Case No. S198638

In the

Supreme Court of California

INLAND EMPIRE PATIENTS HEALTH AND WELLNESS CENTER, INC.; WILLIAM J. SUMP II; LANNY D. SWERDLOW; et al.,

Defendants and Appellants,

v.

CITY OF RIVERSIDE,

Plaintiff and Respondent.

After a Decision By the Court of Appeal
Fourth Appellate District, Division Two
Case No. E052400 (Riverside County Superior Court Case No. RIC10009872 - Honorable John D. Molloy)

MOTION FOR JUDICIAL NOTICE; EXHIBITS A-K; DECLARATION OF JEFFREY V. DUNN; [PROPOSED] ORDER

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MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code section 452, 453, and 459, and California Rules of Court, rules 8.520(g) and 8.252(a), Respondent City of Riverside ("City" or "Respondent"), hereby moves and requests that the court take judicial notice of the documents attached hereto as Exhibits "A" through "K".

1. Exhibit "A" is true and correct copies of portions of the Riverside Municipal Code ("RMC") Chapters 1, 6, and 19, which are at issue in this case and therefore relevant to this appeal. These documents were presented to the trial court, which did not rule on the City's request for judicial notice.

2. Exhibits "B" through "I" are part of the legislative history underlying Assembly Bill 2650 (Stats. 2010, ch. 603), which recently expanded the Medical Marijuana Program Act ("MMPA") to include Health & Safety Code section 11362.768, which is at issue in this case. Therefore, these documents are relevant to this appeal.

These documents were not submitted to the trial court because Assembly Bill 2650, once enacted, became effective January 1, 2011, after the trial court granted the preliminary injunction that is the subject of this appeal. Exhibits "B" through "I" are more particularly set forth as follows:

Exhibit B -	Assem. Bill No. 2650 (2009-2010 Reg. Sess.)
Exhibit C -	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 8, 2010

Exhibit D -	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 15, 2010
Exhibit E -	Assem. Com. on Appropriations, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 15, 2010
Exhibit F -	Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as introduced Feb. 19, 2010
Exhibit G -	Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010
Exhibit H -	Sen. Local Gov. Com., Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010
Exhibit I -	Sen. Com. On Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010

3. Exhibits "J" through "K" are part of the legislative history underlying Assembly Bill 1300 (Stats. 2011, ch. 196), which recently expanded Health and Safety Code section 11362.83, which is at issue in this case. Therefore, these documents are relevant to this appeal.

These documents were not submitted to the trial court because Assembly Bill 1300, once enacted, became effective January 1, 2012, after the trial court granted the preliminary injunction that is the subject of this appeal. Exhibits "J" through "K" are more particularly set forth as follows:

Exhibit J -	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 1300 (2011-2012 Reg. Sess.) as amended Mar. 31, 2011

Exhibit K -	Governor's Veto Message to Sen. on Sen. Bill No. 847 (Sept. 20, 2011) http://gov.ca.gov/docs/SB_0847_Veto_Message.pdf

4. None of the matters to be noticed herein relate to proceedings that occurred after the issuance of the order or judgment that is the subject of this appeal.

5. A proposed order is attached as required by California Rules of Court rule 8.252(a)(1).

Dated: April 26, 2012

Best Best & Krieger LLP

By: _____
Jeffrey V. Dunn
Roderick E. Walston
Attorneys for Respondent
City of Riverside

DECLARATION OF JEFFREY V. DUNN IN SUPPORT OF CITY OF RIVERSIDE'S MOTION FOR JUDICIAL NOTICE

I, Jeffrey V. Dunn, declare:

1. I am an attorney licensed to practice in the State of California, Bar Number 131926, and a partner with the firm of Best Best & Krieger, LLP. The facts set forth below are based on my personal knowledge unless otherwise indicated. If called upon to testify to them, I could and would do so competently.

2. The portions of chapters 1, 6, and 19 of the City of Riverside ("City") Municipal Code ("RMC") attached hereto are true and correct copies obtained from the City's website. The website is http://www.riversideca.gov/municode/ >

3. Assembly Bill 2650 (Stats. 2010, ch. 603), and Assembly Bill 1300 (Stats. 2011, ch. 196), are true and correct copies of the bills located on the "Official California Legislative Information Website." That website is: <http://www.leginfo.ca.gov/ >

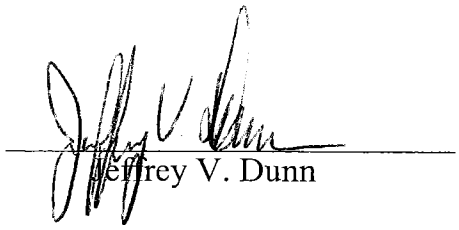
4. The remaining Assembly and Senate Committee Reports submitted herein were obtained from the Legislative Intent Service. The website address is http://www.legintent.com/?gclid=COX4v-fu0q8CFekZQgodLhLsFw . True and correct copies of the documents described herein are attached to this motion.

5. The Governor's Veto Message regarding Senate Bill 847 was

obtained from the Governor's website:

<http://gov.ca.gov/docs/SB_0847_Veto_Message.pdf>. It is a true and correct copy of the document contained on the website.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of April, 2012, at Irvine, California.



Jeffrey V. Dunn

[PROPOSED] ORDER GRANTING CITY OF RIVERSIDE'S MOTION FOR JUDICIAL NOTICE

The Court has received and considered the motion by the City of Riverside ("City") for an order granting judicial notice of Exhibits "A" through "K", and all opposition to the motion, if any. Having read the papers and considered the arguments, and good cause having been shown, the Court grants the City's motion and orders as follows:

Exhibit	Document(s)	Grant	Deny
A	Riverside Municipal Code chapters 1, 6, and 19		
B	Assem. Bill No. 2650 (2009-2010 Reg. Sess.)		
C	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 8, 2010		
D	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 15, 2010		
E	Assem. Com. on Appropriations, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Apr. 15, 2010		
F	Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as introduced Feb. 19, 2010		
G	Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010		
H	Sen. Local Gov. Com., Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010		

I	Sen. Com. On Pub. Safety, Analysis of Assem. Bill No. 2650 (2009-2010 Reg. Sess.) as amended Jun. 10, 2010		
J	Assem. Com. on Pub. Safety, Analysis of Assem. Bill No. 1300 (2011-2012 Reg. Sess.) as amended Mar. 31, 2011		
K	Governor's Veto Message to Sen. on Sen. Bill No. 847 (Sept. 20, 2011) http://gov.ca.gov/docs/SB_0847_Veto_Message.pdf		

IT IS SO ORDERED.

Dated: _____ _____
Chief Justice

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EXHIBIT "A"

Chapter 1.01

CODE ADOPTED

Sections:

Section 1.01.010 Code adopted.

The Riverside Municipal Code, as compiled from the ordinances and prior code sections of the City, and edited and published by Book Publishing Company of Seattle, Washington, is adopted as the code of Riverside. (Ord. 3539 § 1, 1968)

Section 1.01.020 Title--Citation--Reference.

This code shall be known as the "Riverside Municipal Code" and it shall be sufficient to refer to this code as the "Riverside Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall also be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction of, or repeal of the "Riverside Municipal Code." Further reference may be had to the titles, chapters, sections and subsections of the "Riverside Municipal Code" and such reference shall apply to that numbered title, chapter, section or subsection as it appears in this code. (Ord. 3539 § 2, 1968)

Section 1.01.030 Reference applies to amendments.

Whenever a reference is made to this code as the "Riverside Municipal Code" or to any portion thereof, or to any ordinance of the City, the reference shall apply to all amendments, corrections and additions heretofore, now, or hereafter made. (Ord. 3539 § 3, 1968)

Section 1.01.040 Codification authority.

This code consists of all of the regulatory and penal ordinances and certain of the administrative ordinances of the City, codified pursuant to Sections 50022.1 through 50022.10 of the Government Code of the State and Section 415 of the City Charter. (Ord. 3539 § 4, 1968)

Section 1.01.050 Definitions and Construction.

Unless the context otherwise requires, the following words and phrases where used in

this code shall have the meaning and construction given in this Section:

"Code" means the Riverside Municipal Code;

"City" means the City of Riverside;

"City Council" means the City Council of Riverside;

"City employee" shall mean a natural person who performs service to the City of Riverside in exchange for monetary compensation through the City payroll, whether full-time, part-time, seasonally, or pursuant to a contract (including persons made available to work through the services of a staffing, temporary, or employment agency) regardless of employment classification or benefits. This definition shall not include natural persons who are interns, independent contractors, or volunteers; except those volunteers enforcing handicapped parking regulations as authorized by the Vehicle Code. This definition shall apply only to this Code and solely for the purpose of designating those persons who shall have the authority to enforce its provisions. No enlargement, extension, abrogation, or restriction of rights conferred by any collective bargaining agreement or law governing labor and employment shall be construed from this definition.

"County" means the County of Riverside;

"Finance Director" means the Assistant City Manager/Chief Financial Officer or his/her designee.

"Person" means any natural person, firm, association, joint venture, joint stock company, partnership, organization, club, company, corporation, business trust, or their manager, lessee, agent, servant, officer, or employee of any of them;

"State" means the State of California;

"Oath" includes affirmation;

Gender. The masculine gender includes the feminine and neuter;

Number. The singular number includes the plural, and the plural the singular;

Tenses. The present tense includes the past and future tenses, and the future tense includes the present tense;

Shall, May. "Shall" is mandatory, "may" is permissive;

Title of Office. The use of the title of any officers, employee, department, board or commission means that officer, employee, department, board or commission of the City. (Ord. 6872 § 2, 2006; Ord. 6806 § 1, 2005; Ord. 3539 § 5, 1968)

Section 1.01.060 Reference to specific ordinances.

The provisions of this code shall not in any manner affect deposits or other matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within this code, but such reference shall be construed to apply to the corresponding provisions contained within this code. (Ord. 3539 § 6, 1968)

Section 1.01.070 Effect of code on past actions and obligations.

Neither the adoption of this code nor the repeal or amendment hereby of any ordinance or part or portion of any ordinance of the City shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to August 9, 1968, nor be construed as a waiver of any license, fee, or penalty at August 9, 1968, due and unpaid under such ordinances, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee, or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed, or deposited pursuant to any ordinance, and all rights and obligations thereunder appertaining shall continue in full force and effect. (Ord. 3539 § 7, 1968)

Section 1.01.080 Effective date.

This code shall become effective on August 9, 1968. (Ord. 3539 § 8, 1968)

Section 1.01.110 Penalties for violations.

A. It is unlawful for any person to violate any provision or to fail to comply with any of the requirements or provisions of this Code heretofore or hereafter enacted or the provisions of any code adopted by reference by this Code. Any person violating any of such provisions or failing to comply with any of the mandatory requirements of this Code, shall be guilty of a misdemeanor, unless such violation or failure to comply is specifically declared to be an infraction by other provisions of this Code. Notwithstanding any other provisions of this Code, any such violation constituting a misdemeanor may, in the discretion of the City Attorney, be charged and prosecuted as an infraction. Notwithstanding this Section and as an alternative to criminal prosecution, all violations of this Code are subject to the administrative code enforcement remedies set forth at Chapter 1.17 and any other administrative proceeding now or hereafter authorized under this Code.

B. Any person convicted of an infraction under the provisions of this Code, or any code adopted by reference by this Code, shall be punished by a fine not exceeding two hundred-fifty dollars.

C. Any person convicted of a misdemeanor shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the County jail for a period not exceeding six months, or by both such fine and imprisonment.

D. Each such person shall be guilty of a separate offense for each and every day during any portion of which any violation of or failure to comply with any provision of this Code, or the provisions of any code adopted by reference by this Code, is committed, continued or permitted by such person and shall be punishable accordingly.

E. In addition to the penalties provided by this Section or elsewhere in this Code, or in any code adopted by reference by this Code, any condition caused or permitted to exist in violation of any of the provisions of this Code, or the provisions of any code adopted by reference by this Code, shall be deemed a public nuisance and may be abated by the City, and each day such condition continues shall be regarded as a new and separate offense.

F. In any civil action commenced by the City to abate a nuisance, to enjoin a violation of any provision of this Code or any provision of any code adopted by reference by this Code, to collect a civil penalty imposed either by this Code or by State or federal law, or to collect a civil debt owing to the City, the City shall, if it is the prevailing party, be entitled to recover from the defendant in any such action reasonable attorney's fees and costs of suit.

G. Any person who violates any provision or fails to comply with any requirement or provision of this Code heretofore or hereafter enacted or any provision of any code adopted by reference by this Code shall be liable for a civil penalty not to exceed one thousand dollars for each violation. Where the conduct constituting a violation is of a continuing nature, each day of such conduct is a separate and distinct violation. In determining the amount of the civil penalty, the court shall consider all relevant circumstances, including, but not limited to, the extent of harm caused by the conduct constituting a violation, the nature and persistence of such conduct, the length of time over which the conduct occurred, the assets, liabilities and net worth of the person, whether corporate or individual, and any corrective action taken by the defendant. The civil penalty prescribed by this subsection shall be assessed and recovered and a civil action brought by the City Attorney in any court of competent jurisdiction. The civil penalty prescribed by this subsection may be sought in addition to injunctive relief, specific performance or any other remedy, provided, however, that a civil penalty shall not be sought for any violation for which a criminal prosecution has been commenced.

H. A violation of any section of this Code which is punishable as an infraction shall be charged and prosecuted as an infraction, provided that for the second or any additional violation of said section within a one year period, the City Attorney at his or her discretion may charge and prosecute the matter as a misdemeanor. (Ord. 6872 § 1, 2006; Ord. 6349 § 1, 2, 3, 1997; Ord. 6220 § 1, 1995; Ord. 5258 § 1, 1985; Prior code § 1.8)

Section 1.01.115 Enforcement authority; criminal citations; administrative enforcement.

A. Enforcement Authority.

City employees holding the positions hereinafter designated, and designated County of Riverside employees, shall have the authority to enforce the provisions of this Code, the provisions of any code adopted by reference by this Code, and the ordinances and regulations adopted by the City.

