



LAKE MARY CITY COMMISSION

**Lake Mary City Hall
100 N. Country Club Road**

**Regular Meeting
AGENDA**

THURSDAY, NOVEMBER 06, 2014 7:00 PM

- 1. Call to Order**
- 2. Moment of Silence**
- 3. Pledge of Allegiance**
- 4. Roll Call**
- 5. Special Presentations**
 - A. Proclamation - Pancreatic Cancer Month**
- 6. Citizen Participation**
- 7. Unfinished Business**
- 8. New Business**
 - A. North Point Development (Public Hearing) (Gary Schindler, City Planner)**
 - a. Resolution No. 951 - Rescind Development of Regional Impact**

b. Resolution No. 952 - Adopt Development Agreement

B. Request to reduce Code Enforcement Lien for 377 N. Country Club Road; Robert Sabrkhani, Realty Executives (Bruce Fleming, Sr. Code Enforcement Officer)

C. Ordinance No. 1520 - Establishing a temporary moratorium of two hundred and seventy days prohibiting the operation of any medical marijuana facilities within the city - First Reading (Public Hearing) (Gary Schindler, City Planner)

9. Other Items for Commission Action

10. City Manager's Report

A. Items for Approval

a. Appointment to Planning & Zoning Board and to Metroplan's Citizens' Advisory Committee and Municipal Advisory Committee

B. Items for Information

a. Update on projects on International Parkway (Tom Tomerlin, Economic Development Manager)

b. Kittelson & Associates, Inc., Downtown Traffic Study - Update

c. Scoreboards at Sports Complex

11. Mayor and Commissioners Report

12. City Attorney's Report

13. Adjournment

14. THE ORDER OF ITEMS ON THIS AGENDA IS SUBJECT TO CHANGE

Per the direction of the City Commission on December 7, 1989, this meeting will not extend beyond 11:00 P. M. unless there is unanimous consent of the Commission to extend the meeting.

PERSONS WITH DISABILITIES NEEDING ASSISTANCE TO PARTICIPATE IN ANY OF THESE PROCEEDINGS SHOULD CONTACT THE CITY ADA COORDINATOR AT LEAST 48 HOURS IN ADVANCE OF THE MEETING AT (407) 585-1424.

If a person decides to appeal any decision made by this Commission with respect to any matter considered at such meeting or hearing, he or she will need a record of the proceedings, and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. Per State Statute 286.0105.

NOTE: If the Commission is holding a meeting/work session prior to the regular meeting, they will adjourn immediately following the meeting/work session to have dinner in the Conference Room. The regular meeting will begin at 7:00 P. M. or as soon thereafter as possible.

UPCOMING MEETINGS: November 20, 2014

Carol Foster

From: Christopher Bundy <christopherbundy@bellsouth.net>
Sent: Thursday, September 25, 2014 10:03 AM
To: Carol Foster
Subject: Pancreatic Cancer Awareness Month Proclamation
Attachments: LakeMaryProc2014.doc

Good Morning,

I wanted to thank the mayor and city council for designating November as Pancreatic Cancer Awareness Month in Lake Mary for the past three years. I was hoping a similar declaration could be made this year. I have attached the language for the proclamation, please let me know if you need any more info.

Thanks and God bless,

Christopher Bundy
Volunteer, Pancreatic Cancer Action Network



Lake Mary, Florida
Office of the Mayor
Proclamation

Whereas, in 2014, an estimated 46,420 people will be diagnosed with pancreatic cancer in the United States and 39,590 will die from the disease; and

Whereas, pancreatic cancer is one of the deadliest cancers, is currently the fourth leading cause of cancer death in the United States, and is projected to become the second by 2020 ; and

Whereas, pancreatic cancer is the only major cancer with a five-year relative survival rate in the single digits at just 6%; and

Whereas, when symptoms of pancreatic cancer present themselves, it is generally late stage, and 73% of pancreatic cancer patients die within the first year of their diagnosis while 94% of pancreatic cancer patients die within the first five years; and

Whereas, approximately 2,890 deaths will occur in Florida in 2014; and

Whereas, the Recalcitrant Cancer Research Act was signed into law in 2013, which calls on the National Cancer Institute to develop a scientific framework, or strategic plans, for pancreatic cancer and other deadly cancers which will help provide the strategic direction and guidance needed to make true progress against these diseases ; and

Whereas, the Pancreatic Cancer Action Network and its affiliates in Lake Mary support those patients currently battling pancreatic cancer, as well as to those who have lost their lives to the disease, and are committed to nothing less than a cure; and

Whereas, the good health and well-being of the residents of Lake Mary are enhanced as a direct result of increased awareness about pancreatic cancer and research into early detection, causes, and effective treatments.

NOW, THEREFORE, through the authority vested in me as Mayor of the City of Lake Mary, Florida, I, David J. Mealor, do hereby proclaim the month of November 2014 as:

“PANCREATIC CANCER AWARENESS MONTH”

Duly proclaimed this 6th day of November, A.D., 2014.

CITY OF LAKE MARY, FLORIDA

By: _____
DAVID J. MEALOR, MAYOR



MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: Gary Schindler, City Planner

THRU: John Omana, Community Development Director

VIA: Jackie Sova, City Manager

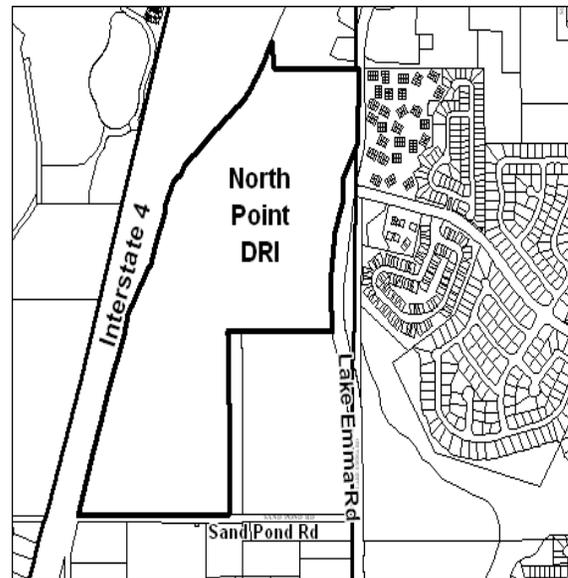
SUBJECT: 2014-NOPC-01, Rescission of the North Point Development of Regional Impact (DRI) designation and approval of a development agreement for the North Point Development

APPLICANT: Miranda F. Fitzgerald for Duke Realty, LLP

REFERENCE: City Code of Ordinances and Florida State Statutes, Subsection 380.115 & Florida Statutes, Subsection 160.3223 – 160.3243.

REQUEST: The applicant has requested the following:

1. Rescind the existing DRI designation for the North Point Development; and
2. Approve a development agreement for the North Point Development.



DISCUSSION:

Location: The North Point Development is located on the west side of Lake Emma Road, south of Lake Mary Boulevard and East of I-4.

Background: The original Development Order (D.O.), establishing the DRI designation, was approved on May 14, 1986. Subsequently, there have been four amendments to the original D.O., which are as follows:

- First Amended and Restated DO, as recorded in O. R. Book 4209, Page 458 of the Public Records of Seminole County, Florida.
- The Second Amended and Restated DO, as recorded in O.R. Book 6518, Page 1861 of the Public Records of Seminole County, Florida.
- The Third Amended and Restated DO, as recorded in O.R. Book 6914, Page 1733 of the Public Records of Seminole County, Florida.
- The Fourth Amended and Restated DO, as recorded in O.R. Book 7081, Page 510 of the Public Records of Seminole County, Florida.

RESCISSION OF THE DEVELOPMENT OF REGIONAL IMPACT DESIGNATION:

Per Florida Statutes Section 380.115, if requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in Section 380.13 (6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies.

DRI Identified Requirements.

Public Safety – Fire. Make a contribution of \$15,000 toward the purchase of a new rescue truck.

The contribution of \$15,000, which was toward the purchase of a specific piece of fire apparatus, was made. Future development shall pay all relevant fire impact fees at the time of building permitting.

Public Safety – Police. Police impact fees specific to development in North Point equal \$.10376 per square foot for office and retail development & \$21.30 per room for hotel rooms. To date, a total of \$51,668.00 has been paid in Police Impact Fees. Per the proposed developer's agreement, new development and relevant redevelopment shall continue to pay Police Impact Fees.

Future development shall pay police impact fees at the time of building permitting at the rate of \$.10376 per square foot for office and retail development & \$21.30 per room for hotels.

Contribution in Lieu of Land Donation. The DRI specifies that the contribution to the City shall be \$0.2320 per square foot for office and retail development & \$22.98 per room for hotels. The City has collected a total of \$72,068.00.

Per the proposed developer's agreement, new development and relevant redevelopment in North Point would continue to make this contribution at the above rates.

Impact Fees. The existing development has complied with all relevant impact fees.

Per the proposed developer's agreement, new development shall pay all relevant impact fees.

Hotel Water Conservation. The City required all hotel development to comply with a list of water saving devices and practices. The complete list of the water saving devices and practices is contained in the attached document entitled REQUEST FOR THE RESCISSION OF THE NORTH POINT DRI DEVELOPMENT ORDER. All existing hotels have complied with this requirement.

Future hotel development shall incorporate these water saving devices and practices into their development plans.

Stormwater. The centralized master stormwater system complies with all relevant requirements of the DRI.

In the event that the existing master stormwater system is insufficient to accommodate the stormwater demands of future development, adequate stormwater facilities shall be addressed at the time of development.

Wildlife Protection. The DRI requires that all development protect those species classified as endangered, threatened or of special concern. A habitat maintenance plan must be submitted to the City, ECFRPC and the Florida Fish and Wildlife Conservation Commission prior to site development.

The gopher tortoise is the only protected species found within the DRI. Existing development has complied with applicable regulations regarding gopher tortoises. Future development shall comply with all applicable policies and practices related to endangered and threatened species.

Transportation. The DRI D.O. requires a number of transportation mitigations, which are as follows:

- A contribution of \$41,300 toward the improvements at Lake Emma Road/Lake Mary Boulevard intersection.
- The Developer funded the construction of left and right turn deceleration lanes at all North Point entrances.
- The Developer contributed \$15,000 to the cost of signalization at North Point entrances.
- The Developer contributed \$37,500 to Seminole County and coordinated with Colonial Properties Trust to secure its matching contribution of \$37,500 for the improvement of the Lake Emma Road/Greenwood Boulevard intersection.

The Developer has fulfilled all DRI obligations regarding roadway improvements.

Bicycle Racks. The DRI required all development to install bicycle racks. Future Development shall install bicycle racks and lockers. Bicycle racks have been installed in common areas and at buildings.

Bicycle facilities shall be installed in compliance with the City's Code of Ordinances.

Transit. The DRI included specific transit conditions. On March 13, 2008, the Developer paid LYNX a sum of \$67,300 to cover the cost of two vans to be utilized for vanpooling. Also, for four years, the Developer paid LYNX an annual sum of \$6,000 to cover the cost of maintaining and insuring each van.

Additional transit related contributions shall be required as relevant to the City's Code of Ordinances.

PROPOSED DEVELOPMENT AGREEMENT:

The applicant is proposing a development agreement that complies with the provisions of Chapter 160 of the Florida Statutes. As proposed, this agreement contains several key issues that were included in the North Point DRI. These are as follows:

- Type of existing and future uses by parcel;
- The maximum development levels for office, retail and hotels;
- Specifies the types of impact fees and other contributions that are required and the amount of the impact fee and/or contribution;
- The minimum percentage of pervious area and open space; and
- Memorialized the land use and trip conversion table that was included in the DRI.

Existing and Future Uses. The table on Page 2 of the proposed development agreement entitled "Parcel Designation on Master Plan, Acreage and Permitted Uses" details the existing use of Parcels A, B, C, F, 1, 2, 3, 4, 5, 6, 6A, 7, 8, & 9. Parcels D, E & G are currently vacant. Because these parcels have a Commercial future land use designation, the Table shows that office/retail/hotel land use shall be allowed.

Maximum Development Levels – The development agreement establishes the thresholds for development as follows: office = 1,109,500 square feet of floor area; retail = 9,148 square feet of floor area and hotel = 583 rooms. These levels are the same as were permitted by the DRI.

Future development on Parcels D & E may not exceed 411,866 square feet of office and 133 hotel rooms. Future development on Parcel G may not exceed 39,982 square feet of office.

Impact Fees. The proposed development agreement states that new development and relevant redevelopment shall pay impact fees and contributions consistent with those in the North Point DRI. Additionally, the development agreement states that water and sewer impact fees shall be paid by new development and applicable redevelopment.

Pervious Coverage and Open Space. In the DRI, there is language that establishes the minimum pervious coverage and open space at 30%. This language in the development agreement states that maximum impervious area is 70%; therefore, minimum pervious area would be 30%.

Land Use and Trip Conversion Table. The North Point DRI allows office, retail and hotel uses. The DRI also contained a table that addressed how to convert from one of the three uses to another. This table and methodology has been included in the development agreement. As stated in the proposed development agreement, “An exchange of the approved land uses may be requested of the City by using the following conversion factors, which are based upon the most restrictive trip generation...” In addition to allowing flexibility within North Point, the inclusion of the conversion table also benefits the City and developers by clearly delineating how to determine the maximum square footage for changes from one use to another.

STAFF FINDINGS OF FACT:

Rescission of Development of Regional Impact (DRI) – Staff finds that the proposed rescission of the DRI status for the North Point Development complies with all relevant portions of Section 380.115, F. S., and does not negatively impact the City of Lake Mary.

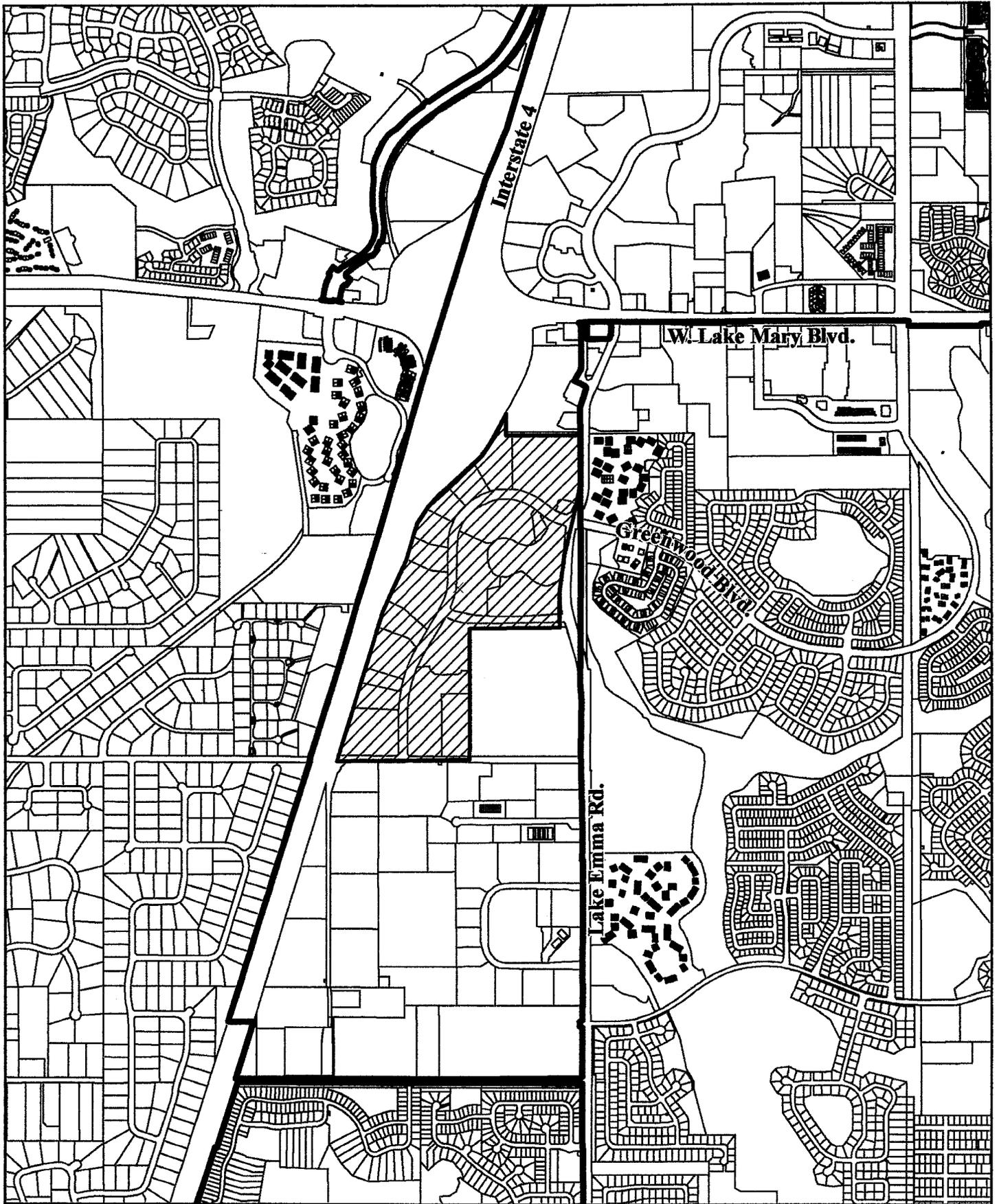
Proposed Development Agreement – Staff finds that the proposed development agreement complies with all relevant provisions of Section 160.3223 through Section 160.3243, F. S., supports development within North Point and safeguards the interests of the City of Lake Mary.

PLANNING & ZONING BOARD: At their regular October 14, 2014 meeting, the P&Z voted unanimously to take the following action:

1. Recommend approval of the rescission of the DRI for the North Point Development; &
2. Recommend approval of the proposed development agreement.

ATTACHMENTS:

- Resolution No. 951 - Rescission of DRI
- Resolution No. 952 – Development Agreement
- Location Map
- Request for Rescission of North Point DRI Development Order
- Map of North Point
- Minutes



Location Map Northpoint DRI



RECEIVED

JUL 07 2014

REQUEST FOR RESCISSION OF
NORTH POINT DRI DEVELOPMENT ORDER

CITY OF LAKE MARY
COMMUNITY DEVELOPMENT DEPT.

THIS REQUEST FOR RESCISSION OF NORTH POINT DRI DEVELOPMENT ORDER (this "Request") is submitted on behalf of Duke Realty Limited Partnership, ("Duke Realty"), whose address is c/o Duke Realty Corporation, 4700 Millenia Boulevard, Suite 380, Orlando, FL 32839, by and through its undersigned attorney, Miranda F. Fitzgerald, c/o Lowndes, Drosdick, Doster, Kantor & Reed, P.A., 215 N. Eola Drive, Orlando, Florida 32801.

Factual Background

1. Duke Realty is the designated "Developer" of certain property located in the City of Lake Mary that is commonly known as the North Point Development of Regional Impact (the "North Point DRI"), which is more particularly described in **Attachment 1** hereto and in the North Point DRI Development Order (as hereinafter defined).

2. Duke Realty entered into that certain Fourth Amended and Restated Development Order for the North Point DRI (the "North Point DRI Development Order") with the City of Lake Mary (the "City") as of October 16, 2008, which is recorded at Official Records Book 7081, Page 510, in the Public Records of Seminole County, Florida.

3. The North Point DRI Development Order specifies the required mitigation for the development of the North Point DRI.

4. Pursuant to Section 380.115, Florida Statutes, "[i]f requested by the developer or landowner, the development-of-regional-impact development order *shall be* rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in s. 380.031(6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies." (Emphasis added).

5. Duke Realty, or its successors in title to the various parcels within the North Point DRI, either has completed or will complete prior to the date of rescission the required mitigation for the amount of development completed as of that date, as set forth in the North Point DRI Development Order.

6. Since all required mitigation under the North Point DRI Development Order either has been or will be completed for the amount of development that exists in the North Point DRI, Duke Realty hereby requests that the City rescind the North Point DRI.

Request for Rescission

1. **Factual Background Incorporated.** The facts set forth in the Factual Background above are true and correct and are hereby incorporated into this Request by this reference.

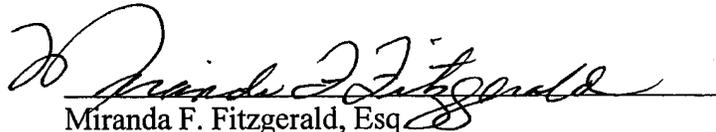
2. **North Point Mitigation.** The North Point DRI Development Order contains certain Conditions of Approval which set forth the mitigation requirements that must be satisfied as development of the Project progresses. Included as **Attachment 2** is a list of Conditions of Approval and the status of each, including documentation of the required mitigation completed for the existing amount of development within the North Point DRI.

3. **North Point DRI Rescission.** Based on the information presented herein, Duke Realty hereby requests rescission of the North Point DRI Development Order.

4. **Proposed Order Approving DRI Rescission.** Included separately with the Request is a proposed form of an Order Approving Rescission of North Point DRI Development Order that the City may wish to use once it has confirmed that all of the required mitigation for the amount of existing development has been completed.

