), and a member of the Virginia Nurses Association. With a Master of Science in Nursing, Mathre has spent 20 years in the field of addictions where she was the first President of the Virginia Nurses Society on Addictions and served on the board of directors and secretary for the National Nurses Society of Addictions. She is now self-employed as a Certified Legal Nurse Consultant working with lawyers in health-related legal cases. Mathre is Co-founder and President of Patient Out of Time, a non-profit organization devoted to educating health care professionals and the public about the therapeutic uses of cannabis. She is the editor of Cannabis in medical Practice, editorial board member of the Journal of Cannabis Therapeutics and the journal of addictions nursing, and President of the International Cannabis Alliance of Researchers and Education. Mathre is the editor of the book Cannabis in Medical Practice, co-editor of women and Cannabis and Cannabis and Harm Reduction, and her writings have been featured in a number of medical texts and collections.

Michael Krawitz is a United States Air Force Disabled Veteran. Sgt. Krawitz is a long-time advocate of hemp and medical use of cannabis, as he himself uses cannabis for injuries received in an accident while serving on the island Guam which put him the highest disability rating acknowledged by the Veterans Administration (VA). He is Director of Veterans for Medical Marijuana Access, an organization committed to protecting the rights of veteran patients and healthcare professionals by advocating for safe legal access to marijuana and to encourage research on marijuana as a treatment alternative. Krawitz is also known as a hemp and cannabis archivist/collector operating The Cannabis Museum where he conserves, researches, and exhibits hemp and cannabis artifacts.
for study, education and enjoyment. Sgt. Krawitz was first prescribed cannabis while traveling abroad in the 1990’s. He is currently in a struggle with the VA’s distribution “voluntary pain contracts” subjecting veterans to urine tests for evidence of illegal drug activity potentially including medical marijuana causing Krawitz to fear of his pain treatment being discontinued. Krawitz has also published multiple articles in the Journal of Industrial Hemp.

Dr. Alexander Sumach is a long time Canadian Advocate and historian of hemp and cannabis. He is the author of the cannabis classic Grow Your Own Stone: The Original, Authentic, Best Seller released in the mid 70’s. The controversial book was banned in Canada in 1984, but later returned to shelves. He also authored A Treasury of Hashish in 1976 which chronicled the history of Hashish and detailed facts regarding cannabis, the effects, the culture, the civilization, and preparation broadly noted. He directed the private-citizen hemp-activist group, the Hemp futures Studies Group. He has published multiple articles, such as an excerpt from his unpublished work Hemp in the New World titled “Archeological Enigmas from Ancient Egypt” which looks at the ingesting of cannabis in Ancient Egypt. He has published several articles in the online trade journal, The Hemp Report, as well as writing the official Report on the Hemp Industries Association’s (HIA) 6th Annual Conference and other articles for the the HIA.

Dr. Paul Hornby is a chemist and plant analyst; he has a PhD in Human Pathology, and studied Biochemistry for his Masters Degree. Hornby led the research and development team for Advanced Nutrients for a few years, and now is in charge of scientific research for the Green Cross Society, a Vancouver-based compassion centre and only the 2nd club to open in the city. He has been analyzing herbal medicines for over 30 years, recently creating an herbal treatment for prostate cancer, Provisse. He has given lectures in a wide array of venues, including the University of Victoria’s Student Society (UVSS) Hempology 101 Club where he discussed the chemistry of cannabis. As President of Hedron Analytical, Inc., a company providing chemical analysts of herbal preparations, he has the facilities to test the cannabis of the Green Cross Society for molds, heavy metals and other contaminates. His use of High Pressure Liquid Chromatography (HPLC) gives the compassion club a cannabinoid profile of their medicine showing amounts of CBD, CBN, THC, and THC-acid, which helps the Green Cross Society more accurately match the medical strain to treat specific illnesses and symptoms. This pivotal information helps to set the Green Cross Society apart from other compassion clubs in Canada. Hornby has also created multiple natural products such as plant nutrient Scorpion Juice, Big Bud and Voodoo Juice, his plant root builder Piranha Beneficial Fungi, and most recently his Cannucaps, which are activated natural cannabis capsule standardized to equal dosage of THC and are quality controlled through contaminant testing.
June 29, 2010

