



**CITY OF CORNING
PLANNING COMMISSION AGENDA
TUESDAY, DECEMBER 15, 2009
WOODSON ELEMENTARY SCHOOL GYMNASIUM
150 NORTH TOOMES AVENUE**

A. **CALL TO ORDER:** at 6:30 p.m.

B. **ROLL CALL:**

Commissioners: Robertson
Reilly
Hatley
Vacant
Chairman: Lopez

C. **MINUTES:**

1. **Waive the Reading and Approve the Minutes of the November 17, 2009 Planning Commission Meeting with any necessary corrections.**

D. **BUSINESS FROM THE FLOOR:** If there is anyone in the audience wishing to speak on items not already set on the Agenda, please come to the podium, and briefly identify the matter you wish to have placed on the Agenda. The Commission will then determine if such matter will be placed on the Agenda for this meeting, scheduled for a subsequent meeting, or recommend other appropriate action. If the matter is placed on tonight's Agenda, you will have the opportunity later in the meeting to return to the podium to discuss the issue. The law prohibits the Commission from taking formal action on the issue, however, unless it is placed on the Agenda for a later meeting so that interested members of the public will have a chance to appear and speak on the subject.

E. **PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Chairman declares the Hearing open. **ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**

2. **Use Permit 2009-258, Sweet Seduction Tattoo; Pursuant to Section 17.54.020 (9) of the Corning Municipal Code, to establish a Tattoo Business (Parlor) in a C-3, General Business Zoning District.**

3. **Ordinance No. 639, Regulating the Cultivation of Medical Marijuana: An Ordinance of the City of Corning adding a Chapter to Title 17 of the Corning Municipal Code that would regulate the cultivation of Medical Marijuana.**

F. **REGULAR AGENDA:** All items listed below are in the order which we believe are of most interest to the public at this meeting. However, if anyone in the audience wishes to have the order of the Agenda changed, please come to the podium, and explain the reason you are asking for the order of the Agenda to be changed.

G. **ITEMS PLACED ON THE AGENDA FROM THE FLOOR:**

H. **ADJOURNMENT:**

POSTED: FRIDAY, DECEMBER 11, 2009



**CITY OF CORNING
PLANNING COMMISSION MINUTES
TUESDAY, NOVEMBER 17, 2009
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. **CALL TO ORDER:** at 6:30 p.m.

B. **ROLL CALL:**

Commissioners: Robertson
Reilly
Hatley
Vacant
Chairman: Lopez

All Commissioners were present except Commissioner Hatley. Commissioner Hatley entered the meeting at 6:45 p.m. after the meeting closed.

C. **MINUTES:**

1. Waive the Reading and Approve the Minutes of the September 17, 2009 Planning Commission Meeting with any necessary corrections.

Chairman Lopez moved to approve the minutes as written, and Commissioner Reilly seconded the motion. **Ayes: Robertson, Reilly and Lopez. Opposed: None. Absent: Hatley. Abstain: None. Motion was approved by a 3-0 vote with Hatley absent and one vacancy on the Commission.**

D. **BUSINESS FROM THE FLOOR:** None.

E. **PUBLIC HEARINGS AND MEETINGS:** Any person may speak on items scheduled for hearing at the time the Chairman declares the Hearing open. **ALL LEGAL NOTICES PUBLISHED IN ACCORDANCE WITH LAW.**

2. Consider Approval of Use Permit No. 2009-257: House of Brews: To establish a specialty coffee house in the west suite of an existing building that fronts 4th Street. The building is located along the east side of 4th Street approximately 60 feet north of the 4th Street/Yolo Street intersection. Address: 615 4th Street, APN No. 71-116-06.

Chairman Lopez introduced this item by title providing the location and brief description of the property. Planning Director John Stoufer briefed the Commission on the intended property use, the background of the property and informed the Commission that he had received one letter from a resident that discussed six issues related to the proposed business. Mr. Stoufer announced that there was a concern related to the condition of the sidewalk fronting the property. He announced that the applicant, Mr. Holden was present.

Chairman Lopez opened the public hearing. Receiving no comments from the audience, Chairman Lopez closed the public hearing.

Commissioner Robertson asked the hours of the proposed business and was informed that the business hours would be Monday through Friday 6:00 a.m. to 5:30 p.m. and Saturday mornings. Commissioner Reilly requested to add a third Condition of Approval to state that the Owner/Applicant will sawcut, remove and replace that portion of concrete at the entrance of suite that is cracked.

With no further discussion, Commissioner Reilly moved to adopt the 4 Subfindings and Findings as presented in the Staff Report and approve Use Permit 2009-257 subject to Conditions of Approval

1 through 2 and add the proposed third Condition of Approval requiring that the Owner/Applicant will sawcut, remove and replace that portion of concrete at the entrance of suite that is cracked. Commissioner Robertson seconded the motion. **Ayes: Robertson, Reilly and Lopez. Opposed: None. Absent: Hatley. Abstain: None. Motion was approved by a 3-0 vote with Hatley absent and one vacancy on the Commission.**

F. **REGULAR AGENDA:** None.

G. **ITEMS PLACED ON THE AGENDA FROM THE FLOOR:** None.

H. **ADJOURNMENT:** 6:42 p.m.

Lisa M. Linnet, City Clerk

**ITEM NO: E-2
USE PERMIT APPLICATION 2009-258;
SWEET SEDUCTION TATTOO; ESTABLISH
A TATTOO BUSINESS (PARLOR) IN THE
EAST SUITE OF AN EXISTING BUILDING
LOCATED ALONG THE SOUTH SIDE OF
SOLANO ST., APPROXIMATELY 400 FEET
WEST OF THE SOLANO ST./TOOMES AVE.
INTERSECTION.
ADDRESS 2069 SOLANO ST. APN:71-140-07**

DECEMBER 15, 2009

TO: PLANNING COMMISSIONERS OF THE CITY OF CORNING

FROM: JOHN STOUFER; PLANNING DIRECTOR

PROJECT DESCRIPTION:

The site proposed for the establishment of the tattoo business is zoned C-3, General Business District. Pursuant to Section 17.54.020 (9) of the Corning Municipal Code, a tattoo business (parlor) in this zoning district shall only be permitted upon the securing of a conditional use permit. The applicant is proposing to locate the business in eastern suite of the three suites in the existing building located in front of the bowling alley.