B. Designated City and/or County employees:

1. The department directors and employees charged with the enforcement of the City's zoning ordinances and regulations, the City's building and construction ordinances and regulations, the City's health and sanitation ordinances and regulations including conditions declared to be nuisances, the litter and littering ordinances and regulations, the pedestrian food vendors ordinances and regulations, the garage sales ordinances and regulations, the noise ordinance and regulations, the landscape maintenance ordinances and regulations, the bees and apiaries ordinance and regulations, and the airport and aircraft ordinance and regulations all as specified in Chapters 5.38, 5.49 and 8.20, and Titles 6, 7, 9, 12, 13, 16, and 19 of this Code.

2. Each County employee holding the position of Animal License Inspector and Animal Control Officer and charged with the enforcement of Chapter 8.12 of this Code.

3. Every City employee charged with the enforcement of the traffic and parking regulations of the City as set forth in this Code; and the enforcement of those sections of the Vehicle Code designated by the Chief of Police and which may be enforced by employees other than peace officers.

4. Every City employee holding the position of Park Ranger and charged with the enforcement of Title 7, Chapters 2.28, 8.12, 9.08, 9.12, 9.16, 9.18, 9.32, 9.52, 10.44, 10.45, 10.48, 10.52, 10.56, and 10.60, and Sections 9.04.080, 9.04.090, 9.04.100, 9.04.200, 9.05.030, 10.54.030 10.64.230, 10.64.240, 10.64.250, 10.64.260, 10.64.290, 10.64.310, 10.64.320, 10.64.330, and 10.64.340 on City property.

5. Every City employee charged with the enforcement of the airport and aircraft regulations of the City as set forth in Title 12 of this Code.

6. The Director of the County of Riverside Department of Environmental Health Services and his or her duly authorized Environmental Health Specialists who are referred to herein as "Enforcement Officers" charged with the enforcement of the City's ordinances and regulations regarding Food Establishments, Food Facilities, Regulation of Food Handlers, and Regulation for the Safety, Operation and Structure of Public Swimming Pools and Spas with the City as set forth in Chapters 6.08, 6.09, 6.10 of this Code.

C. Criminal Citations.

1. Those City and County of Riverside employees designated above are authorized, pursuant to California Penal Code Sections 19.7 and 836.5, and by this section, to issue a criminal citation to a person, without warrant, whenever such employee has reasonable cause to believe that the person has committed a misdemeanor or an infraction, in such employee's presence, which is a violation of this Code or any code adopted by reference by this Code.

2. If a person is to be cited, the designated City or County employee shall issue a NOTICE TO APPEAR (the citation) to such person, pursuant to California Penal Code Sections

853.5 and 853.6, and request that the person sign the NOTICE TO APPEAR, which shall constitute the person's written promise to appear in court. After obtaining the written promise to appear, the employee must immediately release the person.

3. If the person cited refuses to sign the NOTICE TO APPEAR, the designated City or County employee must immediately release the person and refer the matter to the City Attorney's Office or other agency for appropriate action.

D. Administrative Enforcement.

Those City and County of Riverside employees designated above are deemed Enforcement Officers for purposes of issuing notices of violations, administrative citations, and administrative civil penalties notices, as set forth in Chapter 1.17 of this Code. (Ord. 6872 § 3, 2006; Ord. 6702 § 1, 2003; Ord 6653 § 3, 2003; Ord. 6554 § 4, 2000; Ord. 6526 § 1, 2000; Ord. 6429 § 1, 1998; Ord. 6392 § 1, 1997; Ord. 6273 § 2, 1996; Ord. 6170 § 1, 1994; Ord. 6022 § 3, 1992; Ord 5667 § 1, 1988; Ord. 5590 § 1, 1987; Ord. 5494 § 1, 1987; Ord. 5258 § 2, 1985)

Section 1.01.120 Official time defined.

Whenever certain hours are named herein, they mean Pacific Standard Time or Daylight Saving Time as may be in current use in the City. (Prior code § 1.6)

Section 1.01.130 Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed. (Prior code § 1.4)

Section 1.01.140 Severability of parts of code.

It is declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this code are severable, and if any phrase, clause, sentence, paragraph or section of this code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this code. (Prior code § 1.5)

"Weeds" means useless and troublesome plants generally accepted as having no value and frequently of uncontrolled growth. (Ord. 6844 § 5, 2006; Ord. 6788 § 3, 2005; Ord. 5910 § 1, 1991)

Section 6.15.020 Declaration of nuisances.

It is unlawful and is hereby declared a nuisance for any person owning, leasing, occupying or having charge or possession of any property and any vehicles thereon, in the City to maintain the property in such a manner that any of the following conditions are present:

A. The existence of any garbage, rubbish, refuse or waste matter upon the premises contrary to the provisions of Chapter 6.04 of the Riverside Municipal Code.

B. The existence of weeds upon the premises, including public sidewalks, streets or alleys between said premises and the centerline of any public street or alley.

C. The existence of overgrown, dead, decayed, diseased or hazardous trees, and other vegetation, including but not limited to dead agricultural groves which are: (1) likely to attract rodents, vermin or other nuisances, or (2) constitutes a fire hazard, or (3) is dangerous to the public safety and welfare.

D. Overgrown vegetation including trees, shrubbery, ground cover, lawns and decorative plantings which substantially detract from the aesthetic and property values of neighboring properties.

E. Any abandoned or discarded furniture, stove, refrigerator, freezer, sink, toilet, cabinet, or other household fixture or equipment visible from a public right-of-way.

F. The existence of any abandoned, wrecked, dismantled or inoperative motor vehicle upon the premises contrary to the provisions of Chapter 9.28 of the Riverside Municipal Code.

G. The storage or parking of certain vehicles as follows:

1. The storage or parking of trucks exceeding the manufacturer's gross vehicle weight rating of 10,000 pounds on all areas of all residential zones, and the storage or parking of other vehicles on the landscaped front and street side yard setback area of all residential zones, including but not limited to the front lawn areas, contrary to the provisions of Riverside Municipal Code §§ 19.74.052, 19.74.060 and 1 9.74.150.

2. The storage or parking of vehicles on any unpaved parcel of property where such vehicle (a) is likely to disrupt traffic flow in the City; (b) stir up dust from driving on the unimproved surface; (c) negatively impact the aesthetics of the City; (d) allow oils and other unwanted substances to drip onto the untreated dirt surface; and/or (e) cause traffic obstructions by impeding the line of vision of drivers at intersections. Vehicles parked in conjunction with a temporary use as permitted under Riverside Municipal Code Chapter 19.69 are excepted.

H. The outdoor storage of personal property on private property as follows:

1. Any furniture (except for furniture specifically designed for outdoor use), on porches, balconies, sun decks, front, side and/or rear yards, any other personal property not designed for outdoor use and in good working order;

2. The existence of any hay, straw, lumber, papers, or other substances, junk, packing boxes, recyclable materials, salvage materials, building/construction materials, equipment; unless necessarily kept or stored under validly permitted, current construction; appliances, commercial/industrial machinery and/or equipment (whether operable or inoperable); and

3. Any item causing an unsightly appearance which is visible from the public right-of-way or sites of neighboring properties or which provides a harborage for rats and/or other vermin, or creates any other potential health hazard or nuisance.

I. The outdoor storage of personal property on public property as follows:

1. The use of public property to store, maintain, place or abandon any personal property, on any public street, any public sidewalk, any parking lot or public area, improved or unimproved, any public park, parkway, median or greenbelt, except as otherwise provided.

2. Any personal property stored, maintained, placed or abandoned in violation of this section may be removed and discarded at the discretion of the Public Works Director or his designee.

J. Any dangerous or substandard building, whether or not occupied, abandoned, boarded-up or partially destroyed contrary to the provisions of the Uniform Fire Code, Uniform Building Code, Uniform Housing Code, and/or Uniform Code for Abatement of Dangerous Buildings.

K. Peeling or blistering paint on any building or structure such that the condition is plainly visible from a public right-of-way.

L. The existence of loud or unusual noises, or foul or noxious odors which offend the peace and quiet of persons of ordinary sensibilities and which interferes with the comfortable enjoyment of life or property and affect the entire neighborhood or any considerable number of persons.

M. The existence of hazardous substances and waste unlawfully released, discharged, or deposited upon any premises onto any City property.

N. The existence of any stagnant water or water contained in hazardous and/or unmaintained swimming or other pools which obscure required visibility and proper filtering.

O. Any attractive nuisance.

P. Any other condition which is contrary to the public peace, health and safety.

Q. Any other violation of this code pursuant to section 1.01.110E. (Ord. 6844 § 6, 13, 2006; Ord. 6788 § 4, 2005; Ord. 6580 § 1, 2001; Ord. 6347 § 1, 1997; Ord. 6150 § 1, 1994; Ord. 6076 § 1, 1993; Ord. 6022 § 2, 1992; Ord. 5910 § 1, 1991)

Section 6.15.021 Summary Abatement.

In cases of manifest public danger and/or immediate necessity, the Building Official or the Code Enforcement Manager, or their designees, shall have the authority to immediately call a contractor to abate any public nuisance, which presents an immediate threat to public health or safety, at the sole discretion of the Code Enforcement Manager, Building Official, or their designees. Any such abatement activity may be conducted without observance of any notice requirements described in Chapter 6.15. The City may recover all abatement costs as set forth in Chapter 6.15. (Ord. 6844 § 14, 2006)

Section 6.15.022 Method of giving notice.

Any notice required by this chapter may be served in any one of the following methods: (1) by personal service on the owner, occupant, or person in charge or control of the property; or (2) by regular mail addressed to the owner or person in charge and control of the property, at the address shown on the last available assessment roll, or as otherwise known; or (3) by posting in a conspicuous place on the premises or abutting public right-of-way, or (4) in the alternative, insertion of a legal advertisement at least once a week for the period of two weeks in a newspaper of general circulation in the City of Riverside. (Ord. 6724 § 4, 2004)

Section 6.15.025 Determination of nuisance.

A. The Code Enforcement Manager may determine that any premises within the City may constitute a public nuisance pursuant to any provisions of Section 6.15.020 and may initiate abatement proceedings pursuant to this Chapter. The Code Enforcement Manager or the authorized representative thereof shall set forth in such determination in a notice to abate which shall identify the premises and state the conditions which may constitute the nuisance and shall require that such conditions be corrected within such time periods set forth in the notice to abate.

B. The notice to abate to the owner or person in control or charge of the property shall include (1) the condition or conditions on the premises creating the nuisance; (2) a reasonable

Chapter 19.150

BASE ZONES PERMITTED LAND USES

19.150.010 Purpose.

This Section establishes land use regulations for all base zones listed in this Article consistent with the stated intent and purpose of each zone. (Ord. 6966 §1, 2007)

19.150.020 Permitted Land Uses.

Table 19.150.020 A (Permitted Uses Table), Table 19.150.020 B (Incidental Uses Table) and Table 19.150.020 C (Temporary Uses Table) in Chapter 19.150 (Base Zones Permitted Land Uses) identify permitted uses, permitted accessory uses, permitted temporary uses, and uses permitted subject to the approval of a minor conditional use permit (Chapter 19.730 – Minor Conditional Use Permit), or conditional use permit (Chapter 19.760 – Conditional Use Permit), or uses requiring some other permit. Table 19.150.020 A also identifies those uses that are specifically prohibited. Uses not listed in Tables are prohibited unless, the Zoning Administrator, pursuant to Chapter 19.060 (Interpretation of Code), determines that the use is similar and no more detrimental than a listed permitted or conditional use. Any use which is prohibited by state and/or federal law is also strictly prohibited. (Ord. 7110 §§2, 3, 4, 2011; Ord. 7109 §§4, 5, 2010; Ord. 7072 §1, 2010; Ord. 7064 §9, 2010; Ord. 6966 §1, 2007)

19.150.030 Special or Unusual Uses.

At the discretion of the Planning Director, a Conditional Use Permit may be considered for a unique or unusual combination of uses or special facilities similar to and not more detrimental than other uses in a particular zone. (Ord. 6966 §1, 2007)

ARTICLE II: ZONING CODE ADMINISTRATION, INTERPRETATION AND ENFORCEMENT

Chapter 19.070

ENFORCEMENT

19.070.010 Enforcement Authority.

It shall be the duty of the Code Enforcement Division, Fire Department, Public Works Department, their respective designees, and/or the Police Department of the City, and all officers of the City otherwise charged with the enforcement of the law, to enforce the Zoning Code. Any condition imposed as part of an approved planning case, including but not limited to conditional use permits, minor conditional use permits, and temporary use permits, and any condition imposed by an appropriate decision-making body or authorized Planning Division official shall also be enforceable by the appropriate City officials. (Ord. 6966 §1, 2007)

19.070.020 Violations.

For the purposes of this Chapter, those persons vested with enforcement authority pursuant to Section 19.070.010 (Enforcement Authority) shall have the power to issue Notices of Violation and field citations, inspect public and private property and use whatever judicial and administrative remedies are available under the Riverside Municipal Code. (Ord. 6966 §1, 2007)

19.070.030 Verification of Permitted Uses.

The City may require, upon reasonable notice, evidence sufficient to establish that a business permittee or other person engaging in a regulated use of land is in compliance with all entitlements. Such evidence may include, but is not limited to, financial records, operating plans, and other

Article V – PERMITTED USES TABLE

This table identifies permitted uses and uses requiring approval of other permits by zoning designation. In addition to these uses, other incidental and temporary uses may also be permitted as noted in the Incidental Uses Table and the Temporary Uses Table.