DATED: 7/7/2014

Respectfully submitted,



Miranda F. Fitzgerald, Esq.
Lowndes, Drosdick Doster, Kantor &
Reed, P.A.
215 N. Eola Drive, Orlando, FL 32801
(407) 843-4600
As Attorney for:
Duke Realty Limited Partnership

1 C. 2014-NOPC-01: Recommendation to the City Commission concerning the
2 proposed Request for Rescission of North Point DRI Development Order and
3 proposed North Point Development Agreement; Applicant: Miranda Fitzgerald,
4 Esquire (Public Hearing) *This item involves two actions; the P&Z must make a*
5 *recommendation on the rescission of the DRI and, secondly, P&Z needs to*
6 *make a recommendation on the proposed development agreement.*
7

8 Gary Schindler, City Planner, presented Item C. and the related Memorandum
9 (Staff Report). Exhibit B, the last page attached to the Memorandum, was on the
10 overhead projector. He said, you have before you tonight a Staff Report that is
11 asking you to take two actions. The first action relates to the rescission of the
12 DRI for North Point. The second action is the proposed developer's agreement.
13 Both of those documents were included in your packets. If you will go to the
14 second page of the Staff Report where it says **Rescission of the Development**
15 **of Regional Impact Designation**, it says (reading aloud), per Florida Statute
16 Section 380.115, if requested by the developer or land owner, the Development
17 of Regional Impact development order shall be rescinded by the local
18 government having jurisdiction upon a showing that all required mitigation related
19 to the amount of development that existed on the date of rescission has been
20 completed or will be completed under an existing permit or equivalent
21 authorization issued by a governmental agency as defined in Section 380.13 (6),
22 provided such permit or authorization is subject to enforcement through
23 administrative or judicial remedies. In short, it says if I have done everything I'm
24 required to do by the original DRI, then I can come in and ask you to do away
25 with the DRI. So, that's the first thing that you are being asked to do.
26

27 Mr. Schindler stated, if you will look at the bottom of that page, it says, **DRI**
28 **Identified Requirements**. And we go through them (reading aloud): **Public**
29 **Safety-Fire, Public Safety-Police, Contribution in Lieu of Land Donation,**
30 **Impact Fees, Hotel Water Conservation, Stormwater, Wildlife Protection,**
31 **Bicycle Racks, Transit.** You will see that under each of those I have addressed
32 how these have been addressed.
33

34 Mr. Schindler said, staff believes that all of the requirements have been met.
35 Now, that doesn't mean that there isn't going to be more development. There
36 are three tracks that are yet to be developed and that's where we get into the
37 proposed developer's agreement. This is saying to everyone that you're not
38 going to be impacted by this -- what you did yesterday when you were a DRI, you
39 can do tomorrow when that DRI designation goes away. It then identifies the
40 type of use that can be on the yet-to-develop tracts, and those are future
41 developmental parcels D and E and I believe on G, and it dictates the maximum
42 square footage development. We're also keeping the conversion matrix. If I'm

1 vested for office space but want hotel rooms, the conversion matrix tells you how
2 many square feet of office equals one hotel room
3

4 Mr. Schindler stated, we're doing the developer's agreement to make sure that
5 this isn't a runaway project and we still have the quality development that we
6 have had for over 25 years in North Point. We have identified what the
7 developer's agreement is going to have as far as impact fees. It's going to have
8 the same pervious coverage and open space that it has now. We have said it's
9 no longer a DRI, but we're continuing on with the requirements of the DRI as part
10 of this.

11
12 Mr. Schindler said, that's it in a nutshell. I'm sure that Randy Fitzgerald can put it
13 much more eloquently.

14
15 Chairman Hawkins stated, I just wish they would finish developing it.

16
17 Mr. Schindler said, we do too. I mean, we want the tax money. He questioned,
18 do you have any questions?

19
20 Chairman Hawkins replied, no. I understand it completely.

21
22 Member York asked, what do we expect to go in place if we rescind the
23 Agreement?

24
25 Mr. Schindler answered, there will be the developer's agreement.

26
27 Chairman Hawkins added, which is clearly outlined.

28
29 Mr. Schindler concluded his presentation by saying, because, understand, right
30 now there is no PUD for this. This is straight M-1A zoning. It was very common
31 to do PUDs, but when this one was done in the mid to late 80's, for whatever
32 reason, they didn't do a PUD. So, the developer's agreement – even though it's
33 not a PUD, you can do a developer's agreement in the absence of a PUD stating
34 this is what is going to happen for future development.

35
36 Chairman Hawkins requested the Applicant come forward and address the
37 Board.

38
39 Miranda Fitzgerald, Esquire, with Lowndes, Drosdick, Doster, Kantor & Reed law
40 firm, 215 N. Eola Drive, Orlando, Florida 32801, came forward and addressed
41 the Board representing Duke Realty Limited Partnership. She stated, I just
42 wanted to tell you why we're doing this because that didn't really come through.
43 It's not explained. In 2011, when they did the tremendous change to the growth

1 management laws, it gave DRI developers in like 420-something cities in this
2 state and 8 counties in this state, based on population, to either remain a DRI or
3 not remain a DRI and bring the development under local regulation and get the
4 State and the Regional Planning Council just out of the process. I've really been
5 in the business, I'd say for the last two or three years, undoing a lot of the DRIs
6 that I did in the 80s and the 90s just because it doesn't make a lot of sense
7 anymore to have that state overview if you've gone far enough in the
8 development to know what it's going to be like and you have established – you
9 have a track record.

10
11 Ms. Fitzgerald said, in this case, Duke Realty was the master developer for years
12 and years. They actually have sold all the land in the project, and so if you don't
13 rescind the DRI just the way the statutes work today, they go on forever. So,
14 there is really not a mechanism to get out from under the annual reporting and
15 the – you know, it's a tracking nightmare in a way and its expense that the
16 developer has to continue to incur. Particularly in this case, we thought it made
17 sense. The City staff is very helpful in working with us and the replacement
18 document is, in fact, the Development Agreement. The vesting will, essentially,
19 remain for everybody that's there, and as a matter of fact, one of the vacant
20 parcels is owned now by Duke Energy. Progress Energy became Duke Energy
21 and they actually have a company looking at their site now for a hotel, which is
22 interesting, and I know that the Pelloni group that bought the other two vacant
23 parcels on the north end, D and E on the north, they have had quite a bit of
24 interest as well. So, I do think it's going to develop fairly quickly now that the
25 market is coming back, and I think this document gives them the opportunity to
26 have some flexibility within the parameters that have already been established
27 for this project.

28
29 Ms. Fitzgerald concluded her presentation by saying, I appreciate your support.
30 We enjoy working with you-all. Thank you so much.

31
32 Chairman Hawkins opened the hearing to public comment. Hearing none, he
33 closed that portion and entertained board discussion and/or motions.

34
35 **MOTION:**

36
37 **Member Schofield moved to recommend approval to the City Commission**
38 **the request by Miranda Fitzgerald, Esquire, concerning the proposed**
39 **Request for Rescission of North Point DRI Development Order, consistent**
40 **with Staff Findings of Fact listed in the Staff Report. Member York seconded**
41 **the motion, which carried unanimously 3-0.**

42
43 **MOTION:**

OCTOBER 14, 2014-9
PLANNING AND ZONING BOARD

1 **Member Schofield moved to recommend approval to the City Commission**
2 **the request by Miranda Fitzgerald, Esquire, concerning the proposed North**
3 **Point Development Agreement, consistent with Staff Findings of Fact listed in**
4 **the Staff Report. Member York seconded the motion, which carried**
5 **unanimously 3-0.**
6

7 Mr. Omana announced this item will go forward to the City Commission meeting of
8 November 6, 2014.
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QUASI-JUDICIAL SIGN-IN SHEET

10/14, 2014
P+2 MEETING
(please print)

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

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Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

RESOLUTION NO. 951

A RESOLUTION OF THE CITY OF LAKE MARY, FLORIDA, RESCINDING THE DEVELOPMENT ORDER OF THE NORTH POINT DEVELOPMENT OF REGIONAL IMPACT (DRI); PROVIDING FOR CONFLICTS AND EFFECTIVE DATE.

WHEREAS, Section 380.115 of the Florida Statutes states, "If requested by the developer or landowner, the development-of-regional-impact development order shall be rescinded by the local government having jurisdiction upon a showing that all required mitigation related to the amount of development that existed on the date of rescission has been completed or will be completed under an existing permit or equivalent authorization issued by a governmental agency as defined in Section 380.13 (6), provided such permit or authorization is subject to enforcement through administrative or judicial remedies"; and

WHEREAS, the North Point Development (DRI), governs the property as described in Attachment 1, which is within the City of Lake Mary; and

WHEREAS, Duke Realty Limited Partnership, an Indiana limited partnership, is the designated "Developer" of the North Point DRI under F.S. 380.06; and

WHEREAS, Duke Realty has requested rescission of the development order for the North Point DRI, which is recorded in O.R. Book 7081, Page 510, Public Records of Seminole County, Florida; and

WHEREAS, all required mitigation under the North Point DRI Development Order either has been or will be completed for the amount of

development that exists in the North Point DRI, as described in Attachment 2,;
and

WHEREAS, on October 14, 2014, the City of Lake Mary Planning and Zoning Board voted unanimously to recommend approval of the proposed rescission, as consistent with F.S. 380.115 and the City comprehensive plan.

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of Lake Mary, Florida, as follows:

SECTION 1. The development order of the North Point DRI is rescinded.

SECTION 2. CONFLICTS. All Resolutions or parts of Resolutions in conflict are repealed to the extent of such conflict.

SECTION 3. EFFECTIVE DATE. This Resolution shall take effect immediately upon passage and adoption.

PASSED AND ADOPTED this 6TH day of November, 2014.

CITY OF LAKE MARY, FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

Approved as to form and legality for use
and reliance upon by the City of Lake
Mary, Florida.

CATHERINE D. REISCHMANN, CITY ATTORNEY

Attachment 1

LEGAL DESCRIPTION

All that part of Government Lot 1, Section 13, Township 20 South, Range 29 East, Seminole County, Florida, lying Easterly of State Road 400 (Interstate 4); and also the West 330 feet of the Northwest 1/4 of the Northwest 1/4 of Section 18, Township 20 South, Range 30 East, LESS road right of way; and also that part of the Southwest 1/4 of the Northwest 1/4 of Section 18, lying North of the North line of Government Lot 2, Section 13, Township 20 South, Range 29 East, Seminole County, Florida, extended Easterly, lying westerly of Lake Emma Road.

AND

All those lands lying in Government Lot 2, Section 13, Township 20 South, Range 29 East, and Section 18, Township 20 South, Range 30 East, Lake Mary, Florida, described as follows: From the Southeast corner of Section 13, Township 20 South, Range 29 East, run along the Range line between Ranges 29 and 30, North 00°21'09" East, 33.00 feet to a point on the North right of way line of a City Road (66 feet wide); thence leaving said North right of way line continue along said Range Line North 00°21'09" East, 1,549.89 feet to the Point of Beginning; thence leaving said Range Line run North 89°53'23" West, 120.86 feet; thence run South 00°21'09" West, 272.06 feet; thence run North 89°54'20" West 1,161.11 feet to a point on the Easterly right of way line of State Highway 400 (I-4); thence run along said Easterly right of way line North 17°54'33" East, 1,390.09 feet to the North line of Government Lot 2, Section 13, Township 20 South, Range 29 East; thence leaving said Easterly right of way line, run along the North line of Government Lot 2, North 89°35'22" East, 862.07 feet to the Northeast corner of said Government Lot 2, thence run North 89°32'17" East 996.83 feet to a P.O.C. of a curve to the left on the Westerly right of way line of Lake Emma Road, having a radius of 799.20 feet and a central angle of 06°56'01"; thence along the Westerly right of way line of Lake Emma Road, run along the arc of said curve 96.71 feet to the P.T.; thence run South 04°28'02" West 467.61 feet to the P.C. of a curve to the left having a radius of 1,515.69 feet and a central angle of 19°20'17"; thence along the arc of said curve 511.57 feet to the P.T.; thence leaving said Westerly right of way line of Lake Emma Road, run North 89°53'23" West, 999.08 feet to the Point of Beginning, being in Seminole County, Florida.

AND

All those lands lying in Government Lot 2, Section 13, Township 20 South, Range 29 East, Lake Mary, Florida, described as follows: From the Southeast corner of Section 13, Township 20 South, Range 29 East, run along the Range Line between Ranges 29 and 30, North 00°21'09" East 33.00 feet to a point on the North right of way line of a City Road (66 feet wide); thence along said North right of way line, run North 89°56'38" West, 120.86 feet to the Point of Beginning; thence continuing along said North right of way line, run North 89°54'20" West, 1565.99 feet to a point on the Easterly right of way line of State Highway 400 (I-4); thence leaving said North right of way line of a City Road, run along the Easterly right of way line of State Highway 400, North 17°54'33" East, 1,342.20 feet; thence leaving said Easterly right of

way line, run South $89^{\circ}54'20''$ East, 1,161.11 feet; thence run South $00^{\circ}21'09''$ West, 1,277.86 feet to the Point of Beginning, being in Seminole County, Florida.

SAID PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

A portion of Government Lot 1 in Section 13, Township 20 South, Range 29 East and a portion of Section 18, Township 20 South, Range 30 East, Seminole County, Florida, being more particularly described as follows:

From the Southeast corner of Section 13, Township 20 South, Range 29 East, run $N00^{\circ}20'12''E$, along the range line between Range 29 East and Range 30 East, a distance of 1582.89 feet for a POINT OF BEGINNING; thence $N89^{\circ}52'44''W$, a distance of 120.86 feet; thence $S00^{\circ}20'12''W$, a distance of 1549.98 feet to a point on the North right-of-way line of a city road, said point being 33.00 feet North of the South line of said Section 13; thence run $N89^{\circ}55'18''W$, parallel with said South line, a distance of 1566.73 feet to a point on the Easterly right-of-way line of Interstate Highway No. 4 (I-4) (S.R. 400); thence run $N17^{\circ}53'55''E$, along said right-of-way line, a distance of 4425.10 feet to a point on the limited access right-of-way line of said Interstate Highway No. 4, as described in O.R. Book 591, Page 394 of the Public Records of Seminole County, Florida, said point being on a curve concave Southeasterly having a radius of 1146.23 feet; thence from a tangent bearing of $N22^{\circ}22'08''E$, through a central angle of $47^{\circ}12'46''$, run Northeasterly along the arc of said curve, a distance of 944.51 feet to a point of tangency; thence continue along said right-of-way line $N69^{\circ}34'54''E$, a distance of 19.31 feet to a point on the East line of the West 330.00 feet of the Northwest 1/4 of the Northwest 1/4 of Section 18, Township 20 South, Range 30 East; thence departing said right-of-way line, run $S00^{\circ}09'03''W$, a distance of 1115.39 feet to the Southeast corner of said West 330.00 feet; thence run $S89^{\circ}51'11''E$, along the South line of the Northwest 1/4 of the Northwest 1/4 of said Section 18, a distance of 849.72 feet to a point on the West right-of-way line of Lake Emma Road as described in O.R. Book 1281 at Page 524 of the Public Records of Seminole County, Florida; thence run $S00^{\circ}12'40''W$, along said right-of-way line, a distance of 554.91 feet to the point of curvature of a curve concave Northwesterly having a radius of 633.20 feet; thence through a central angle of $29^{\circ}23'00''$, run Southwesterly along the arc of said curve, a distance of 324.73 feet to a point of tangency; thence continuing along the West right-of-way line of Lake Emma Road being 17.00 feet West of parallel and concentric with that 66.00 feet right-of-way as described in O.R. Book 319, at Page 138 of the Public Records of Seminole County, Florida, run $S29^{\circ}35'40''W$, a distance of 24.81 feet to the point of curvature of a curve concave Southeasterly having a radius of 799.20 feet; thence through a central angle of $25^{\circ}08'00''$, run Southwesterly along the arc of said curve a distance of 350.58 feet to a point of tangency; thence $S04^{\circ}27'40''W$, a distance of 467.80 feet to the point of curvature of a curve concave Easterly having a radius of 1515.39 feet, thence through a central angle of $19^{\circ}20'09''$, run Southeasterly along the arc of said curve, a distance of 511.40 feet; thence departing said curve and said right-of-way line, run $N89^{\circ}52'44''W$ parallel with the South line of the Southwest 1/4 of Section 18, Township 20 South, Range 30 East, a distance of 999.33 feet to the POINT OF BEGINNING.

Attachment 2

CONDITIONS OF APPROVAL REGARDING MITIGATION MEASURES

1. **Public Safety – Fire.** (Development Order IV.1.) The North Point DRI Development Order included Public Safety contribution requirements for fire safety.

Response: A contribution of \$15,000.00 was made to the City on March 4, 1994, toward the cost of purchasing and equipping a rescue type truck.

2. **Public Safety – Police.** (Development Order Condition IV.2.) This Project will have a significant impact on Lake Mary's police services. Based on 1,118,648 square feet at buildout this Project will require a total of three officers to be assigned to this section of the City. The cost of these services will be \$34,236.00 per officer (total cost at \$102,708.00). The amount of \$51,040.00 has been paid to the City to date for police impact fees. The balance of police impact fees will be assessed upon issuance of building permits for the remaining development as follows:

Office/Retail: \$.10376 per square foot @ 467,950 square feet =	\$48,558.00
Hotel Rooms: \$21.30 per room for 146 rooms =	<u>3,110.00</u>
Total Balance Due:	\$51,668.00

Response: All development within the North Point Project to date has paid these site-specific police impact fees. Further development within the North Point Project will be subject to the terms and conditions of the City of Lake Mary / North Point Development Agreement, which will provide for the continued payment of these fees as future building permits are issued.

3. **Capital Improvement Contribution.** (Development Order IV.4.a.) The applicant shall donate to the City of Lake Mary \$184,000.00 cash in lieu of a 2-acre land donation. The cash may be used for any Capital Improvement Project approved by the City Commission. Prior to the effective date of this Fourth Amended and Restated Development Order, \$72,068.00 has been paid to the City. Payment for the balance of this cash contribution for the remaining development shall be made at the time a building permit is issued by the City at the following rates:

Office/Retail: \$.2320 per square foot @ 467,950 square feet =	\$108,577.00
Hotel Rooms: \$22.98 per room for 146 rooms =	<u>3,355.00</u>
Total Balance Due:	\$111,932.00

Response: All development within the North Point Project to date has paid the applicable site-specific capital contribution amount. Further development within the North Point

Project will be subject to the terms and conditions of the City of Lake Mary / North Point Development Agreement, which will provide for the continued payment of these capital contribution charges as future building permits are issued.

4. **Impact Fees.** (Development Order IV.4.c.) The building permit applicant shall comply with the City's impact fees and Seminole County transportation impact fees in effect at the time of application for building permits.

Response: All existing development within the North Point Project has paid the required amount of impact fees. All additional development within the North Point Project will also pay impact fees.

5. **Hotel Water Conservation.** (Development Order IV.4.d.) Hotel development shall include the following water conservation measures:

Guest Rooms:

- A linen reuse program consisting of info cards notifying guests that linens will be washed every three (3) days unless otherwise requested by guest, and instructions to place dirty towels on the floor
- Low flow water closets (1.6 gallons)
- Low flow shower heads (2.5 gallons per minute)
- Aerators on vanity sinks to restrict water flow

Kitchen:

- Low flow dishwasher
- Water efficient ice machines
- Swimming Pool:
- Water saving pool filters
- Recycle water from water feature
- Cistern/roof water collection system to be used for water feature and pool (if acceptable to the Health Department)

Landscaping:

- Xeriscape (drought tolerant plants) landscaping
- Focused irrigation limiting amount of spray to parking lots and walks
- Irrigation system to be equipped with automatic rain shut off device
- Drip type irrigation heads to be used where applicable
- Reuse water to be utilized for irrigation in all areas except at the pool and front door

Public Areas:

- Low volume urinals (1 gallon per flush)

Response: All hotel development to date within the North Point Project has complied with these mitigation requirements. Further hotel development within the North Point Project will be subject to the terms and conditions of the City of Lake Mary / North Point Development Agreement, which will continue to prescribe these mitigation measures for hotel developments.

6. **Stormwater Management.** (Development Order V.2., V.3., V.5., V.6.) A minimum 20-foot wide perimeter shall be established upland of the normal water elevation in all excavated ponds. Littoral zones shall be used in all retention areas. To minimize dependence on grounds irrigation and promote retention of wildlife habitat, native vegetation shall be utilized to the maximum extent practicable in site development. Development within the Project must comply with the stormwater management regulations of the Department of Environmental Protection ("DEP") or the St. Johns River Water Management District ("SJRWMD").

Response: A vegetative management plan was submitted to the SJRWMD, the ECFRPC and the City for approval prior to the start of construction of the stormwater system. The North Point Project is subject to permits issued by the SJRWMD (MSSW Conceptual Permit #4-117-21864 also listed as #4-117-0111CM2 and Permit #4-117-21986 also listed as #4-117-0164 for Greenwood Boulevard and Road "A"). All development to date within the Project has been in compliance with the applicable permits and regulations of the FDEP and the SJRWMD.

7. **Wildlife Protection.** (Development Order V.4., V.7.) Except as otherwise allowable by any applicable permit, site development related activities shall not result in the harming, pursuit or harassment of wildlife species classified as endangered, threatened or a species of special concern by either the state or federal government in contravention of applicable state or federal laws. A habitat maintenance plan must be submitted to the City, ECFRPC and the Florida Fish and Wildlife Conservation Commission ("FFWCC") prior to site development.

Response. The gopher tortoise is the only protected species found on the Project site to date. Development to date within the Project has complied with applicable regulations regarding gopher tortoises. Prior to the initiation of site development, the Developer submitted a habitat maintenance plan to the City, ECFRPC and the FFWCC that included representative portions of xeric oak, pine flatwoods and pine/xeric oak communities located to maximize continuity between these communities and the wetland/retention pond areas.

8. **Transportation.** (Development Order V. 9., V.10.) The North Point DRI Development Order included several transportation mitigation requirements.

