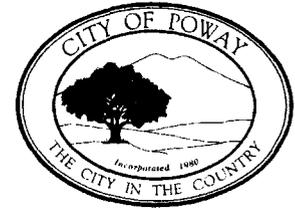


DON HIGGINSON, Mayor
CARL KRUSE, Deputy Mayor
MERRILEE BOYACK, Councilmember
JIM CUNNINGHAM, Councilmember
JOHN MULLIN, Councilmember

CITY OF POWAY

RECEIVED
JUL 19 2010



July 15, 2010

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

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JUL 22 2010

SAN DIEGO
COUNTY GRAND JURY

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

Dear Judge Enright:

This letter constitutes the response to the above-referenced Grand Jury report on behalf of the City Council for the City of Poway, pursuant to Penal Code section 933(c). The response discusses those findings and recommendations pertinent to the City of Poway, and does not discuss those findings and recommendations applicable to other governmental agencies and officers.

Response to Findings

Finding No. 5 says that adopting "cost-neutral" zoning and land use ordinances are effective for licensing, regulating, and inspecting dispensaries. **The City Council disagrees with this finding. The Grand Jury report acknowledges that in cities currently regulating dispensaries, such as the City of San Diego, many of the dispensaries are operating outside of the law. There is no evidence that any city in the county is successfully regulating dispensaries through land use or zoning laws, other than those that have complete bans on dispensaries. Additionally, other regulations such as business licensing requirements, including fingerprinting and background investigations, are generally required for effective management of police regulated businesses which involve potential illegal activity.**

Finding No. 6 by the Grand Jury is that the City of San Diego's Medical Marijuana Task Force "may" serve as a good model for other cities to adopt. **The City Council agrees that the City of San Diego Medical Marijuana Task Force's guidelines may possibly serve as a guideline to other cities choosing to regulate medical marijuana and allow operation of dispensaries.**

Finding No. 9 from the Grand Jury is that 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 Council disagrees with this finding. The Grand Jury report indicates that in March 2010, over one hundred known medical marijuana dispensaries were operating in the City of San Diego alone. The Grand Jury report did not make any findings regarding medical marijuana patients in Poway, or demonstrate that anyone in Poway who has a medical need for marijuana is unable to obtain it. The Grand Jury report does not acknowledge other methods for obtaining medical marijuana that are permissible under the Compassionate Use Act, including the personal cultivation of marijuana by patients and caregivers.**

Finding No. 11 from the Grand Jury is 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 audit any dispensary's finances, or compare the burden of paying regulatory fees on dispensaries to the burden on local governments of regulating dispensaries. The City has no reason to believe that medical marijuana cooperatives or collectives are unable to afford reasonable regulatory fees.**

Response to Recommendations

Recommendation No. 10-123: This Grand Jury recommendation calls on the City to pass a cost-neutral ordinance licensing, regulating, and monitoring dispensaries, and limiting the number of dispensaries. **The City disagrees and will not implement this recommendation at this time. The recommendation is unreasonable for the City to implement at present for the following reasons: (1) the problems outlined in the Grand Jury report with existing illegal medical marijuana operations in those cities which allow operation of dispensaries; (2) the *Anaheim* case mentioned in the Grand Jury report, which is still pending; (3) the November 2010 initiative to legalize marijuana, which is still pending, and would likely cause significant changes to cities' regulatory approaches if passed; and (4) existing cases in California holding that dispensaries cannot qualify as "primary caregivers" under the Compassionate Use Act if they do not provide care for patients other than the dispensing of marijuana. *People v. Mentch* (2008) 45 Cal. 4th 274; *People v. Hohanadel* (2009) 176 Cal. App. 4th 997. The City will not consider adoption of such an ordinance in light of the current legal uncertainty about medical marijuana dispensaries, and will only consider adoption of such an ordinance if changes in the legal landscape make such regulation necessary.**

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July 15, 2010
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Recommendation No. 10-124: The Grand Jury's second recommendation is that the City adopt regulations allowing it to close down unlicensed dispensaries. The City agrees and is already in compliance with this recommendation. Currently, under Chapters 1, 5, and 17 of the Poway Municipal Code, the City may take enforcement actions against any business operating in violation of the City's zoning, business licensing, or other codes.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Don Higginson", with a long horizontal flourish extending to the right.

Honorable Don Higginson
Mayor, City of Poway

cc: Members of the Poway City Council
Penny Riley, City Manager
Tina White, Assistant City Manager
Linda Troyan, City Clerk
Bob Manis, Director of Development Services