GENERAL PLAN LAND USE DESIGNATION

C – Commercial – This classification includes all commercial uses of land as permitted in the City's zoning ordinance. These include zoning districts C-1, C-2, C-3, C-3-P, CD, and CH zoning districts.

ZONING

C-3 – General Commercial District – This district is intended to be applied where general commercial facilities are necessary for public service and convenience.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21084 of the Public Resources Code requires a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA. The Secretary of Resources has classified projects that do not have a significant effect on the environment and are declared to be categorically exempt from the requirement for the preparation of environmental documents.

CEQA, Section 15301, Existing Facilities, Class 1 provides exemptions for the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of

the lead agency's determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

This project will allow additional commercial use of a building that was previously occupied by tax preparation business that had clients making daily appointments. Reuse of the building for a tattoo business would be a similar or less intensive use of the building than the previous tax business, therefore it is considered a negligible expansion of a commercial use and exempt from CEQA pursuant to Section 15301, Class 1.

CONSISTENCY WITH GENERAL PLAN

The site is designated Commercial as shown on the Current Land Use Map for the City of Corning. Development of a commercial use such as a tattoo business in an existing building at this location is consistent with the following Community Goals, Land Use Goals, and Policies of the Corning General Plan.

Community Goals

Goal #1 – Continue and enhance the quality of life in the City of Corning and its immediate vicinity.

Goal #2 – Improve the quality and environment sensitivity of new development in Corning

Goal #3 – Attract jobs that will employ Corning residents.

Land Use Goals

Goal #1 – Promote the orderly development of Corning and its surroundings.

Goal #2 – Insure that new development pays for the necessary City facilities

Land Use Policies

Policy #6 – Encourage the location and development of businesses which generate high property and sales taxes, local employment and are environmentally compatible.

Policy #7 – Commercial development should be clustered on arterial streets and at major intersections in the downtown or near Interstate 5 interchanges

PARKING

Chapter 17.51 of the City of Corning Zoning Code establishes off-street parking requirements and states: "The purpose of this chapter is to provide reasonable requirements for off-street parking in order to expedite traffic movement, lessen street congestion, improve traffic and pedestrian safety, and to provide for the public health, safety and general welfare."

"The off-street parking requirements contained in this chapter apply to the particular use made of a lot, building or structure and not to a particular zoning classification."

This chapter does establish parking requirements for barber and beauty shops but does not specifically establish parking requirements for a tattoo business. Pursuant to Section 17.51.160 of the CMC the Planning Commission has the ability to apply parking requirements for uses not specified in Chapter 17.51. Staff feels that a tattoo business would be similar to a barber or beauty shop which would require one space for each seventy-five square feet of gross floor area or two spaces per chair, whichever is less.

The applicant has indicated that the suite where the tattoo business will be located is approximately 400 sq. ft. and that there are 4 parking stalls available for this business. With having only one chair the four spaces comply with the off-street parking requirements.

RECOMMENDATION:

Staff recommends that the Planning Commission adopt the following, or similar, Subfindings and Findings for Use Permit 2009-258:

Subfinding #1

That portion of the existing building proposed for use as a tattoo business was previously occupied by Jackson/Hewitt Tax Services that had daily visits from the general public.

Finding #1

The granting of Use Permit 2009-258 is a negligible change of a previous commercial use of an existing building established at this site and therefore exempt from CEQA pursuant to Section 15301, Class 1.

Subfinding #2

The existing suite has approximately 400 sq. ft. of area and 4 off-street parking stalls to be used by the tattoo business.

Finding #2

The building, and parcel proposed for use by Sweet Seduction Tattoo is adequate in size, shape and topography for the establishment of a tattoo business.

Subfinding #3

The parcel has frontage and direct access to Solano Street.

Finding #3

The site has existing access to Solano St. that is constructed with adequate width, pavement and capacity for the proposed use.

Subfinding #4

The establishment of a tattoo business will be located in an existing building that was constructed for, and has been used for commercial purposes. The parcel is currently zoned for commercial use.

Finding #4

The establishment of a tattoo business at this site will not have an adverse effect upon the use, enjoyment or valuation of adjacent or neighboring properties or upon the public welfare.

ACTION

1. **MOVE TO ADOPT THE 4 SUBFINDINGS AND FINDINGS AS PRESENTED IN THE STAFF REPORT FOR USE PERMIT 2009-258**
(PLEASE NOTE : PRIOR TO ADOPTING THE RECOMMENDED SUBFINDINGS & FINDINGS THE COMMISSION HAS THE ABILITY TO MODIFY OR REMOVE ANY OF THE SUBFINDINGS AND FINDINGS IF DEEMED APPROPRIATE BY A MAJORITY OF THE COMMISSION)

VOTE OF THE COMMISSION

2. **MOVE TO APPROVE USE PERMIT 2009-258 SUBJECT TO THE FOLLOWING CONDITIONS AS RECOMMENDED BY STAFF.**
(PLEASE NOTE: THE COMMISSION HAS THE ABILITY TO MODIFY, DELETE OR ADD CONDITIONS PRIOR TO APPROVAL OF THE PROJECT.)

VOTE OF THE COMMISSION

OR:

Failing to make findings in support of the project recommend findings in denial of the project for consideration by the Commission.

Adopt findings in denial of the project and deny Use Permit 2009-258.

**STAFF RECOMMENDS THE FOLLOWING
CONDITIONS OF APPROVAL
FOR USE PERMIT 2009-258**

Condition #1

The applicant must comply with the requirements of the Tehama County Environmental Health Department.