Response: In June 2007, the Developer paid to Seminole County the sum of \$41,300.00 which represents an 11.8 percent share of the cost of improvements to the Lake Emma Road/Lake Mary Boulevard intersection, pursuant to the monitoring study performed prior to Phase II(b). These improvements included: (i) a separate westbound right-turn lane, and (ii) a fifth southbound lane such that the southbound approach has one left-turn lane, two through lanes, and two right-turn lanes. These improvements have been completed. In addition, the Developer funded the construction of left and right-turn deceleration lanes at all Project entrances, and the Developer contributed \$15,000.00 to Seminole County to fund the cost of signalization at Project entrances. This contribution fulfilled the Developer's obligation regarding signalization at Project entrances. The Developer also contributed \$37,500.00 to Seminole County and coordinated with Colonial Properties Trust to secure its matching contribution of \$37,500.00 for the improvement of the Lake Emma Road/Greenwood Boulevard intersection.

9. **Bicycle Racks.** (Development Order V. 11) The North Point Owners Association (the "Association") will install bicycle racks in common open space areas adjacent to parking areas near existing buildings in North Point, and the Property Manager for the Association will work with existing building owners to obtain other locations for bike racks, such that each building will have at least one bike rack installed a reasonable distance from the building entrance. Future site developers shall install bicycle racks or lockers at all structures.

Response: The North Point Owners Association has installed bicycle racks in common open space areas, and existing building owners have also installed bike racks.

10. **Transit.** (Development Order V.12.). The Development Order included specific transit conditions.

Response. Pursuant to that certain Service Funding Agreement Between Duke Realty Limited Partnership and LYNX, recorded at O.R. Book 9288, Page 2545, on March 13, 2008, the Developer paid \$67,300.00 to LYNX to cover the cost of two (2) vans to be utilized by the employees within the North Point Project for van pooling purposes. Additionally, for a period of four (4) years following purchase of the vans, the Developer paid to LYNX \$6,000.00 per year per van to cover the cost of maintaining and insuring each van. The vans are part of the LYNX van pool program.

RESOLUTION NO. 952

A RESOLUTION OF THE CITY OF LAKE MARY, FLORIDA, ADOPTING A DEVELOPMENT AGREEMENT FOR THE NORTH POINT DEVELOPMENT; PROVIDING FOR CONFLICTS AND EFFECTIVE DATE.

WHEREAS, Sections 163.3223 through 163.3243, F. S., permits the City of Lake Mary to consider and enter into development agreements relating to Chapter 154 of the City's Land Development Code; and

WHEREAS, Duke Realty Limited Partnership, an Indiana limited partnership, ("Duke Realty") is the designated "Developer" in the North Point Development of Regional Impact Development Order recorded at O.R. Book 7081, Public Records of Seminole County, Florida; and

WHEREAS, Duke Realty requested rescission of the North Point DRI development order; and

WHEREAS, on November 6, 2014, the Lake Mary City Commission approved Resolution No. 951, which rescinded the North Point DRI development order; and

WHEREAS, Duke Realty requests to enter into a development agreement with the City of Lake Mary for certain properties known as the North Point Development, as described in Attachment No. 1; and

WHEREAS, the proposed development agreement identifies and protects the entitlements of existing and future development within the North Point Development; and

WHEREAS, on October 14, 2014, the City of Lake Mary Planning and Zoning Board voted unanimously to recommend approval of the proposed development agreement as consistent with the City's comprehensive plan and State law; and

WHEREAS, the City Commission finds this development agreement will promote the health and general welfare of the citizens of Lake Mary, Florida and will establish the highest and best use of the property.

NOW, THEREFORE BE IT RESOLVED by the City Commission of the City of Lake Mary, Florida, as follows:

Section 1. The City Commission approves the development agreement for the North Point Development, Attachment "A", and authorizes the Mayor to execute the Agreement.

Section 2. Conflicts. All Resolutions or parts of Resolutions in conflict are repealed to the extent of such conflict.

Section 3. Effective Date. This Resolution shall take effect immediately upon passage and adoption.

PASSED AND ADOPTED this 6TH day of November, 2014.

CITY OF LAKE MARY, FLORIDA

MAYOR, DAVID J. MEALOR

ATTEST:

CITY CLERK, CAROL A. FOSTER

Approved as to form and legality for use
And reliance upon by the City of Lake
Mary, Florida.

CATHERINE D. REISCHMANN, CITY ATTORNEY

ATTACHMENT "A"
NORTH POINT
DEVELOPMENT AGREEMENT

After recording a copy should be returned to:

Miranda F. Fitzgerald, Esq.
Lowndes, Drosdick, Doster,
Kantor & Reed, P.A.
215 N. Eola Drive
Post Office Box 2809
Orlando, FL 32802

NORTH POINT DEVELOPMENT AGREEMENT

THIS NORTH POINT DEVELOPMENT AGREEMENT (this “Agreement”) is made and entered into by and between **DUKE REALTY LIMITED PARTNERSHIP**, a _____ limited partnership, whose address is c/o Duke Realty Corporation, 4700 Millenia Boulevard, Suite 380, Orlando, FL 32839 (“Duke Realty”); **TPA PELLONI, LLC**, a Georgia limited liability company, whose address is 3350 Riverwood Parkway, Suite 750, Atlanta, GA 30339 (“TPA”); **DUKE ENERGY FLORIDA, INC.**, a Florida corporation, d/b/a Duke Energy 3300 Exchange Place, Lake Mary FL 32746 (“Duke Energy”); and the **CITY OF LAKE MARY**, a municipality organized and existing under the laws of the State of Florida, whose address is 100 N. Country Club Road, Lake Mary, FL 32795 (the “City”). Duke Realty, TPA, Duke Energy and the City are sometimes together referred to herein as the “Parties,” and separately as the “Party,” as the context requires.

I. BACKGROUND

1. The City approved the Development Order for the North Point Development of Regional Impact (“DRI”) on May 14, 1986, (the “Original Development Order”).

2. The City approved that certain First Amendment to the Original Development Order on July 7, 1994, (the “First Amendment”) that is recorded in Official Records Book, 2800, Page 0516, of the Public Records of Seminole County, Florida.

3. Subsequently, the City approved First, Second and Third Amended and Restated Development Orders for the North Point DRI which are recorded, respectively, as follows:

First Amended and Restated	O.R. Book 4209, Page 0458
Second Amended and Restated	O.R. Book 6518, Page 1861
Third Amended and Restated	O.R. Book 6914, Page 1733
Fourth Amended and Restated	O.R. Book 7081, Page 510

4. On October 16, 2008, the City approved the Fourth Amended and Restated Development Order for the North Point DRI (the “Final Development Order”) that is recorded in Official Records Book, 07081, Page 510, of the Public Records of Seminole County, Florida.

5. In 2011, the Florida Legislature, in Section 380.06(29)(a), Florida Statutes, authorized the rescission of DRI Development Orders in municipalities meeting specified density requirements. The City is one of the municipalities which the Florida Legislature designated as a “dense urban land area” in which existing DRI’s may be rescinded pursuant to Section 380.115, Florida Statutes.

6. On _____, 2014, the City approved rescission of the North Point DRI Development Order and, in its place approved this Agreement.

II. LEGAL DESCRIPTION

The property subject to this Agreement is described in Exhibit "A" attached hereto (the "Property").

III. FINDINGS OF FACT

1. Duke Realty is the designated "Developer" in the Final Development Order and has the authority to request rescission of the North Point DRI and enter into this Agreement with the City.

2. TPA and Duke Energy are owners of undeveloped property within the North Point Project (the "Project"). The City is authorized to enter into development agreements that satisfy the requirements of the Florida Local Government Development Agreement Act, Sections 163.3220-163.3243, Florida Statutes, (the "Act").

3. Public hearings as required by Section 163.3225 of the Act have been duly noticed and held.

4. The Project consists of the following:

Total Acreage: 157 acres, more or less.

Land Use: The Project is an office park located within the City limits in an area zoned M-1A/C-1. A copy of the updated North Point Master Plan is attached as Exhibit "B."

Project Size: 1,109,500 square feet of office space, (including internalized warehouse or storage uses), 9,148 square feet of retail space and 583 hotel rooms.

Parcel Designation on Master Plan, Acreage and Permitted Uses:

<u>Parcel</u>	<u>Acreage</u>	<u>Land Use</u>
A	8.49	Office
B	8.79	Office
C	8.79	Office
D	14.05	Office, Retail,* Hotel
E	8.43	Office, Retail,* Hotel
F	7.70	Office
G	8.00	Office, Hotel
1	1.12	M-1A Uses Only
2	2.36	Hotel
3	3.02	Hotel

<u>Parcel</u>	<u>Acreage</u>	<u>Land Use</u>
4	3.25	Hotel
5	3.15	Office
6	5.18	Office/Warehouse
6A	2.68	Office/Warehouse
7	2.90	Hotel
8	11.49	Office
9	5.76	Office

*The following uses are not allowed: convenience stores, gas stations or fast food restaurants

5. An exchange of the approved land uses may be requested of the City by using the following conversion factors which are based on the most restrictive trip generation, either external PM peak hour (two-way) or external PM peak hour peak direction. However, the exchange of land uses shall not result in an increase in external PM peak-hour peak-direction trips.

Land Use and Trip Conversion Table

		OFFICE (ksf)	RETAIL (ksf)	HOTEL (rooms)
Office (1 ksf)	Is equivalent to	1.000	0.430	3.482
Retail (1 ksf)	Is equivalent to	1.456	1.000	7.958
Hotel (1 room)	Is equivalent to	0.183	0.124	1.000

For clarification, the application of the matrix is described below:

To Convert From	Multiply	By	Result
Office to Retail*	Office (1,000 sf)	0.430	Retail (1,000 sf)
Office to Hotel	Office (1,000 sf)	3.482	Hotel (rooms)
Retail to Office	Retail (1,000 sf)	1.456	Office (1,000 sf)
Retail to Hotel	Retail (1,000 sf)	7.958	Hotel (rooms)
Hotel to Office	Hotel (rooms)	0.183	Office (1,000 sf)
Hotel to Retail*	Hotel (rooms)	0.124	Retail (1,000 sf)

*Conversion to convenience stores, gas stations and fast food restaurants is prohibited

6. The Project is consistent with the City's Comprehensive Plan, as applicable.

7. This Agreement constitutes final approval of 1,109,500 square feet of office space, 9,148 square feet of retail space, and 583 hotel rooms, as more particularly detailed in Section III. 4., above. As of the date of this Agreement all of the Parcels have been developed except Parcels D, E and G, and the only remaining undeveloped entitlements have been allocated as follows:

8. Parcels D and E: 411,866 s.f. office and 133 hotel rooms.*
 Parcel G: 39,982 s.f. office*

*These uses may be converted to other uses by applying the conversion factors in the Land Use and Trip Conversion Table in Section III.5 of this Agreement.

The development program for other, previously developed Parcels may also be modified through use of the Land Use and Trip Conversion Table in Section III.5., above, or through other City processes that evaluate and impose appropriate mitigation requirements on any owner that requests a change in land use that will result in additional transportation impacts.

9. The intent and purpose of this Agreement is to preserve the existing development entitlements of the owners within the Project and to allow further development of the Project consistent with the terms of this Agreement.

IV. CONDITIONS OF APPROVAL

1. Public Safety – Fire. A contribution of \$15,000.00 was made to the City on March 4, 1994, toward the cost of purchasing and equipping a rescue type truck. Any development within the Project shall meet or exceed the City’s fire codes in existence at the time of building permit issuance.

2. Public Safety – Police. This Project will have a significant impact on Lake Mary’s police services. Based on 1,109,500 square feet of office space, 9,148 square feet of retail space and 583 hotel rooms, this Project will require a total of three officers to be assigned to this section of the City. Prior to the effective date of this Development Agreement, \$51,040.00 has been paid to the City for police impact fees. The balance of police impact fees will be assessed at the time a building permit is issued by the City for the remaining development at the rates set forth in Section 4 below.

3. Contribution in Lieu of Land Donation. The Project shall contribute to the City of Lake Mary \$184,000.00 cash in lieu of a 2-acre land donation. The cash may be used for any Capital Improvement Project approved by the City Commission. Prior to the effective date of this Agreement, \$72,068.00 has been paid to the City. The balance of this cash contribution for the remaining development shall be made at the time a building permit is issued by the City at the rates set forth in Section 4 below.

4. Rate of Police Impact Fees and Contribution in Lieu of Land Donation. The amounts due for Police Impact Fees and for the remaining Contribution in Lieu of Land Donation are:

<u>Land Use</u>	<u>Police Impact Fees</u>	<u>Contribution in Lieu of Land Donation</u>	<u>Total</u>
Office or Retail	\$0.10376 / square foot	\$0.2320 / square foot	\$0.33576 / square foot
Hotel	\$21.30 / room	\$22.98 / room	\$44.28 / room

5. Other Impact Fees.

(a) Water and sewer impact fees, at the adopted rates, must be paid to the City and Seminole County (the "County"), as applicable, at the time of application for site construction permits.

(b) City impact fees for fire, public works and recreation for new development or redevelopment must be paid at the adopted rates at the time the fees are due. Police impact fees shall be paid as set forth in Section 4 of this Agreement.

(c) County transportation impact fees for new development or redevelopment must be paid at the adopted rates at the time the fees are due.

6. Additional Conditions.

(a) Total development within the Project shall not exceed that scope which represents 20,017 average external trips per day, unless additional transportation mitigation is provided by the owner and approved by the City.

(b) Hotel development shall include the following water conservation measures:

Guest Rooms:

- A linen reuse program consisting of information cards notifying guests that linens will be washed every three (3) days unless otherwise requested by guest, and instructions to place dirty towels on the floor
- Low flow water closets (1.6 gallons)
- Low flow shower heads (2.5 gallons per minute)
- Aerators on vanity sinks to restrict water flow

Kitchen:

- Low flow dishwasher
- Water efficient ice machines

Swimming Pool:

- Water saving pool filters
- Recycle water from water feature
- Cistern/roof water collection system to be used for water feature and pool (if acceptable to the Health Department)

Landscaping:

- Xeriscape (drought tolerant plants) landscaping

- Focused irrigation limiting amount of spray to parking lots and walks
- Irrigation system to be equipped with automatic rain shut off device
- Drip type irrigation heads to be used where applicable
- Reuse water to be utilized for irrigation in all areas except at the pool and front door

Public Areas:

- Low volume urinals (1 gallon per flush)

(c) A minimum 20-foot wide perimeter shall be established upland of the normal water elevation in all excavated ponds.

(d) To minimize dependence on grounds irrigation and promote retention of wildlife habitat, native vegetation shall be utilized to the maximum extent practicable in site development.

(e) The stormwater management system for each individual development tract will incorporate separate “off-line” retention areas for the treatment of the “first flush” of stormwater per the stormwater regulations of the Department of Environmental Protection (“DEP”) or SJRWMD; only water which follows diversion of the “first flush” to “off-line” retention areas will be discharged to the master drainage network of retention lakes.

(f) Site developers shall install bicycle racks at all structures. The bicycle racks will be sized according to the type of structure. Smaller bicycle racks will be installed at retail establishments and larger bicycle racks will be installed to support office developments.

(g) Seventy percent (70%) of each site within the Property may consist of impervious surface.

V. LAND USE, ZONING, AND DEVELOPMENT REGULATION APPROVALS

The development of the Project must comply with the conditions of this Agreement, the City’s Comprehensive Plan and the applicable requirements of the City’s Land Development Code, as amended from time to time.

VI. EFFECT OF THIS AGREEMENT

The North Point DRI has been rescinded simultaneously with the approval of this Agreement. Therefore, this Agreement supersedes the Development Order dated May 15, 1986, the First Amendment to the Development Order recorded at O.R. Book 2800, Page 0512, the First Amended and Restated Development Order recorded at O.R. Book 4209, Page 0458, the Second Amended and Restated Development Order recorded at O.R. Book 6518, Page 1861, the Third Amended and Restated Development Order recorded at O.R. Book 6914, Page 1733, and the Fourth Amended and Restated Development Order recorded at O.R. Book 7081, Page 510,

all of the Public Records of Seminole County, Florida. This Agreement governs all conditions and requirements for development of the Property.

VII. EFFECTIVE DATE AND TERM

This Agreement shall take effect thirty (30) days following the date on which the State Land Planning Agency within the Florida Department of Economic Opportunity receives a copy of this Agreement with the recording information affixed thereto. The term of this Agreement shall be thirty (30) years following the effective date, unless the term is extended by mutual consent of the Parties, or their assigns, following a public hearing in accordance with Section 163.3225 of the Act.

VIII. DEVELOPMENT PERMITS

The following City development permits will be required for additional development within the Property:

- A Final Site Plan for each proposed building site;
- A site construction permit;
- A building permit;
- Modification to SJRWMD permit;

IX. MISCELLANEOUS

1. Additional Permits, Conditions or Restrictions. The failure of this Agreement to address a particular permit, condition, term, or restriction shall not relieve owners or developers of sites within the Property of the necessity of complying with the law governing such permitting requirement, condition, term, or restriction. This Agreement has, however, been adopted with the same formalities for enacting ordinances in the City, and consequently has the effect of authorizing alternative procedures applicable only to the Property in regard to the designated permitting requirements, conditions, terms or restrictions specified herein.

2. Entire Agreement. This Agreement constitutes the complete and entire agreement between the Parties with respect to the subject matter hereof, and supersedes any and all prior agreements, arrangements or understandings, whether oral or written, among the Parties relating thereto.

3. Modification. This Agreement may not be assigned, amended, changed, or modified, and material provisions hereunder may not be waived, except by a written document approved by the City Commission and signed by the Parties to this Agreement, or their assigns, in accordance with the provisions of Section 163.3225 of the Act.

4. Advertising and Recording. Duke Realty shall pay all advertising and notice costs related to approval of this Agreement, as required by the Act. Within fourteen (14) days following the City's approval of this Agreement, the City, at Duke Realty's expense, shall record

a fully executed counterpart of this Agreement in the Public Records of Seminole County, Florida, in accordance with Section 163.3229 of the Act.

5. Covenant Running with the Land. Following the recordation of this Agreement, it shall be binding upon and inure to the benefit of the City and the owners of the Property. It shall also become a covenant running with title to the Property and shall be binding upon and inure to the benefit of any owner of all or a portion of the Property.

6. Benefitted Owners and Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the owners of parcels within the Property (the "Benefitted Owners"). Duke Realty has represented to the City that Duke Realty has sent individual notice of the public hearings held on this Development Agreement. No right or cause of action shall accrue by reason hereof to or for the benefit of any third party not specifically named as a Benefitted Owner herein and their successors in title. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the Benefitted Owners and their respective successors and assigns. Duke Realty has certified that, as of the effective date of this Agreement, the following entities are the Benefitted Owners under this Agreement:

<u>Parcel</u>	<u>Benefitted Owner</u>
A	BRE/COH FL LLC
B	BRE/COH FL LLC
C	DH Northpoint III, LLC
D	TPA Pelloni, LLC
E	TPA Pelloni, LLC
F	DRE/COH FL LLC
G	Duke Energy
1	EDROS Investments Corporation.
2	BRE/ESA P Portfolio LLC
3	BRE/Homestead Portfolio LLC
4	BRE/LQ FL Properties LLC
5	Pamela R. Filutowski
6	Scholastic Book Fairs, Inc.
6A	Scholastic Book Fairs, Inc.
7	Generation Suites of Lake Mary, LLC
8	Wachovia Trust Company
9	NorthPointe Officenter LLC

7. Remedies. In the event of a default in the performance of any obligation under this Agreement, and after the expiration of and an opportunity to cure for a period of thirty (30) days after receipt of written notice of default, either Party to this Agreement or a Benefitted Owner shall have the option to initiate an action at law for compensatory damages or in equity to enforce its rights under this Agreement, including but not limited to injunctive relief or specific performance.

8. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by either Party to this Agreement or a Benefitted Owner named in this Agreement, or substantially increase the burden of either Party to this Agreement or any Benefitted Owner, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

9. Attorneys' Fees and Costs. In the event of any action to enforce the terms of this Agreement, the predominantly prevailing party shall be entitled to recover reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in pre-litigation negotiation, litigation at the trial level, or upon appeal.

10. Choice of Law and Venue. Florida law shall govern the interpretation and enforcement of this Agreement. In any action or proceeding required to enforce or interpret the terms of this Agreement, venue shall be in Seminole County, Florida.

11. Construction of the Agreement. This Agreement is the result of negotiations between the City and Duke Realty, as the master developer of the Property, by and for the benefit of the Benefitted Owners, their successors and assigns. Each Party has contributed substantially and materially to the preparation of this Agreement. Accordingly, this Agreement shall not be construed more strictly against one Party than against the other Party.

12. Captions. The headings or captions for the Sections and Subsections contained in this Agreement are used for convenience and reference only, and do not, in themselves, have any legal significance.

13. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which, taken together, shall constitute one and the same document.

14. No Waiver of Regulatory Authority. Nothing in this Agreement constitutes or is intended to operate as a waiver of the City's regulatory authority or the application of any applicable laws, rules or regulations, except as specifically provided herein.

(Signatures on Following Pages)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year approved and signed.

Witnesses:

DUKE REALTY LIMITED PARTNERSHIP,
an Indiana limited partnership

Print Name _____

By: Duke Realty Corporation, an Indiana corporation, its general partner

Print Name _____

By: _____

Print Name: _____

Title: _____

Dated: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as _____ of Duke Realty Corporation, an Indiana corporation, as general partner of Duke Realty Limited Partnership, an Indiana limited partnership on behalf of said corporation and limited partnership. He/She is personally known to me or who has produced _____ as identification.

Notary Public

Name: _____

(Printed or Typed)

Commission No. _____

My Commission Expires: _____

(Signatures Continued on Next Page)

Witnesses:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

TPA PELLONI LLC, a Georgia limited liability company

By: Pelloni Real Estate Group, LLC,
a Florida limited liability company,
its Co-Manager

By: _____
Print Name: Justin J. Pelloni
Title: Managing Member

and

By: TPA Cumberland, LLC,
a Georgia limited liability company,
its Co-Manager

By: _____
Name: _____
Title: _____

Dated: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Justin A. Pelloni, as Managing Member of Pelloni Real Estate Group, the Co-Manager of TPA Pelloni, LLC, a Georgia limited liability company on behalf of said limited liability company. He is personally known to me or who has produced _____ as identification.