Use	Zones																				Location of Required Standards in the Municipal Code
	Residential Zones							Office & Commercial Zones				Mixed Use Zones			Industrial Zones				Other Zones		
	RC	RA-5	RR	RE	R-1	R-3	R-4	O	CR	CG	CRC*	MU-N	MU-V*	MU-U*	BMP	I	AI	AIR	PF	RWY	DSP	
Live/Work Unit	X	X	X	X	X	X	X	X	X	X	X	P	SP	SP	X	X	X	X	X	X		See Live/ Work Units "A Guide For Developers And Property Owners" 19.335 – Live/Work Units
Lumber Yard and Building Materials – Wholesale	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	X	X	X	X		See Incidental Uses Table for Outdoor Display
Manufactured Dwellings[4]	P	P	P	P	P	X	X	X	X	X	X	P	X	X	X	X	X	X	X	X		19.850 – Fair Housing 19.100 – Residential Zones 19.340 – Manufactured Dwellings
Manufacturing (Indoors)	X	X	X	X	X	X	X	X	X	X	X	X	X	X	P	P	P	P	X	X		
Medical Marijuana Dispensary	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		Prohibited Use
Medical Services – Clinic, Medical/Dental Offices, Laboratory, Urgent/Express Care, and Optometrist	X	X	X	X	X	X	X	P	P	P	SP	P	SP	SP	MC	MC	MC	MC	X	X		5.52 – Massage
Medical Services – Hospital	X	X	X	X	X	X	X	C	C	C	C	X	X	X	X	X	X	X	X	X		
Mobile Home Park	X	X	With the MH Overlay Zone[5]			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		19.210 – Mobile Home Park Overlay Zone 5.75 – Mobile Home Parks Rent Stabilization Procedures
Model Homes	P	P	P	P	P	SP	SP	X	X	X	X	P	SP	SP	X	X	X	X	X	X		19.345 – Model Homes
Multi-tenant Indoor Mall	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		Prohibited Use
Multiple-family Dwelling (2 or more units)	X	X	X	X	X[6]	SP	SP	X	X	X	X	X	SP	SP	X	X	X	X	X	X		19.850 – Fair Housing
Offices (Administrative, Business, Executive and Professional, But Not Medical or Dental) A. In Historic Residence	X X	X X	X MC[2]	X MC[2]	X MC[2]	X MC[2]	X X	P X	P X	P X	SP X	P X	SP X	SP X	P X	P X	P X	P X	X X	X X		

[4] Manufactured Dwellings are only permitted in zones where single family residences are permitted.

[5] Mobile Home Parks are permitted in the RR, RE and R-1 Zones only with the Mobile Home Park Overlay Zone (Chapter 19.210).

[6] Legal, existing duplexes built prior to the adoption of this Zoning Code are permitted in the R-1-7000 Zone see 19.100.060 D.

* = For CRC, MU-U and MU-V Zones a Site Plan Review Permit (Chapter 19.770) is required for any new or additions/changes to existing buildings or structures.
P = Permitted
RCP = Recycling Center Permit, Chapter 19.870
DCP Day Care Permit – Large Family, Chapter 19.860
PRD = Planned Residential Development Permit, Chapter 19.780
C = Subject to the granting of a Conditional Use Permit (CUP), Chapter 19.760
TUP = Temporary Use Permit, Chapter 19.740.
sq. ft. = Square Feet
MC = Subject to the granting of Minor Conditional Use Permit (MCUP), Chapter 19.730
X = Prohibited
SP = Site Plan Review Permit, Chapter 19.770

EXHIBIT "B"

Assembly Bill No. 2650

CHAPTER 603

An act to add Section 11362.768 to the Health and Safety Code, relating to medical marijuana.

[Approved by Governor September 30, 2010. Filed with Secretary of State September 30, 2010.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, except as specified. The bill also would provide that local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of these medical marijuana establishments would not be preempted by its provisions; and that nothing in the bill shall prohibit a city, county, or city and county from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments. The bill would express a legislative finding and declaration that establishing a uniform standard regulating the proximity of these medical marijuana establishments to schools is a matter of statewide concern and not a municipal affair and that, therefore, all cities and counties, including charter cities and charter counties, shall be subject to the provisions

of the bill. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 11362.768 is added to the Health and Safety Code, to read:

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

(f) Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.

SEC. 2. The Legislature finds and declares that establishing a uniform standard regulating the proximity of medical marijuana cooperatives, collectives, dispensaries, operators, establishments, or providers to schools

is a matter of statewide concern and not a municipal affair, as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this act shall apply to all cities and counties, including charter cities and charter counties.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

O

EXHIBIT "C"

Date of Hearing: April 13, 2010
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

AB 2650 (Buchanan) – As Amended: April 8, 2010

SUMMARY: Prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possess, cultivates, or distributes medical marijuana, as specified, from being located within 1,000 feet of a school, public park, public library, religious institution, licensed child care facility, youth center, substance abuse rehabilitation center, or any pre-existing medical marijuana cooperative or dispensary, as specified. Specifically, this bill:

1) States that the 1,000-foot restriction shall be the horizontal distance measured in a straight line from the property line of the school, public park, public library, religious institution, licensed child care facility, youth center, substance abuse rehabilitation center, or preexisting medical marijuana cooperative or dispensary, as specified, to the closest property line of that lot on which the medical marijuana cooperative or dispensary is located without regard to intervening structures.

2) Provides that the 1,000-foot restriction shall not apply to medical marijuana cooperatives or dispensaries, as specified that are also licensed residential medical or elder care facilities.

EXISTING LAW:

1) States the People of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

   a) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

   b) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

   c) To encourage the Federal and State governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. [Health and Safety Code (HSC) Section 11362.5(b)(1)(A) to (C).]

2) Provides that nothing in this law shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of

marijuana for non-medical purposes. [HSC Section 11362.5(b)(2).]

3) States notwithstanding any other provision of law, no physician in California shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. [HSC Section 11362.5(c).]

4) States existing law, relating to the possession of marijuana and the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. [HSC Section 11362.5(d).]

5) Provides 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 under existing law. (Welfare and Institutions Code Section 11362.775.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "January 2010, the Los Angeles City Council passed an ordinance to regulate the collective cultivation of the medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. Several cities in our district, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana dispensaries in within their city limits. As Medical Marijuana Dispensaries are increasing throughout the state, more and more are opening closer to our schools. Currently, there is no guidance as the most appropriate locations for these dispensaries to open. As a result, we have cases of dispensaries opening up close to schools and other places where children congregate. As Medical Marijuana Dispensaries continue to open throughout the state, they are increasingly located near schools and parks, public libraries and child care facilities. To keep Medical Marijuana Dispensaries from further encroaching from places where children and families congregate, we believe we need to keep them a measured distance from these locations."

2) Compassionate Use Act of 1996 (Proposition 215): In November 1996, Californians voted in favor of Proposition 215, the "Compassionate Use Act". Pursuant to HSC Section 11362.5, the Act ensured the right of patients to obtain and use marijuana in California to treat specified serious illnesses. Additionally, the Act protected physicians who appropriately recommended the use of marijuana to patients for medical purposes and exempted qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana. (McCabe, *It's High Time: California Attempts to Clear the Smoke Surrounding the Compassionate Use Act*, 35 McGeorge L. Rev. 545, 546.)

"Although qualifying patients and their caregivers are exempt from California state cultivation and possession laws under the Act, there are no provisions addressing other relevant issues, such as the formation of cooperatives for the purpose of cultivating and distributing marijuana, transportation of marijuana by patients or caregivers, or provisions establishing the quantity of marijuana a qualified person may possess. Further, absence of

uniform guidelines adversely affected the ability of law enforcement officers to enforce the Act, resulting in inconsistent application. It has even been alleged that Proposition 215 was purposely drafted to be vague." (*Ibid* at 547.)

The United States Supreme Court specifically ruled on whether the Compassionate Use Act of 1996 could decriminalize the use of marijuana for medicinal purposes. *Gonzalez vs. Raich* (2004) 125 S.Ct. 3195 held California could not exempt marijuana for medicinal use from the criminal possession statute. The Court based its ruling on the idea that use of "any commodity, be it wheat or marijuana, has a substantial effect on the supply and demand in the national market for that commodity" and, hence, falls within interstate commerce. The Court ruled that the Federal Control Substances Act preempts any state attempt to decriminalize marijuana (*Raich* at 2208), meaning that federal agencies may enforce federal law in California notwithstanding the Compassionate Use Act, but there is no requirement that state law enforcement assist in enforcement.

In *City of Garden Grove vs. Superior Court of Orange County* (hereinafter *City of Garden Grove)* (2007) 157 Cal.App. 4th 355, the court of appeal argued that a defendant, whose charges of marijuana transportation were dismissed, was entitled to the return of seized marijuana. The trial court granted the patient's motion for return of property. The appellate court held that the city had standing under existing law to seek a writ of mandate because the question of whether medical marijuana patients were entitled to the return of lawfully seized marijuana was an issue of considerable public interest. The court stated that the patient's marijuana possession was legal under state law but it was illegal under federal law. The court concluded that his possession was lawful for purposes of obtaining the return of property because state courts were not required to enforce federal drug laws. Further, the federal drug laws did not preempt state law under the supremacy clause of the United States Constitution as to the return of medical marijuana to qualified users. Due process required the return of seized property after the dismissal of a criminal charge. (*City of Garden Grove* at 370.)

3) California Constitutional Limitations on Legislative Regulation of Medical Marijuana: SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, developed and clarified Proposition 215. Much of the state regulatory scheme for use of medical marijuana defers to city and counties to draft their own rules. Health and Safety Code Section 11362.77 states, in relevant part, "Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits" for marijuana possession set forth existing law. [HSC Section 11362.77(c).] Health and Safety Code Section 11362.72(a) requires county departments of health to issue and regulate medical marijuana identification cards. As noted above, SB 420 provided statutory guidelines for a right established through initiative.

The California Supreme Court very recently ruled on the Legislature's ability to regulate the use of medical marijuana because it was an initiative. The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." [Cal. Const., art. II, Sec. 10.] Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. Proposition 215 is silent as to the Legislature's authority to amend that proposition.

"The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power, and hence to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. At the same time, despite the strict bar on the Legislature's authority to amend initiative statutes, the Legislature is not precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a related but distinct area." [*Proposition 103 Enforcement Project vs. Quackenbush* (1998) 64 Cal.App. 1473.]

In *People vs. Kelly*, the California Supreme Court ruled that the Legislative restriction on the number of plants a person may possess was unconstitutional as it interfered with the rights established by the initiative. Although the Legislature may be able to clarify or expand the rights established in Proposition 215, it may not enact legislation that interferes with the use of marijuana for medicinal purposes. The *Kelly* Court stated:

"Under the CUA [Compassionate Use Act], as adopted by Proposition 215, these individuals are not subject to any specific limits and do not require a physician's recommendation in order to exceed any such limits; instead they may possess an amount of medical marijuana reasonably necessary for their, or their charges', personal medical needs. By extending the reach of Health and Safety Code Section 11362.77's quantity limitations beyond those persons who voluntarily register under the MMP [Medical Marijuana Program] and obtain an identification card that provides protection against arrest - and by additionally restricting the rights of all qualified patients and primary caregivers who fall under the CUA - the language of Section Health and Safety Code Section 11362.77 effectuates a change in the CUA that takes away from rights granted by the initiative statute. In this sense, [Health and Safety Code Section 11362.77] quantity limitations conflict with - and thereby substantially restrict - the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. In that respect, Section 11362.77 improperly amends the CUA in violation of the California Constitution." [*People vs. Kelly (hereinafter Kelly)* (2010) 47 Cal.4th 1008, 1044.]

This bill creates a statewide prohibition for any medical marijuana dispensary to be located within 1,000 feet of a school, public park, public library, religious institutions, licensed child care facilities, youth centers, substance abuse rehabilitation centers, or another dispensary. It is arguable that in some jurisdictions this restriction may completely eliminate medical marijuana dispensaries. In that case, the prohibition may be viewed by the court as "substantially restricting" access to medical marijuana. If that is the case, this proposed legislation, if enacted, may be invalidated as unconstitutional. Some medical marijuana advocates have suggested dispensaries should be treated like liquor stores. Most jurisdictions prohibit liquor stores within 600 to 1,000 feet from a school. However, the restriction in this bill also includes parks, libraries, youth centers, religious institutions, child care facilities or rehabilitation centers may be overly broad. Also, there is no definition of "youth center" or "religious institution", giving local government no direction on how to enforce this provision.

4) Local Governments: This language appears to be what the Los Angeles City Council adopted in February 2010. The City of Los Angeles rejected a more stringent 500-foot rule

in favor of a broader 1,000-foot rule. The Council took hours of testimony on access and agreed to consider and revisit access to dispensaries if it is determined that the restriction will limit the rights of patients. Americans for Safe Access (ASA) have filed suit in Los Angeles Superior Court seeking an injunction against the ordinance and Los Angeles City Council from enforcing its language. ASA is arguing the 1,000-foot restriction will effectively eliminate access to medical marijuana in a manner inconsistent with the proposition. The request for injunction was filed on March 18, 2010. [Barboza, "Medical Marijuana Advocates Challenge L.A. Ordinance", Los Angeles Times, March 2, 2010, pg. 1A.] Los Angeles devoted two and one-half years developing regulations and may still be constitutionally prohibited from acting.

Since the passage of SB 420 in 2003, much of the medical marijuana regulation has been determined by local jurisdictions better equipped to resolve issues related to the unique nature of its city or county. Given the precarious constitutional status of the 1,000-foot restriction in Los Angeles, should the Legislature defer to local governments until legal issues may be resolved?

5) Related Legislation: AB 390 (Ammiano) legalizes the possession, sale, cultivation and other conduct relating to marijuana by persons over the age of 21. AB 390 passed out of the Assembly Committee on Public Safety and was never heard in the Assembly Committee on Health.