Condition #2

The tattoo business must comply with the City of Corning Sign Regulations

ATTACHMENTS

Exhibit "A"	VICINITY MAP
Exhibit "B"	GENERAL PLAN LAND USE MAP
Exhibit "C"	ZONING MAP
Exhibit "D"	APPLICATION

EXHIBIT "A" VICINITY MAP

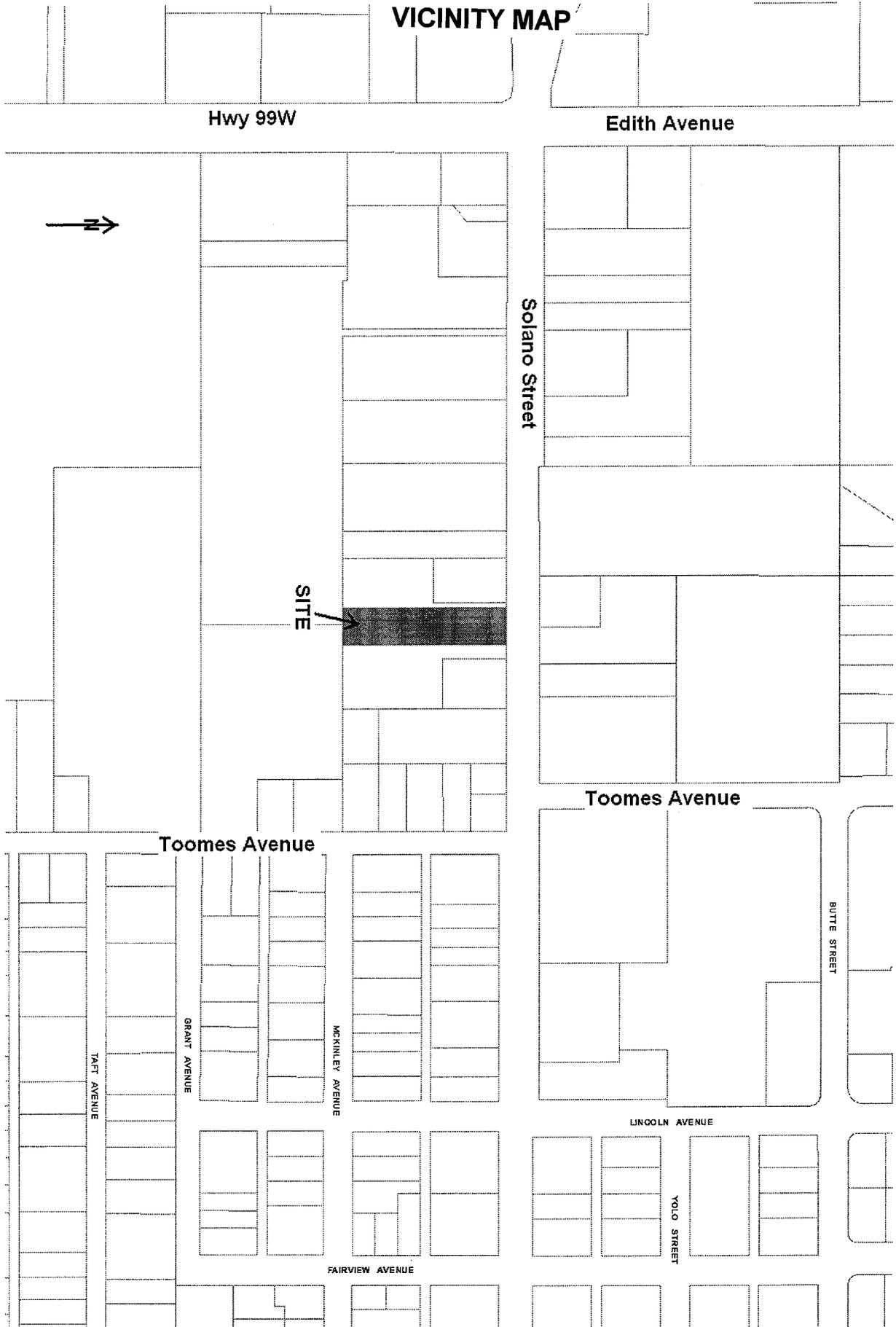
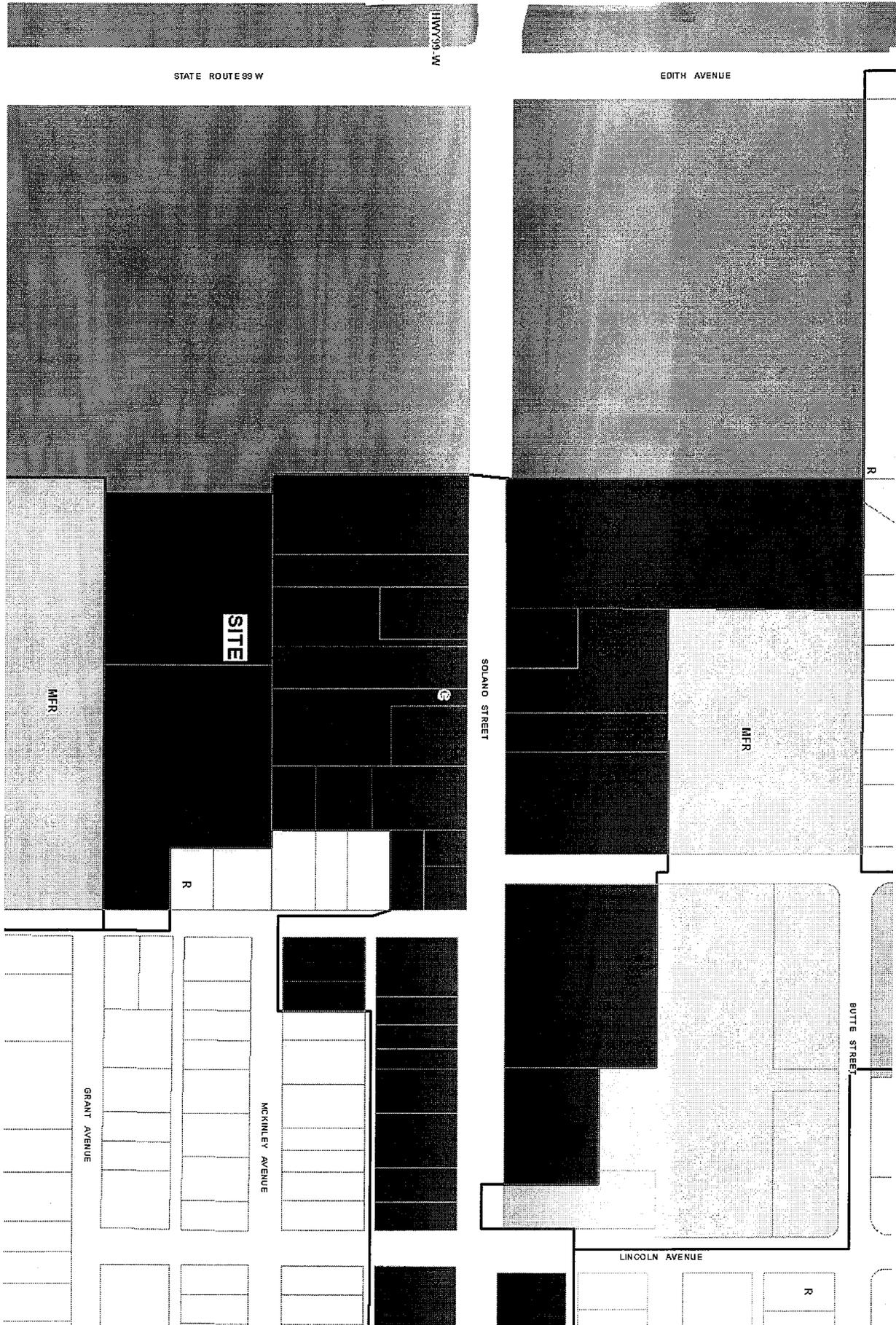