SENT VIA ELECTRONIC MAIL

Mayor Ann Johnston and City Council
City of Stockton
425 N. El Dorado Street
Stockton, CA 95202

Re: June 29, 2010 Agenda Item 9.02
Draft Medical Cannabis Ordinances

Dear Mayor Johnston and Councilmembers:

This law office represents a team that will apply for a permit to operate a medical cannabis dispensing collective (MCDC) in the City of Stockton after the City adopts its medical cannabis ordinances. We have substantial experience with the permitting of MCDCs in San Francisco and currently represent teams vying for MCDC permits in Sacramento, San Jose, and Napa. Further, both signatories to this letter were recently appointed to San Francisco’s newly formed Medical Cannabis Advisory Task Force – to the attorney and community organizer seats respectively.

We have concerns about the following provisions in the draft medical cannabis ordinances before you tonight:

1. Approval/Denial of Permit

As drafted, the ordinance places the final approval or denial of an MCDC application with the Chief of Police – appealable to the City Manager. With all due respect to the Chief, we propose that the City Manager approve or deny the permit with the Chief of Police verifying background checks. At the very least there should be joint approval/denial of an application by the City Manager and Chief of Police – appealable to the City Council. The permit is for a legal activity, yet the proposed system places almost full discretion with the Chief of Police as if the activity is criminal. Indeed, the cities of Oakland and San Francisco appropriately chose bodies other than the Police to approve or deny MCDC applications. Leave enforcement to the Police Department, not administration of a fully legal activity.
2. Number of MCDCs

Capping the number of MCDC permits at three is ill advised. Given the very limited places MCDCs can locate under the draft ordinances, only three permitted MCDCs in different council districts, MCDCs will be spread far a flung in a somewhat large city in size – 75 square miles. Given the City’s size geographically and in population (about 300,000), it makes more sense to provide Stockton’s patients – many of whom have difficulty getting around – more options. Significantly, doing so will also provide more jobs and revenues for the City.

3. Lottery

We are confused about a possible lottery system. While the draft ordinance at one point mentions a lottery, it is not clear from draft ordinance Exhibit 4 – Administrative Guidelines – at what point a lottery would occur. This needs to be clarified. Of utmost importance to the City is to ensure that it is permitting the most qualified applicants applying industry best practices. Doing so will reduce enforcement demands while providing the City with healthy, sustainable revenue streams.

4. Employee Work Permit

Requiring all employees, paid and volunteer, to obtain a work permit, and be cleared of virtually any crime in the past 10 years, is overly draconian and unduly burdensome on everyone – employees and Police alike. A more reasonable system would limit this requirement to applicants and managers as well as to the past seven years (or on a case by case basis). Simply put, a more reasonable provision is needed than that proposed.

5. Record Keeping

First, all patients’ records (names, addresses, recommendations, etc.) must be protected pursuant to HIPAA protections. Moreover, requiring medicinal contributions be recorded is self-incriminating. In sum, the record keeping requirements appear to be a set up for future criminal prosecution. That suspicion is just about confirmed by proposed ordinance § 5.100.240 indicating that any violation of any provision of the chapter is a misdemeanor. San Francisco Department of Health’s Rules and Regulations (attached) provides a better model for record keeping.

6. Sensitive Uses – 600-feet Buffers

Presently, the draft zoning ordinance lists a number of sensitive uses that MCDCs must be 1000 feet from. Such extensive buffers create a map in which there are very few options for MCDC locations. A more reasonable buffer would be 600-feet which is consistent with AB 2650 that has passed the Assembly and awaiting hearing in the Senate. If passed, AB 2650 would create a minimum distance that MCDCs could locate from schools – as originally drafted the minimum distance was 1000-feet. However, the bill’s author (Joan Buchanan – R – 15th Dist.) amended it to 600-feet concluding that distance was more reasonable. We urge you to follow Assembly member Buchanan’s lead and adopt 600-feet buffers, not 1000.
We look forward to your Council meeting tonight.