Notary Public
Name: _____

(Printed or Typed)

Commission No. _____

My Commission Expires: _____

(Signatures Continued on Next Page)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by _____, as _____ of TPA Cumberland, LLC, the Co-Manager of TPA Pelloni, LLC, a Georgia limited liability company on behalf of said limited liability company. He is personally known to me or who has produced _____ as identification.

Notary Public
Name: _____
(Printed or Typed)
Commission No. _____
My Commission Expires: _____

(Signatures Continued on Next Page)

Witnesses:

DUKE ENERGY FLORIDA, INC.
a Florida corporation d/b/a DUKE ENERGY

Print Name _____

By: _____

Print Name: Daniel Hendricks

Title: Manager of Land Services

Print Name _____

Dated: _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2014, by Daniel Hendricks, as Manager of Land Services of Duke Energy of Florida, Inc., a Florida corporation d/b/a Duke Energy, on behalf of said entity. He is personally known to me or who has produced _____ as identification.

Notary Public

Name: _____

(Printed or Typed)

Commission No. _____

My Commission Expires: _____

(Signatures Continued on Next Page)

ATTEST:

ACCEPTED BY THE CITY OF
LAKE MARY

Carol A. Foster, City Clerk

BY: _____
David J. Meador, Mayor

Dated: _____

Approved as to form for use and
reliance upon by the City of
Lake Mary, Florida.

Catherine D. Reischmann
City Attorney

EXHIBIT "A"

All that part of Government Lot 1, Section 13, Township 20 South, Range 29 East, Seminole County, Florida, lying Easterly of State Road 400 (Interstate 4); and also the West 330 feet of the Northwest 1/4 of the Northwest 1/4 of Section 18, Township 20 South, Range 30 East, LESS road right of way; and also that part of the Southwest 1/4 of the Northwest 1/4 of Section 18, lying North of the North line of Government Lot 2, Section 13, Township 20 South, Range 29 East, Seminole County, Florida, extended Easterly, lying westerly of Lake Emma Road.

AND

All those lands lying in Government Lot 2, Section 13, Township 20 South, Range 29 East, and Section 18, Township 20 South, Range 30 East, Lake Mary, Florida, described as follows: From the Southeast corner of Section 13, Township 20 South, Range 29 East, run along the Range line between Ranges 29 and 30, North 00°21'09" East, 33.00 feet to a point on the North right of way line of a City Road (66 feet wide); thence leaving said North right of way line continue along said Range Line North 00°21'09" East, 1,549.89 feet to the Point of Beginning; thence leaving said Range Line run North 89°53'23" West, 120.86 feet; thence run South 00°21'09" West, 272.06 feet; thence run North 89°54'20" West 1,161.11 feet to a point on the Easterly right of way line of State Highway 400 (I-4); thence run along said Easterly right of way line North 17°54'33" East, 1,390.09 feet to the North line of Government Lot 2, Section 13, Township 20 South, Range 29 East; thence leaving said Easterly right of way line, run along the North line of Government Lot 2, North 89°35'22" East, 862.07 feet to the Northeast corner of said Government Lot 2, thence run North 89°32'17" East 996.83 feet to a P.O.C. of a curve to the left on the Westerly right of way line of Lake Emma Road, having a radius of 799.20 feet and a central angle of 06°56'01"; thence along the Westerly right of way line of Lake Emma Road, run along the arc of said curve 96.71 feet to the P.T.; thence run South 04°28'02" West 467.61 feet to the P.C. of a curve to the left having a radius of 1,515.69 feet and a central angle of 19°20'17"; thence along the arc of said curve 511.57 feet to the P.T.; thence leaving said Westerly right of way line of Lake Emma Road, run North 89°53'23" West, 999.08 feet to the Point of Beginning, being in Seminole County, Florida.

AND

All those lands lying in Government Lot 2, Section 13, Township 20 South, Range 29 East, Lake Mary, Florida, described as follows: From the Southeast corner of Section 13, Township 20 South, Range 29 East, run along the Range Line between Ranges 29 and 30, North 00°21'09" East 33.00 feet to a point on the North right of way line of a City Road (66 feet wide); thence along said North right of way line, run North 89°56'38" West, 120.86 feet to the Point of Beginning; thence continuing along said North right of way line, run North 89°54'20" West, 1565.99 feet to a point on the Easterly right of way line of State Highway 400 (I-4); thence leaving said North right of way line of a City Road, run along the Easterly right of way line of State Highway 400, North 17°54'33" East, 1,342.20 feet; thence leaving said Easterly right of way line, run South 89°54'20" East, 1,161.11 feet; thence run South 00°21'09" West, 1,277.86 feet to the Point of Beginning, being in Seminole County, Florida.

SAID PROPERTY ALSO BEING DESCRIBED AS FOLLOWS:

A portion of Government Lot 1 in Section 13, Township 20 South, Range 29 East and a portion of Section 18, Township 20 South, Range 30 East, Seminole County, Florida, being more particularly described as follows:

From the Southeast corner of Section 13, Township 20 South, Range 29 East, run $N00^{\circ}20'12''E$, along the range line between Range 29 East and Range 30 East, a distance of 1582.89 feet for a POINT OF BEGINNING; thence $N89^{\circ}52'44''W$, a distance of 120.86 feet; thence $S00^{\circ}20'12''W$, a distance of 1549.98 feet to a point on the North right-of-way line of a city road, said point being 33.00 feet North of the South line of said Section 13; thence run $N89^{\circ}55'18''W$, parallel with said South line, a distance of 1566.73 feet to a point on the Easterly right-of-way line of Interstate Highway No. 4 (I-4) (S.R. 400); thence run $N17^{\circ}53'55''E$, along said right-of-way line, a distance of 4425.10 feet to a point on the limited access right-of-way line of said Interstate Highway No. 4, as described in O.R. Book 591, Page 394 of the Public Records of Seminole County, Florida, said point being on a curve concave Southeasterly having a radius of 1146.23 feet; thence from a tangent bearing of $N22^{\circ}22'08''E$, through a central angle of $47^{\circ}12'46''$, run Northeasterly along the arc of said curve, a distance of 944.51 feet to a point of tangency; thence continue along said right-of-way line $N69^{\circ}34'54''E$, a distance of 19.31 feet to a point on the East line of the West 330.00 feet of the Northwest 1/4 of the Northwest 1/4 of Section 18, Township 20 South, Range 30 East; thence departing said right-of-way line, run $S00^{\circ}09'03''W$, a distance of 1115.39 feet to the Southeast corner of said West 330.00 feet; thence run $S89^{\circ}51'11''E$, along the South line of the Northwest 1/4 of the Northwest 1/4 of said Section 18, a distance of 849.72 feet to a point on the West right-of-way line of Lake Emma Road as described in O.R. Book 1281 at Page 524 of the Public Records of Seminole County, Florida; thence run $S00^{\circ}12'40''W$, along said right-of-way line, a distance of 554.91 feet to the point of curvature of a curve concave Northwesterly having a radius of 633.20 feet; thence through a central angle of $29^{\circ}23'00''$, run Southwesterly along the arc of said curve, a distance of 324.73 feet to a point of tangency; thence continuing along the West right-of-way line of Lake Emma Road being 17.00 feet West of parallel and concentric with that 66.00 feet right-of-way as described in O.R. Book 319, at Page 138 of the Public Records of Seminole County, Florida, run $S29^{\circ}35'40''W$, a distance of 24.81 feet to the point of curvature of a curve concave Southeasterly having a radius of 799.20 feet; thence through a central angle of $25^{\circ}08'00''$, run Southwesterly along the arc of said curve a distance of 350.58 feet to a point of tangency; thence $S04^{\circ}27'40''W$, a distance of 467.80 feet to the point of curvature of a curve concave Easterly having a radius of 1515.39 feet, thence through a central angle of $19^{\circ}20'09''$, run Southeasterly along the arc of said curve, a distance of 511.40 feet; thence departing said curve and said right-of-way line, run $N89^{\circ}52'44''W$ parallel with the South line of the Southwest 1/4 of Section 18, Township 20 South, Range 30 East, a distance of 999.33 feet to the POINT OF BEGINNING.



MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: Bruce Fleming, Sr. Code Enforcement Officer

THRU: Steve Bracknell, Chief of Police
Colin Morgan, Deputy Chief

VIA: Jackie Sova, City Manager

SUBJECT: Request to reduce Code Enforcement Lien for 377 N. Country Club Road;
Robert Sabrkhani, Realty Executives (Bruce Fleming, Sr. Code
Enforcement Officer)

The Lake Mary Code Enforcement Board held a public hearing on the above styled case, May 21, 2013. The Board found that the property owner(s), Bank of America and Maria McGowan, had violated the Lake Mary Property Maintenance Code by failing to comply with the provisions of said code related to an overgrowth of weeds/grass, removal of all trash, debris and rubbish, and registering an abandoned foreclosed property with the office of the City Clerk. The property owner(s) were required to bring the property into compliance within 14 calendar days of the hearing or pay a fine of \$250 per day for each day the violation continued. The Board convened a compliance hearing on September 17, 2013, and determined that compliance had not been obtained; therefore, the Board ordered the lien of \$250/day be filed for 102 days of non-compliance beginning June 7, 2013, through September 17, 2013. The lien continued to accrue daily until November 23, 2013.

Code Enforcement conducted a subsequent inspection on November 25, 2013, which revealed compliance had been obtained. An Affidavit of Compliance was filed for a total of 169 days of non-compliance with an outstanding lien balance of \$42,250. The filing fees of \$47.00 and interest of \$837.45, calculated at 4% per annum, was also attached for a grand total of \$43,134.45 through December 31, 2013.

On November 27, 2013, the property owner(s) submitted a request for consideration by the Commission to reduce the outstanding lien to \$4,250. An inspection by Code Enforcement revealed the property remained in compliance at that time. The request was denied by the Commission.

On October 28, 2014, a request was received from the new property owner, Federal National Mortgage Association through its agent, Robert Sabrkhani of Realty Executives, for consideration of a lien reduction. The current outstanding balance through November 30, 2014 is \$42,250 for the code enforcement lien, \$2,429.75 interest calculated at 4% per annum, \$47.00 recording fees, \$570 attorney fees, and estimated staff time of \$950.00. The grand total outstanding is \$46,246.75.

RECOMMENDATION:

This property is currently in compliance with the Board's Order of May 21, 2013; therefore, staff offers no objection to consideration of abatement of the lien provided full remittance is made within 30 days of the reduction.

Carol Foster

From: Robert Sabrkhani <robert@realtyexecoffice.com>
Sent: Tuesday, October 28, 2014 10:01 AM
To: Carol Foster
Subject: 377 N. Country Club Rd, Lake Mary, FL 32746

Good morning, my name is Robert Sabrkhani with Realty Executives and i am the Broker in charge of this property. I have had this property since September and we imminently attended to the property and since have fixed it up and getting ready to market the property and hope to have a family move into this home soon, however the tax lien search is showing a lien from City of Lake Mary in the amount of \$44,995.94. The lien was placed when the original loan servicer was in charge of this property. We are requesting this amount to be reduced, i have worked with Orange County and Seminole County before and they normally reduce it to \$1000.00 and this was after they see we had done all the repairs and see that property is being maintained.

Please help me get this issue resolved so we can put the house on the market and find new home owners for this property.

Thank you.

--

Robert Sabrkhani

Realty Executives Seminole
VP of Operations
407.383.9994 | Cell
407.330.4884 | Office
407.330.7690 | Fax

[www.SearchHomes\(Orlando.com\)](http://www.SearchHomes(Orlando.com))

PREPARED BY: Bruce Fleming, City of Lake Mary, P. O. Box 958445, Lake Mary, FL 32795-8445
RETURN TO: Carol A. Foster, City of Lake Mary, P. O. Box 958445, Lake Mary, FL 32795-8445

MARYANNE MORSE, SEMINOLE COUNTY
CLERK OF CIRCUIT COURT & COMPTROLLER
BK 08170 Pgs 1523 - 1524; (2pgs)
CLERK'S # 2013150631
RECORDED 12/02/2013 01:27:10 PM
RECORDING FEES 18.50
RECORDED BY H DeVore

**AFFIDAVIT OF COMPLIANCE
NOTICE OF LIEN**

CITY OF LAKE MARY
Petitioner,

CEB CASE 13-046

vs

Bank of America
400 National Way
Simi Valley CA 93065
&
Maria McGowan
1697 Sharon Lane
Lancaster SC 29720

Respondent,

RE:
377 N Country Club Road
Lake Mary Florida 32746

**STATE OF FLORIDA
COUNTY OF SEMINOLE**



BEFORE ME, the undersigned authority, personally appeared Bruce Fleming, Code Enforcement Official for the City of Lake Mary, Florida, who after being duly sworn, deposes and says:

1. That, on May 21, 2013, the Board held a public hearing and issued its Order in the above styled matter.
2. That, pursuant to said Order, Respondent(s) were found to have violated Chapter 91 Health and Public Safety, §91.75 Property Maintenance Code (D) Property Maintenance Requirements
3. That, pursuant to said Order, Respondent Bank of America, as mortgagee, and Respondent Maria McGowan were required to correct the overgrowth violations and accumulations of trash, junk, debris and rubbish cited in the Notice of Violation document within fourteen (14) days of the hearing, or pay a fine of \$250 per day for each day the violation(s) continued.

4. That, a Compliance Hearing on September 17, 2013 revealed the trash, rubbish and debris remained on the property and the Respondent(s) had failed to comply with the Board's previous Order, therefore a fine of \$25,000 was filed against the property as a lien and continued to accrue at 4% per annum.
5. That, a subsequent inspection on November 23, 2013 revealed that the outstanding issues had been resolved and the property was in compliance with the previous order.
6. That, the outstanding lien of \$42,250 for 169 days of non-compliance @ 4% per annum is therefore attached.

**FURTHER AFFIANT SAYETH NOT.
DATED this 25th day of November, 2013**

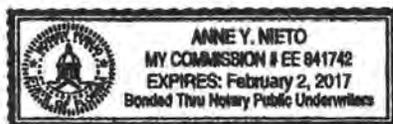


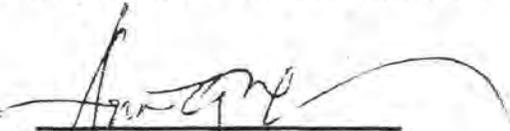
**Bruce Fleming
Sr. Code Enforcement Officer
Lake Mary Police Department**

I hereby certify that a true and correct copy of the foregoing has been provided this 25th day of November 2013, by U.S. mail to the property owner(s)/agent(s).

**STATE OF FLORIDA
COUNTY OF SEMINOLE**

The foregoing instrument was acknowledged before me this 25th day of November 2013, by Bruce Fleming, who is personally known to me and who did take an oath.





**Anne Nieto
Notary Public
State of Florida at Large**

Remit payment to the City of Lake Mary, attention City Clerk, PO Box 958445 Lake Mary FL 32795 or in person to 100 N. Country Club Road, Lake Mary Florida, Office of the City Clerk



MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: Gary Schindler, City Planner

THRU: John Omana, Community Development Director

VIA: Jackie Sova, City Manager

SUBJECT: Ordinance No. 1520 - Establishing a temporary moratorium of two hundred and seventy days prohibiting the operation of any medical marijuana facilities within the city - First Reading (Public Hearing) (Gary Schindler, City Planner)

APPLICANT: City of Lake Mary

REFERENCE: City of Lake Mary Comprehensive Plan and State Statutes.

REQUEST: The applicant requests the adoption of an ordinance establishing a Moratorium of two hundred-seventy (270) days in length prohibiting the establishment of medical marijuana dispensaries and other related uses within the City of Lake Mary. The purpose of the moratorium is to allow the City time to analyze the rules and regulations to be developed by the Florida Department of Health. The moratorium will allow the City to develop land use regulations that are compatible with state regulations.

DISCUSSION: On November 4, 2014, Florida voters shall have the opportunity to reject or approve an amendment to the State Constitution to allow the use of medical marijuana. If the amendment is approved, the State Department of Health has six months to develop rules and regulations regarding medical marijuana.

On August 21, 2014, the Lake Mary City Commission held a workshop to discuss the issue of medical marijuana. The memo provided to the City Commission identified a host of issues that local governments must address. A copy of the August 21, 2014 memo is attached.

Although the City Commission did not take formal action on this issue, there was consensus that staff should prepare a moratorium for their review and action on November 6, 2014, the first meeting after the General Election. The moratorium will allow the City time to thoroughly analyze the new rules and regulations before the City Commission decides upon whether or not to take action locally.

RECOMMENDATION: Staff recommends approval of the proposed 270 day moratorium.

PLANNING & ZONING BOARD: At their regular October 14, 2014 meeting, the P&Z voted unanimously to recommend approval of the proposed moratorium on medical marijuana dispensaries.

ATTACHMENTS:

- Ordinance
- August 21, 2014 Workshop Memo
- Minutes

ORDINANCE NO. 1520

AN ORDINANCE OF THE CITY OF LAKE MARY, FLORIDA ESTABLISHING A TEMPORARY MORATORIUM OF TWO HUNDRED AND SEVENTY DAYS (270) PROHIBITING THE OPERATION OF ANY MEDICAL MARIJUANA FACILITIES WITHIN THE CITY OF LAKE MARY, AND ON THE ISSUANCE OF BUSINESS TAX RECEIPTS, DEVELOPMENT ORDERS OR PERMITS FOR MEDICAL MARIJUANA FACILITIES, WITHIN THE CITY LIMITS IN ORDER TO PROVIDE THE CITY AN OPPORTUNITY TO REVIEW AND ENACT REGULATIONS GOVERNING SAID ACTIVITIES; ESTABLISHING A PURPOSE AND INTENT; PROVIDING DEFINITIONS; MAKING CERTAIN FINDINGS; PROVIDING FOR VESTED RIGHTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR NON-CODIFICATION AND PROVIDING FOR EFFECTIVE DATE.

WHEREAS, the City is granted the authority, under Section 2(b), Article VIII, of the State Constitution, to exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, a ballot initiative has been scheduled for state wide vote in November 2014, as a constitutional amendment to allow the dispensing and use of marijuana for medical purposes by persons with debilitating diseases;

WHEREAS, the measure would legalize the medical use of marijuana, allow caregivers to assist with the medical use of marijuana, and directs the Florida Department of Health to register and regulate centers in the production and distribution of medical marijuana and to issue identification cards to certain patients and caregivers utilizing medical marijuana; and

WHEREAS, in 1996, the state of California became the first state to legalize the use of medical marijuana, and several other states subsequently enacted laws legalizing medical marijuana in various circumstances; and

WHEREAS, the California Police Chiefs Association developed a Task Force on Marijuana Dispensaries that prepared the “White Paper on Marijuana Dispensaries” (“White Paper”), which White Paper was published in 2009; and

WHEREAS, the White Paper examined the direct and indirect adverse impacts of marijuana dispensaries in local communities and indicated that marijuana dispensaries may attract or cause ancillary crimes, and may result in adverse effects, such as marijuana smoking in public, the sale of other illegal drugs at dispensaries, loitering and nuisances, and increased traffic near dispensaries; and

WHEREAS, the White Paper further indicates that the presence of marijuana dispensing businesses in a community may contribute to the existence of a secondary market for illegal, street-level distribution of marijuana; and

WHEREAS, the White Paper outlines the following typical complaints received from individuals regarding certain marijuana dispensary areas: high levels of traffic going to and from the dispensaries, people loitering in the parking lot of the dispensaries, people smoking marijuana in the parking lot of the dispensaries, vandalism near dispensaries, threats made by dispensary employees to employees of other businesses, and citizens worried that they may become crime victims due to their proximity to dispensaries; and

WHEREAS, the White Paper found that many medical marijuana dispensary owners had histories of drug and violence-related arrests, that records or lack of records showed that some owners were not properly reporting income generated from the sales of marijuana, that some medical marijuana businesses were selling to individuals without serious medical conditions, and that the California law had no guidelines on the amount of marijuana which could be sold to an individual; and

WHEREAS, the White Paper ultimately concludes that there are many adverse secondary effects created by the presence of medical marijuana dispensaries in communities; and

WHEREAS, the City of Lake Mary regulates the use of land through its Comprehensive Plan and its Land Development Regulations; and

WHEREAS, the City of Lake Mary does not currently have definitions or regulations within its Land Development Regulations for medical marijuana treatment centers, medical marijuana dispensaries, medical marijuana facilities, medical marijuana caregivers, or activities pertaining to medical marijuana; and

WHEREAS, the City Commission of Lake Mary desires for its staff to have sufficient time to review and make recommendations for the enactment of regulations governing said activities; and

WHEREAS, the City believes that by establishing a moratorium for 270 days on the issuance of business tax receipts or land use approvals for medical marijuana treatment centers, medical marijuana dispensaries, and medical marijuana facilities, the City will have the opportunity to research and study various regulatory options; and

WHEREAS, the City Commission finds it is in the best interest of the citizens of the City to minimize and control the adverse effects of medical marijuana treatment centers, medical marijuana dispensaries, and medical marijuana facilities, and thereby protect the health, safety, and welfare of the citizenry; protect the citizens from increased crime; preserve the quality of life and preserve property values, by adopting appropriate regulations; and

WHEREAS, the City of Lake Mary has authority in accordance with the Florida Constitution, Chapter 163 and 166 of the Florida Statutes to enact regulations in the interest of the public health, safety and welfare of its citizens; and

WHEREAS, On October 14, 2014, the Planning and Zoning Board reviewed and recommended approval of the proposed moratorium.