6) Prior Legislation:

a) SB 847 (Vasconcellos), Chapter 750, Statutes of 1999, established the Marijuana Research Act of 1999 and provided that the Regents of the University of California, if they elect to do so, may implement a three-year program, the "California Marijuana Research Program", under which funds would be provided for studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, to develop medical guidelines for the appropriate administration and use of marijuana.

b) SB 791 (McPherson), of the 2001-02 Legislative Session, would have reduced simple possession of not more than 28.5 grams or marijuana to an infraction for the first offense and an alternate infraction/misdemeanor for the second offense. SB 791 failed passage on the Assembly Floor.

c) SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, establishes a voluntary registry identification card system for patients authorized to engage in the medical use of marijuana and their caregivers.

d) SB 131 (Sher), of the 2003-04 Legislative Session, would have reduced simple possession of not more than 28.5 grams of marijuana to an infraction for the first offense, would have reduced simple possession for a subsequent offense to an alternate infraction/misdemeanor, and would have increased the penalty for an offense to a fine of not more than $250. SB 131 failed passage on the Assembly floor, was granted reconsideration, and was never re-heard.

e) SB 797 (Romero), of the 2005-06 Legislative Session, would have reclassified a first offense for simple possession of not more than 28.5 grams of marijuana as an alternate

infraction/misdemeanor and increases the penalty for the offense from $100 to $250. SB 797 failed passage on the Assembly Floor and was moved to the Inactive File after being granted reconsideration.

f) AB 684 (Leno), of the 2007-08 Legislative Session, would have clarified the definition of "marijuana" contained in the Uniformed CSA to exclude industrial hemp, except where the plant is cultivated or processed for purposes not expressly allowed, as specified. AB 684 was vetoed.

g) AB 2743 (Saldana), of the 2007-08 Legislative Session, would have stated that it is the policy of California that its agencies and agents not cooperate in federal raids and prosecutions for marijuana related offenses if the target is a qualified patient. AB 2743 was moved to the Inactive File on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

None

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

EXHIBIT "D"

Date of Hearing: April 20, 2010
Counsel: Kimberly A. Horiuchi

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

AB 2650 (Buchanan) – As Amended: April 15, 2010

SUMMARY: Prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possess, cultivates, or distributes medical marijuana, as specified, from being located within 1,000 feet of a school. Specifically, this bill:

1) States that the 1,000-foot restriction shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of that lot on which the medical marijuana cooperative or dispensary is located without regard to intervening structures.

2) Provides that the 1,000-foot restriction shall not apply to medical marijuana cooperatives or dispensaries, as specified that are also licensed residential medical or elder care facilities.

3) Provides that this restriction shall only apply to medical marijuana cooperatives, collective, dispensary, operator, establishment or providers that is authorized by law to possess, cultivate or distribute medical marijuana.

4) States that nothing in this legislation shall be construed to supersede existing local ordinances that impose more restrictive requirements on the location of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate or distribute medical marijuana.

EXISTING LAW:

1) States the People of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

   a) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

   b) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

   c) To encourage the Federal and State governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

[Health and Safety Code (HSC) Section 11362.5(b)(1)(A) to (C).]

2) Provides that nothing in this law shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes. [HSC Section 11362.5(b)(2).]

3) States notwithstanding any other provision of law, no physician in California shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. [HSC Section 11362.5(c).]

4) States existing law, relating to the possession of marijuana and the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. [HSC Section 11362.5(d).]

5) Provides 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 under existing law. (Welfare and Institutions Code Section 11362.775.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "January 2010, the Los Angeles City Council passed an ordinance to regulate the collective cultivation of the medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. Several cities in our district, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana dispensaries in within their city limits. As Medical Marijuana Dispensaries are increasing throughout the state, more and more are opening closer to our schools. Currently, there is no guidance as the most appropriate locations for these dispensaries to open. As a result, we have cases of dispensaries opening up close to schools and other places where children congregate. As Medical Marijuana Dispensaries continue to open throughout the state, they are increasingly located near schools and parks, public libraries and child care facilities. To keep Medical Marijuana Dispensaries from further encroaching from places where children and families congregate, we believe we need to keep them a measured distance from these locations."

2) Compassionate Use Act of 1996 (Proposition 215): In November 1996, Californians voted in favor of Proposition 215, the "Compassionate Use Act". Pursuant to HSC Section 11362.5, the Act ensured the right of patients to obtain and use marijuana in California to treat specified serious illnesses. Additionally, the Act protected physicians who appropriately recommended the use of marijuana to patients for medical purposes and exempted qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana. (McCabe, *It's High Time: California Attempts to Clear the Smoke Surrounding the Compassionate Use Act*, 35 McGeorge L. Rev. 545, 546.)

"Although qualifying patients and their caregivers are exempt from California state

cultivation and possession laws under the Act, there are no provisions addressing other relevant issues, such as the formation of cooperatives for the purpose of cultivating and distributing marijuana, transportation of marijuana by patients or caregivers, or provisions establishing the quantity of marijuana a qualified person may possess. Further, absence of uniform guidelines adversely affected the ability of law enforcement officers to enforce the Act, resulting in inconsistent application. It has even been alleged that Proposition 215 was purposely drafted to be vague." (*Ibid* at 547.)

The United States Supreme Court specifically ruled on whether the Compassionate Use Act of 1996 could decriminalize the use of marijuana for medicinal purposes. *Gonzalez vs. Raich* (2004) 125 S.Ct. 3195 held California could not exempt marijuana for medicinal use from the criminal possession statute. The Court based its ruling on the idea that use of "any commodity, be it wheat or marijuana, has a substantial effect on the supply and demand in the national market for that commodity" and, hence, falls within interstate commerce. The Court ruled that the Federal Control Substances Act preempts any state attempt to decriminalize marijuana (*Raich* at 2208), meaning that federal agencies may enforce federal law in California notwithstanding the Compassionate Use Act, but there is no requirement that state law enforcement assist in enforcement.

In *City of Garden Grove vs. Superior Court of Orange County* (hereinafter *City of Garden Grove)* (2007) 157 Cal.App. 4th 355, the court of appeal argued that a defendant, whose charges of marijuana transportation were dismissed, was entitled to the return of seized marijuana. The trial court granted the patient's motion for return of property. The appellate court held that the city had standing under existing law to seek a writ of mandate because the question of whether medical marijuana patients were entitled to the return of lawfully seized marijuana was an issue of considerable public interest. The court stated that the patient's marijuana possession was legal under state law but it was illegal under federal law. The court concluded that his possession was lawful for purposes of obtaining the return of property because state courts were not required to enforce federal drug laws. Further, the federal drug laws did not preempt state law under the supremacy clause of the United States Constitution as to the return of medical marijuana to qualified users. Due process required the return of seized property after the dismissal of a criminal charge. (*City of Garden Grove* at 370.)

3) California Constitutional Limitations on Legislative Regulation of Medical Marijuana: SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, developed and clarified Proposition 215. Much of the state regulatory scheme for use of medical marijuana defers to city and counties to draft their own rules. Health and Safety Code Section 11362.77 states, in relevant part, "Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits" for marijuana possession set forth existing law. [HSC Section 11362.77(c).] Health and Safety Code Section 11362.72(a) requires county departments of health to issue and regulate medical marijuana identification cards. As noted above, SB 420 provided statutory guidelines for a right established through initiative.

The California Supreme Court very recently ruled on the Legislature's ability to regulate the use of medical marijuana because it was an initiative. The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the

electors unless the initiative statute permits amendment or repeal without their approval." [Cal. Const., art. II, Sec. 10.] Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. Proposition 215 is silent as to the Legislature's authority to amend that proposition.

"The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power, and hence to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. At the same time, despite the strict bar on the Legislature's authority to amend initiative statutes, the Legislature is not precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a related but distinct area." [*Proposition 103 Enforcement Project vs. Quackenbush* (1998) 64 Cal.App. 1473.]

In *People vs. Kelly*, the California Supreme Court ruled that the Legislative restriction on the number of plants a person may possess was unconstitutional as it interfered with the rights established by the initiative. Although the Legislature may be able to clarify or expand the rights established in Proposition 215, it may not enact legislation that interferes with the use of marijuana for medicinal purposes. The *Kelly* Court stated:

"Under the CUA [Compassionate Use Act], as adopted by Proposition 215, these individuals are not subject to any specific limits and do not require a physician's recommendation in order to exceed any such limits; instead they may possess an amount of medical marijuana reasonably necessary for their, or their charges', personal medical needs. By extending the reach of Health and Safety Code Section 11362.77's quantity limitations beyond those persons who voluntarily register under the MMP [Medical Marijuana Program] and obtain an identification card that provides protection against arrest - and by additionally restricting the rights of all qualified patients and primary caregivers who fall under the CUA - the language of Section Health and Safety Code Section 11362.77 effectuates a change in the CUA that takes away from rights granted by the initiative statute. In this sense, [Health and Safety Code Section 11362.77] quantity limitations conflict with - and thereby substantially restrict - the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. In that respect, Section 11362.77 improperly amends the CUA in violation of the California Constitution." [*People vs. Kelly (hereinafter Kelly)* (2010) 47 Cal.4th 1008, 1044.]

This bill creates a statewide prohibition for any medical marijuana dispensary to be located within 1,000 feet of a school. It is arguable that in some jurisdictions this restriction may completely eliminate medical marijuana dispensaries. In that case, the prohibition may be viewed by the court as "substantially restricting" access to medical marijuana. If that is the case, this proposed legislation, if enacted, may be invalidated as unconstitutional. Some medical marijuana advocates have suggested dispensaries should be treated like liquor stores. Most jurisdictions prohibit liquor stores within 600 to 1,000 feet from a school.

4) Local Governments: This language appears to be what the Los Angeles City Council adopted in February 2010. The City of Los Angeles rejected a more stringent 500-foot rule in favor of a broader 1,000-foot rule. The Council took hours of testimony on access and

agreed to consider and revisit access to dispensaries if it is determined that the restriction will limit the rights of patients. Americans for Safe Access (ASA) have filed suit in Los Angeles Superior Court seeking an injunction against the ordinance and Los Angeles City Council from enforcing its language. ASA is arguing the 1,000-foot restriction will effectively eliminate access to medical marijuana in a manner inconsistent with the proposition. The request for injunction was filed on March 18, 2010. [Barboza, "Medical Marijuana Advocates Challenge L.A. Ordinance", Los Angeles Times, March 2, 2010, pg. 1A.] Los Angeles devoted two and one-half years developing regulations and may still be constitutionally prohibited from acting.

Since the passage of SB 420 in 2003, much of the medical marijuana regulation has been determined by local jurisdictions better equipped to resolve issues related to the unique nature of its city or county. Given the precarious constitutional status of the 1,000-foot restriction in Los Angeles, should the Legislature defer to local governments until legal issues may be resolved?

5) Pending Initiative Legalizing Marijuana: Although several initiatives are in circulation to legalize marijuana in the State of California, the "Regulate, Control and Tax Cannabis Act of 2010" qualified for the November 2010 ballot on March 24, 2010. It provides, among other things that any person 21 years of age or older may personally possess or cultivate marijuana. It allows local governments to enact ordinances licensing and regulating the possession and cultivation and consumption in public. It prohibits the seizure or destruction of lawfully cultivated cannabis by law enforcement. The initiative also authorizes local governments to impose an excise tax on the possession, use or cultivation of marijuana. Nothing in the initiative directly references the use of marijuana for medicinal purposes, however, the Compassionate Use Act works as an exception to an otherwise prohibited substance. If that substance is no longer illegal, then the exception no longer applies. If this initiative passes in November, most of the medical marijuana language will be moot. Does it make sense to wait and see if marijuana will be legal before making changes to medical marijuana dispensaries?

6) Related Legislation: AB 390 (Ammiano) legalizes the possession, sale, cultivation and other conduct relating to marijuana by persons over the age of 21. AB 390 passed out of the Assembly Committee on Public Safety and was never heard in the Assembly Committee on Health.

7) Prior Legislation:

a) SB 847 (Vasconcellos), Chapter 750, Statutes of 1999, established the Marijuana Research Act of 1999 and provided that the Regents of the University of California, if they elect to do so, may implement a three-year program, the "California Marijuana Research Program", under which funds would be provided for studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, to develop medical guidelines for the appropriate administration and use of marijuana.

b) SB 791 (McPherson), of the 2001-02 Legislative Session, would have reduced simple possession of not more than 28.5 grams or marijuana to an infraction for the first offense and an alternate infraction/misdemeanor for the second offense. SB 791 failed passage on the Assembly Floor.

c) SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, establishes a voluntary registry identification card system for patients authorized to engage in the medical use of marijuana and their caregivers.

d) SB 131 (Sher), of the 2003-04 Legislative Session, would have reduced simple possession of not more than 28.5 grams of marijuana to an infraction for the first offense, would have reduced simple possession for a subsequent offense to an alternate infraction/misdemeanor, and would have increased the penalty for an offense to a fine of not more than $250. SB 131 failed passage on the Assembly floor, was granted reconsideration, and was never re-heard.

e) SB 797 (Romero), of the 2005-06 Legislative Session, would have reclassified a first offense for simple possession of not more than 28.5 grams of marijuana as an alternate infraction/misdemeanor and increases the penalty for the offense from $100 to $250. SB 797 failed passage on the Assembly Floor and was moved to the Inactive File after being granted reconsideration.

f) AB 684 (Leno), of the 2007-08 Legislative Session, would have clarified the definition of "marijuana" contained in the Uniformed CSA to exclude industrial hemp, except where the plant is cultivated or processed for purposes not expressly allowed, as specified. AB 684 was vetoed.

g) AB 2743 (Saldana), of the 2007-08 Legislative Session, would have stated that it is the policy of California that its agencies and agents not cooperate in federal raids and prosecutions for marijuana related offenses if the target is a qualified patient. AB 2743 was moved to the Inactive File on the Assembly Floor.

8) Arguments in Opposition:

a) Marijuana Policy Project, "If enacted into law, the bill would shut down safe access for thousands of seriously ill patients who rely on medical marijuana collectives for their medicine. This is at odds with the will of the California electorate, which overwhelmingly supports medical marijuana and patients' rights to access it in an open, safe, and legal environment. This legislation usurps the authority of local governments to make their own land-use decisions. It is wholly inappropriate to enact a one-size-fits-all policy to apply to every jurisdiction in California – the largest and most diverse state in the nation.