EXHIBIT "B" GENERAL PLAN MAP



STATE ROUTE 99 W

HWY 99 W

EDITH AVENUE

SITE

MFR

R

SOLANO STREET

MFR

GRANT AVENUE

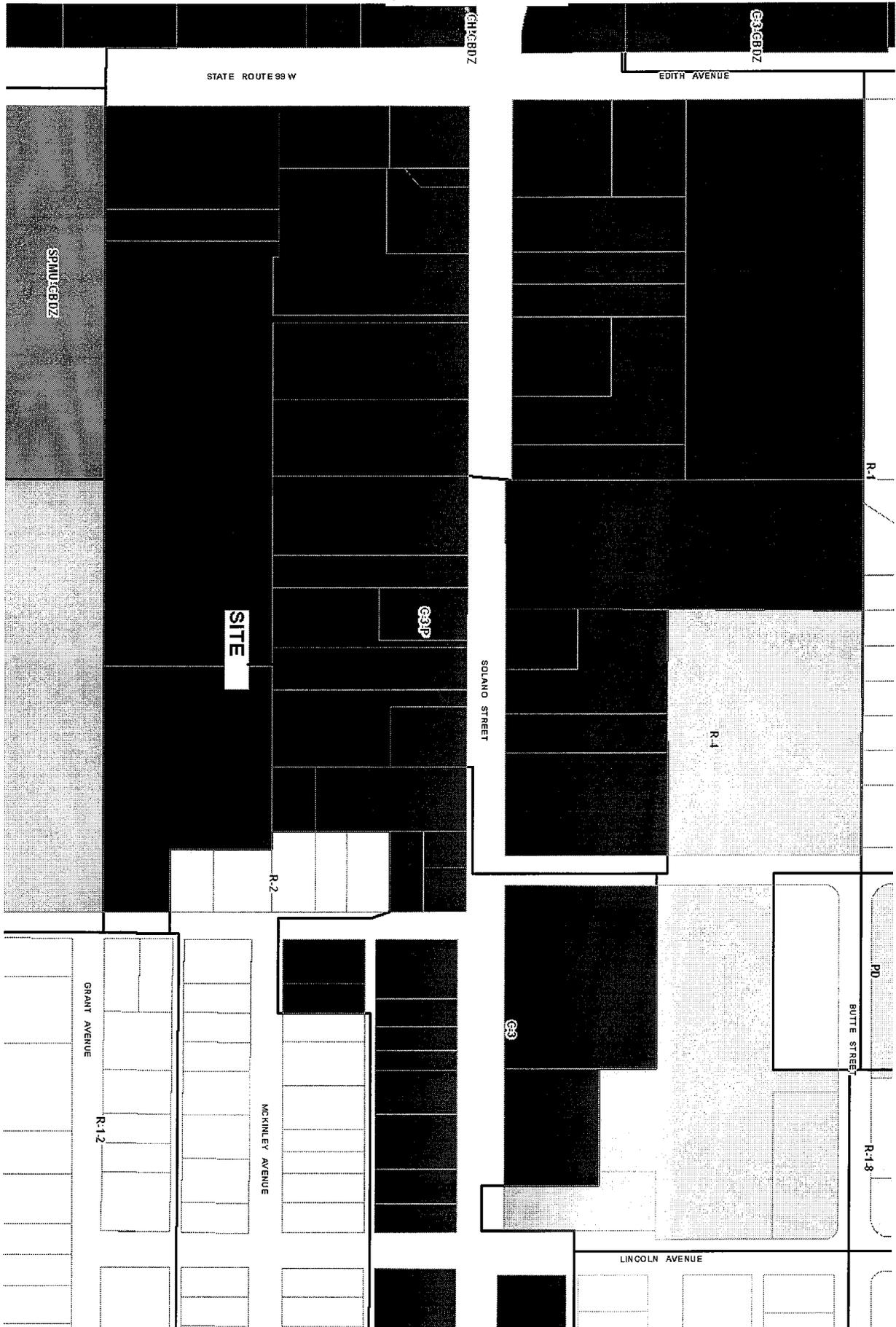
MCKINLEY AVENUE

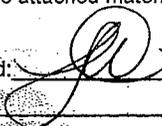
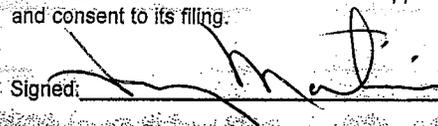
BUTTE STREET