IT IS HEREBY ENACTED BY THE CITY OF LAKE MARY AS FOLLOWS:

Section 1. Purpose and Intent. The foregoing “Whereas” clauses are hereby ratified and affirmed as being true and correct and are incorporated herein by reference.

Section 2. Definitions. For purposes of this ordinance, the following terms shall be defined as follows:

“Marijuana” has the meaning given cannabis in Section 893.02(3), Florida Statutes.

“Medical Marijuana Dispensary” means a business operation for the distribution of medical marijuana or related supplies, whether a principal use or accessory use, pursuant to the Florida Right to Medical Marijuana Initiative, Amendment 2, constitutional amendment or any other provision of Florida law.

“Medical Marijuana Treatment Center” means any entity that acquires, cultivates, possesses, processes (including development of related products such as food, tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, or administers marijuana, products containing marijuana, related supplies, or educational materials to qualifying patients or their personal caregivers and is registered by the Department of Health.

“Medical Marijuana Facility” means any authorized Medical Marijuana Treatment Center, Medical Marijuana Dispensary, or any other facility that dispenses, processes, cultivates, distributes, sells, or engages in any other activity that involves or is related to

medical marijuana pursuant to the Florida Right to Medical Marijuana Initiative, Amendment 2 or any other provision of Florida law.

Section 3. Moratorium Imposed. The City of Lake Mary hereby prohibits the operation of any medical marijuana facility in the City of Lake Mary, and a zoning moratorium is hereby declared and imposed as follows:

1. The City shall not accept, process or approve any application for business tax receipts, building permits, land use/zoning permits, or any other development permits concerning or related to any and all medical marijuana facilities, including but not limited to marijuana production, processing, storage or distribution facilities within the City's corporate limits.
2. The City of Lake Mary shall not accept, process or approve any business tax receipt, building permits, land use/zoning permits, or any other development permits concerning or related to any and all medical marijuana facilities, including but not limited to marijuana production, processing, storage or distribution facilities within the City's corporate limits.
3. The City of Lake Mary shall not process or approve any permits, licenses or approvals for any property, entity, or individual for the sale or distribution of medical marijuana, or for the operation of any authorized medical marijuana treatment facilities so long as this ordinance is in effect. No person, corporation, partnership or other entity shall establish, operate or engage in any medical marijuana facility, including but not limited to marijuana production, processing, or distribution within the City of Lake Mary.
4. Nothing in this temporary moratorium shall be construed to prohibit the medical use of marijuana or low-THC cannabis by a qualified patient, as

determined by a licensed Florida physician, pursuant to Amendment 2, Florida Statutes § 381.986 or other Florida law.

Section 4. Duration of Moratorium. The moratorium imposed by this ordinance shall be effective until August 17, 2015 unless rescinded sooner.

Section 5. Vested Rights Relief Procedure.

(a) The owner or owners of real property may request a determination of vested rights by filing a technically complete application with the City Manager.

(b) The application form shall, at a minimum, contain the following information:

(1) A legal description, current tax parcel identification number and survey or sketch of the real property which is the subject of the application.

(2) A site or development plan or plat for the real property.

(3) Identification of any ordinance, resolution or other action of the City or failure to act by the City, upon which the applicant relied and which the applicant believes supports the applicant's position.

(4) A statement of fact which the applicant intends to prove in support of the application that vested rights exist. The application shall fully articulate the legal basis for being allowed to proceed with development notwithstanding the moratorium.

(5) Such other relevant information that the City Commission may request or the applicant may desire to have initially considered.

(c) The application shall provide a sworn statement to be executed by all owners of the real property that all information set forth on the application is true and correct.

(d) The City Manager shall screen each application for a vested rights determination to determine whether the application is technically complete. If not technically complete, the application shall be promptly returned to the applicant, and the applicant shall be granted fourteen (14) additional calendar days to complete this application.

(e) Upon the City Manager accepting a technically complete application, for which the application fee has been submitted, the City Commission shall review the application and hold a public hearing and make a final determination within twenty-one (21) calendar days as to whether or not it has been clearly and convincingly demonstrated that the real property subject to the application has vested rights. Within seven (7) calendar days after making a final determination of vested rights status, the City Commission shall provide the applicant with written notification of the determination of vested rights status.

(f) Decisions made by the City Commission pursuant to this Ordinance may be appealed by the real property owners to the Circuit Court in and for Seminole County, Florida.

Section 6. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance, or application hereof, is held or declared to be unconstitutional, inoperative or void, such holding of invalidity shall not affect the remaining portions of this Ordinance and shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative parts

therein, and the remainder of this Ordinance, after the exclusion of such part or parts, shall be deemed to be held valid as if this ordinance had been adopted without such unconstitutional, invalid or inoperative part therein and if this Ordinance or any provision thereof, shall be held inapplicable to any person, group of persons, property, kind of property, circumstances, or set of circumstances, such holding shall not affect the application thereof to any other person, property or circumstances.

Section 7. Non-Codification. The provisions of this Ordinance shall not be included and incorporated within the Code of Ordinances of the City of Lake Mary.

Section 8. Effective Date. This Ordinance shall become effective upon the adoption of Section 29 to Article X of the Florida Constitution, if adopted. The temporary moratorium shall terminate two hundred seventy (270) days from the effective date of this ordinance, unless the City Commission rescinds or extends the moratorium by subsequent ordinance.

FIRST READING: November 6, 2014

SECOND READING: November 20, 2014

PASSED AND ADOPTED this 20th day of November, 2014.

CITY OF LAKE MARY, FLORIDA

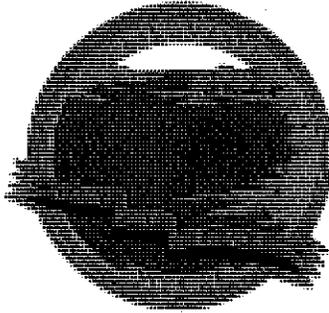
ATTEST:

Carol A. Foster, City Clerk

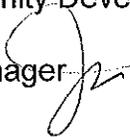
David J. Mealor, Mayor

FOR THE USE AND RELIANCE OF THE
CITY OF LAKE MARY ONLY. APPROVED
AS TO FORM AND LEGAL SUFFICIENCY:

CATHERINE D. REISCHMANN
CITY ATTORNEY



MEMORANDUM

DATE: August 21, 2014
TO: Mayor and City Commission
FROM: Gary Schindler, City Planner
THRU: John Omana, Community Development Director
VIA: Jackie Sova, City Manager 
SUBJECT: Medical Marijuana

DISCUSSION: On November 4, 2014, the residents of the State of Florida will have the opportunity to vote on an amendment to the State Constitution to allow the use of marijuana for medical purposes. Should the proposed constitutional amendment to allow medical marijuana pass, the Seminole County Sheriff plans to challenge the law and prohibit medical marijuana dispensaries throughout the County.

If the Sheriff is not successful, local governments could subsequently adopt zoning and separation criteria for medical marijuana dispensaries. In light of these "what ifs" and in an effort to be proactive, staff has studied specific changes to the City's Land Development Code in an attempt to deal with where medical marijuana dispensaries may locate.

In developing potential revisions to the City's existing Code of Ordinances, the following criteria need to be taken into consideration:

1. **Issues for Local Governments to Consider** – There are a number of issues with which local governments shall be faced. These include the following: 1) prohibition; 2) the impacts of dispensaries on existing development; 3) zoning; 4) security standards; 5) permitting; 6) smoking bans; 7) fire hazard; 8) licensing requirements; 9) drug testing of employees; 10) law enforcement. There is also the issue of how to treat mainstream pharmacies that fill prescriptions for medicines containing synthetic THC.

2. **Zoning & Location Requirements** - Staff has considered treating medical marijuana dispensaries comparable to pain management clinics. As such, they would be conditional uses and allowed to locate in the M-1A & the M-2A zoning districts. Additionally, the separation requirements associated with pain management clinics would also be proposed for the medical marijuana dispensaries. Separation would be required between dispensaries; and between dispensaries and pain management clinics; daycare centers; houses of worship; schools; congregate living facilities; nursing homes, and residences. The regulations would propose hours of operation and would prohibit loitering and the on-site consumption of alcohol beverages.

The final details of any local regulations regarding the zoning and separation requirements of medical marijuana dispensaries will depend upon the specifics of the documents that come out of Tallahassee, if it is approved in November.

3. **Other Local Governments** - Attached is a table showing what other local governments are doing.
4. The City Attorney has provided several documents related to medical marijuana. These are as follows: 1) Florida League of Cities – Medical Marijuana; 2)US Department of Justice – Memorandum for all United States Attorneys & 3) California Police Chiefs Association’s Task Force on Marijuana Dispensaries - White Paper of Marijuana Dispensaries.

REQUEST FOR DIRECTION: Staff requests City Commission input and direction regarding the issue of regulating medical marijuana dispensaries.

ATTACHMENTS:

- Pain Management Clinics regulations
- Table of Other Local Governments
- Florida League of Cities Memorandum – Medical Marijuana
- US Department of Justice Memo – Guidance Regarding Marijuana Related Financial Crisis
- California Police Chiefs Association’s Task Force on Marijuana Dispensaries - White Paper of Marijuana Dispensaries

**CITY OF LAKE MARY
PAIN MANAGEMENT CLINIC REGULATIONS**

Section 154.65, M-1A, Office and Light Industrial District, Section B (2) (l), Pain management clinic.

- (1) Such uses shall comply with the following criteria:
 - a. No co-location (on the same property) with a pharmacy;
 - b. Minimum separation of a 1,000 feet from another pain management clinic, or any pre-existing pharmacy, school (VPK through 12), place of worship, daycare center, congregate living facilities, nursing homes or residential dwelling unit(s) unless a variance is granted pursuant to Section 154.31 of the City's Code of Ordinances;
 - c. Maximum hours of operation shall not exceed 7 a.m. to 9 p.m. of the same day;
 - d. Shall not restrict payment options to "cash only";
 - e. No outdoor customer seating areas, queues or waiting areas;
 - f. All activities shall be conducted within a building, and adequate indoor waiting areas shall be provided;
 - g. No on-site consumption of alcoholic beverages, including parking areas.

- (2) A Business Tax Receipt issued by the City of Lake Mary is required for a pain management clinic to operate. In part, the issuance of a Business Tax Receipt is contingent upon the following:
 - a. Documentation that owner(s) of the pain management clinic is a physician(s) licensed to practice in the State of Florida;
 - b. Documentation that the owner(s), physician(s) and/or clinic employees have not been charged with a disciplinary action and/or convicted of a felony within the last five (5) years.
 - c. Documentation of State registration under section 458.3265 or section 459.0137, or documents evidencing that the clinic does not need to register with the State.

- (3) Noncompliance with the provisions of (2) (a) through (c) above is grounds for the City to deny a request for the issuance of a Business Tax Receipt and the revocation of a previously issued Business Tax Receipt.

- (4) This section shall not be construed as authorizing a "pill mill" which is prohibited by section 154.120 of the City's Code of Ordinances.

OTHER LOCAL GOVERNMENTS

Government	Summary of proposed action
Deltona	Staff recommended allowing dispensaries only in Heavy Commercial zoning district. City Commission has directed City Attorney to review the draft proposal.
Winter Park	Draft regulations have been prepared. The draft contains separation from sensitive land uses as well as standards for dispensaries similar to those of Lake Mary's pain management clinics.
Cape Canaveral	Pain management clinics and medical marijuana dispensaries are combined. Dispensaries are allowed as special exceptions in some commercial and industrial zoning districts.
Cocoa Beach	The City has adopted regulations to allow both medical marijuana dispensaries, which at a later date could be used for the sale of recreational marijuana, if allowed by the state. Dispensaries are allowed as special exceptions in the General Commercial zoning district. The regulations include criteria of dispensaries and separation requirements comparable to those for pain management clinics.
Sanford	Sanford is in the very beginning of the process.
Seminole County	The BCC has not yet provided direction to staff regarding this matter.
Tavares	Ordinance has had 1 st reading. Dispensaries to be permitted use in Highway Commercial zoning districts.
Longwood	The City of Longwood has drafted an ordinance; however, it is on hold until the City Commission decides how they want to proceed.
Winter Springs	The City of Winter Springs has drafted an ordinance; however, it is on hold until the City Commission decides how they want to proceed.
Oviedo	The City of Oviedo is just beginning the process. They have not yet scheduled any formal workshops or meetings to discuss the issue.
Altamonte Springs	Has not yet started the process.

MEDICAL MARIJUANA

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Florida League of Cities
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I. 2014 MEDICAL MARIJUANA LEGISLATION

“The Compassionate Medical Cannabis Act of 2014” (CS/CS/SB 1030) allows the use of low-THC cannabis to treat certain specified medical conditions such as epilepsy and ALS (Lou Gehrig’s disease). The strain of low-THC marijuana which has been legalized is popularly known as “Charlotte’s Web” and is administered in an oil or capsule form. This differs from Amendment 2, which would legalize all forms of cannabis to treat a wider variety of medical conditions. The legislation does not contain any provisions which preempt municipalities from enacting ordinances relating to medical marijuana.

The legislation provides the Florida Department of Health (DOH) rulemaking authority to establish the framework for the implementation and regulation of medical marijuana. DOH held the first workshop on its draft rules on July 7, 2014. The draft rules do not contain any provisions which preempt municipalities from enacting ordinances relating to medical marijuana. There are provisions in the draft rules which do provide state regulations of interest to municipalities.

- A marijuana dispensing organization facility (includes buildings where marijuana is grown as well as physically dispensed) may not be located within 500 feet of a private or public school which was in existence prior to the dispensing organization’s application to DOH
- A marijuana dispensary must be open at least 30 hours per week between the hours of 7:00 AM and 10:00 PM
- Allows law enforcement agencies to enter dispensing organization facilities and to access the “Compassionate Use Registry” of persons eligible for medical marijuana
- DOH will take public access, right-of-way, and parking needs into consideration when granting an application to become a dispensing organization

The legislation divided Florida into five regions for licensing purposes. In each region, only one company is eligible to become a medical marijuana dispensary licensed by DOH. There is some debate over whether the physical dispensing of the marijuana should occur in the same location as the marijuana is cultivated, or whether an eligible company could open several stores in their region to dispense marijuana which is cultivated off-site. If multiple dispensaries were permitted, municipalities could be greatly impacted as the companies would likely seek to open dispensaries in areas of established infrastructure and high population density.

During public comments at the rule hearing, questions regarding zoning and the ability of local governments to regulate medical marijuana were raised, with some advocating treating the dispensaries no different than drugstores. The concern of these advocates is local governments enacting restrictive ordinances which would effectively prohibit dispensaries from operating in city limits. DOH did not give any indication of its position on this issue. The next hearing will be in late July or early August.

II. AMENDMENT 2 – 2014 GENERAL ELECTION

In the 2014 general election, Florida voters will be asked to cast a “yes” or “no” vote on Amendment 2 which, per the ballot title, would allow for the “Use of Marijuana for Certain Medical Conditions.” Voters must approve the Amendment by a 60% majority. Several recent polls have shown support at or above the 60% threshold.

The Amendment does the following:

1. Authorizes use of medical marijuana
2. Specifies certain medical conditions which make a patient eligible for medical marijuana
3. Defines terms necessary for implementation and rulemaking by the Florida department of Health (DOH)
4. Requires DOH to promulgate implementing regulations within six months
5. Requires DOH to begin registering marijuana treatment centers and issuing identification cards to qualifying patients within nine months
6. Permits the Legislature to enact laws consistent with the Amendment

Absent from the text of the Amendment is any reference to the role of local government in its implementation and regulation. Since the Amendment leaves all discretion to the DOH and the Legislature on how the Amendment will be implemented, municipalities may wish to wait for guidance from the state. However, we do not recommend that approach.

Per the Amendment, two parties are involved in promulgating and implementing regulations, DOH and the Legislature. The regulatory framework provided by DOH will likely be based on the rules promulgated in implementing the 2014 “Charlotte’s Web” legislation. The Legislature’s involvement during the 2015 session will likely depend on the final rules adopted by DOH. Further clouding the issue is the 2014 gubernatorial race, with one candidate in favor of the Amendment and one candidate opposed. Depending on the outcome, the regulations promulgated by DOH could differ greatly.

III. ISSUES FOR MUNICIPALITIES TO CONSIDER

The 2014 "Charlotte's Web" legislation and the possible passage of Amendment 2 provide much uncertainty to municipalities as to how medical marijuana will be regulated on a statewide level and what role local governments will be able to play (or be preempted) in its regulation in the future. In the event a municipality wants enact any ordinances prior to the rules being issued by the Department of Health (DOH) or any further action by the Legislature, here are some concepts to consider:

- **Prohibition:** A complete prohibition on the operation of "medical marijuana treatment centers" as defined in Amendment 2 and "dispensing organizations" as defined in the 2014 legislation in s. 381.986, F.S.
- **Impacts:** The locations of marijuana cultivation and dispensaries may impact municipalities in several ways:
 - Increased traffic flow, interference with the adjacent right-of-way, and limited parking similar to past experiences with pain clinics.
 - The odor of marijuana is very strong. All buildings in the area surrounding the dispensary could be negatively affected.
 - Marijuana dispensaries in other states have been unable to deposit cash in banks due to the banks' concerns over violating federal money laundering laws. Any business with a large amount of cash on hand risks criminal activity such as robberies and burglaries.
- **Zoning:** If a municipality does not change its zoning ordinances, marijuana dispensaries are likely to be located in areas where medical offices and pharmacies currently exist. Many cities in other states have restricted dispensaries to areas which have been zoned for industrial use. While DOH has promulgated a draft rule which restricts a marijuana dispensing organization from being located within 500 feet of a school, a municipality may want to go beyond this limitation and add additional setback requirements. Municipalities may want to review the zoning requirements in adult entertainment ordinances for guidance.
- **Security standards:** Although municipalities are preempted from adopting security standards for convenience stores pursuant to s. 812.1725, F.S., there are no such preemptions in Amendment 2, the 2014 legislation, or DOH draft rules. The state standards for convenience store security in s. 812.173, F.S. may be a useful template for any municipal ordinances regulating marijuana dispensaries
- **Permitting:** In addition to other restrictions, municipalities in other states have added a licensing requirement for medical marijuana dispensaries. The municipalities have then restricted the number of permits which may be issued at any one time. Municipalities may want to review the permitting requirements in adult entertainment ordinances for guidance.
- **Smoking bans:** As stated above, the smoke and strong odor of marijuana can be a nuisance. No law or draft rule prohibits municipalities from treating marijuana in the same manner as is currently allowed for tobacco products. In fact, the website of the

group pushing Amendment 2 contains specific language that their intent is for the smoking medicinal marijuana to be treated in a manner identical to tobacco. While the opinion of this group are neither law nor rule, the stated intent of the group is positive for municipal regulation authority.

- **Utility impacts:** Other states have reported the amount of electricity needed to grow marijuana has, in some circumstances, significantly increased demand on the power grid. Municipalities which operate municipal utilities may want to consider reviewing current policies on the use of electricity. Municipalities may also want to consider the existing utility infrastructure in making a determination of where dispensaries may be located.
- **Fire:** The processing equipment and contents of marijuana dispensaries are extremely flammable. Municipalities may want to consider setback requirements and the impact on fire services when making decisions on where dispensaries can be located.
- **Licensing requirements / Fees:** In a manner similar to the establishment of security requirements, municipalities may want to consider any additional licensing requirements and fees required for dispensaries to operate in city limits. While cities may not levy sales taxes on marijuana as they have been permitted to do in Colorado, other fees and business taxes may be available for municipalities to pursue.
- **Drug testing of employees:** The Supreme Courts of several states have held because marijuana is still a banned substance under federal law, an employee may be discharged for a positive marijuana drug test even if the employee is permitted to use medicinal marijuana under state law. Florida courts have not had the opportunity to consider the matter. Although these decisions are not binding in Florida, they may be persuasive when such a case arises. Municipalities may want to amend their employment policies consistent with these decisions.
- **Law enforcement:** The initial draft of DOH rules allow law enforcement agencies to enter marijuana dispensaries and access the "Compassionate Use Registry." Municipal law enforcement agencies may want to consider creating policies and procedures for when and how to enter a dispensary or access the Registry.

Several municipalities have already enacted ordinances related to medical marijuana dispensaries. Copies of these ordinances can be obtained by contacting Ryan Padgett, Assistant General Counsel, Florida League of Cities.



U.S. Department of Justice

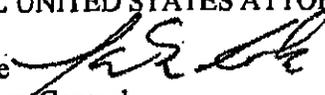
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

February 14, 2014

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: James M. Cole 
Deputy Attorney General

SUBJECT: Guidance Regarding Marijuana Related Financial Crimes

On August 29, 2013, the Department issued guidance (August 29 guidance) to federal prosecutors concerning marijuana enforcement under the Controlled Substances Act (CSA). The August 29 guidance reiterated the Department's commitment to enforcing the CSA consistent with Congress' determination that marijuana is a dangerous drug that serves as a significant source of revenue to large-scale criminal enterprises, gangs, and cartels. In furtherance of that commitment, the August 29 guidance instructed Department attorneys and law enforcement to focus on the following eight priorities in enforcing the CSA against marijuana-related conduct:

- Preventing the distribution of marijuana to minors;
- Preventing revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
- Preventing the diversion of marijuana from states where it is legal under state law in some form to other states;
- Preventing state-authorized marijuana activity from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;
- Preventing violence and the use of firearms in the cultivation and distribution of marijuana;
- Preventing drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
- Preventing the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
- Preventing marijuana possession or use on federal property.

Under the August 29 guidance, whether marijuana-related conduct implicates one or more of these enforcement priorities should be the primary question in considering prosecution

under the CSA. Although the August 29 guidance was issued in response to recent marijuana legalization initiatives in certain states, it applies to all Department marijuana enforcement nationwide. The guidance, however, did not specifically address what, if any, impact it would have on certain financial crimes for which marijuana-related conduct is a predicate.