"This bill would also prohibit any "provider authorized by law to possess, cultivate, or distribute medical marijuana" within 1,000 feet of a school. This provision would criminalize caregivers supplying medical marijuana to any patient in accordance with existing law simply because of the location of their residence. Family members such as spouses and adult children are often designated as caregivers to provide medical marijuana to their loved ones who may be too ill to obtain it themselves. Making criminals out of people for trying to ease a loved one's pain would be grossly inhumane. Additionally, this provision would be an unconstitutional amendment to the voter-enacted *Compassionate Use Act*, which specifically protects primary caregivers from criminal sanctions.

b) According to Americans for Safe Access: "This restriction is unnecessary to protect public welfare, and will make finding a location for a legal collective or cooperative unduly burdensome in most jurisdictions. It also serves to usurp the authority of city and county government to make ordinary land use decisions based on the local circumstances. Americans for Safe Access (ASA) opposes AB 2650, as amended, and I am writing to encourage you and your colleagues on the committee to vote no.

"ASA is the nation's largest organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic use and research. We work in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a collective; and complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

"In Oakland, where collectives have been licensed since 2004, City Administrator Barbara Killey, notes that "The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed." In the City of Los Angeles, Police Chief Charlie Beck told City Council members that the claim that patients' associations attract crime "doesn't really bear out." In fact, the overall crime rate in Los Angeles dropped during the proliferation of collectives and cooperatives in that city. Given that effective local regulations address public safety concerns, there is no public safety rationale for a statewide policy keeping collectives and cooperatives away from sensitive uses.

"Furthermore, local land use decisions are best made by City Councils and County Boards of Supervisors based on the individual circumstances in the community. Usurping this local authority with an arbitrary statewide limit will interfere with the ability of local governments to use their discretion in developing the kinds of regulations that are already proven to protect legal patients and the community at large. Land use issues related to these associations should continue to be made at the local level – just like those for other legal businesses or organizations.

"Finally, most of California's legal medical cannabis patients rely on dispensing collectives or cooperatives to obtain the doctor-recommended medicine they need to treat the symptoms of HIV/AIDS, cancer, Multiple Sclerosis, chronic pain, and other serious illnesses. These patients' associations are legal under California law, and California Attorney General Jerry Brown published guidelines in August 2008 that state "a properly organized and operated collective of cooperative that dispenses medical marijuana through a storefront may be lawful under California law," provided the facility substantially complies with the guidelines. It is already hard enough to find a location for a legally organized and operated medical cannabis association. AB 2650 will make this task even more difficult – thus diminishing safe and legal access to medicine in communities statewide.

"A restriction like that imposed by AB 2650 may be motivated by a misunderstanding about the state law concerning patients' associations or by ambivalence about medical cannabis use in general. ASA urges you and your colleagues to look past the stigma that

sometimes underlies the debate about medical cannabis regulations, and to vote no on AB 2650 because it is unnecessary for public welfare, interferes in local regulation, and is harmful to legal medical cannabis patients

REGISTERED SUPPORT / OPPOSITION:

Support

None

Opposition

Americans for Safe Access
California NORML
Drug Policy Alliance
Marijuana Policy Project

Analysis Prepared by: Kimberly Horiuchi / PUB. S. / (916) 319-3744

EXHIBIT "E"

Date of Hearing: May 19, 2010

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Felipe Fuentes, Chair

AB 2650 (Buchanan) – As Amended: April 15, 2010

Policy Committee: Public Safety Vote: 4-2

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY

This bill prohibits any medical marijuana cooperative, dispensary, operator, or provider who possess, cultivates, or distributes medical marijuana, as specified, from being located within 1,000 feet of a school. Specifies that nothing in this legislation shall supersede existing local ordinances that impose more restrictive requirements on the location of a medical marijuana dispensary.

FISCAL EFFECT

Unknown, significant GF costs, well into the hundreds of thousands of dollars, to the Department of Justice (DOJ), to defend the state against imminent litigation. Based on the current experience in L.A. (see comment 2), where several suits were filed within weeks of the signing of a related ordinance, preliminary indications from DOJ concur with this assessment.

COMMENTS

1) Rationale. The author's intent is to establish a statewide standard and preemption regarding the proximity of medical marijuana dispensaries to schools. The author contends this bill provides local jurisdictions necessary guidance while allowing them to construct a more restrictive ordinance.

According to the author, "In January 2010, the L.A. City Council passed an ordinance to regulate the collective cultivation of the medical marijuana in order to ensure the health, safety and welfare of the residents of the City of Los Angeles. Several cities in our district, including Danville, Walnut Creek and Isleton, have recently passed ordinances to move, restrict or ban marijuana dispensaries within their city limits. As Medical Marijuana Dispensaries are increasing throughout the state, more and more are opening closer to our schools. Currently, there is no guidance as to the most appropriate locations for these dispensaries to open. As a result, we have cases of dispensaries opening up close to schools and other places where children congregate. As Medical Marijuana Dispensaries continue to open throughout the state, they are increasingly located near schools and parks, public libraries and child care facilities. To keep Medical Marijuana Dispensaries from further encroaching from places where children and families congregate, we believe we need to keep them a measured distance from these locations."

2) L.A. experience indicates significant state litigation exposure if state preempts the field. AB 2650 is based on a similar ordinance recently adopted by the L.A. City Council that includes

a 1,000-foot limitation between a dispensary and such places as schools, parks, libraries, churches, and day care facilities. Several groups, including Americans for Safe Access (ASA), an organization of patients, health practitioners and others promoting medical marijuana use, have filed suit in L.A. Superior Court seeking an injunction against the ordinance. ASA argues the 1,000-foot restriction will effectively eliminate access to medical marijuana in a manner inconsistent with Proposition 15, the 1996 Compassionate Use Act, which authorized medicinal marijuana use under the care of a physician.

According to the L.A. City Attorney's Office, the city spent more than two years developing regulations and now litigation may delay the June operative date of the ordinance.

Considering the challenges to the L.A. ordinance, should the Legislature wait-and-see before pursuing state preemption?

3) With a marijuana legalization initiative on November ballot, should the Legislature pause before pursuing state preemption?

4) Opposition. ASA contends there is no evidence that marijuana dispensaries are dangerous in any way, that access to medical marijuana is protected by Proposition 15, and that local land use decisions are best made by local leaders. "Usurping this local authority with an arbitrary statewide limit will interfere with the ability of local governments to use their discretion in developing the kinds of regulations that are already proven to protect legal patients and the community at large. Land use issues related to these associations should continue to be made at the local level - just like those for other legal businesses or organizations."

According to the Marijuana Project, "If enacted into law, the bill would shut down safe access for thousands of seriously ill patients who rely on medical marijuana collectives for their medicine. This is at odds with the will of the California electorate, which overwhelmingly supports medical marijuana and patients' rights to access it in an open, safe, and legal environment. This legislation usurps the authority of local governments to make their own land-use decisions. It is wholly inappropriate to enact a one-size-fits-all policy to apply to every jurisdiction in California - the largest and most diverse state in the nation."

5) Amendments. The author has offered amendments to reduce the 1,000-foot limit to 600 feet and to state that this bill does not preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of medical marijuana dispensaries.

Analysis Prepared by: Geoff Long / APPR. / (916) 319-2081

EXHIBIT "F"

ASSEMBLY BILL No. 2650

Introduced by Assembly Member Torrico

February 19, 2010

An act to amend Section 2653 of the Penal Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, as introduced, Torrico. Inmates: medical treatment.

Existing law specifies procedures to be followed when a physician certifies in writing that a particular medical treatment is required for an inmate to prevent certain violations of law.

This bill would make a technical, nonsubstantive change to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2653 of the Penal Code is amended to read:

2653. (a) If a physician employed by the Department of Corrections ~~or the Department of the Youth Authority~~ *and Rehabilitation* certifies in writing that a particular medical treatment is required to prevent a violation of Section 147, 673, 2650, or 2652, or is required to prevent serious and imminent harm to the health of a prisoner, the order for that particular medical treatment may not be modified or canceled by any employee of the department without the approval of the chief medical officer of the institution or the physician in attendance unless an inmate

or ward has a known history of violent or otherwise disruptive behavior that requires additional measures to protect the safety and security of the institution specified in writing by the warden or superintendent, or unless immediate security needs require alternate or modified procedures. Following any necessary modified or alternate security procedures, treatment of the inmate or ward shall be effected as expeditiously as possible.

Nothing in this section shall be construed to prevent a registered nurse from questioning, or seeking clarification of, an order from a physician that in the professional judgment of that nurse endangers patient health or safety, or otherwise is contrary to the professional ethics of the registered nurse.

(b) Any person who violates this section shall be subject to appropriate disciplinary action by the department.

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EXHIBIT "G"

AMENDED IN SENATE JUNE 10, 2010

AMENDED IN ASSEMBLY MAY 28, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2650

Introduced by Assembly Member Buchanan
(Coauthors: Assembly Members Carter, Portantino, Torres, and Torrico)

February 19, 2010

An act to add Section 11362.768 to the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 2650, as amended, Buchanan. Medical marijuana.

Existing law added by initiative, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a qualified patient, the qualified patient's primary caregiver, or an individual who provides assistance to the qualified patient or the qualified patient's primary caregiver, who possesses, cultivates, or distributes marijuana for the personal medical purposes of the qualified patient upon the written or oral recommendation or approval of a physician. Existing statutory law requires the State Department of Public Health to establish and maintain a voluntary program for the issuance of identification

cards to qualified patients and establishes procedures under which a qualified patient with an identification card may use marijuana for medical purposes. Existing law regulates qualified patients, a qualified patient's primary caregiver, and individuals who provide assistance to the qualified patient or the qualified patient's primary caregiver, as specified. A violation of these provisions is generally a misdemeanor.

This bill would provide that no medical marijuana cooperative, collective, dispensary, operator, establishment, or provider authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license shall be located within a 600-foot radius of any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive, as specified. The bill also would provide that local ordinances ~~relating to~~ *that regulate the location or establishment of* these medical marijuana establishments, adopted prior to January 1, 2011, would not be preempted by its provisions; *and that nothing in the bill shall prohibit municipal jurisdictions from adopting ordinances that further restrict the location or establishment of these medical marijuana establishments*. By creating a new crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 11362.768 is added to the Health and Safety Code, to read:

11362.768. (a) This section shall apply to individuals specified in subdivision (b) of Section 11362.765.

(b) No medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana pursuant to this article shall be located within a 600-foot radius of a school.

(c) The distance specified in this section shall be the horizontal distance measured in a straight line from the property line of the

school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

(d) This section shall not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

(e) This section shall apply only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license .

(f) Nothing in this section shall prohibit municipal jurisdictions from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

~~(f)~~

(g) Nothing in this section shall preempt local ordinances, adopted prior to January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

~~(g)~~

(h) For the purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIIIB of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIIIB of the California Constitution.

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EXHIBIT "H"

SENATE LOCAL GOVERNMENT COMMITTEE
Senator Dave Cox, Chair

BILL NO: AB 2650
AUTHOR: Buchanan
VERSION: 6/10/10

HEARING: 6/30/10
FISCAL: Yes
CONSULTANT: Weinberger

MEDICAL MARIJUANA LOCATIONS

Background and Existing Law

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. Cities and counties' major land use decisions --- subdivisions, zoning, public works projects, use permits --- must be consistent with their general plans.

The police power is the authority of governments to regulate private behavior in the public interest, consistent with constitutional rights and procedures. The California Constitution allows cities and counties to "make and enforce within [their] limits all local police, sanitary, and other ordinances and regulations not in conflict with general laws." Zoning and use permits are examples of how local officials use their police powers to regulate land uses.

State law sometimes limits local discretion over land uses. The Legislature has limited (or even preempted) local land use regulations for specific land uses:

- Manufactured housing in residential zones (AB 3735, Bornstein, 1994).
- Second units in residential zones (AB 1866, Wright, 2002).
- Amateur radio station antenna structures (AB 1228, Dutton, 2003).
- Solar energy systems (AB 2473, Wolk, 2004).
- Wireless telecommunications collocation facilities (SB 1627, Kehoe, 2006).
- Small wind energy systems (AB 45, Blakeslee, 2009).

The state has also taken land use permit powers away from local officials in four regions to protect natural resources with statewide importance: the Delta Protection Commission, the San Francisco Bay Conservation Development Commission, the Tahoe Regional Planning Agency, and the California Coastal Commission.

State law also regulates certain land uses' proximity to specific sites. For example the Legislature has banned tobacco ads on billboards within 1,000 feet of schools (AB 752, Migden, 1997) and development on active earthquake faults (SB 5, Alquist, 1975).

In 1996, the voters approved Proposition 215, the "Compassionate Use Act," which allows individuals to grow or possess marijuana for medical use when recommended by a physician to treat specified illnesses. Subsequent legislation clarified and implemented Proposition 215 by creating the California Medical Marijuana Program (SB 420, Vasconcellos, 2003). State law requires county departments of health to issue and regulate medical marijuana identification cards.

Hundreds of retail enterprises in communities throughout California cultivate and sell medical marijuana to patients with identification cards. Local ordinances regulate these medical marijuana establishments, called buyers' clubs, collectives, cooperatives, or dispensaries. Some local ordinances ban such establishments, create zoning restrictions on their locations, or tax their operations.

Some public officials are concerned that medical marijuana establishments may encroach on areas where children congregate. They want the Legislature to prohibit medical marijuana establishments from locating near schools.

Proposed Law

Assembly Bill 2650 prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana from locating within a 600-foot radius of a school. The bill applies only to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate, or distribute medical marijuana and that has a storefront or mobile retail outlet which ordinarily requires a local business license.

The bill does not apply to a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is also a licensed residential medical or elder care facility.

AB 2650 states that it does not prohibit municipal jurisdictions from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider. The bill does not preempt local ordinances, adopted before January 1, 2011, that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

The bill specifies that the 600-foot radius is the horizontal distance measured in a straight line from the property line of the school to the closest property line of the lot on which the medical marijuana cooperative, collective, dispensary, operator, establishment, or provider is to be located without regard to intervening structures.

AB 2650 defines "school" as any public or private school providing instruction in kindergarten or grades 1 to 12, inclusive.