LINCOLN AVENUE

R

EXHIBIT "C" ZONING MAP



PROJECT INFORMATION	PROJECT ADDRESS 2069 SOLANO ST.	ASSESSOR'S PARCEL NUMBER 71-140-07	G.P. LAND USE DESIGNATION C-Commercial
	ZONING DISTRICT COMMERCIAL (C-2)	FLOOD HAZARD ZONE	SITE ACREAGE
	PROJECT DESCRIPTION: (attach additional sheets if necessary) Establish a Tattoo business in a C-3 Zoning District pursuant to Section 17.54.020 (9) of the Corning Municipal Code.		
	APPLICATION TYPE (Check All Applicable)		
<input type="checkbox"/> Annexation/Detachment <input type="checkbox"/> General Plan Amendment <input type="checkbox"/> Lot Line Adjustment <input type="checkbox"/> Merge Lots <input type="checkbox"/> Planned Dev. Use Permit <input type="checkbox"/> Parcel Map <input type="checkbox"/> Preliminary Plan Review <input type="checkbox"/> Rezone <input type="checkbox"/> Street Abandonment <input type="checkbox"/> Subdivision <input type="checkbox"/> Time Extension <input checked="" type="checkbox"/> Use Permit			
APPLICANT INFORMATION	APPLICANT LUSINA ESPINOZA ANTHONY CARRILLO	ADDRESS 1119 WEST ST 96021	DAY PHONE 530 838 5271
	REPRESENTATIVE (IF ANY)	ADDRESS	DAY PHONE
	PROPERTY OWNER Jerry MARTIN	ADDRESS PO Box 863	DAY PHONE 824-4489
	CORRESPONDENCE TO BE SENT TO <input checked="" type="checkbox"/> APPLICANT <input type="checkbox"/> REPRESENTATIVE <input type="checkbox"/> PROP. OWNER		
	APPLICANT/REPRESENTATIVE: I have reviewed this application and the attached material. The information provided is correct. Signed: 		PROPERTY OWNER: I have read this application and consent to its filing. Signed: 
By signing this application, the applicant/property owner agrees to defend, indemnify, and hold the City of Corning harmless from any claim, action, or proceeding brought to attack, set aside, void or annul the City's approval of this application, and any Environmental Review associated with the proposed project.			

SUBMITTAL INFO	FOR OFFICE USE ONLY			
	APPLICATION NO. 2009-258	RECEIVED BY: JS	DATE RECEIVED 11/11/09	DATE APPL. DEEMED COMPLETE
FEES RECEIVED/RECEIPT NO:		CEQA DETERMINATION Exempt ND MND EIR	DATE FILED	



CITY OF CORNING

ENVIRONMENTAL INFORMATION FORM (To be completed by Applicant)

DATE FILED _____

General Information

1. Project Title: SWEET SEDUXION TATTOO

2. List and describe any other related permits and other public approvals required for this project, including those required by city, regional, state and federal agencies:

BUSINESS LICENCE, REGISTERING WITH ENVIRONMENTAL HEALTH (DONE)

Additional Project Information

3. For non-residential projects, indicate total proposed building floor area: ~400 sq. ft. in _____ floor(s).

4. Amount of off-street parking to be provided. 4 parking stalls. (Attach plans)

5. Proposed scheduling/development. Schedule opening if Use Permit is approved / NO phased development.

6. Associated project(s).
BARBER SHOP, HERBALIFE, JAVA LANES

7. If residential, include the number of units, schedule of unit sizes, range of sale prices or rents, and type of household size expected. (This information will help the City track compliance with the objectives of the Housing Element of the General Plan.)

N/A

**CITY OF CORNING
PLANNING APPLICATION**

8. If commercial, indicate the type, whether neighborhood, city or regionally oriented, square footage of sales area, and loading facilities.

TATTOO SHOP, CITY ORIENTED,

9. If industrial, indicate type, estimated employment per shift, and loading facilities.

N/A

10. If institutional, indicate the primary function, estimated employment per shift, estimated occupancy, loading facilities, and community benefits to be derived from the project.

N/A

11. If the project involves a variance, conditional use permit or rezoning application, state this and indicate clearly why the application is required.

Are the following items applicable to the project or its effects? Discuss below all items checked yes (attach additional sheets as necessary).

- | | YES | NO |
|---|--------------------------|-------------------------------------|
| 12. Change in existing topographic features, or substantial alteration of ground contours? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 13. Change in scenic views or vistas from existing residential areas or public lands or roads? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 14. Change in pattern, scale or character of general area of project? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 15. Significant amounts of solid waste or litter? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 16. Change in dust, ash, smoke, fumes or odors in vicinity? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 17. Change in lake, stream or ground water quality or quantity, or alteration of existing drainage patterns? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 18. Substantial change in existing noise or vibration levels in the vicinity? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 19. Is the site on filled land or on slopes of 10 percent or more? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 20. Use, storage, or disposal of potentially hazardous materials, such as toxic substances, flammables or explosives? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 21. Substantial change in demand for municipal services (police, fire, water, sewage, etc.)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 22. Substantially increase energy usage (electricity, oil, natural gas, etc.)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| 23. Relationship to a larger project or series of projects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

**CITY OF CORNING
PLANNING APPLICATION**

Environmental setting

24. Describe the project site as it exists before the project, including information on topography, soil type and stability, plants and animals, and any cultural, historical or scenic aspects. Describe any existing structures on the site, and the use of the structures. Attach photographs of the site, snapshots or Polaroid photos will be accepted.