The provisions of the money laundering statutes, the unlicensed money remitter statute, and the Bank Secrecy Act (BSA) remain in effect with respect to marijuana-related conduct. Financial transactions involving proceeds generated by marijuana-related conduct can form the basis for prosecution under the money laundering statutes (18 U.S.C. §§ 1956 and 1957), the unlicensed money transmitter statute (18 U.S.C. § 1960), and the BSA. Sections 1956 and 1957 of Title 18 make it a criminal offense to engage in certain financial and monetary transactions with the proceeds of a "specified unlawful activity," including proceeds from marijuana-related violations of the CSA. Transactions by or through a money transmitting business involving funds "derived from" marijuana-related conduct can also serve as a predicate for prosecution under 18 U.S.C. § 1960. Additionally, financial institutions that conduct transactions with money generated by marijuana-related conduct could face criminal liability under the BSA for, among other things, failing to identify or report financial transactions that involved the proceeds of marijuana-related violations of the CSA. *See, e.g.,* 31 U.S.C. § 5318(g). Notably for these purposes, prosecution under these offenses based on transactions involving marijuana proceeds does not require an underlying marijuana-related conviction under federal or state law.

As noted in the August 29 guidance, the Department is committed to using its limited investigative and prosecutorial resources to address the most significant marijuana-related cases in an effective and consistent way. Investigations and prosecutions of the offenses enumerated above based upon marijuana-related activity should be subject to the same consideration and prioritization. Therefore, in determining whether to charge individuals or institutions with any of these offenses based on marijuana-related violations of the CSA, prosecutors should apply the eight enforcement priorities described in the August 29 guidance and reiterated above.¹ For example, if a financial institution or individual provides banking services to a marijuana-related business knowing that the business is diverting marijuana from a state where marijuana sales are regulated to ones where such sales are illegal under state law, or is being used by a criminal organization to conduct financial transactions for its criminal goals, such as the concealment of funds derived from other illegal activity or the use of marijuana proceeds to support other illegal activity, prosecution for violations of 18 U.S.C. §§ 1956, 1957, 1960 or the BSA might be appropriate. Similarly, if the financial institution or individual is willfully blind to such activity by, for example, failing to conduct appropriate due diligence of the customers' activities, such prosecution might be appropriate. Conversely, if a financial institution or individual offers

¹ The Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) is issuing concurrent guidance to clarify BSA expectations for financial institutions seeking to provide services to marijuana-related businesses. The FinCEN guidance addresses the filing of Suspicious Activity Reports (SAR) with respect to marijuana-related businesses, and in particular the importance of considering the eight federal enforcement priorities mentioned above, as well as state law. As discussed in FinCEN's guidance, a financial institution providing financial services to a marijuana-related business that it reasonably believes, based on its customer due diligence, does not implicate one of the federal enforcement priorities or violate state law, would file a "Marijuana Limited" SAR, which would include streamlined information. Conversely, a financial institution filing a SAR on a marijuana-related business it reasonably believes, based on its customer due diligence, implicates one of the federal priorities or violates state law, would label the SAR "Marijuana Priority," and the content of the SAR would include comprehensive details in accordance with existing regulations and guidance.

services to a marijuana-related business whose activities do not implicate any of the eight priority factors, prosecution for these offenses may not be appropriate.

The August 29 guidance rested on the expectation that states that have enacted laws authorizing marijuana-related conduct will implement clear, strong and effective regulatory and enforcement systems in order to minimize the threat posed to federal enforcement priorities. Consequently, financial institutions and individuals choosing to service marijuana-related businesses that are not compliant with such state regulatory and enforcement systems, or that operate in states lacking a clear and robust regulatory scheme, are more likely to risk entanglement with conduct that implicates the eight federal enforcement priorities.² In addition, because financial institutions are in a position to facilitate transactions by marijuana-related businesses that could implicate one or more of the priority factors, financial institutions must continue to apply appropriate risk-based anti-money laundering policies, procedures, and controls sufficient to address the risks posed by these customers, including by conducting customer due diligence designed to identify conduct that relates to any of the eight priority factors. Moreover, as the Department's and FinCEN's guidance are designed to complement each other, it is essential that financial institutions adhere to FinCEN's guidance.³ Prosecutors should continue to review marijuana-related prosecutions on a case-by-case basis and weigh all available information and evidence in determining whether particular conduct falls within the identified priorities.

As with the Department's previous statements on this subject, this memorandum is intended solely as a guide to the exercise of investigative and prosecutorial discretion. This memorandum does not alter in any way the Department's authority to enforce federal law, including federal laws relating to marijuana, regardless of state law. Neither the guidance herein nor any state or local law provides a legal defense to a violation of federal law, including any civil or criminal violation of the CSA, the money laundering and unlicensed money transmitter statutes, or the BSA, including the obligation of financial institutions to conduct customer due diligence. Even in jurisdictions with strong and effective regulatory systems, evidence that particular conduct of a person or entity threatens federal priorities will subject that person or entity to federal enforcement action, based on the circumstances. This memorandum is not intended, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. It applies prospectively to the exercise of prosecutorial discretion in future cases and does not provide defendants or subjects of enforcement action with a basis for reconsideration of any pending civil action or criminal prosecution. Finally, nothing herein precludes investigation or prosecution, even in the absence of any one of the factors listed above, in particular circumstances where investigation and prosecution otherwise serves an important federal interest.

² For example, financial institutions should recognize that a marijuana-related business operating in a state that has not legalized marijuana would likely result in the proceeds going to a criminal organization.

³ Under FinCEN's guidance, for instance, a marijuana-related business that is not appropriately licensed or is operating in violation of state law presents red flags that would justify the filing of a Marijuana Priority SAR.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

George Anderson, California Department of Justice
Jacob Appelsmith, Office of the California Attorney General
John Avila, California Narcotics Officers Association
Phebe Chu, Office of San Bernardino County Counsel
Scott Collins, Los Angeles County District Attorney's Office
Cathy Coyne, California State Sheriffs' Association
Lorrac Craig, Trinity County Sheriff's Department
Jim Denney, California State Sheriffs' Association
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Dana Filkowski, Contra Costa County District Attorney's Office
John Gaines, California Department of Justice/Bureau of Narcotics Enforcement
Craig Gundlach, Modesto Police Department
John Harlan, Los Angeles County District Attorney's Office—Major Narcotics Division

Nate Johnson, California State University Police
Mike Kanalakis, Monterey County Sheriff's Office
Bob Kochly, Contra Costa County Office of District Attorney
Tommy LaNier, The National Marijuana Initiative, HIDTA
Carol Leveroni, California Peace Officers Association
Kevin McCarthy, Los Angeles Police Department
Randy Mendoza, Arcata Police Department
Mike Nivens, California Highway Patrol
Rick Oules, Office of the United States Attorney
Mark Pazin, Merced County Sheriff's Department
Michael Regan, El Cerrito Police Department
Melissa Reisinger, California Police Chiefs Association
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Kent Shaw, California Department of Justice/Bureau of Narcotics Enforcement
Crystal Spencer, California Department of Justice, Conference Planning Unit
Sam Spiegel, Folsom Police Department
Valerie Taylor, ONDCP
Thomas Toller, California District Attorneys Association
Martin Vranicar, Jr., California District Attorneys Association

April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (*See Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: "One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party 'who has consistently assumed responsibility for the housing, health, or safety' of that purchaser as section 11362.5(e) requires.")

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as "primary caregivers." Those included in the list clearly show the Legislature's intent to restrict the definition to one involving a significant and long-term commitment to the patient's health, safety, and welfare. The only facilities which the Legislature authorized to serve as "primary caregivers" are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General's recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that "Patients and caregivers 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" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California's marijuana laws.

Further, the common dictionary definition of "collectives" is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

The common dictionary definition of collectives is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess “the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; *capital investment receives either no return or a limited return*; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members.”²⁷ Marijuana businesses, of any kind, do not meet this legal definition.

Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their "primary caregiver" (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the "contribution" will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so "contributions" are made to reimburse the dispensary for its time and care in making "product" available. However, if a calculation is made based on the available evidence, it is clear that these "contributions" can easily add up to millions of dollars per year. That is a very large cash flow for a "non-profit" organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the "primary caregivers" of patients. This is a spurious claim. As discussed above, the term "primary caregiver" has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient."³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it "**consistently** had assumed responsibility for [a patient's] **housing, health, or safety.**"³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient's health: the responsibility for the patient's health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business's relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because "medical marijuana is such a controversial issue."³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man's throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was "shot in the stomach" and "bled to death" during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and "dumped outside the emergency entrance of Children's Hospital Oakland" after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane's home in Laytonville, California while yelling, "This is a raid." Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “perfectly healthy” young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions" ⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas. ⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire. ⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels. ⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year. ⁷⁷ With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year" ⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana. ⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation. ⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10’) in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UC1's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

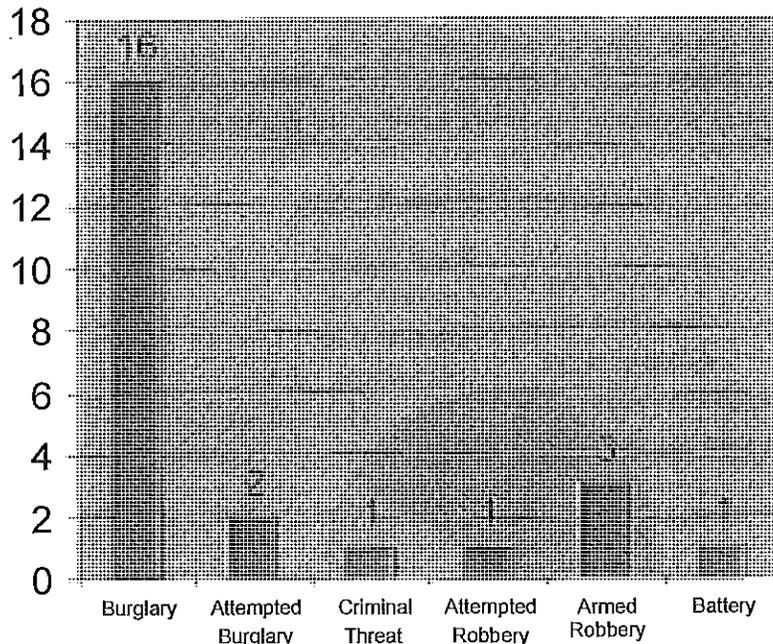
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

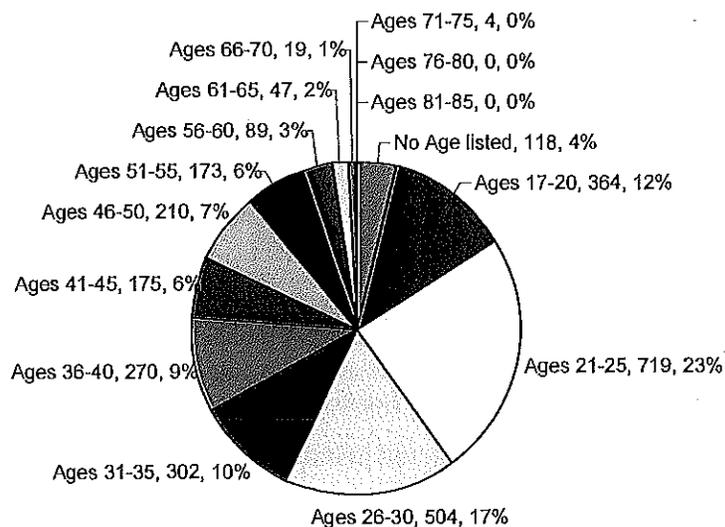
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation *exploded* with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

1. **Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

1. **Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified 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 section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act— that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).)⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

ENDNOTES

- ¹ U.S. Const., art. VI, cl. 2.
- ² U.S. Const., art. I, sec. 8, cl. 3.
- ³ *Gonzales v. Raich* (2005) 125 S.Ct. 2195 at p. 2204.
- ⁴ *Gonzales v. Raich*. See also *United States v. Oakland Cannabis Buyers' Cooperative* (2001) 121 S.Ct. 1711, 1718.
- ⁵ *Gonzales v. Raich* (2005) 125 S.Ct. 2195; see also *United States v. Oakland Cannabis Buyers' Cooperative* 121 S.Ct. 1711.
- ⁶ Josh Meyer & Scott Glover, "U.S. won't prosecute medical pot sales," *Los Angeles Times*, 19 March 2009, available at <http://www.latimes.com/news/local/la-me-medpot19-2009mar19,0,4987571.story>
- ⁷ See *People v. Mower* (2002) 28 Cal.4th 457, 463.
- ⁸ Health and Safety Code section 11362.5(b) (1) (A). All references hereafter to the Health and Safety Code are by section number only.
- ⁹ H&S Code sec. 11362.5(a).
- ¹⁰ H&S Code sec. 11362.7 *et. seq.*
- ¹¹ H&S Code sec. 11362.7.
- ¹² H&S Code secs. 11362.71–11362.76.
- ¹³ H&S Code sec. 11362.77.
- ¹⁴ H&S Code secs. 11362.765 and 11362.775; *People v. Urziceanu* (2005) 132 Cal.App.4th 747 at p. 786.
- ¹⁵ H&S Code sec. 11362.77; whether or not this section violates the California Constitution is currently under review by the California Supreme Court. See *People v. Kelly* (2008) 82 Cal.Rptr.3d 167 and *People v. Phomphakdy* (2008) 85 Cal.Rptr. 3d 693.
- ¹⁶ H&S Code secs. 11357, 11358, 11359, 11360, 11366, 11366.5, and 11570.
- ¹⁷ H&S Code sec. 11362.7(h) gives a more comprehensive list – AIDS, anorexia, arthritis, cachexia, cancer, chronic pain, glaucoma, migraine, persistent muscle spasms, seizures, severe nausea, and any other chronic or persistent medical symptom that either substantially limits the ability of a person to conduct one or more life activities (as defined in the ADA) or may cause serious harm to the patient's safety or physical or mental health if not alleviated.
- ¹⁸ *People v. Mower* (2002) 28 Cal.4th 457 at p. 476.
- ¹⁹ *Id.* Emphasis added.
- ²⁰ Packel, *Organization and Operation of Cooperatives*, 5th ed. (Philadelphia: American Law Institute, 1970), 4-5.
- ²¹ Sam Stanton, "Pot Clubs, Seized Plants, New President—Marijuana's Future Is Hazy," *Sacramento Bee*, 7 December 2008, 19A.
- ²² For a statewide list, see <http://canorml.org/prop/cbclist.html>.
- ²³ Laura McClure, "Fuming Over the Pot Clubs," *California Lawyer Magazine*, June 2006.
- ²⁴ H&S Code sec. 11362.765(c); see, e.g., *People v. Urziceanu*, 132 Cal.App.4th 747 at p. 764.
- ²⁵ *Gonzales v. Raich*, *supra*, 125 S.Ct. at page 2195.
- ²⁶ *People v. Urziceanu* (2005) 132 Cal.App.4th 747; see also H&S Code sec. 11362.765.
- ²⁷ Israel Packel, 4-5. Italics added.
- ²⁸ H&S Code sec. 11362.7(d)(1).
- ²⁹ See, e.g., McClure, "Fuming Over Pot Clubs," *California Lawyer Magazine*, June 2006.
- ³⁰ H&S Code secs. 11362.5(e) and 11362.7(d)(1), (2), (3), and (e); see also *People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1395.
- ³¹ *People v. Mower*, 28 Cal.4th at 476. Emphasis added.
- ³² Glenda Anderson, "Laytonville Marijuana Guru Shot to Death: 2 Others Beaten in Home; No Suspects but Officials Believe Killing Related to Pot Growing," *Santa Rosa Press Democrat*, 19 November 2005, available at <http://www1.pressdemocrat.com/apps/pbcs.dll/article?AID=/20051119/NEWS/511190303/1033/>
- ³³ "Medical Marijuana Shop Robbed," *Santa Barbara Independent*, 10 August 2006, available at <http://independent.com/news/2006/aug/10/medical-marijuana-shop-robbed/>
- ³⁴ Mark Scaramella, "No Good Deed Goes Unpunished," *Anderson Valley Advertiser*, 16 June 2004, available at <http://www.theava.com/04/0616-cerelli.html>

- ³⁵ Ricci Graham, "Police Arrest Suspect in Deadly San Leandro Pot Club Robbery," *Oakland Tribune*, 8 August 2006, available at http://findarticles.com/p/articles/mi_qn4176/is_20060808/ai_n16659257
- ³⁶ Ricci Graham, "Man Faces Murder Charge in Pot Robbery," *Oakland Tribune*, 24 August 2005, available at <http://www.highbeam.com/doc/1P2-7021933.html>
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DRAFT

1 VIII. New Business

2
3 A. 2014-MISC-04: Recommendation to the City Commission declaring a
4 moratorium against establishing medical marijuana dispensaries within the City
5 of Lake Mary; Applicant: City of Lake Mary/Community Development
6 Department (Public Hearing)
7

8 Gary Schindler, City Planner, presented Item A. and the related Memorandum
9 (Staff Report). He said, if Amendment 2 passes at the November 4th election that
10 will allow for legalizing medical marijuana and we will be coming back to you with
11 proposed code revisions. I'm sure we will spend a lot of time in that process to
12 balance the Code, but tonight your one focus is on the proposed moratorium for
13 270 days. The reason for the moratorium is that we don't know what is going to
14 be coming out of the Legislature. Rather than try to guess and possibly be
15 wrong, the Commission thought it was best if we simply do a moratorium. This
16 item went to a workshop in August and, of course, no formal action occurs at a
17 workshop; however, they gave enough direction that staff understood what they
18 wanted. It was decided that they want staff to bring back a proposed moratorium
19 ordinance. Before you tonight is the concept of this moratorium. This is slated to
20 go to the Commission the 6th of November, which will be two days after the
21 election. This is the soonest that we felt we could get it to them.
22

23 Mr. Schindler concluded his presentation by saying, that's it. I'm available for
24 any questions. If you have any legal questions, we have tonight Ms. Catherine
25 Reischmann, who is the City Attorney.
26

27 Chairman Hawkins asked, so, I guess I'm assuming that these will be managed
28 similar to the pain clinics?
29

30 Mr. Schindler answered, that's certainly one way of addressing them if the
31 Commission wants to allow them. We would allow them as conditional uses as
32 we also allow pain management clinics and have separation from sensitive uses
33 such as schools, daycare centers, churches, and so forth. A number of local
34 governments are doing that. Other local governments are just saying, hey, we're
35 going to allow them in retail zones. So, there are certainly two different schools
36 of thought and that is partly why we want to make sure we do it right.
37

38 Chairman Hawkins questioned, it looks like other municipalities have drafted
39 ordinances, but they just put them on hold?
40

41 Mr. Schindler responded, yes. Some of them have drafted ordinances.
42 Longwood has a copy of our ordinance and has basically patterned an ordinance

1 right after ours. Sometimes you lead, sometimes you follow. We steal from each
2 other shamelessly.

3
4 Chairman Hawkins stated, yeah. Well, we have done that for years.

5
6 Member York asked, when would day one be of the moratorium?

7
8 Mr. Schindler questioned, when would the moratorium begin?

9
10 Member York replied, uh-huh.

11
12 Mr. Schindler answered, the ordinance would be written to take effect on the date
13 that it passed; November 4th. Is that correct, Katie?

14
15 Catherine Reischmann, City Attorney, responded (away from microphone), that's
16 correct, although that actually doesn't take effect until January 6th, but we would
17 go ahead and put it in effect just so we're covered in case somebody
18 (inaudible)...

19
20 Member York interjected saying, because I believe the amendment is operative
21 January...

22
23 Chairman Hawkins interposed, hold on. He asked, do you think you got that?

24
25 Diana T. Adams, Administrative Assistant, replied, no. It wasn't being picked up
26 by a microphone.

27
28 Ms. Reischmann repeated her answer by saying, the ordinance is scheduled to
29 take effect on November 4th, but the actual amendment doesn't take effect until
30 January 6th. So, we would have that extra time built in because there is some
31 concern that a moratorium would be subject to challenge even though we do
32 moratoriums routinely, but we just don't want to get caught in any crosshairs at
33 all. So, we figured it's the best of all worlds that we can declare this moratorium
34 and kind of force everybody to focus in and the Commission wants us to do that.
35 Then, we'll still have time when the amendment takes effect, if it passes. From
36 the time it takes effect, there are still six months for Department of Health to
37 promulgate regulations and so forth. So, there is time built in there for us to look
38 at all the options.

39
40 Chairman Hawkins opened the hearing to public comment.

41
42 Richard Fess, 106 Pine Circle Drive, Lake Mary, Florida 32746, came forward.
43 He questioned, with the effective date being the 4th, should it be the 3rd so it

1 would be in place before it passes to clarify any mix up? He stated, just a point-
2 of-order question.

3
4 Ms. Reischmann answered, that's probably a very good point too. I believe the
5 way we worded it was that it was effective upon the effective date or the adoption
6 of the Amendment. So, I don't think we put a date in there but that should cover
7 it.

8
9 Chairman Hawkins asked, I don't think we need to change anything, do we?

10
11 Mr. Schindler responded, no. Because you are simply recommending on the
12 concept. We will work out the details between now and the City Commission
13 meeting.

14
15 Hearing no further public comment, Chairman Hawkins closed that portion and
16 entertained board discussion and/or a motion.

17
18 Chairman Hawkins commented, I don't have any problem with this. I think it's a
19 great idea to do it this way.

20
21 Member York commented, I agree. I think it is prudent as well, particularly when
22 you'll have the Legislature and the Department of Health potentially promulgating
23 new regulations. We want to give it as much breathing room as possible to see
24 how this plays out.