Comments

1. Protecting students. As medical marijuana dispensaries proliferate, state law provides no guidance on the most appropriate locations for these establishments. Some communities worry about marijuana dispensaries opening near schools, parks, libraries, and child-care facilities. State law sets a precedent for creating a buffer-zone between school children and medical marijuana by prohibiting anyone from smoking medical marijuana, outside of a residence, within 1,000 feet of a school, recreation center, or youth center. AB 2650 is a similar measure that ensures that medical marijuana dispensaries are located a reasonable distance away from schools.

2. Local control. Local voters elect county supervisors and city council members to make public policy in response to local needs. Local land use decisions that strike a delicate balance between protecting school children and ensuring that patients and caregivers can obtain medical marijuana are best made by city and county officials. By prohibiting medical marijuana establishments from locating near schools, AB 2650 may reduce or eliminate patients' ability to obtain medical marijuana in some communities that strongly support providing safe, legal access. The Committee may wish to consider whether AB 2650 substitutes an arbitrary, one-size-fits-all standard for local officials' informed judgments about their communities.

3. Not charter cities. The California Constitution lets charter cities control their municipal affairs. The 118 charter cities must follow statewide laws only for issues of statewide concern when the Legislature has fully occupied the field. The courts -- not the Legislature -- interpret the Constitution and decide what's a municipal affair and what's an issue of statewide concern. Because AB 2650 does not declare that regulating medical marijuana establishments' proximity to schools is an issue of statewide concern, the bill does not apply to charter cities. If the Committee wants the bill to control charter cities, then it should insert a specific declaration that the Legislature considers regulating medical marijuana establishments' proximity to schools to be an issue of statewide concern and insert a persuasive recital of legislative findings to bolster that claim. Even then, the courts must agree.

4. A flexible standard. AB 2650 doesn't preempt local ordinances adopted before January 1, 2011 regulating the location or establishment of medical marijuana enterprises near schools. In effect, the bill sets a January 1, 2011 deadline for adopting any local ordinance that is less restrictive than AB 2650. The Committee may wish to consider whether, if AB 2650 is chaptered, this deadline will encourage local communities that want to avoid preemption by state law to quickly adopt

ordinances that are less restrictive than AB 2650 before the bill takes effect. Rather than preempting local ordinances that are less restrictive and adopted after an arbitrary date, the Committee may wish to consider amending AB 2650 to delete the January 1, 2011 deadline for passing less restrictive local ordinances. Without this deadline, AB 2650 establishes a statewide default standard requiring marijuana establishments to locate at least 600 feet from schools in communities that do not adopt their own ordinances specifying either a longer or shorter distance from schools, based on local conditions.

5. Home schools, too? Read broadly, the term "private school" in AB 2650's definition of schools could include home schools. By contrast, another definition of schools in the Health and Safety Code specifically excludes "any private school in which education is primarily conducted in private homes." A 2008 Superior Court decision in *Jonathan L. v. The Superior Court of Los Angeles County* found that "California statutes permit home schooling as a species of private school education." The Committee may wish to consider clarifying whether AB 2650 prohibits a medical marijuana establishment from locating within 600 feet of any private residence in which a student receives a K-12 education.

6. Undefined. AB 2650 says it does not prohibit "municipal jurisdictions" from adopting more restrictive ordinances or policies. The bill does not define the term "municipal jurisdictions," which appears nowhere else in the Health and Safety Code. The Committee may wish to consider amending AB 2650 to replace the term "municipal jurisdictions" with "cities and counties."

7. Pending litigation. The Los Angeles Superior Court is considering various challenges to a recent Los Angeles city ordinance that prohibits marijuana dispensaries within 1,000 feet of "sensitive use areas," including schools. Petitioners argue that the Los Angeles ordinance effectively eliminates access to marijuana in a manner inconsistent with Proposition 215. The Committee may wish to consider whether the Legislature should impose a similar restriction statewide before the court makes a final decision on this suit.

8. Mandate. By creating a new crime, AB 2650 also creates a new state-mandated program. But the bill disclaims the state's responsibility for reimbursing local governments for enforcing these new crimes. That's consistent with the California Constitution, which says that the state does not have to reimburse local governments for the costs of new crimes (Article XIIIB, §6[a][2]).

9. Double-referral. Because some of AB 2650's provisions fall beyond the Senate Local Government Committee's policy jurisdiction, the Senate Rules Committee ordered a double-referral. The Senate Public Safety Committee will consider AB 2650 at its June 29 hearing. If the Public Safety Committee passes the bill, the Senate Local Government Committee will hear AB 2650 at its June 30 hearing.

EXHIBIT "I"

SENATE COMMITTEE ON PUBLIC SAFETY

Senator Mark Leno, Chair
2009-2010 Regular Session

AB 2650

AB 2650 (Buchanan)
As Amended June 10, 2010
Hearing date: June 29, 2010
Health & Safety Code
JM:dl

MEDICAL MARIJUANA

HISTORY

Source: Peace Officers Research Association of California

Prior Legislation: SB 420 (Vasconcellos) - Ch. 875, Stats. 2003
SB 847 (Vasconcellos) - Ch. 750, Stats. 1999

Support: Association of California School Administrators; California Police Chiefs' Association; California Narcotics Officers Association; California State Parent Teacher Association; California State Sheriffs' Association; Sacramento Police Officers Association; Elk Grove Chief of Police

Opposition: League of California Cities; Drug Policy Alliance; Marijuana Policy Project

Assembly Floor Vote: Ayes 54 - Noes 15

KEY ISSUES

SHOULD A SPECIFIED MEDICAL MARIJUANA ENTITY THAT OPERATES THROUGH A STOREFRONT OR MOBILE RETAIL OUTLET BE PROHIBITED FROM LOCATING WITHIN A "600 FOOT RADIUS" OF A SCHOOL?

SHOULD THIS BILL NOT PREEMPT ANY LOCAL ORDINANCE REGULATING THE LOCATION OR ESTABLISHMENT OF A MEDICAL MARIJUANA ENTITY, IF THE ORDINANCE WAS ADOPTED PRIOR TO THE EFFECTIVE DATE OF THIS BILL (JANUARY 1, 2011)?

(CONTINUED)

(More)

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2009-2010 AB2650 - Medical marijuana. (Version: 92 - Chaptered 9/30/10)

Bill History Switch Order

Date	Action
9/30/10	Chaptered by Secretary of State - Chapter 603, Statutes of 2010.
9/30/10	Approved by the Governor.
8/26/10	Enrolled and to the Governor at 3 p.m.
8/16/10	Senate amendments concurred in. To enrollment. (Ayes 68. Noes 6. Page 6225.)
8/11/10	In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 13 pursuant to Assembly Rule 77.
8/11/10	Read third time, passed, and to Assembly. (Ayes 28. Noes 2. Page 4458.)
8/4/10	Read second time. To third reading.
8/3/10	From committee: Be placed on second reading file pursuant to Senate Rule 28.8.
8/2/10	In committee: Hearing postponed by committee.
7/15/10	Read second time and amended. Re-referred to Com. on APPR.
7/15/10	From committee: Amend, do pass as amended, and re-refer to Com. on APPR. (Ayes 4. Noes 0.) (June 30).
6/30/10	From committee: Do pass, and re-refer to Com. on L. GOV. Re-referred. (Ayes 4. Noes 2.) (June 29).
6/10/10	From committee chair, with author's amendments: Amend, and re-refer to committee. Read second time, amended, and re-referred to Com. on PUB. S.
6/10/10	Referred to Coms. on PUB. S. and L. GOV.
6/7/10	In Senate. Read first time. To Com. on RLS. for assignment.
6/3/10	Read third time, passed, and to Senate. (Ayes 54. Noes 15. Page 5561.)
6/1/10	Read second time. To third reading.
5/28/10	Read second time and amended. Ordered returned to second reading.
5/28/10	From committee: Amend, and do pass as amended. (Ayes 15. Noes 2.) (May 28).
5/19/10	In committee: Set, first hearing. Referred to APPR. suspense file.
4/22/10	From committee: Do pass, and re-refer to Com. on APPR. Re-referred. (Ayes 4. Noes 2.) (April 22).
4/22/10	Joint Rule 62(a), file notice suspended. (Page 4777.)
4/20/10	In committee: Hearing postponed by committee.
4/19/10	Re-referred to Com. on PUB. S.
4/15/10	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
4/13/10	In committee: Set, first hearing. Hearing canceled at the request of author.
4/12/10	Re-referred to Com. on PUB. S.
4/8/10	From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
4/8/10	Referred to Coms. on PUB. S. and HEALTH.
2/22/10	Read first time.
2/21/10	From printer. May be heard in committee March 23.
2/19/10	Introduced. To print.

AFTER THE EFFECTIVE DATE OF THIS BILL, SHOULD ANY LOCAL ENTITY ONLY BE AUTHORIZED TO ADOPT AN ORDINANCE THAT IS MORE RESTRICTIVE THAN THIS BILL?

PURPOSE

The purposes of this bill are to 1) prohibit operation or establishment of a medical marijuana cooperative, collective, dispensary or provider within 600 feet of a school; 2) to provide that ordinances adopted prior to the effective date of this bill (1/1/2011) regulating the location or establishment of such a medical marijuana entity shall not be preempted by this bill; and 3) to authorize a local entity to only adopt an ordinance that restricts the location or establishment of a medical marijuana entity "further" than those entities are restricted by this bill.

Existing law – the Compassionate Use Act of 1996 (Health & Saf. Code § 11362.5), includes the following purposes:

- To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where such use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

- To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

- To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. (Health and Saf. Code § 11362.5, subd. (b)(1)(A)- (C).)

Existing law - the Compassionate Use Act – also provides:

- The act shall not be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of marijuana for non-medical purposes. (Health & Saf. Code § 11362.5, subd. (b)(2).)

- No physician in California shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. (Health & Saf. Code § 11362.5, subd. (c).)

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- Penal laws relating to the possession of marijuana and the cultivation of marijuana shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. (Health & Saf. Code § 11362.5, subd. (d).)

Existing law provides 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 under existing law. (Health & Saf. Code § 11362.775.)

This bill provides that its terms shall apply to persons specified in Health and Safety Code Section 11362.765. Those persons are 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.

This bill prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possess, cultivates, or distributes medical marijuana, as specified, from being located within 600 feet of a school.

This bill states that the 600-feet distance shall be the horizontal distance measured in a straight line from the property line of the school to the closest property line of that lot on which the medical marijuana cooperative or dispensary is located, without regard to intervening structures.

This bill provides that the 600-feet restriction shall not apply to medical marijuana cooperatives or dispensaries, as specified that are also licensed residential medical or elder care facilities.

This bill provides that this restriction shall only apply to medical marijuana cooperatives, collective, dispensary, operator, establishment or providers that are authorized by law to possess, cultivate or distribute medical marijuana.

This bill does not preempt local ordinances, adopted prior to January 1, 2011 (the effective date of this bill), that regulate the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider.

This bill states that after the effective date of this bill, a local entity can only adopt a local ordinances that impose more restrictive requirements on the location of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider that is authorized by law to possess, cultivate or distribute medical marijuana than imposed under this bill.

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RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

The severe prison overcrowding problem California has experienced for the last several years has not been solved. In December of 2006 plaintiffs in two federal lawsuits against the Department of Corrections and Rehabilitation sought a court-ordered limit on the prison population pursuant to the federal Prison Litigation Reform Act. On January 12, 2010, a federal three-judge panel issued an order requiring the state to reduce its inmate population to 137.5 percent of design capacity -- a reduction of roughly 40,000 inmates -- within two years. In a prior, related 184-page Opinion and Order dated August 4, 2009, that court stated in part:

> "California's correctional system is in a tailspin," the state's independent oversight agency has reported. . . . (Jan. 2007 Little Hoover Commission Report, "Solving California's Corrections Crisis: Time Is Running Out"). Tough-on-crime politics have increased the population of California's prisons dramatically while making necessary reforms impossible. . . . As a result, the state's prisons have become places "of extreme peril to the safety of persons" they house . . . (Governor Schwarzenegger's Oct. 4, 2006 Prison Overcrowding State of Emergency Declaration), while contributing little to the safety of California's residents . . . California "spends more on corrections than most countries in the world," but the state "reaps fewer public safety benefits." . . . . Although California's existing prison system serves neither the public nor the inmates well, the state has for years been unable or unwilling to implement the reforms necessary to reverse its continuing deterioration. (Some citations omitted.)
>
> . . .
>
> The massive 750% increase in the California prison population since the mid-1970s is the result of political decisions made over three decades, including the shift to inflexible determinate sentencing and the passage of harsh mandatory minimum and three-strikes laws, as well as the state's counterproductive parole system. Unfortunately, as California's prison population has grown, California's political decision-makers have failed to provide the resources and facilities required to meet the additional need for space and for other necessities of prison existence. Likewise, although state-appointed experts have repeatedly provided numerous methods by which the state could safely reduce its prison population, their recommendations have been ignored, underfunded, or postponed indefinitely. The convergence of tough-on-crime policies and an unwillingness to expend the necessary funds to support the population growth has brought California's prisons to the breaking point. The state of emergency declared by Governor Schwarzenegger almost three years ago continues to this day, California's prisons remain severely overcrowded, and inmates in the California

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> prison system continue to languish without constitutionally adequate medical and mental health care.[1]

The court stayed implementation of its January 12, 2010 ruling pending the state's appeal of the decision to the U.S. Supreme Court. On Monday, June 14, 2010, The U.S. Supreme Court agreed to hear the state's appeal in this case.

This bill does not appear to aggravate the prison overcrowding crisis described above.

COMMENTS

1. Need for This Bill

According to the author:

> Currently, there is no guidance from the state regarding the location of medical marijuana dispensaries. In La Jolla there is dispensary across the street from a high school, one block from a middle school and four blocks from an elementary school. This measure simply prevents medical marijuana dispensaries with a storefront from being located directly across from a school. By requiring dispensaries to be located at least 600 feet from a school, this measure is consistent with the distance most bars and liquor stores are banned. Additionally, this bill does not preempt existing local ordinances that regulate the location of marijuana dispensaries as the most appropriate locations for these dispensaries to open. This bill represents a balanced approach between our responsibilities to our children and schools and the need for patients to have access to medical marijuana dispensaries.