EXISTING COMMERCIAL BUILDING SITE
CURRENTLY VACANT, NO CONSTRUCTION BEING
DONE.

25. Describe the surrounding properties, including information on plants and animals and any cultural, historical or scenic aspects. Indicate the type of land use (residential, commercial, etc.), intensity of land use (one-family, apartment houses, shops, department stores, etc.), and scale of development (height, frontage, set-back, rear yard, etc.). Attach photographs of the vicinity. Snapshots or Polaroid photos will be accepted.

MINI MART, ACE HARDWARE, VETERINARY CLINIC,
LYNDON JOHNSONS, ESTABLISHED COMMERCIAL
USE ON E SOLANO ST. IN CORNING.

Certification

I hereby certify that the statements furnished above and in the attached exhibits present the data and information required for this initial evaluation to the best of my ability, and that the facts, statements, and information presented are true and correct to the best of my knowledge and belief.

Date 11/11/2009

Signature 
For: SWEET SEDUCTION TATTOO

**ITEM NO. E-3
ORDINANCE NO. 639; CULTIVATION OF MEDICAL
MARIJUANA; AN ORDINANCE OF THE CITY OF
CORNING ADDING A CHAPTER TO TITLE 17 OF
THE CORNING MUNICIPAL CODE THAT WOULD
REGULATE THE CULTIVATION OF MEDICAL
MARIJUANA**

DECEMBER 15, 2009

TO: PLANNING COMMISSION OF THE CITY OF CORNING

FROM: JOHN STOUFER, PLANNING DIRECTOR

BACKGROUND:

At the February 2009 Planning Commission Meeting a study matter regarding regulating the cultivation of medical marijuana and banning the establishment of medical marijuana dispensaries, collectives and cooperatives was discussed. Due to several uncertainties in the law and pending litigation involving other cities in the State of California an ordinance regulating the cultivation of medical marijuana has not been presented for public review and consideration before the Planning Commission and City Council.

Since the February meeting the City Council has adopted an interim ordinance banning the establishment of medical marijuana dispensaries, collectives and cooperatives within any zoning district in the City of Corning. This interim ordinance will remain in effect until August 2010. The ordinance before the Planning Commission imposes regulation regarding the cultivation of medical marijuana only, and does not have any effect on the interim ordinance that currently bans dispensaries, collectives and cooperatives.

Staff has been working with an Adhoc Committee, appointed by the Council, in developing the regulations proposed in this ordinance. Below are bullet points of the regulations that would be imposed if Ordinance No. 639 is adopted by the Council:

- Cultivation of medical marijuana would be prohibited within any residential structure.
- Outdoor cultivation of medical marijuana would be prohibited.
- Cultivation of medical marijuana would be limited to six (6) mature or twelve (12) immature marijuana plants per parcel or premises. Premises is defined in the ordinance as a single legal parcel or contiguous legal parcels under common ownership.
- Cultivation of medical marijuana must be conducted within a secure detached structure, located in the rear yard of a parcel only, and a minimum 10 feet from any property line surrounded by a six (6) foot high solid fence

- A mechanical ventilation system approved by the Building Official must be installed within the detached structure.
- Adequate mechanical or electronic security system approved by the Building Official and Police Chief must be installed in and around the detached structure.
- Qualified patients or caregivers must annually register with the Corning Police Department and provide a valid medical recommendation or State issued medical marijuana card.
- Non-conforming or “grandfathered” cultivation of medical marijuana must comply with this ordinance by December 31, 2010.
- Cultivation of medical marijuana is prohibited within 1000 feet of any school located within the City.

ENVIRONMENTAL:

The California Environmental Quality Act (CEQA) Section 15061 (b) (3) states: “a project is exempt from CEQA if: The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA.” Regulating the cultivation of medical marijuana will not have a significant effect on the environment.

This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA. This approach has been noted with approval in a number of appellate court decisions including the State Supreme Court opinion in *No Oil, Inc. v. City of Los Angeles*.

PROPOSED ORDINANCE NO. 639 APPLICABLE TO THE CULTIVATION OF MEDICAL MARIJUANA WITHIN THE CITY OF CORNING

WHEREAS, the State of California approved Proposition 215 “The Compassionate Use Act of 1996” (Health and Safety Code Section 11362.5), which was to enable persons who are in need of marijuana for medical purposes; and

WHEREAS, the State also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, under the Controlled Substances Act, the use, possession and cultivation of medicinal marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, marijuana plants, as they begin to flower and for a period of two months or more during the growing season (August through October for outdoor cultivation), produce an extremely strong odor, offensive to many people, and detectable far beyond property boundaries; and

WHEREAS, the City has continually received complaints of odor related to the growing of medicinal marijuana; and

WHEREAS, in the case of multiple qualified patients who are in control of the same legal parcel, or parcels, of property, or in the case of a caregiver growing for numerous patients, a very large number of plants could be grown on the same legal parcel, or parcels, within the City of Corning; and

WHEREAS, the possession of large quantities marijuana has resulted in the armed robberies of residents living in nearby communities and residential areas surrounding the City of Corning; and

WHEREAS, the strong smell of marijuana creates an attractive nuisance, alerting persons to the location of the valuable plants, and creating a risk of burglary, robbery or armed robbery, and the death of a man in the nearby community of Los Molinos; and

WHEREAS, it is the purpose and intent of this ordinance to implement state law by providing a means for regulating the cultivation of medicinal marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers and promotes the health, safety, morals and general welfare of the residents and businesses within the City of Corning. Nothing in this ordinance shall be constructed to allow the use of marijuana (cannabis) for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal; and

WHEREAS, the potential adverse secondary effects of allowing the cultivation of medicinal marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety of the community because currently the City has no rules or regulations governing the cultivation of medical marijuana; and

WHEREAS, it is the purpose and intent of this ordinance is to ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets; and

WHEREAS, it is the purpose and intent of this ordinance to help law enforcement agencies perform their duties effectively and in accordance with California law; and