Very truly yours,

Patrick D. Goggin

Stephanie Tucker
Consultant
San Francisco Department of Public Health
Environmental Health Section
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Director's Rules and Regulations
San Francisco Medical Cannabis Dispensary (MCD) Inspection Program
In Accordance with the California Attorney General's Guidelines For
The Security and Non-Diversion of Marijuana Grown For Medical Use
Issued August, 2008

These regulations are issued under the authority of Article 33, Sec.3301-3321 of the San Francisco Health Code, and in accordance with California Health and Safety Code, Section 11362.7 et seq., and California Health and Safety Code Section 11362.5 (Compassionate Use Act of 1996).
Introduction;

The following Rules and Regulations are issued under Article 33, Section 3312 of the San Francisco Health Code regarding Medical Cannabis Dispensaries (MCDs) that operate in San Francisco.

The following are Rules and Regulations governing the operation by which MCDs may lawfully operate pursuant to San Francisco Health Code Article 33 in the City and County of San Francisco, in accordance with applicable State Health and Safety Codes regarding medical cannabis possession and distribution, and in accordance with the Attorney General’s Guidelines For The Security and Non-Diversion of Marijuana Grown For Medical Use (AG Guidelines) as issued August, 2008.

The Role of the Department of Public Health (DPH)

DPH is the permitting agency for MCDs, and as such is responsible for ensuring that MCDs are in compliance with applicable laws before issuing a permit to operate. In addition, DPH performs ongoing routine inspections of permitted MCDs to ensure such compliance is maintained.

The following sections of SF Health Code Article 33 are hereby referenced as the authority by which these Rules and Regulations are enacted:

1. Section 3304(f)- The Director is hereby authorized to require in the permit application any other information including, but not limited to, any information necessary to discover the truth of the matters set forth in the application.

2. Section 3308(a)- Medical cannabis dispensaries shall meet all the operating criteria for the dispensing of medical cannabis as is required pursuant to California Health and Safety Code Section 11362.7 et seq., by this Article, and by the Director's administrative regulations for the permitting and operation of medical cannabis dispensaries.

3. Section 3312(a)- The Director shall issue rules and regulations regarding the conduct of hearings concerning the denial, suspension or revocation of permits and the imposition of administrative penalties on medical cannabis dispensaries.

4. Section 3312(b)- The Director may issue regulations governing the operation of medical cannabis dispensaries.
Definitions;

1. “Director” means the Director of Public Health or any individual designated by the Director to act on his or her behalf, including, but not limited, to inspectors.

2. “Doctor” means an individual licensed to practice medicine or osteopathy in the State of California.

3. “Medical Cannabis Dispensary”, as defined in San Francisco Health Code Article 33, Section 3301(f), may include the offsite distribution of medical cannabis to members of the cooperative or collective if all of the following conditions are met:
   
a. All patients or caregivers distributing and receiving medical cannabis must be registered members of the cooperative/collective where the cannabis originated.
   b. No patient or caregiver may distribute or receive more than one ounce of dried cannabis, or weight equivalent in edible cannabis form, per transaction.
   c. All receiving patients or caregivers must have a valid Medical Cannabis ID card or a valid doctor’s recommendation.
   d. Medical cannabis distributed offsite must be treated the same way as cannabis distributed on-site, including the collection of sales tax, and record keeping regarding distribution.

Application Process

In addition to the requirements set forth in Article 33 of the San Francisco Health Code, every applicant and manager must:

1. Submit proof of their status as a medical cannabis patient or caregiver, using either a valid doctor’s recommendation or a valid CA State Medical Cannabis ID card. This proof must be submitted every year (or upon the expiration of the previously submitted document establishing legal medical cannabis use/possession) to confirm the legal right of the owner and manager(s) to possess medical cannabis at the MCD, in accordance with the State Attorney General’s Guidelines.

2. Submit a copy of the articles of incorporation, if the MCD is a statutory cooperative, or a corporation.
3. Upon request, medical cannabis dispensaries shall provide the Department copies of, or access to, any records or any other information that the Department determines is necessary to demonstrate compliance with Section 3301(f). Specifically, medical cannabis dispensaries must maintain and provide, upon request, records and any other information to the Department that demonstrates that the dispensary is organized and operating as a collective or cooperative as defined under the City's Medical Cannabis Act ("the Act"). A dispensary organized and operating as a collective must, upon request of the Department, provide documents or any other information to demonstrate that the dispensary is jointly owned and operated by its members, and that persons have been designated by the members of the collective to manage and serve as the representative or agent of the dispensary concerning compliance with operating requirements under the Act.