2. Compassionate Use Act of 1996 (Proposition 215) – Medical Marijuana

General Considerations

Proposition 215 – the "Compassionate Use Act (CUA) -- was enacted in November, 1996. The Act is set out in Health and Safety Code Section 11362.5. The CUA established the right of patients to obtain and use marijuana in California to treat specified serious illnesses and any other illness for which marijuana provides relief. Additionally, the CUA specifically protects physicians who recommend the use of marijuana to patients for medical purposes and exempts qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana. (McCabe, *It's High Time: California Attempts to Clear the Smoke*

[1] Three Judge Court Opinion and Order, *Coleman v. Schwarzenegger, Plata v. Schwarzenegger*, in the United States District Courts for the Eastern District of California and the Northern District of California United States District Court composed of three judges pursuant to Section 2284, Title 28 United States Code (August 4, 2009).

Surrounding the Compassionate Use Act, (2004) 35 McGeorge L. Rev. 545, 546.) The law review article noted:

> Although qualifying patients and their caregivers are exempt from California state cultivation and possession laws under the Act, there are no provisions addressing other relevant issues, such as the formation of cooperatives for the purpose of cultivating and distributing marijuana, transportation of marijuana by patients or caregivers, or provisions establishing the quantity of marijuana a qualified person may possess. Further, absence of uniform guidelines adversely affected the ability of law enforcement officers to enforce the Act, resulting in inconsistent application. It has even been alleged that Proposition 215 was purposely drafted to be vague. (*Ibid* at p. 547.)

Federal Law

The United States Supreme Court in *Gonzalez vs. Raich* (2004) 125 S.Ct. 3195, held that California could not exempt marijuana for medicinal use from the criminal possession statute in contravention of federal law. The ruling was based on the Commerce Clause of the United States Constitution. The court found that use of "any commodity, be it wheat or marijuana, has a substantial effect on the supply and demand in the national market for that commodity" and, hence, falls within interstate commerce. The Court ruled that the Federal Control Substances Act preempts any state attempt to decriminalize marijuana (*Raich* at 2208), meaning that federal agencies may enforce federal law in California notwithstanding the Compassionate Use Act. However, and perhaps most important, there is no requirement that state law enforcement assist in enforcement.

A Patient's Right to Possess Marijuana, and the Right to Return of Marijuana taken from the Patient by the Police, under California Law

In *City of Garden Grove vs. Superior Court of Orange County* (hereinafter *Garden Grove)* (2007) 157 Cal.App.4th 355 the Court of Appeal held that a defendant, whose charges of marijuana transportation were dismissed, was entitled to the return of seized marijuana. The appellate court held that the city had standing under existing law to seek a writ of mandate because the question of whether medical marijuana patients were entitled to the return of lawfully seized marijuana was an issue of considerable public interest. The court stated that the patient's marijuana possession was legal under state law but it was illegal under federal law. The court concluded the defendant was entitled to a return of property that was legal for him to own because state courts were not required to enforce federal drug laws. Further, the federal drug laws did not preempt state law under the supremacy clause of the United States Constitution as to the return of medical marijuana to qualified users. Due process required the return of seized property after the dismissal of a criminal charge. (*Id,* at p. 370.)

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3. Constitutional Provisions Limit the Ability of the Legislature to Affect the CUA

The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." (Cal. Const., art. II, Sec. 10.) Therefore, unless the initiative expressly authorizes the Legislature to amend an initiative, only the voters may alter statutes created thereby.

The court in *Proposition 103 Enforcement Project vs. Quackenbush* (1998) 64 Cal.App.4th 1473, explained:

> The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a duty to jealously guard the people's initiative power, and hence to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. At the same time, despite the strict bar on the Legislature's authority to amend initiative statutes, the Legislature is not precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a related but distinct area.

The California Supreme Court recently ruled on the power of the Legislature to amend or affect the Compassionate Use Act (CUA). (*People* v. *Kelly* (2010) 47 Cal.4th 1008.) In *Kelly*, the court ruled that the Legislative restriction on the number of plants a qualified patient may possess was unconstitutional as it interfered with the rights established by the initiative. Although the Legislature may clarify or expand the rights established in Proposition 215, it may not enact legislation that interferes with the use of marijuana for medicinal purposes. The *Kelly* Court stated:

> Under the CUA ... [patients and primary caregivers] are not subject to any specific limits and do not require a physician's recommendation in order to exceed any such limits; instead they may possess an amount of medical marijuana reasonably necessary for their, or their charges', personal medical needs. By extending the reach of Health and Safety Code Section 11362.77's quantity limitations beyond those persons who voluntarily register under the MMP [Medical Marijuana Program] and obtain an identification card that provides protection against arrest - and by additionally restricting the rights of all qualified patients and primary caregivers who fall under the CUA - the language of Section Health and Safety Code Section 11362.77 effectuates a change in the CUA that takes away from rights granted by the initiative statute. In this sense, quantity limitations conflict with - and thereby substantially restrict - the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. In that respect,

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Section 11362.77 improperly amends the CUA in violation of the California Constitution. (*People* v. *Kelly*, *supra*, 47 Cal.4th 1008, 1044.)

This bill creates a statewide prohibition for any medical marijuana dispensary to be located within 600 feet of a school. It is arguable that in some jurisdictions this restriction may completely eliminate medical marijuana dispensaries. In that case, the prohibition may be viewed by the court as "substantially restricting" access to medical marijuana. If that is the case, this proposed legislation, if enacted, may be invalidated as unconstitutional.

AS THE LEGISLATURE CANNOT CONSTITUTIONALLY SET OR LIMIT THE AMOUNT OF MARIJUANA A QUALIFIED PATIENT MAY POSSESS, CAN THE LEGISLATURE CONSTITUTIONALLY PROHIBIT A VALID COOPERATIVE OR COLLECTIVE FROM OPERATING WITHIN 600 FEET OF A SCHOOL?

4. California Supreme Court Case Interpreting the Term "Primary Caregiver" Arguably Limits the Function or Powers of Caregivers under the Act, Particularly as Concerns Providing Marijuana to Patients

In *People* v. *Mentch* (2008) 45 Cal.4th 274, the California Supreme Court interpreted the term "primary caregiver" within the mean of the CUA. The defendant in *Mentch* (Roger Mentch) operated a business called the Homporium and provided marijuana to five medical marijuana users, each of whom had a doctor's recommendation to use the drug. Mentch testified that he did not make a profit from medical marijuana, but only recovered his expenses. He took two of the patients/customers to medical appointments on a sporadic basis. He counseled his patients/customers on the best strains of marijuana for their particular maladies. (*Id*, at pp. 280-281.)

The court found that Mentch was not a primary caregiver. The court succinctly held: "[A] defendant asserting primary caregiver status must prove at a minimum that he or she (1) consistently provided caregiving, (2) independent of any assistance in taking medical marijuana, 3) at or before the time he or she assumed responsibility for assisting with medical marijuana." (*Id*, at p. 283.) The court continued: "A primary caregiver must establish he or she satisfies the responsibility clause cased on evidence independent of the administration of marijuana." (*Id*, at p. 284.) The words the statute uses -- housing, health, safety -- imply a caretaking relationship directed at the core survival needs of a seriously ill patient, not just one single pharmaceutical need." (*Id*, at p. 286.)

5. Joint Consideration of *Mentch* and *Kelly*

The decision in *Kelly* clearly establishes the right of a patient to obtain any amount of marijuana necessary to treat his or her malady. The decision in *Mentch* effectively limits the assistance a qualified patient can received from others in obtaining medical marijuana. A patient who does not have a primary caregiver who meets the standards set out in *Mentch* must rely on his or her own efforts to obtain medical marijuana. A law that substantially or significantly impedes the

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patient's ability to obtain medical marijuana – including by make it unreasonably difficult for a patient to reach a coop or cooperative – would be challenged as being an unconstitutional amendment to the CUA.

IN CONSIDERATION OF THE RELATIVELY STRINGENT REQUIREMENTS FOR A PERSON TO BE A PRIMARY CAREGIVER, WOULD STATEWIDE RESTRICTIONS ON THE LOCATION AND ESTABLISHMENT OF MEDICAL MARIJUANA COOPERATIVES AND OTHER PROVIDERS BE UNDULY BURDENSOME?

6. Los Angeles Ordinance

Terms of the Ordinance

This bill appears to be modeled in part on an ordinance adopted by Los Angeles City Council in January, 2010 and only fully implemented in the past week. Two of the main reasons stated by proponents of the measure were that dispensaries were proliferating too rapidly and concentrating in certain areas. It appears that residents in some areas complained of excess traffic, congregation of patients near sites, litter and other problems.

The Los Angeles ordinance prohibits medical marijuana dispensaries from being located within 1,000 feet of sensitive locations, including schools churches and parks. A provision in the ordinance allows police to obtain patient lists and doctor's recommendations from a dispensary without a warrant. It also appears that a violation of the Los Angeles ordinance is punishable by a jail term of up to six months and civil fines of up to $2,500 per day. In the past week, orders to approximately 440 dispensaries to shut down were implemented.

Court Challenges

It appears that numerous challenges to the ordinance were filed in Los Angeles courts. Americans for Safe Access (ASA) sought at injunction in the Los Angeles County Superior Court against the ordinance and Los Angeles City Council on the grounds that the 1,000-foot restriction effectively eliminates access to medical marijuana and thereby violates the Compassionate Use Act. A final request for an injunction was denied on June 4, 2010, clearing the way for enforcement of the ordinance. However, additional litigation in the matter will continue.

The Los Angeles Times, in an article filed June 5, 2010, explained the court's order and pending matters before the court:

> Attorneys for patients using medical marijuana had filed a class-action lawsuit against the city last week, contending that the law would unconstitutionally bar patients' access to their medicine. ... In court Friday, attorneys presented a map to the judge that they said showed most dispensaries will have to close if forced to

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comply with the ordinance... [Judge] Chalfant rejected that argument, saying because patients can grow their own marijuana and an estimated 137 shops will be allowed to remain open at least temporarily, there was no reason to issue an emergency order stopping the city from implementing the law.

"I believe access to medical marijuana ... is supposed to be limited," the judge said. "It is not supposed to be freely available on the street to anyone who wants it; that was the intention of the people."

He said, however, that patients may have grounds to ask for an injunction based on their privacy rights — the city ordinance says police will be able to obtain patient lists and doctors' recommendations without a warrant.

The judge also denied requests from lawyers representing dispensaries to stop the ordinance. The lawyers had contended that their clients' rights as property owners and their due process rights would be violated when the city's law takes effect. Chalfont ordered attorneys to file additional papers on whether allowing certain dispensaries to remain open while closing others would be a violation of the equal protection clause of the California Constitution. Hearings for the patients and the dispensaries were set for early July.

ARE CHALLENGES TO THE LOS ANGELES ORDINANCE STILL BEING LITIGATED?

7. Local Regulation Generally- Preemption Except for Ordinances that are More Restrictive than this Bill

Since the passage of SB 420 in 2003, medical marijuana regulation has been done by local jurisdictions. This bill does include a "grandfather" clause that allows a local ordinance enacted prior to the effective date of this bill to stand. However, after the effective date of this bill, only local ordinances that are more restrictive than this bill as to location and establishment of medical marijuana facilities will not be preempted by state law.

It has been argued that a single state-wide standard for locations of medical marijuana dispensaries ignores the wide differences among communities in California. These differences extend to physical features, population density, transportation, medical needs of patients and public attitudes about medical marijuana. It can be argued that each local government entity, in comparison with the state, best understands the particular issues concerning medical marijuana that may arise in each city or county. A standard that is workable in a rural area could be very difficult to comply with in a very dense urban area such as San Francisco.

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BECAUSE OF THE UNIQUE CIRCUMSTANCES IN EACH CITY AND COUNTY – INCLUDING DENSITY OF POPULATION, RENTAL PRICES, TRANSPORTATION, AND HEALTH PROBLEMS IN PARTICULAR NEIGHBORHOODS – SHOULD REGULATION OF THE LOCATION AND ESTABLISHMENT OF MEDICAL MARIJUANA FACILITIES BE LEFT TO LOCAL GOVERNMENT?

****

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614. On June 27, 2011, I served the following document(s):

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF RESPONDENT'S BRIEF

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):

☐ Deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Irvine, California.

SERVICE LIST

Court of Appeal 3389 Twelfth St. Riverside, CA 92501	Original + Copy
J. David Nick, Esq. Law Office of J. David Nick 345 Franklin Street San Francisco, CA 94102 (415) 552-4444 (415) 358-5897-Facsimile jdavidnick@lawyer.com	One Copy
Hon. John D. Molloy Riverside County Superior Court 4050 Main St. Riverside, CA 92501	One Copy

IRVINE, CALIFORNIA 92614

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 27, 2011, at Irvine, California.

Kerry V. Keefe

IRVINE, CALIFORNIA 92614

Date of Hearing: April 26, 2011
Counsel: Milena Nelson

ASSEMBLY COMMITTEE ON PUBLIC SAFETY
Tom Ammiano, Chair

AB 1300 (Blumenfield) – As Amended: March 31, 2011

REVISED

SUMMARY: Defines "marijuana cooperative or collective" and allows local governments to regulate marijuana cooperatives and collectives. Specifically, this bill:

1) Defines a "marijuana cooperative or collective" as a location where qualified patients, persons with valid identification cards, or the designated primary caregiver of qualified patients or persons with identification cards associate within this state in order to collectively or cooperatively cultivate or dispense marijuana for medical purposes to person authorized to possess medical marijuana, as specified.

2) Allows cities or other local governing bodies to adopt and enforce local ordinances that regulate the location, operation or establishment of a medical marijuana cooperative or collective; the civilly or criminally enforce those local ordinances; and to enact other laws consistent with the Medical Marijuana Program (MMP), as specified.

EXISTING LAW:

1) States the People of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

   a) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

   b) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

   c) To encourage the Federal and State governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. [Health and Safety Code (HSC) Section 11362.5(b)(1)(A) to (C).]

