

Recommended City Council Responses to Findings and Recommendation in San Diego County Grand Jury Report entitled “Medical Marijuana in San Diego”

GRAND JURY FINDINGS

Finding #04: *The San Diego City Council is empowered by Government Code Section 65858 to enact a moratorium on the opening of additional medical marijuana dispensaries.*

Mayor’s Response: **We partially agree with this finding.** While the Council is empowered to enact a moratorium, a moratorium is not necessary under the present code. See response to Recommendation 10-114 below.

IBA Recommendation: Do not join the Mayor’s response, and respond independently with the following:

We agree with the finding. In response to a request from the Public Safety and Neighborhood Services Committee (PS&NS), a July 24, 2009 City Attorney report to the Committee advised that the City Council has the authority to enact a moratorium on the opening of medical marijuana dispensaries. Enacting a moratorium would require a four-fifths vote of the Council to enact a forty-five day interim moratorium ordinance, which could be extended for ten months and fifteen days, followed by a one year extension. Each extension to the moratorium would require a four-fifths vote. Alternatively, the Council could enact a twenty-two month and 15 day extension, after the expiration of the initial forty-five day interim ordinance, with a four-fifths vote. The enactment of the moratorium requires legislative findings of a current and immediate threat to public health, safety, or welfare. Ten days before the moratorium’s expiration, the City Council would have to issue a written report outlining the efforts made to alleviate the conditions warranting it. At this time, the City Council has not elected to enact a moratorium.

Finding #05: *Adopting cost neutral zoning and land use ordinances is an effective method for the licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the unincorporated areas and eighteen cities of San Diego County.*

Mayor’s Response: **We partially agree with this finding.** While the adoption of such ordinances may be an obvious option to regulate medical marijuana cooperatives, there is no present evidence to prove that such ordinances are effective in regulating the distribution of medical marijuana.

IBA Recommendation: Respond with a modification to the Mayor’s response, replacing it with the following:

Partially agree. A number of city and counties within the state of California have utilized cost neutral zoning and land use ordinances to license, regulate, and inspect cooperatives and collectives. Although the ordinances typically involve zoning and land use authority, other regulatory authority, such as police, health, and general administration is involved to a varying degree across jurisdictions to address licensing, regulation, and inspection. The effectiveness of

specific types of ordinances in the licensing, regulation, and periodic inspection of cooperatives and collectives would vary based on the specific regulations involved, the level of enforcement, and the community in which they are applied.

Finding #06: *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.*

Mayor’s Response: No response.

IBA Recommendation: Respond independently with the following:

Partially agree. As purposed through its establishment, the Medical Marijuana Task Force’s recommendations will advise the City Council regarding zoning and land use ordinances for cooperatives and collectives. The final ordinance will evolve as the ordinance progresses through the Land Development Code amendment review process, including deliberations by the Planning Commission, City Council, and Coastal Commission, with public input, to address the particular interests of all involved stakeholders. Whether the Task Force’s recommendations can serve as a model for adoption by other cities in the County will be determined through a similar public process on a city by city basis.

Finding #11: *The imposition of regulatory fees and associated costs could create a financial hardship for the smaller medical marijuana cooperatives and collectives.*

Mayor’s Response: We disagree with this finding. There are no public records which presently show the financial status of any of these dispensaries. Therefore we cannot determine if regulatory fees and costs would create any financial hardships regardless of the dispensary’s size.

IBA Recommendation: Do not join the Mayor’s response, and respond independently with the following:

Partially agree. Preliminary estimates of the City’s Development Services Department’s regulatory fees that could be associated with the permitting process for medical marijuana dispensaries range from \$25,000-\$35,000. This does not incorporate other potential costs associated with the involvement of other regulatory authorities such as the Police Department and the Treasurer’s Office. The amount of the fees will ultimately depend on the regulatory requirements. The regulatory fees in other sited jurisdictions vary, for example with the County of Los Angeles, initial application fees total up to \$8,539, while with the City of Oakland, they total \$33,756.

Larger regulatory fee amounts would increase the upfront costs that medical marijuana cooperatives and collectives would have to bear in order to establish legal existence. Depending on the financial status of the potential operator, higher start-up costs may create a financial hardship. Although regulatory fees may increase initial start-up costs, **per the Attorney General’s “Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use”, issued August 2008, states California State Law,** operators can recover these

expenses by integrating them into costs borne by cooperative and collective members as reimbursement ~~to the cooperative or collective~~ for the expense of the medical marijuana allocated to them.