25
26 **MOTION:**

27
28 **Member Schofield moved to recommend approval to the City Commission**
29 **the request by City of Lake Mary/Community Development Department to**
30 **declare a moratorium against establishing medical marijuana dispensaries**
31 **within the City of Lake Mary, consistent with staff's Memorandum (Staff**
32 **Report). Member York seconded the motion, which carried unanimously 3-0.**
33

34 It is noted that it was not announced there was a Quasi-Judicial Sign-In Sheet (see
35 attached) for this item located at the back of the chambers for any interested party
36 to sign in order to be kept abreast of this matter. It is also noted that this item will
37 move forward to the City Commission meeting of November 6, 2014.
38
39
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43

QUASI-JUDICIAL SIGN-IN SHEET

10/14, 2014
P+Z MEETING
(please print)

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____

Name _____ Phone No. _____

Address _____

Item of Interest _____



CITY MANAGER'S REPORT

DATE: November 6, 2014
TO: Mayor and City Commission
FROM: Jackie Sova, City Manager
SUBJECT: City Manager's Report

ITEMS FOR COMMISSION ACTION:

1. Appointment to Planning & Zoning Board and to Metroplan's Citizens' Advisory Committee and Municipal Advisory Committee. **(ATTACHMENT #1)**

ITEMS FOR COMMISSION INFORMATION:

1. Update on projects on International Parkway (Tom Tomerlin, Economic Development Manager).
2. Kittelson & Associates, Inc., Downtown Traffic Study - Update. **(ATTACHMENT #2)**
3. Scoreboards at Sports Complex. **(ATTACHMENT #3)**



MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: Carol Foster, City Clerk

VIA: Jackie Sova, City Manager

SUBJECT: Appointment to Planning & Zoning Board and to Metroplan's Citizens' Advisory Committee and Municipal Advisory Committee

As you will recall, you recently appointed the alternate member on the Planning & Zoning Board, Justin York, as a regular member on the Planning & Zoning Board replacing Commissioner Miller, leaving the alternate position vacant.

Jeff Bales and David Wickham submitted Board Appointment Information Forms, copy attached, indicating their desire to serve on the P & Z Board. Both gentlemen had been members of the Local Planning Agency until its duties were merged with P & Z earlier this year--Mr. Bales since January 2006 and Mr. Wickham since August 2012.

The Commission needs to appoint representatives to Metroplan. Sid Miller has been the City's representative on the Citizens' Advisory Committee since 2009 but since his election to the Commission, he is no longer eligible to serve on that committee. This member must be a citizen of the City—not an elected official. The Citizens' Advisory Committee meets the 4th Wednesday of every month at 9:30AM in downtown Orlando.

You also need to appoint a member of the Commission to serve on the Municipal Advisory Committee to replace former Commissioner Allan Plank. This board meets the 1st Thursday of each month at 9AM in Orlando. Commissioner Brender is currently the alternate member but is not interested in becoming the regular member. If it is not feasible to appoint a member of the Commission, you can designate a senior staff member in your stead.

RECOMMENDATION:

1. Appoint a citizen to serve as an alternate member on the Planning & Zoning Board to complete a term which expires December 31, 2015.
2. Appoint a citizen/business owner to Metroplan's Citizens' Advisory Committee.
3. Appoint a member of the Commission or senior staff to serve on the Municipal Advisory Committee.

CITY OF LAKE MARY
BOARD APPOINTMENT INFORMATION FORM
(please print)

1. NAME: Jeffrey C. Bales HOME PHONE: 407 323 1805
2. HOME ADDRESS: 113 Linda Lane Lake Mary, Fl. 32746
E-MAIL ADDRESS: jobales@aol.com
3. BUSINESS: Gibraltar Real Estate Services, LLC BUSINESS PHONE: 407 862 6004
4. BUSINESS ADDRESS: 2350 S. US 17-92 Suite 1000 Longwood Fl. 32750
5. BRIEF RESUME OF EDUCATION AND EXPERIENCE: Please see attached

6. ARE YOU A REGISTERED VOTER? YES [X] NO []
7. ARE YOU A RESIDENT OF THE CITY? YES [X] NO []
8. DO YOU OWN PROPERTY IN THE CITY? YES [X] NO []
9. DO YOU HOLD A PUBLIC OFFICE? YES [] NO [X]
10. ARE YOU EMPLOYED BY THE CITY? YES [] NO [X]
11. HAVE YOU BEEN CONVICTED OF A MISDEMEANOR OR FELONY, EXCLUDING CIVIL TRAFFIC INFRACTIONS? YES [] NO [X]

(IF YES, PLEASE PROVIDE INFORMATION--USE SEPARATE SHEET. NOTE: DUI'S and revoked licenses are NOT "civil traffic infractions" and must be reported.)

12. HAVE YOU PREVIOUSLY SERVED ON A CITY BOARD? YES [X] NO []
If yes, which one(s)? Lake Mary Local Planning Agency

- 13. PLEASE CHECK THE BOARD(S) YOU ARE INTERESTED IN SERVING ON:
[] BOARD OF ADJUSTMENT* MUST BE A QUALIFIED ELECTOR OF LAKE MARY
[] CODE ENFORCEMENT BOARD* MUST BE A RESIDENT OF LAKE MARY
[] ELDER AFFAIRS COMMISSION UP TO 3 MEMBERS MAY BE RESIDENTS OF UNINCORPORATED Lake Mary
[] FIREFIGHTER'S PENSION (Trustees)* 2 MEMBERS ARE ELECTED BY MEMBERS OF THE PLAN. THE COMMISSION APPOINTS 2 RESIDENTS OF LAKE MARY AND THE 4 MEMBERS ELECT A 5TH MEMBER WHO IS NOT REQUIRED TO RESIDE IN LAKE MARY
[] HISTORICAL COMMISSION NO RESIDENCY REQUIREMENT
[] LOCAL PLANNING AGENCY* MUST BE A QUALIFIED ELECTOR OF LAKE MARY
[] PARKS & RECREATION ADVISORY BOARD MUST BE A QUALIFIED ELECTOR OF LAKE MARY
[X] PLANNING AND ZONING BOARD* MUST BE A QUALIFIED ELECTOR OF LAKE MARY
[] POLICE PENSION (Trustees)* 2 MEMBERS ARE ELECTED BY MEMBERS OF THE PLAN. THE COMMISSION APPOINTS 2 RESIDENTS OF LAKE MARY AND THE 4 MEMBERS ELECT A 5TH MEMBER WHO IS NOT REQUIRED TO RESIDE IN LAKE MARY

*REQUIRES FILING FINANCIAL DISCLOSURE FORM IF APPOINTED.

14. What qualifications would you bring to this Board(s) if appointed? Please see attached

Pursuant to City Code, service on City boards is at the pleasure of the City Commission. Board members may be removed with or without cause upon motion and majority vote of the City Commission. Applicant, by his/her signature below, waives any right under F.S. Section 112.501 to removal for cause and a hearing before removal.

SIGNATURE: [Handwritten Signature]
DATE: 10/24/2014

All Boards must function in accordance with Florida Laws regarding GOVERNMENT IN THE SUNSHINE. Return completed form to: City of Lake Mary, P. O. Box 958445, Lake Mary, FL 32795-8445, or drop it off at City Hall, 100 N. Country Club Road (entrance on Lakeview Avenue). If you submitted a form within the past year and still desire to be considered for an appointment, please call the City Clerk's Office at 407-585-1423.

113 Linda Ln
Lake Mary, FL 32746

Phone (407) 330-8162
E-Mail JCBales@aol.com

Jeffrey C. Bales

Career Strengths

In the past 40 years, I have used my organizational and communication skills to succeed. From college graduation until 1997, I was co-owner and general manager of Sanford Motor Company, an authorized Jeep dealership. Managing people, time and expectations were my strongest attributes in this position. Upon the sale of the dealership, I entered the real estate profession and found new challenges to meet. Learning a new business and succeeding became a mission. I undertook advanced training and certification to advance my professionalism. Additionally, I co-own and manage a citrus grove and co-own a real estate investment company.

I strive to rise to each new challenge with a combination of intellectual curiosity and drive. I use past experience to fuel future success.

Employment History

General Manager/Co-Owner

1974 – July 1997 Sanford Motor Company
Vehicle Sales and Service

July 1997 - October 2008 Re/MAX Realty Resources, Lake Mary, FL
Residential & Vacant Land Real Estate Sales

October 2008 – Present Gibraltar Real Estate Services, LLC
Residential & Vacant Land Real Estate Sales

Vice President/Co-Owner

January 1992 – Present Lake Jessup Groves
Citrus Groves and Sales

Vice President/Co-Owner

July 2010 to Present Gibraltar Property Group Inc., Longwood, FL
Residential & Vacant Land Real Estate Sales

Education

June 1970 – Seminole High School Graduate, Sanford, FL
June 1974 – University of Florida Graduate, Gainesville, FL

Professional Affiliations

Certified Residential Specialist, Accredited Buyers Representative, Graduated Real Estate Institute, E-Pro and Real Estate Cyber Society. Served from 2006 – 2009 Board of Directors Orlando Regional Realtor Association and 2006 – 2014 Lake Mary Local Planning Agency.

CITY OF LAKE MARY
BOARD APPOINTMENT INFORMATION FORM

(please print)

1. NAME: DAVID L. WICKHAM HOME PHONE: 407-322-4822
2. HOME ADDRESS: 722 POWDER HORN CIRCLE, L.M., FL.
E-MAIL ADDRESS: DAVIDATDWA@AOL.COM
3. BUSINESS: RETIRED BUSINESS PHONE: _____
4. BUSINESS ADDRESS: _____
5. BRIEF RESUME OF EDUCATION AND EXPERIENCE: BS - INLAND ARCH & URBAN PLNG - MSLN PARK & REC. AND URBAN PLANNING
6. ARE YOU A REGISTERED VOTER? YES NO
7. ARE YOU A RESIDENT OF THE CITY? YES NO
8. DO YOU OWN PROPERTY IN THE CITY? YES NO
9. DO YOU HOLD A PUBLIC OFFICE? YES NO
10. ARE YOU EMPLOYED BY THE CITY? YES NO
11. HAVE YOU BEEN CONVICTED OF A MISDEMEANOR OR FELONY, EXCLUDING CIVIL TRAFFIC INFRACTIONS? YES NO

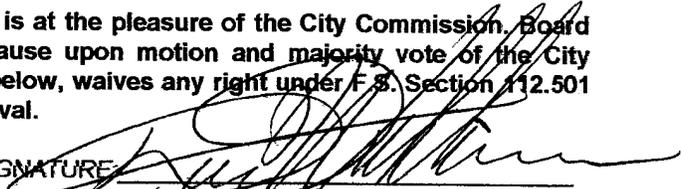
(IF YES, PLEASE PROVIDE INFORMATION--USE SEPARATE SHEET. NOTE: DUI'S and revoked licenses are NOT "civil traffic infractions" and must be reported.)

12. HAVE YOU PREVIOUSLY SERVED ON A CITY BOARD? YES NO
If yes, which one(s)? L.M. - LOCAL PLANNING AGENCY
13. PLEASE CHECK THE BOARD(S) YOU ARE INTERESTED IN SERVING ON:

- BOARD OF ADJUSTMENT* MUST BE A QUALIFIED ELECTOR OF LAKE MARY
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- *REQUIRES FILING FINANCIAL DISCLOSURE FORM IF APPOINTED.

14. What qualifications would you bring to this Board(s) if appointed? 30+ YEARS OF ORLANDO AREA, LAKE MARY, STATE & NAT'L LEGAL AND PRACTICAL PLANNING & ZONING KNOWLEDGE & EXPERIENCE

Pursuant to City Code, service on City boards is at the pleasure of the City Commission. Board members may be removed with or without cause upon motion and majority vote of the City Commission. Applicant, by his/her signature below, waives any right under F.S. Section 112.501 to removal for cause and a hearing before removal.

SIGNATURE: 
DATE: 10/17/19

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MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: John Omana, Community Development Director

VIA: Jackie Sova, City Manager

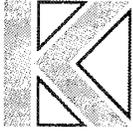
SUBJECT: Kittelson & Associates, Inc., Downtown Traffic Study - Update
- Update

DISCUSSION: Kittelson & Associates, Inc., has submitted a proposal for the Downtown traffic study (See Attachment).

The Downtown Traffic Circulation Study (DTCS) will take into account densities and intensities over a 5 and 10 year period and factor in traffic calming measures. Intersection operations and Cut-Through Traffic will also be analyzed. Overall, this will result in an operational analysis for the years 2020 and 2025.

Kittelson & Associates estimates the cost of the project at \$31,411.95. This contract for services will be conducted under the Seminole County Continuing Services Contract (Seminole County Project No. PS-8286-13/JVP, Miscellaneous Capacity and Safety Improvement Evaluations.) The City Manager will be executing the contract pursuant to her financial threshold authority.

DISPOSITION: This item is provided for your information and no formal action is required.



KITTELSON & ASSOCIATES, INC.

TRANSPORTATION ENGINEERING / PLANNING

225 E Robinson Street, Suite 450, Orlando, FL 32801 P 407.540.0555 F 407.540.0550

October 29, 2014

Project #: 18081P

Mr. John A. Omana, Jr.
City of Lake Mary
911 Wallace Court
Lake Mary, FL 32746

RE: Lake Mary Downtown Area Traffic Study Proposal

Dear John,

Kittelison and Associates, Inc. (KAI) is pleased to submit this scope of services and fee proposal in response to your request for a downtown traffic circulation study. Part "A" identifies our proposed scope of work for the project. This scope was developed based on our discussions with you and our understanding of the City's needs and desires. We estimate the total cost of our work effort to be \$31,411.95. We propose to conduct the work under a lump sum basis based upon our rates under the Seminole County Continuing Services Contract (Seminole County Project No. PS-8286-13/JVP, Miscellaneous Capacity and Safety Improvement Evaluations).

This proposal (scope of work, budget, and timeline) is effective for sixty days. A reasonable project schedule will be agreed upon by the City and KAI upon your authorization. This schedule shall be equitably adjusted as the work progresses, allowing for changes in scope, character or size of the project requested by you, or for delays or other causes beyond our reasonable control.

I will serve as the Project Manager and Mr. Karl Passetti, P.E. will serve as the Project Principal providing senior review and quality assurance. Any questions of a technical or contractual nature can be directed to either Karl or me.

Please review this proposal at your earliest convenience. If the agreement is satisfactory, please return a signed copy. A fully executed copy will be returned for your records. Thank you for the opportunity to propose on this project. If you have any questions please call us at (407) 540-0555.

Sincerely,

KITTELSON & ASSOCIATES, INC.

Ryan J. Cunningham, P.E.
Senior Engineer

AUTHORIZATION FOR PROFESSIONAL SERVICES

October 29, 2014

Kittelson & Associates, Inc.
225 E Robinson Street, Suite 450
Orlando, FL 32801
407.540.0555 (P)
407.540.0550 (F)

City of Lake Mary, with an office at 911 Wallace Court, Lake Mary, FL 32746 hereby requests and authorizes Kittelson & Associates, Inc. to perform the services as described in Part "A" - Scope of Work to this authorization and subject to all of the provisions described in Part "B" Terms and Conditions.

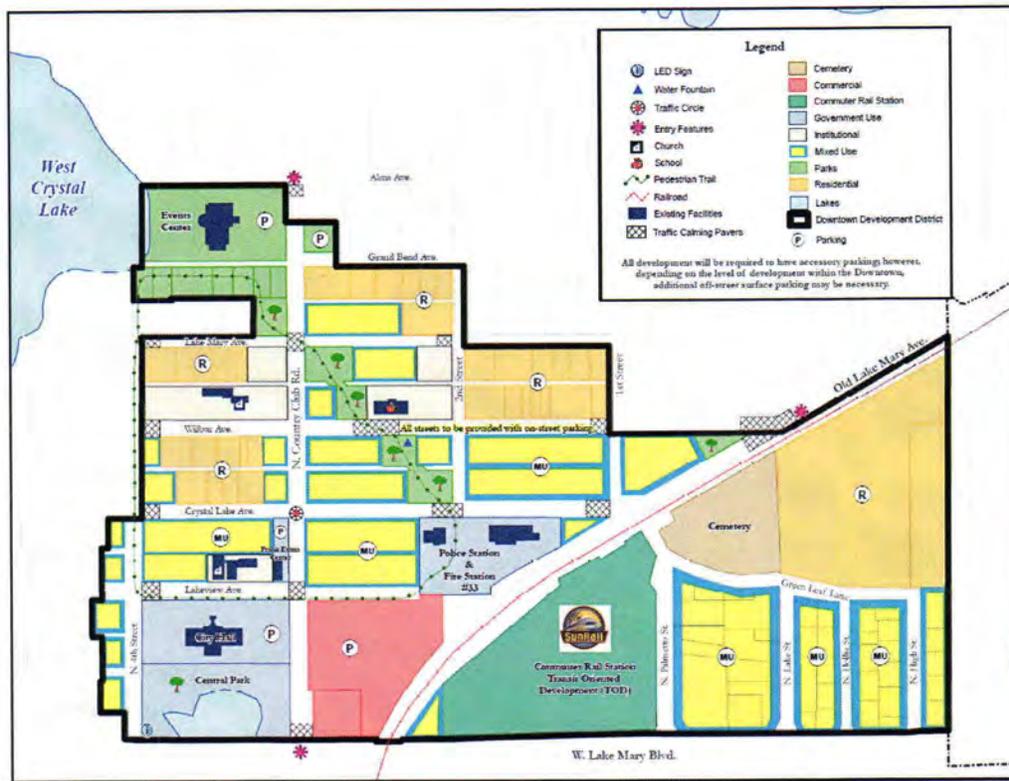
PART A - SCOPE OF WORK

TASK 1: DOWNTOWN AREA TRAFFIC CIRCULATION STUDY

In Task 1, KAI will conduct a traffic circulation study of the downtown area. Lake Mary's vision for its downtown is a city within a city, a place where residents can live, work, and play. The traffic study will focus on traffic operations within the limits of the downtown study area in the following scenarios:

- Existing Traffic Scenario
- 5-Year Traffic Scenario
 - No-Build Geometric Condition
 - Traffic Calming Geometric Condition
- 10-Year Traffic Scenario
 - No-Build Geometric Condition
 - Traffic Calming Geometric Condition

The limits of the downtown study area are depicted below in the City's Downtown Master Plan.



Subtask 1.1: Data Collection

The first subtask will consist of obtaining or collecting the necessary data to complete the traffic study. The data collection efforts are summarized as follows:

- a. Collect a.m. and p.m. peak period intersection turning movement counts at the study intersections, summarized in 15-minute intervals and including pedestrians, bicycles and autos. The study intersections will consist of up to seven (7) intersections, including:
 - o Lake Mary Boulevard & 4th Street
 - o Lake Mary Boulevard & Country Club Road
 - o Lake Mary Boulevard & Palmetto Street
 - o Country Club Road & Crystal Lake Avenue
 - o Country Club Road & Wilbur Avenue (data from traffic signal warrant analysis task will be used)
 - o Country Club Road & Lake Mary Avenue
 - o Crystal Lake Avenue/Old Lake Mary Avenue & Palmetto Street
 - o Old Lake Mary Avenue & Wilbur Avenue
- b. Collect 24-hour segment (tube) counts at up to eight (8) locations, including:
 - o Lake Mary Avenue – west of Country Club Road
 - o Wilbur Avenue – west of Country Club Road

- Crystal Lake Avenue – west of Country Club Road
 - Lakeview Avenue – west of Country Club Road
 - 4th Street – south of Seminole Avenue
 - 5th Street – south of Seminole Avenue
 - Lakeview Avenue – west of 5th Street
 - Seminole Avenue – west of 5th Street
- c. Speed data – the segment counts will also be utilized to collect speed data at each of the eight (8) segment locations noted above.
- d. Land use data
- Obtain GIS data available from the City to understand existing land uses and other trends
 - Request from the City records of any near-term planned or programmed improvements within the study area, including proposed land use program for the Downtown Development District

Subtask 1.2: Existing Conditions Analysis

The second subtask will analyze the existing intersection peak hour operations and evaluate the order of magnitude of cut-through traffic volumes west of Country Club Road. For the intersection analysis, the existing volumes collected in Subtask 1.1 will be seasonally adjusted to average annual traffic using the seasonal factor (SF) from FDOT's 2013 Florida Traffic Information.

- a. Intersection Operations – the existing intersection operations will be evaluated in terms of Levels of Service (LOS), delays, volume-to-capacity (v/c) ratios, and 95th percentile queues.
- b. Cut-Through Traffic – the roadway segment data will be used to evaluate the order-of-magnitude cut-through traffic volume utilizing residential streets west of Country Club Road.

Subtask 1.3: Forecast Traffic Volumes (2020, 2025)

KAI will utilize input from the City on known or planned project densities to forecast traffic growth within the downtown study area for the 5-year and 10-year study periods.

- a. Request from the City 5-year and 10-year development programs for future scenarios.
- b. Future scenario development programs provided by the City will be used to estimate future scenario traffic volumes based upon ITE Trip Generation methodologies. Depending upon development program sizes and locations, internalization within the downtown will be estimated using the FDOT report Trip Internalization in Multi-Use Developments, prepared by the Center for Urban Transportation Research (CUTR) and dated April 2014.

- c. Downtown development traffic will be distributed to the area roadways and intersections through a trip distribution. The trip distribution will be manually developed using existing traffic movements or otherwise using the regional travel demand model (OUATS). A sub-area model validation effort is not included as part of this subtask.
- d. In addition to downtown development scenarios, background traffic growth will be considered for future year analyses. Background traffic growth will consider historical traffic volumes in the area and projected growth from the adopted OUATS model to establish an annual growth rate.
- e. KAI will develop alternative traffic volume scenarios for the future years based upon the City's proposed traffic calming measures shown on the following page (e.g. all-way stop controlled intersections, conversion to one-way streets).