WHEREAS, the cultivation of marijuana within a residence has potential adverse affects to the structural integrity of the residence and the use of high wattage grow lights within a residence increases the chances of a fire which presents a clear and present danger to the occupants; and

WHEREAS, The indoor cultivation of substantial amounts of marijuana also requires excessive use of electricity, which often creates an unreasonable risk of fire from the electrical grow lighting systems used in indoor cultivation; and

WHEREAS, Areas surrounding schools attract large numbers of juveniles and the cultivation of any amount of marijuana at locations or premises within 1,000 feet of a school makes the site vulnerable to theft or recreational consumption by juveniles. Further, the potential for criminal activities associated with marijuana cultivation in such locations poses heightened risks that juveniles will be involved or endangered. Therefore, cultivation of any amount of marijuana in such locations or premises is especially hazardous to public safety and welfare, and to the protection of children and the person(s) cultivating the marijuana plants; and

WHEREAS, The Attorney General's August 2008 *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use* recognizes that the cultivation or other concentration of marijuana in any location or premises without adequate security increases the risk that surrounding homes or businesses may be negatively impacted by nuisance activity such as loitering or crime

- 17.64.010 Purpose and Intent**
- 17.64.020 Definitions**
- 17.64.030 Cultivation of Medical Marijuana**
- 17.64.040 Non-Conforming Use**
- 17.64.050 Enforcement**

17.64.010. Purpose and Intent: It is the purpose and intent of this chapter to require that medical marijuana be cultivated in appropriately secured, enclosed, and ventilated structures, so as not to be visible to the public domain, to provide for the health, safety and welfare of the public, to prevent odor created by marijuana plants from impacting adjacent properties, and ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets.

This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.

17.64.020. Definitions: Definitions: As used herein the following definitions shall apply:

A. **CULTIVATION:** The planting, growing, harvesting, drying, or processing of marijuana plants or any part thereof.

B. DETACHED FULLY ENCLOSED AND SECURE STRUCTURE: A building completely detached from a residence that complies with the California Building Code, as adopted in the City of Corning, and has a complete roof enclosure supported by connecting walls extending from the ground to the roof, a foundation, slab or equivalent base to which the floor is secured by bolts or similar attachments, is secure against unauthorized entry, and is accessible only through one or more lockable doors. Walls and roofs must be constructed of solid materials that cannot be easily broken through, such as two inch by four inch (2" x 4") or thicker studs overlaid with three-eighths inch (3/8") or thicker plywood or the equivalent. Plastic sheeting, regardless of gauge, or similar products do not satisfy this requirement.

C. IMMATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has not yet flowered and which does not yet have buds that are readily observed by unaided visual examination.

D. INDOORS: Within a fully enclosed and secure structure.

E. MATURE MARIJUANA PLANT: A marijuana plant, whether male or female, that has flowered and which has buds that are readily observed by unaided visual examination.

F. OUTDOOR: Any location within the City of Corning that is not within a fully enclosed and secure structure.

G. LEGAL PARCEL: Any parcel of real property that may be separately sold in compliance with the Subdivision Map Act (Division 2, commencing with Section 66410, of Title 7 of the Government Code).

H. PREMISES. A single, legal parcel of property. Where contiguous legal parcels are under common ownership or control, such contiguous legal parcels shall be counted as a single "premises" for purposes of this chapter.

I. REAR YARD. As defined in Section 17.06.560 of the Corning Municipal Code.

J. SOLID FENCE. A six foot high structure, constructed with material approved by the Building Official that prevents viewing the contents from one side to the other.

K. SCHOOL. An institution of learning for minors, whether public or private, offering regular course of instruction for children attending kindergarten, elementary school, middle or junior high school or senior high school. A residence that provides home schooling and preschool or daycare centers are not included in this definition.

L. PRIMARY CAREGIVER: A "primary caregiver" as defined in Health and Safety Code section 11362.7(d).

M. QUALIFIED PATIENT: A "qualified patient" as defined in Health and Safety Code section 11362.7(f).

17.64.030. Cultivation of Medical Marijuana: The following regulations shall apply to the cultivation of medical marijuana as allowed pursuant to Proposition 215 and Senate Bill 420.

A. Outdoor Cultivation: It is hereby declared to be unlawful for any person owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Corning to cause or allow such parcel or premises to be used for the outdoor cultivation of marijuana plants.

B. Residential Structure Cultivation: It is hereby declared to be unlawful for any person to cultivate marijuana in any residential structure, occupied or not.

C. Multi-Family Residential or Commercial Parcels: It is hereby declared to be unlawful for any person to cultivate marijuana on any legal parcel or premises containing two or more attached or detached residential structures.

D. Proximity to Schools: It is hereby declared to be unlawful to cultivate medical marijuana on any legal parcel or premises within 1000 feet of a school as defined in this chapter. The 1000 foot distance shall be measured from the closet property line of the school to the closet property line of the cultivation parcel.

E. Cultivation Limits: It is hereby declared to be unlawful for any person or persons owning, leasing, occupying, or having charge or possession of any legal parcel or premises within any zoning district in the City of Corning to cause or allow such parcel or premises to be used for the cultivation of more than six (6) mature or twelve (12) immature marijuana plants.

F. Indoor Cultivation: The indoor cultivation of medical marijuana must be conducted within a detached fully enclosed secure structure and shall conform to the following standards:

- 1) Any detached structure, regardless of square footage, constructed, altered or used for the cultivation of medical marijuana must obtain a building permit from the Building Official. Cultivation within this detached structure may not commence without final approval of the Building Official, Planning Director and Chief of Police.
- 2) Indoor grow lights shall not exceed 1200 watts and comply with the California Building, Electrical and Fire Codes as adopted by the City of Corning. Gas products (CO₂, Butane, Propane, Natural Gas, etc) or generators may not be used within a detached structure used for the cultivation of medical marijuana.
- 3) Any detached structure used for the cultivation of medical marijuana must install a ventilation system that will prevent marijuana plant odors from exiting the interior of the structure and that shall comply with the California Building Code Section 402.3 Mechanical Ventilation. The ventilation system must be approved by the Building Official and installed prior to commencing cultivation within the detached structure.
- 4) A detached structure used for the cultivation of marijuana must be located in the rear yard area of a legal parcel or premises, maintain a minimum ten (10) foot setback from any property line, and the area surrounding the structure must be enclosed by a six (6)

foot high solid fence. If the entire rear yard area is fenced by a six foot high solid fence, and access from the side yards are fenced by a six foot high solid fence that will suffice for the fencing requirement.