A dispensary organized and operating as a cooperative must, upon request of the Department, provide documents or any other information to demonstrate that the dispensary is operating consistent with the cooperative's bylaws, and that persons have been designated by the members of the cooperative under the bylaws to manage and serve as the representative or agent of the dispensary concerning compliance with operating requirements under the Act.

Operational Regulations

1. Each patient or caregiver seeking to use an MCD must first apply for membership in writing at the dispensary. Forms for membership must include rules regarding membership, and these rules must be agreed to by the patient/caregiver. These rules shall include, but are not limited to, such things as: A) an agreement to not divert medical cannabis for non-medical purposes, B) prohibiting entry to anyone under the influence of alcohol, or in possession of or consuming alcohol C) a requirement to wash hands for all members working at the dispensary who handle cannabis D) signage posted alerting members that there is no smoking or ingesting of medical cannabis allowed within 50 feet of the MCD in the public right-of-way. Violations of the MCD's rules should result in the cancellation of membership privileges at the MCD.
2. Once the patient's/caregiver's written, verifiable doctor's recommendation or State issued medical cannabis ID card has been validated, and the MCD is in receipt of the signed membership form(s), the MCD must record the patient/caregiver name, and State ID number or MCD-assigned number to confirm their membership at the MCD. The dispensary will further record the expiration date of the recommendation or ID card. Records reflecting the name of the patient/caregiver may be kept off-site, but shall be made available to the Director during inspections.

3. The MCD shall verify each patient/caregiver membership in the cooperative/collective before they are allowed to purchase or exchange cannabis at the dispensary.

4. Each MCD is required on an annual basis to confirm in writing under the penalty of perjury that upon information and belief all cannabis dispensed at the MCD is grown in California and has not crossed the California state line at any time. All cannabis dispensed must originate only from members of the cooperative/collective, including edible cannabis products. Only lawfully cultivated cannabis may be distributed.

5. The dispensary must record and track the contributions of the members to their MCD. This includes time, labor, materials and/or money. These amounts need not be separated out, but may be tracked as one number reflecting the amount contributed.

6. In order to protect confidentiality when requested, the MCD may maintain records of all qualified patients and caregivers with valid identification cards using either the identification card number issued by the State pursuant to California Health and Safety Code Section 11362.7 et seq., or a unique number assigned by the MCD to the individual. Alternatively, the MCD may record the legal name of the individual as long as the patient/caregiver is made aware that this information is being kept by the MCD. The MCD's membership list must be made available during inspections when requested by the Director.

7. All required external signage must be easily legible from adjacent public right-of-ways.

8. All MCDs selling/distributing edible cannabis products must abide by the San Francisco Department of Public Health's Medical Cannabis Dispensary (MCD) Regulations for Preparation of Edible Cannabis Products.
9. All MCDs must operate in a not-for-profit manner. Any investigations regarding the operational status of an MCD will be conducted in accordance with Article 33 of the San Francisco Health Code.

10. Every MCD shall be required to obtain a seller’s permit from the State Board of Equalization.

11. All cannabis sales, including edible cannabis products, must be taxed where applicable and at the legal rate per California State law.

12. Every MCD must be prepared to show proof during inspections by the Director that collected sales tax for medical cannabis sales was submitted to the State Board of Equalization in the amount required by State Law. Under-reporting of cannabis sales may be investigated by the Director, with referrals sent to the State Board of Equalization when necessary.

13. MCDs must comply with all applicable Weights and Measures laws and regulations as they pertain to the use of commercial weighing devices used in MCDs.

**Hearing Regulations**

All hearings conducted regarding violations noted at MCDs shall follow current standard enforcement procedures for facilities as regulated by the Department of Public Health (DPH), and in accordance with Article 33 of the San Francisco Health Code, Sections 3313-3317.