



City of Del Mar



August 30, 2010

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

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SAN DIEGO
COUNTY GRAND JURY

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Re: **Response to 2009/10 Grand Jury Report "Medical Marijuana in San Diego"**

Dear Judge Enright:

The City of Del Mar ("City") has reviewed the Facts, Findings, and Recommendations in "Medical Marijuana in San Diego" from the San Diego County Grand Jury 2009/10 Report issued on June 7, 2010. In accordance with California Penal Code §933(c), the City is responding to the following findings and recommendations made by the Grand Jury Report.

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

The City disagrees with the finding because the City has not fully analyzed the effect of such an ordinance. Currently, the City has no ordinances identifying or allowing the use of marijuana collectives and other storefront dispensaries and no other city in San Diego County successfully regulates dispensaries through zoning or land use ordinances, except through the use of complete bans. It is with this uncertainty that the City disagrees with the finding.

Finding #09: The lack of zoning and land use ordinances for the licensing, regulation and periodic inspection of cooperatives and collectives distributing medical marijuana in the cities of Carlsbad, Coronado, Del Mar, Encinitas, La Mesa, Lemon Grove, Poway, and Solana Beach deprives some qualified medical marijuana patients of access to marijuana in their communities.

The City of Del Mar wholly disagrees with this finding. The City's interpretation of the Zoning Ordinance is that a "use" must be specifically identified in order to be allowed; the City has no ordinance identifying or allowing the use of medical marijuana collectives or other storefront dispensaries and it has been determined that it is not an allowable use. If a party wished to have such a use, they must file an application for and obtain a Zoning Code Amendment from the City. In addition, the City has no jurisdiction over deliveries from outside the city limits to any qualified patient whose use was within the scope of Health and Safety Code §11362.5 (Use of Marijuana for Medical Purposes). Therefore, the City disagrees that such individuals are deprived of access due to the zoning and land use ordinances.

Recommendation #10-123: Enact an ordinance to establish a cost neutral program for the licensing, regulations and monitoring of medical marijuana collectives and cooperatives, and establish a limit on the number of such facilities.

Recommendation #10-124: Adopt regulations which would allow for the closure of all unlicensed "dispensaries."

The City's interpretation of the Zoning Ordinance is that a "use" must be specifically identified in order to be allowed. Since the City has no ordinances identifying or allowing the use of medical marijuana collectives and other storefront dispensaries, it has been determined that it is not an allowable use. In addition, several legal decisions regarding the legality of outright bans have not been determined at this time. *Qualified Patients Association v. City of Anaheim* is still pending in California's Fourth Appellate District Court, with the Court asking further clarification on whether the State legislature meant to prevent local governments from using nuisance statutes to outlaw medical marijuana distribution. With these legal uncertainties, the City finds these recommendations unwarranted and unreasonable and will not proceed to implement these recommendations at this time.

If you have any questions in regards to the City's response to the above recommendations, please contact Gretchen Crowson, Assistant to the City Manager, at (858) 755-9313.

Sincerely,



Karen P. Brust
City Manager
City of Del Mar