

Solana Beach "medical marij"



CITY OF SOLANA BEACH

635 SOUTH HIGHWAY 101 • SOLANA BEACH, CA 92075 • (858) 720-2400 • FAX (858) 792-6513
www.ci.solana-beach.ca.us

August 25, 2010

RECEIVED

The Honorable Kevin A. Enright
Presiding Judge
San Diego County Superior Court
220 W. Broadway
San Diego, CA 92101

RECEIVED

SEP 01 2010

SEP 02 2010

SAN DIEGO
COUNTY GRAND JURY

**Re: Response to June 7, 2010 Grand Jury Report Entitled
"Medical Marijuana in San Diego"**

Dear Judge Enright:

On behalf of the City Council for the City of Solana Beach, this letter constitutes the response to the 2009/2010 San Diego County Grand Jury report entitled, "Medical Marijuana in San Diego." The response discusses those findings and recommendations pertinent to the City of Solana Beach and does not discuss those findings and recommendations applicable to other governmental agencies and officers.

Response to Findings

Finding 5 states that adopting "cost-neutral zoning and land use ordinances is an effective method for the licensing, regulating, and periodic inspection of cooperatives and collectives distributing marijuana." The City Council disagrees with this finding. The City of Solana Beach has not fully analyzed the way such an ordinance would affect the City of Solana Beach. Also, no city in the county successfully regulates cooperatives or collectives through land use or zoning laws, except via complete bans on them. Further, any business regulations needed for "vice" type businesses (liquor stores, massage, adult entertainment, etc.) involve business licensing laws, independent of land use regulations, which involve some cost to the businesses.

The City Council agrees with Finding 6 by the Grand jury that the City of San Diego's medical marijuana task force may serve as a good model for other cities to adopt in the future once the legal uncertainties regarding regulating medical marijuana are resolved.

Finding 7 is that annual financial reporting and periodic auditing of cooperatives and collectives is not occurring in San Diego County. The City Council agrees with this finding. The City is not aware of any entity currently charged with this task.

The City Council disagrees with Finding 9 from the Grand Jury's report that the lack of zoning and land use ordinances pertaining to cooperatives and collectives distributing marijuana has the effect of denying legitimate, qualified patients access to medical marijuana. The status of the law is not clear that the City can regulate marijuana dispensaries, collectives or cooperatives. The uncertainty is based upon the conflict between federal and state law, the pending decision in the *Qualified Patients Association v. City of Anaheim* case, and Proposition 19, which is on the ballot for the November 2010 election. With the law unclear as to whether the City can regulate marijuana dispensaries, cooperatives or collectives, the lack of such regulation cannot deny patients access to medical marijuana. In addition, the Grand Jury report did not indicate that it interviewed any person specifically in the City of Solana Beach who was a legitimately qualified medical marijuana patient and who had not been able to obtain marijuana for a medical need. Additionally, medical marijuana dispensaries, collectives or cooperatives are located within the County that may serve Solana Beach residents.

The City Council disagrees with Finding 11 from the Grand Jury that imposing regulatory fees and costs could impose a hardship on smaller collectives and cooperatives. The City Council disagrees with this finding because the Grand Jury did not provide any information on how smaller collectives or cooperatives differ from other small businesses that are subject to regulatory fees and costs. Specifically, the Grand Jury did not provide an audit or examples of financials of any dispensary's finances and did not compare the burden of paying regulatory fees on dispensaries to the burden on local governments of regulating dispensaries. Accordingly, the City has no reason to believe that medical marijuana cooperatives or collectives of any size will be unable to afford reasonable regulatory fees.

Response to Recommendations

First, in Recommendation 10-123, the Grand Jury recommended that the City Council should pass a cost-neutral ordinance for the licensing, regulating, and monitoring of medical marijuana collective and cooperatives, including limiting the number of these facilities. The City will not implement this recommendation at this time because the recommendation is unwarranted because it is premature at this time. As stated above in response to Finding 9, the state of the law concerning a municipality's authority to regulate the use, cultivation, or distribution of marijuana is uncertain, subject to change by the pending Court of Appeals decision in the *Qualified Patients Association v. City of Anaheim* case and by the results of the election in November 2010 due to Proposition 19. In addition, any zoning changes within the City of Solana Beach may require Coastal Commission approval and possibly voter approval. These issues will not be decided in the near future and cannot be accomplished even within the six-month time frame for further study allotted by Penal Code Section 933.05(b)(3). The City Council may consider regulating medical marijuana in the future along these lines proposed by the Grand Jury, but in light of the current legal uncertainties, doing so at this time would be premature.

Honorable Kevin A. Enright
Re: Medical Marijuana Grand Jury Report
August 25, 2010
Page 3

Second, in Recommendation 10-124, the Grand Jury's recommends that the City Council should adopt regulations allowing it to shut down unlicensed dispensaries. Under the current law, no dispensary can lawfully operate within the City of Solana Beach. Pursuant to Solana Beach Municipal Code Chapters 1.16 and 4.48, the City is authorized to pursue several methods of enforcement, including seeking all legal remedies available to it in a court of law against any unlicensed business, including but not limited to seeking an injunction to shut down the unlicensed business.

If you have any questions regarding the City of Solana Beach's responses, please do not hesitate to contact the City Manager, David Ott at (858) 720-2400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas M. Campbell". The signature is written in a cursive, flowing style.

Honorable Mayor Thomas M. Campbell
Mayor, City of Solana Beach