Recommendation 10-114: *Enact an ordinance creating an immediate moratorium on the opening of additional medical marijuana dispensaries in the City of San Diego, pending the adoption by the council of guidelines regulating such establishments, as recommended by the Medical Marijuana Task Force with appropriate public input.*

Mayor's Response: **This recommendation will not be implemented.** Medical marijuana dispensaries are not presently a permitted use in the City of San Diego's Land Development Code and may not operate legally within the City. Because these uses are not presently permitted and because we are taking enforcement action to close all of the existing shops, a moratorium would be redundant and unnecessary.

IBA Recommendation: **Do not join the Mayor's response, and respond independently with the following:**

Requires further analysis. At this time, the City Council has not elected to enact a moratorium, though this option has not been eliminated for consideration. The City Council's current efforts have attempted to address concerns regarding allowing for safe and legal access to medical marijuana. On October 6, 2009, the City Council appointed members of the Medical Marijuana Task Force to advise the Council on "(1) guidelines for medical marijuana patients and primary caregivers; (2) guidelines for the structure and operation of medical marijuana cooperatives and/or collectives; and (3) guidelines for police department enforcement regarding medical marijuana". The Task Force has since presented its findings to the full Council and the City's Land Use & Housing (LU&H) and PS&NS Committees. Per separate direction from LU&H and PS&NS, incorporating Task Force recommendations, the City Attorney's Office is currently drafting ordinances for review by the City Council at a future date.

~~On September 13, 2010, At a City Council meeting in the fall,~~ the City Council **will discuss whether to** adopted a resolution to initiate amendments to the City's Land Development Code and Local Coastal Program in relation to medical marijuana collectives and cooperatives. **With this action if initiated**, a proposed land use and zoning ordinance will be heard at the Planning Commission, beginning the deliberative process required for any amendment to the Land Development Code. As this process moves forward, all options deemed appropriate will be examined.

Recommendation 10-115: *Enact an ordinance to establish a cost neutral program for the licensing, regulation and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.*

Mayor's Response: **The City Council is in the process of implementing this recommendation.**

IBA Recommendation: **Respond with a modification to the Mayor's response.**

The recommendation has not yet been implemented, but will be implemented in the future. Both the PS&NS and LU&H Committees have provided direction to the City Attorney's Office to draft an ordinance incorporating both the Medical Marijuana Task Force's recommendations and Committee modifications. Though some Council members have expressed a desire to establish a limit on the number of medical marijuana collectives and cooperatives in the City, the direction from both Committees to the City Attorney's Office does not specifically incorporate this. The LU&H Committee directed the City Attorney to draft an ordinance with delineated limitations regarding the existence of dispensaries next to sensitive uses, other dispensaries, and to specific zones within the city, excluding zones that include residential uses. By default, these zoning and use limitations will effectively limit the number of medical marijuana collectives and cooperatives that can feasibly exist within the City. Whether the final ordinance will explicitly incorporate a limit on the number of facilities will be determined by future deliberations as a proposed ordinance undergoes a public review process, with input from the City's Code Monitoring Team, **Technical Advisory Committee**, Community Planners Committee, the Planning Commission, the City Council, and the California Coastal Commission.

Recommendation 10-116: *Adopt regulations which would allow for the closure of all unlicensed dispensaries.*

Mayors' Response: **This recommendation does not need to be implemented.** Medical marijuana collectives are not presently permitted to operate in any zone within the city. San Diego Municipal Code §12.0102 provides the authority and powers necessary to gain compliance with violations of the municipal code and close the unpermitted dispensaries. The City is currently prosecuting approximately 125 cases involving medical marijuana dispensaries and is requiring all to shut down.

IBA Recommendation: **Do not join the Mayor's response, and respond independently with the following:**

Requires further analysis. Per current interpretation, City regulations do not permit dispensaries. However, the LU&H Committee has expressed its intent to include language in a future ordinance amending the Municipal Code that will outline criteria for the existence of dispensaries. Dispensaries currently in existence that are not in compliance with the new ordinance will be shut down. Amending the Municipal Code will allow for the licensure of eligible collectives and cooperatives within the City to provide for safe access to medical marijuana for qualified patients and caregivers in accordance with California law. ~~**The new ordinance will be discussed at a future Council meeting.**~~

On September 13, 2010, the City Council adopted a resolution to initiate an amendment to the City's Land Development Code and Local Coastal Program. This action formally began the public review process required for an amendment to the Land Development Code. As a part of this review, the proposed zoning and use ordinance will be heard at the Planning Commission at a future date.

In conjunction with the land use and zoning ordinance, the City Attorney is also drafting a separate ordinance addressing Task Force and Committee recommendations pertaining to collective and cooperative operations and regulatory enforcement. This ordinance will be discussed at a future City Council meeting along with the proposed land use ordinance.