Subtask 1.4: Future Year Traffic Operations (2020, 2025)

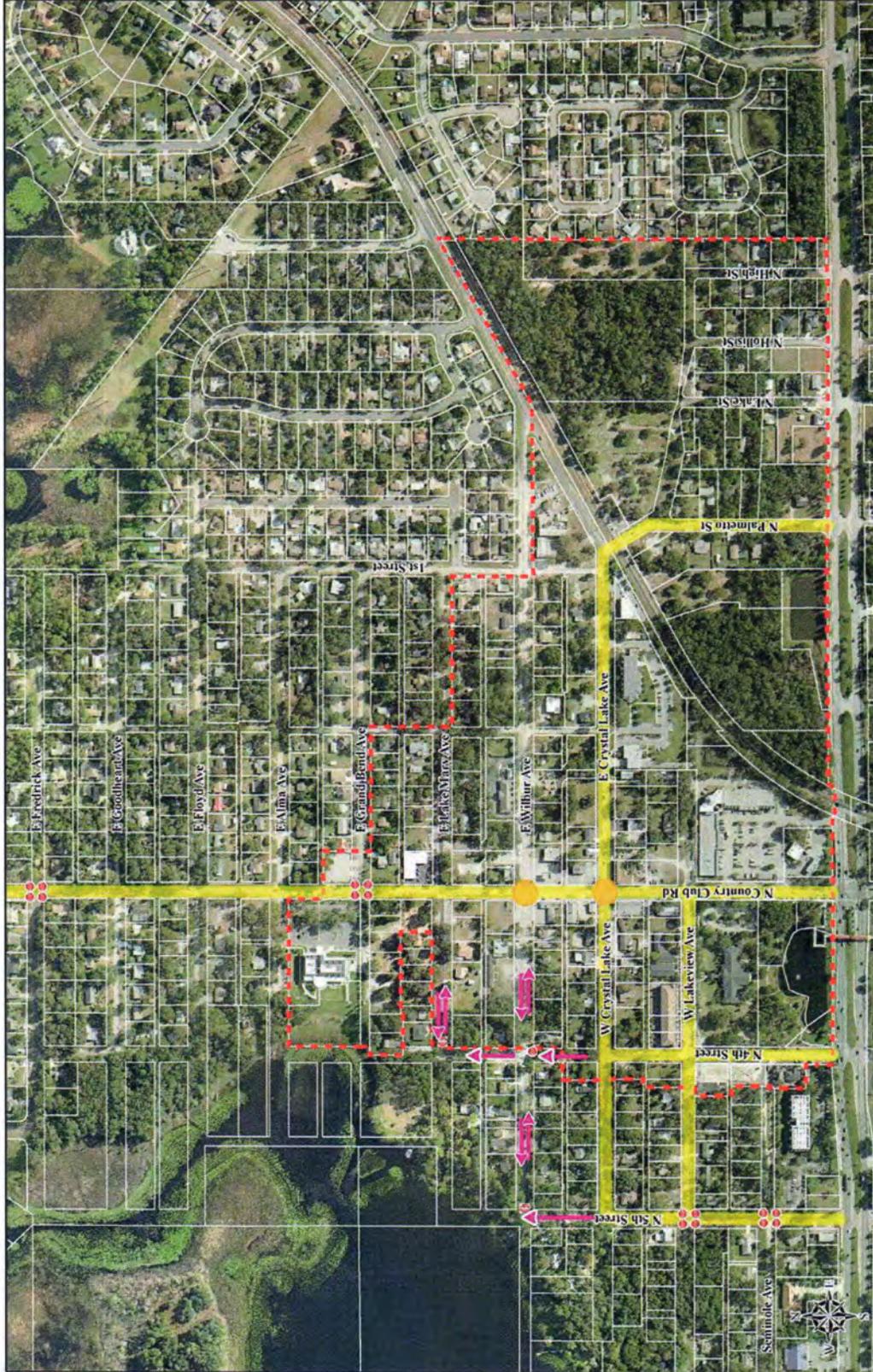
KAI will use the projected future volumes to conduct future year scenario operations analyses for the 5-year and 10-year timeframes. Each of the 5 and 10-year timeframes will include a no-build condition and a build condition with the City's proposed traffic calming measures in place, as shown below:

- a. 2020 No-Build Intersection Operations
- b. 2020 Traffic Calming Intersection Operations
- c. 2025 No-Build Intersection Operations
- d. 2025 Traffic Calming Operations

In each scenario, KAI will evaluate a.m. and p.m. peak hour analyses for the eight (8) study intersections (16 intersections total per scenario), and the intersection operations will be evaluated in terms of Levels of Service (LOS), delays, volume-to-capacity (v/c) ratios, and 95th percentile queues. KAI will identify potential operational deficiencies in the future scenarios and recommend improvements.

Subtask 1.5: Technical Report

KAI will document the methodology and findings of the traffic operations analysis in a technical report, which will be submitted to the City of Lake Mary in draft form for review and comments. The report will include conclusions and recommendations for the study intersections based on the analysis. The final technical report will be prepared after receiving the City's review. Two (2) signed and sealed copies will be provided to the City along with an electronic version of the technical memo.



PART B – TERMS AND CONDITIONS

1. **GENERAL:** The terms and conditions set forth herein shall govern all work subsequently performed on behalf of CLIENT unless changed by a written agreement signed by KITTELSON & ASSOCIATES, INC. In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.
2. **LIMITATION OF LIABILITY:** CLIENT AGREES THAT IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT, KITTELSON & ASSOCIATES, INC.'S AGGREGATE JOINT, SEVERAL AND INDIVIDUAL LIABILITY, WHETHER FOR BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, PROFESSIONAL MALPRACTICE OR STRICT LIABILITY SHALL BE LIMITED TO AN AMOUNT NO GREATER THAN THREE TIMES THE TOTAL COMPENSATION RECEIVED BY KITTELSON & ASSOCIATES, INC. UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OR EXPIRATION OF THIS AGREEMENT.
3. **LIMITATION OF REMEDY:** CLIENT COVENANTS THAT IT WILL NOT, UNDER ANY CIRCUMSTANCES, BRING A LAWSUIT OR CLAIM AGAINST KITTELSON & ASSOCIATES, INC.'S INDIVIDUAL EMPLOYEES, OFFICERS, DIRECTORS OR SHAREHOLDERS AND THAT CLIENT'S SOLE REMEDY SHALL BE AGAINST KITTELSON & ASSOCIATES, INC.
4. **WAIVER OF CONSEQUENTIAL DAMAGES:** NEITHER KITTELSON & ASSOCIATES, INC. NOR ANY OF ITS OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS SHALL BE LIABLE FOR ANY INDIRECT, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE, INCLUDING, BUT NOT LIMITED TO FINES, PENALTIES, LOST PROFITS, WHETHER SAID CLAIM IS BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR ANY OTHER THEORY OF LAW.
5. **INDEMNITY:** To the maximum extent allowed by law, CLIENT and KITTELSON & ASSOCIATES, INC. shall indemnify, reimburse, and hold harmless each other and its employees, officers, directors and agents from and against all claims, losses, costs and expenses resulting from their bodily injury or property damage (with the sole exception that neither Party will have a duty to indemnify the other Party from claims or losses to the extent those claims or losses are from the direct fault or negligence of the other Party or its employees or agents).

IN ACCORDANCE WITH SECTION 558 ET SEQ OF THE FLORIDA STATUTES AND TO THE FULLEST EXTENT PERMITTED BY LAW, CLIENT ACKNOWLEDGES AND AGREES THAT NO INDIVIDUAL EMPLOYEE OR AGENT OF KITTELSON & ASSOCIATES, INC. SHALL BE HELD INDIVIDUALLY LIABLE FOR DAMAGES RESULTING FROM NEGLIGENCE OCCURRING WITHIN THE SCOPE AND COURSE OF THIS AGREEMENT.

6. **OWNERSHIP OF DOCUMENTS:** KITTELSON & ASSOCIATES, INC is deemed the author and owner of its documents and other instruments of service, and will retain all common law, statutory, and other reserved rights, including copyrights. KITTELSON & ASSOCIATES, INC. grants CLIENT a

license to use instruments of professional service for the purpose of constructing, occupying and maintaining the PROJECT. Reuse or modification of any such documents by CLIENT, without KITTELSON & ASSOCIATES, INC.'s written permission, shall be at CLIENT's own sole risk and CLIENT agrees to indemnify and hold harmless KITTELSON & ASSOCIATES, INC. from all claims, damages and expenses, including attorney's fees, related to the reuse by CLIENT or others acting through CLIENT.

7. **ELECTRONIC DOCUMENTS:** If KITTELSON & ASSOCIATES, INC. provides CLIENT any documents or other instruments of service in electronic form ("Electronic Documents"), acceptance and use of the electronic documents by CLIENT shall be at CLIENT's sole risk and CLIENT shall:
 - a. Waive and covenant not to sue KITTELSON & ASSOCIATES, INC. alleging any inaccuracy or defect of the Electronic Documents.
 - b. Agree that KITTELSON & ASSOCIATES, INC. makes no representation with regard to the compatibility of the Electronic Documents with CLIENT'S software or hardware.
 - c. Indemnify, hold harmless, reimburse and defend KITTELSON & ASSOCIATES, INC. from, for and against any claim, damage, liability, or cost, including attorneys' fees that may arise from CLIENT'S use of the Electronic Documents or any subsequent modification of the Electronic Documents by any person or entity.
 - d. CLIENT agrees that prior to use of the Electronic Documents on any project other than the project for which the Electronic Documents were created, CLIENT shall retain the services of a licensed professional as necessary to review and revise the Electronic Documents for compliance with the local laws, practices and standards of the place where the Project will be located.
8. **JURISDICTION/DISPUTE RESOLUTION:** After first attempting to resolve disputes through good faith negotiations, CLIENT agrees that any claim or dispute arising out of this Agreement for any work performed by KITTELSON & ASSOCIATES, INC. shall be resolved by non-binding mediation. At the option of CLIENT, pending final resolution of a dispute hereunder, KITTELSON & ASSOCIATES, INC. shall continue diligently with the performance of Services under this Agreement.

The rights and liabilities of the parties to this AGREEMENT shall be governed by the laws of the State of Oregon.

9. **TIME BAR TO LEGAL ACTION:** All legal actions by either party against the other arising out of or in any way connected with this Agreement or the services to be performed hereunder shall be barred and under no circumstances shall any such legal action be initiated by either party after the shorter of: three (3) years or the State's applicable statute of limitations calculated from the date the Scope of Work herein is completed unless this Agreement shall be terminated earlier, in which case the date of termination of this Agreement shall be the date on which such period shall commence.

10. **DIRECT EXPENSES:** KITTELSON & ASSOCIATES, INC.'s Direct Expenses shall be those costs incurred on or directly for the CLIENT'S Project, including but not limited to necessary transportation costs including mileage at the current IRS-allowed rates, meals and lodging. Reimbursement for automobiles, meals and lodging, and any other expenses furnished by commercial sources shall be on the basis of actual charges plus a 10% markup.

All communication fees including, but not limited to computer services, telephone, faxes, postage, overnight deliveries, and in-house copies, printing, and binding charges shall be billed on the basis of a per direct labor hour fee when furnished by KITTELSON & ASSOCIATES, INC.

11. **PROFESSIONAL SERVICES:** KITTELSON & ASSOCIATES, INC. staff is defined as all permanent and temporary employees, as well as any and all contract labor of KITTELSON & ASSOCIATES, INC. All KITTELSON & ASSOCIATES, INC., staff time spent working on the Project will be billed at the negotiated rates under the Seminole County Continuing Services Contract (Seminole County Project No. PS-8286-13/JVP, Miscellaneous Capacity and Safety Improvement Evaluations).
12. **COST ESTIMATE:** Any cost estimates provided by KITTELSON & ASSOCIATES, INC. during its scope of work will be on a basis of experience and judgment, but because it has no control over market conditions or bidding procedures KITTELSON & ASSOCIATES, INC. cannot warrant that bids, construction or other project costs will not vary from these cost estimates.
13. **TERMINATION:** Either CLIENT or KITTELSON & ASSOCIATES, INC. may terminate this Agreement by giving 30 days written notice to the other party. In such event, CLIENT shall forthwith pay KITTELSON & ASSOCIATES, INC. in full for all work previously authorized and performed prior to effective date of termination as well as all unavoidable expenses incurred prior to termination. If no notice of termination is given, relationships and obligations created by this Agreement shall be terminated upon completion of all applicable requirements of this Agreement.
14. **PAYMENT TO KITTELSON & ASSOCIATES, INC.:** Monthly invoices will be issued by KITTELSON & ASSOCIATES, INC. for all work performed under the terms of this agreement. A retainer, if applicable, will be required in advance of start of work and will be credited to the final invoice(s) of this project. Invoices are due and payable within 30 days of receipt. The CLIENT must notify the KITTELSON & ASSOCIATES, INC.'s Project Manager or Billing Analyst, in writing, within said time frame if there are any disputed amounts. CLIENT must still pay undisputed invoiced amounts. Remainder will be due once disputed amount is resolved and agreed upon. Interest at the rate of 1.5 percent per month will be charged on all past due amounts, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law. Interest charges are in addition to the fixed ceiling for the contract. CLIENT'S failure to make payments to KITTELSON & ASSOCIATES, INC. before invoice is 90 days past due shall constitute a material breach of this agreement and KITTELSON & ASSOCIATES, INC. shall have the option to withhold services until paid, or to terminate this Agreement. Legal action will be taken on unpaid invoices that are over 120 days overdue.
15. **ADDITIONAL INSURED:** CLIENT and KITTELSON & ASSOCIATES, INC. shall cause its general liability insurers to name each other as an additional insured and shall require its Contractors performing

Work on this Project to name KITTELSON & ASSOCIATES, INC. as an additional insured on their general liability and umbrella/excess insurance policies.

16. **PROFESSIONAL STANDARDS:** KITTELSON & ASSOCIATES, INC. shall be responsible for performing its work to the level of competency currently maintained by other practicing professional engineers performing the same type of work in CLIENT'S community, for the professional and technical soundness, accuracy, and adequacy of all designs, drawings, specifications, and other work and materials furnished under this Agreement. KITTELSON & ASSOCIATES, INC. makes no warranty, guaranty or assurance, express or implied that KITTELSON & ASSOCIATES, INC.'s work will yield or accomplish a perfect or particular outcome for the Project.
17. **ENTIRE AGREEMENT:** These terms and conditions and the attached Exhibits constitute the entire, legally-binding contract between the parties regarding its subject matter and supersede any and all prior or contemporaneous understandings, agreements, or representations, whether oral or written. Amendments to this Agreement will be governed by this Agreement and must be in writing and signed by both the CLIENT and KITTELSON & ASSOCIATES, INC.
18. **NO THIRD PARTY RIGHTS:** To the fullest extent permitted by law, no party has any third party beneficiary or other rights arising from or related to the work performed by KITTELSON & ASSOCIATES, INC.
19. **AUTHORIZATION TO PROCEED:** Signing this form shall be construed as agreement with all terms and conditions and as authorization by CLIENT for KITTELSON & ASSOCIATES, INC. to proceed with the work.

Project Phase Description		Billing Method	Authorized Amount
1	Downtown Traffic Circulation Study	Lump Sum	\$31,411.95
Total Project Cost			\$31,411.95

SO AGREED this ___ day of ____, 2014.

Accepted for:
 KITTELSON & ASSOCIATES, INC.

Approved for:
 City of Lake Mary

 Signature

 Signature

 Print Name

 Print Name

 Title

 Title

BUDGET FOR DOWNTOWN TRAFFIC CIRCULATION STUDY
9/24/2014

Task	Description	Project Manager	Principal Engineer	Senior Engineer	Project Engineer	Engineer	Engineer Intern	Cad Tech/ Designer	Accounting	Clerical	Total Hours/ Cost
1.0	Downtown Area Traffic Circulation Study	14	2	0	34	48	146	0	0	2	246
	1.1 Data Collection	6	0	0	0	6	12	0	0	0	24
	1.2 Existing Conditions Analysis	2	0	0	6	8	32	0	0	0	48
	1.3 Forecast Traffic Volumes (2020, 2025)	2	0	0	8	8	24	0	0	0	42
	1.4 Future Year Operations (2020, 2025)	2	0	0	12	18	64	0	0	0	96
	1.5 Technical Report	2	2	0	8	8	14	0	0	2	36
	PROJECT MANAGEMENT	4	1	0	1	1	1	0	1	0	9
	TOTAL HOURS	18	3	0	35	49	147	0	1	2	265
	Contract Rate	\$121.19	\$232.75	\$163.91	\$122.34	\$115.62	\$98.77	\$120.73	\$84.33	\$65.74	
	KAI Labor Cost	\$2,181.42	\$698.25	\$0.00	\$4,281.90	\$5,665.38	\$14,519.19	\$0.00	\$84.33	\$131.48	\$27,561.95
	Reimbursable Expenses										
	1.1 Downtown Area Study Data Collection (Quality Counts)										\$3,850
	Total Project Cost										\$31,411.95

ESTIMATE

ESTIMATE #: 127877
 DATE: 9/4/2014



BILL TO: Kittelson & Associates, Inc.
 610 SW Alder St, Suite 700
 Portland, OR 97212
 503-228-5230

ORDER NO	ORDER DATE	PROJECT NO	PAYMENT TERMS	ORDER BY
127877	9/4/2014	Lake Mary	Due on receipt	Ryan Cunningham

QTY	DESCRIPTION	DATE	RATE	TOTAL
1	1-Person Turning Movement Count 1 Location(s) for time period(s): 7:00 AM - 7:00 PM (Mid) - Country Club Rd -- Wilbur Ave, Lake Mary, FL		\$875.00	\$875.00
14	1-Person Turning Movement Count 7 Location(s) for time period(s): AM Peak (Mid), PM Peak (Mid) - 4th St -- Lake Mary Blvd, Lake Mary, FL - Country Club Blvd -- Lake Mary Blvd, Lake Mary, FL - Palmetto St -- Lake Mary Blvd, Lake Mary, FL - Country Club Blvd -- Crystal Lake Ave, Lake Mary, FL - Country Club Rd -- Lake Mary Ave, Lake Mary, FL - Palmetto St -- Old Lake MArY Rd/Crystal Lake Ave, Lake Mary, FL - Old Lake Mary Rd -- E Wilbur Ave, Lake Mary, FL		\$175.00	\$2,450.00
8	Bi-Direction 2 lane roadway Tube Count 8 Location(s) for 1 Day(s) (Vehicle Speed,Volume) - Lake Mary Ave West of Country Club Rd, Lake Mary, FL - Wilbur Ave West of Country Club Rd, Lake Mary, FL - Crystal Lake Ave West of Country Club Rd, Lake Mary, FL - Lakeview Ave West of Country Club Rd, Lake Mary, FL - 4th St South of Seminole Ave, Lake Mary, FL - 5th St South of Seminole Ave, Lake Mary, FL - Lakeview Ave West of 5th St, Lake Mary, FL - Seminole Ave West of 5th St, Lake Mary, FL		\$150.00	\$1,200.00
1	Tube Setup Fee - Project Hours		\$200.00	\$200.00
			TOTAL	\$4,725.00
			BALANCE DUE	\$4,725.00

Quality Counts, LLC
 7409 SW Tech Center Dr, STE 150
 Tigard, OR 97223
 (877) 580-2212
 (503) 620-4545 (fax)
 qualitycounts.net



MEMORANDUM

DATE: November 6, 2014

TO: Mayor and City Commission

FROM: Gunnar Smith, Recreation and Events Center Manager

THRU: Bryan Nipe, Director of Parks and Recreation

VIA: Jackie Sova, City Manager

SUBJECT: Scoreboards at Sports Complex

The Lake Mary Little League has secured sponsorship to purchase and install two new scoreboards at the Lake Mary Sports Complex. The scoreboards would replace the existing scoreboard on baseball field #2 and provide a new scoreboard for baseball field #1, which has never had a scoreboard. The addition of a scoreboard on baseball field #1 would enhance the sports complex and make the field more desirable to field users.

Each of the two scoreboards would have sponsorship panels at the top to underwrite the cost.

City Parks and Recreation staff will oversee the installation process and ensure all permits and inspection requirements are adhered to.

Attached: Scoreboard rendering

LAKE MARY LITTLE LEAGUE, LAKE MARY, FL

PROOF #22886-PR

PROOF INCLUDES:

- **Model 1610 LED Scoreboard**
10'W x 4'H x 8"
Scoreboard Color: #76 Print Black
Digit Color: Red
- **Non-Illuminated Sign**
10'W x 2'H





FOR CAR WASH SPECIALS
Text: TOPDOG to 313131

HOME

22

INNING

8

GUESTS

9

BALL ●● **STRIKE** ●● **OUT** ●●

2'

4'



This rendering is for conceptual purposes only. It may not be to exact scale or specifications and should not be used for installation purposes. Every effort has been made to make it as accurate as possible. Beams and or pillars are for illustration only. Engineering specifications may require changes in quantity, size and or shape.

LAKE MARY LITTLE LEAGUE, LAKE MARY, FL

PROOF #22630A

PROOF INCLUDES:

- **Model 1610 LED Scoreboard**
1-side: 10'W x 4'H x 8"
Scoreboard Color: #76 Print Black
Digit Color: Red
- **Non-Illuminated Sign**
10'W x 2'H



This rendering is for conceptual purposes only. It may not be to exact scale or specifications and should not be used for installation purposes. Every effort has been made to make it as accurate as possible. Beams and or pillars are for illustration only. Engineering specifications may require changes in quantity, size and or shape.