2) Provides that nothing in this law shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, or to condone the diversion of

marijuana for non-medical purposes. [HSC Section 11362.5(b)(2).]

3) States notwithstanding any other provision of law, no physician in California shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. [HSC Section 11362.5(c).]

4) States existing law, relating to the possession of marijuana and the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician. [HSC Section 11362.5(d).]

5) Provides 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 under existing law. (Welfare and Institutions Code Section 11362.775.)

6) Prohibits any medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possess, cultivates, or distributes medical marijuana, as specified, from being located within 600 feet of a school. (Welfare and Institutions Code Section 11362.768.)

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's Statement: According to the author, "AB 1300 clarifies California's medical marijuana laws to protect the right of communities to regulate dispensaries in a manner consistent with the intent of the voters who authorized the use of marijuana for medical purposes."

2) Background: According to information provided by the author, "AB 1300 clarifies two important components of our state's medical marijuana laws. The bill clarifies provisions of the Medical Marijuana Program (MMP) Act of 2003 relating to the authority of local governments to enact ordinances affecting medical marijuana collectives or cooperatives. This is necessary due to the frequency of lawsuits challenging the authority of local governments to regulate land use, zoning, business licensure, and use permit conditions as they affect the operations of what are commonly referred to as dispensaries or pot clubs.

"Under article XI, section 7 of the California Constitution, 'A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.' Yet some argue that the Proposition 215 of 1996 and the MMP constitute the parameters of medical marijuana cooperative or collective regulation and, therefore, preclude local governments from enforcing any additional requirements. In the wake of key court cases on point, this bill clarifies state law so that communities may adopt ordinances and enforce them without the instability and expense of lawsuits challenging legal issues that have already been resolved.

"This provision of the bill is written to be consistent with our state constitution and three

appellate court decisions: (1) *City of Claremont v. Darrell Kruse*, which found that there is nothing in the text or history of Proposition 215 suggesting that the voters intended to mandate municipalities to allow medical marijuana dispensaries to operate within their jurisdictions, or to alter the fact that land use has historically been a function of local government under their grant of police power. (2) *City of Corona v. Ronald Naulls*, which found that a dispensary's failure to comply with the city's procedural requirements before opening and operating a medical marijuana dispensary could be prosecuted as a nuisance. (3) *County of Los Angeles v. Martin Hill*, which found the MMP does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose, and that dispensaries are not similarly situated to pharmacies and, therefore, do not need to be treated equally under local zoning laws.

"The bill also defines medical marijuana 'collaborative or cooperative' in order to specify the parameters of local authority for medical marijuana regulation consistent with Proposition 215 of 1996 and the MMP. While terms such as 'dispensary' or 'pot club' are frequently used, neither construct is authorized under state law. Section 11362.775 of the MMP specifies collectives and/or cooperatives as the legal basis through which medical marijuana may be legally obtained. However, there is no definition for them in law. All we have in place are guidelines issued by the Attorney General in 2008 and two key elements of the MMP: (1) a prohibition against medical marijuana profiteering in Health and Safety Code 11362.765 and (2) a prohibition against citing them within a 600 foot radius of a school in Health and Safety Code 11362.768.

"The urgency to enact a definition is further enhanced by the dramatic growth in medical marijuana dispensaries, which has occurred primarily since the 2009 announcement that dispensaries operating under state laws will not be prosecuted by the US Department of Justice. With medical marijuana sales expected to be $1.7 billion this year, a definition is necessary to prevent abuses in our medical marijuana program and to help ensure that patients may obtain and use medical marijuana in a manner consistent with the will of the voters who approved Proposition 215 and the MMP which was enacted for the benefit of patients and their caregivers."

3) Compassionate Use Act of 1996 (Proposition 215): In November 1996, Californians voted in favor of Proposition 215, the "Compassionate Use Act". Pursuant to HSC Section 11362.5, the Act ensured the right of patients to obtain and use marijuana in California to treat specified serious illnesses. Additionally, the Act protected physicians who appropriately recommended the use of marijuana to patients for medical purposes and exempted qualified patients and their primary caregivers from California drug laws prohibiting possession and cultivation of marijuana. (McCabe, *It's High Time: California Attempts to Clear the Smoke Surrounding the Compassionate Use Act*, 35 McGeorge L. Rev. 545, 546.)

"Although qualifying patients and their caregivers are exempt from California state cultivation and possession laws under the Act, there are no provisions addressing other relevant issues, such as the formation of cooperatives for the purpose of cultivating and distributing marijuana, transportation of marijuana by patients or caregivers, or provisions establishing the quantity of marijuana a qualified person may possess. Further, absence of uniform guidelines adversely affected the ability of law enforcement officers to enforce the Act, resulting in inconsistent application. It has even been alleged that Proposition 215 was purposely drafted to be vague." (*Ibid* at 547.)

The United States Supreme Court specifically ruled on whether the Compassionate Use Act of 1996 could decriminalize the use of marijuana for medicinal purposes. *Gonzalez vs. Raich* (2004) 125 S.Ct. 3195 held California could not exempt marijuana for medicinal use from the criminal possession statute. The Court based its ruling on the idea that use of "any commodity, be it wheat or marijuana, has a substantial effect on the supply and demand in the national market for that commodity" and, hence, falls within interstate commerce. The Court ruled that the Federal Control Substances Act preempts any state attempt to decriminalize marijuana (*Raich* at 2208), meaning that federal agencies may enforce federal law in California notwithstanding the Compassionate Use Act, but there is no requirement that state law enforcement assist in enforcement.

In *City of Garden Grove vs. Superior Court of Orange County* (hereinafter *City of Garden Grove)* (2007) 157 Cal.App. 4th 355, the court of appeal argued that a defendant, whose charges of marijuana transportation were dismissed, was entitled to the return of seized marijuana. The trial court granted the patient's motion for return of property. The appellate court held that the city had standing under existing law to seek a writ of mandate because the question of whether medical marijuana patients were entitled to the return of lawfully seized marijuana was an issue of considerable public interest. The court stated that the patient's marijuana possession was legal under state law but illegal under federal law. The court concluded that his possession was lawful for purposes of obtaining the return of property because state courts were not required to enforce federal drug laws. Further, the federal drug laws did not preempt state law under the supremacy clause of the United States Constitution as to the return of medical marijuana to qualified users. Due process required the return of seized property after the dismissal of a criminal charge. (*City of Garden Grove* at 370.)

4) California Constitutional Limitations on Legislative Regulation of Medical Marijuana: SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, developed and clarified Proposition 215. Much of the state regulatory scheme for use of medical marijuana defers to city and counties to draft their own rules. Health and Safety Code Section 11362.77 states, in relevant part, "Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits" for marijuana possession set forth existing law. [HSC Section 11362.77(c).] Health and Safety Code Section 11362.72(a) requires county departments of health to issue and regulate medical marijuana identification cards. As noted above, SB 420 provided statutory guidelines for a right established through initiative.

The California Supreme Court very recently ruled on the Legislature's ability to regulate the use of medical marijuana because it was an initiative. The California Constitution states, "The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval." [Cal. Const., Art. II, Sec. 10.] Therefore, unless the initiative expressly authorizes the Legislature to amend, only the voters may alter statutes created by initiative. Proposition 215 is silent as to the Legislature's authority to amend that proposition.

"The purpose of California's constitutional limitation on the Legislature's power to amend initiative statutes is to protect the people's initiative powers by precluding the Legislature from undoing what the people have done, without the electorate's consent. Courts have a

duty to jealously guard the people's initiative power, and hence to apply a liberal construction to this power wherever it is challenged in order that the right to resort to the initiative process is not improperly annulled by a legislative body. At the same time, despite the strict bar on the Legislature's authority to amend initiative statutes, the Legislature is not precluded from enacting laws addressing the general subject matter of an initiative. The Legislature remains free to address a related but distinct area." [*Proposition 103 Enforcement Project vs. Quackenbush* (1998) 64 Cal.App. 1473.]

In *People vs. Kelly*, the California Supreme Court ruled that the Legislative restriction on the number of plants a person may possess was unconstitutional as it interfered with the rights established by the initiative. Although the Legislature may be able to clarify or expand the rights established in Proposition 215, it may not enact legislation that interferes with the use of marijuana for medicinal purposes. The *Kelly* Court stated:

"Under the CUA [Compassionate Use Act], as adopted by Proposition 215, these individuals are not subject to any specific limits and do not require a physician's recommendation in order to exceed any such limits; instead they may possess an amount of medical marijuana reasonably necessary for their, or their charges', personal medical needs. By extending the reach of Health and Safety Code Section 11362.77's quantity limitations beyond those persons who voluntarily register under the MMP [Medical Marijuana Program] and obtain an identification card that provides protection against arrest - and by additionally restricting the rights of all qualified patients and primary caregivers who fall under the CUA - the language of Section Health and Safety Code Section 11362.77 effectuates a change in the CUA that takes away from rights granted by the initiative statute. In this sense, [Health and Safety Code Section 11362.77] quantity limitations conflict with - and thereby substantially restrict - the CUA's guarantee that a qualified patient may possess and cultivate any amount of marijuana reasonably necessary for his or her current medical condition. In that respect, Section 11362.77 improperly amends the CUA in violation of the California Constitution." [*People vs. Kelly (hereinafter Kelly)* (2010) 47 Cal.4th 1008, 1044.]

This bill specifies that local government entities may adopt local ordinances that regulate the location, operation, or establishment of medical marijuana cooperative or collective. It is arguable this restriction may be used to completely eliminate medical marijuana dispensaries. In that case, the prohibition may be viewed by the court as "substantially restricting" access to medical marijuana. If that is the case, this proposed legislation, if enacted, may be invalidated as unconstitutional.

5) Related Legislation:

a) AB 1017 (Ammiano) makes the penalty for the cultivation of marijuana an alternate felony/misdemeanor. AB 1017 is pending hearing by this Committee.

b) AB 223 (Ammiano) establishes a comprehensive and multidisciplinary commission that is empowered to address issues regarding the legality and implementation of the Compassionate Use Act of 1996 and the state's medical marijuana law. AB 223 is pending hearing by this Committee.

c) AB 472 (Ammiano) provides that it shall not be a crime for any person who experiences a drug overdose to seek medical assistance or for any other person to seek medical

assistance for a person who overdoses. AB 472 is pending a vote on the Assembly Floor.

6) Previous Legislation:

a) AB 390 (Ammiano) would have legalized the possession, sale, cultivation and other conduct relating to marijuana by persons over the age of 21. AB 390 passed this Committee and was never heard in the Assembly Committee on Health.

b) SB 847 (Vasconcellos), Chapter 750, Statutes of 1999, established the Marijuana Research Act of 1999 and provided that the Regents of the University of California, if they elect to do so, may implement a three-year program, the "California Marijuana Research Program", under which funds would be provided for studies intended to ascertain the general medical safety and efficacy of marijuana and, if found valuable, to develop medical guidelines for the appropriate administration and use of marijuana.

c) SB 791 (McPherson), of the 2001-02 Legislative Session, would have reduced simple possession of not more than 28.5 grams of marijuana to an infraction for the first offense and an alternate infraction/misdemeanor for the second offense. SB 791 failed passage on the Assembly Floor.

d) SB 420 (Vasconcellos), Chapter 875, Statutes of 2003, establishes a voluntary registry identification card system for patients authorized to engage in the medical use of marijuana and their caregivers.

e) SB 131 (Sher), of the 2003-04 Legislative Session, would have reduced simple possession of not more than 28.5 grams of marijuana to an infraction for the first offense, would have reduced simple possession for a subsequent offense to an alternate infraction/misdemeanor, and would have increased the penalty for an offense to a fine of not more than $250. SB 131 failed passage on the Assembly floor, was granted reconsideration, and was never re-heard.

f) SB 797 (Romero), of the 2005-06 Legislative Session, would have reclassified a first offense for simple possession of not more than 28.5 grams of marijuana as an alternate infraction/misdemeanor and increases the penalty for the offense from $100 to $250. SB 797 failed passage on the Assembly Floor and was moved to the Inactive File after being granted reconsideration.

g) AB 684 (Leno), of the 2007-08 Legislative Session, would have clarified the definition of "marijuana" contained in the Uniformed CSA to exclude industrial hemp, except where the plant is cultivated or processed for purposes not expressly allowed, as specified. AB 684 was vetoed.

h) AB 2743 (Saldana), of the 2007-08 Legislative Session, would have stated that it is the policy of California that its agencies and agents not cooperate in federal raids and prosecutions for marijuana related offenses if the target is a qualified patient. AB 2743 was moved to the Inactive File on the Assembly Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Americans for Safe Access
California NORML
Drug Policy Alliance

Opposition

None

Analysis Prepared by: Milena Nelson / PUB. S. / (916) 319-3744

OFFICE OF THE GOVERNOR

SEP 20 2011

To the Members of the California State Senate:

I have already signed AB 1300 that gave cities and counties authority to regulate medical marijuana dispensaries -- an authority I believe they already had.

This bill goes in the opposite direction by preempting local control and prescribing the precise locations where dispensaries may not be located. Decisions of this kind are best made in cities and counties, not the State Capitol.

I am returning Senate Bill 847 without my signature.

Sincerely,

Edmund G. Brown Jr.

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is 5 Park Plaza, Suite 1500, Irvine, California 92614. On April 26, 2012, I served the following document(s):

MOTION FOR JUDICIAL NOTICE; EXHIBITS A-K; DECLARATION OF JEFFREY V. DUNN; [PROPOSED] ORDER

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses listed below (specify one):*

☒ Placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Irvine, California.

☒ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.**

California Supreme Court
350 McAllister Street, Room 1295
San Francisco, CA 94102-7303
**Via Overnight Delivery
Original + 9 Copies

J. David Nick
Law Offices of J. David Nick
345 Franklin Street
San Francisco, CA 94102
*Via U.S. Mail
1 Copy

Editte Dalya Lerman
Law Office of E.D. Lerman
695 South Dora Street
Ukiah, CA 95482
*Via U.S. Mail
1 Copy

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on April 26, 2012, at Irvine, California.

Kerry V. Keefe

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