- 5) Adequate mechanical or electronic security systems approved by the Building Official and Chief of Police must be installed in and around the detached structure prior to the commencement of cultivation.
- 6) Prior to commencing cultivation, and upon annual renewal of a qualified patients physicians recommendation, the person(s) owning, leasing, occupying, or having charge or possession of any legal parcel or premises where a detached structure is used for the cultivation of marijuana must register with the Corning Police Department. The following information will be required with the annual registration:
 - A. A notarized signature from the landowner consenting to the cultivation of marijuana within a detached structure on a legal parcel or premises. The City will supply the letter of consent for signature by the landowner.
 - B. The number of marijuana plants to be cultivated on the legal parcel or premises.
 - C. The name of each person, owning, leasing, occupying, or having charge of any legal parcel or premises where marijuana will be cultivated.
 - D. The name of each qualified patient or primary caregiver who participates in the cultivation, either directly or by providing reimbursement for marijuana or the services provided in conjunction with the provision of that marijuana.
 - E. The original current valid medical recommendation or State issued medical marijuana card for each qualified patient identified as required above, and for each qualified patient for whom any person identified as required above is the primary caregiver.
 - F. The physical site address of where the marijuana will be cultivated.
 - G. A signed consent form authorizing city staff, including the police department, authority to do a notified inspection of the detached structure used for the cultivation of marijuana. The City will supply the letter of consent for signature.

The information contained within the registration material shall be received in confidence, and shall be used or disclosed only for purposes of administration of this ordinance or State law, or as otherwise required by law.

17.64.040 Non-Conforming Use

Non-Conforming Cultivation : Any parcel or premises that was used for the cultivation of medical marijuana by a qualified patient or caregiver and had marijuana plants established and growing by March 12, 2010 and does not meet the requirements of this section shall be allowed to continue cultivation activities as established in accordance with regulations for non-conforming land uses in Section 17.52.010 of the Corning Municipal Code until December 31, 2010 at which time Section 17.52.010 will no longer be applicable and any non-conforming cultivation must cease and future cultivation of medical marijuana must comply with this chapter.

17.64.050 Enforcement:

A. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

B. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure:

a. The Chief of Police, Building Official, Planning Director, or a designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.

(2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.

(3) State the date and time by which the required abatement actions must be completed.

(4) State that to avoid the civil penalty provided in subsection C.a.(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.

(5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection E. of this section.

(6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection E. of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

D. The notice described in subsection C.a. of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

E. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city administrator or a hearing officer designated by the city administrator to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city administrator or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

F. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The enforcement official or the city administrator or hearing officer hearing an appeal pursuant to subsection C.a.(5) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and the violator's ability to pay. The daily penalty shall continue until the violation is abated. The

penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

G. Violation: Cultivation of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in subsections C.a.(8) and F. of this chapter.

H. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

ACTION

After taking public comments staff recommends that the Planning Commission take one of the following actions:

- 1) Move to recommend that the City Council adopt Ordinance No. 639 as presented to the Commission in the staff report.**
- 2) Move to recommend that the City Council adopt Ordinance No. 639 with changes as recommended by the Planning Commission.**
- 3) Move to send Ordinance No. 639 back to the Adhoc Committee to consider making changes as recommended by the Planning Commission.**
- 4) Move to recommend that the City Council deny adoption of Ordinance No. 639.**

ATTACHMENTS

A copy of Ordinance No. 639 was sent to THC, Inc., attached is information Ken & Kathy Prather submitted to the City.

RECEIVED

12/08/09

CORNING CITY CLERK

To; Tehama County Board of Supervisors,

Again we are forced to address the city of Corning, where we live, in regards to local regulation over state regulation of the state authorized Medical Marijuana Program. (MMP) Created by prop 215 in 1996, and Senate Bill 420 in 2003 (SB 420). This meeting will be @ olive view school. 12/15/09 6:30pm , as you know this city is in TEHAMA COUNTY. Your failure to act in a timely manner on this issue since 2003, and again in Oct/2008 June/2009 has created a countywide problem. You fail to follow the direction of State Authorized Agencies, and Officials designated by Prop 215, and SB 420 who have established regulation guidelines and policies to follow. We proposed you address these issues of regulation in July/2009 and you refused to put our proposal on your agenda.

Your actions here borderline Discrimination of medical marijuana patients who are complying with California State, and Federal Laws.

You have proposed restrictions, and bans against citizens who participate in the State Medical Marijuana Program, and refuse to acknowledge facts beyond the opinion of your local legal counsel. We as citizens using Marijuana as medicine with a doctors recommendation have threatened to sue this county.

Please read the enclosed letter to the city of Corning in regards to this issue. Maybe you will actually read the factual information that will command you cease all actions proposed by the county staff in all area's of the State Medical Marijuana Program. The AG Guidelines are also clearly written.

We request you remove the threat of legal actions against patients. Civil actions would conclude a sanction to the normal activities allowed under Prop 215, and SB 420, and are prohibited by SB 420 Health & Safety codes.

“Choose Option III of the last staff report” Future conflict may be likely if you do not address this issue their way? This “conflict” has already happened, initiated by the county staff, and allowed by your support of the local county staff recommendations. Please accept this in good faith, and not as a threat. Facts are facts.

530 824 4811

1317 Solano

Corning, Ca 96021

Respectfully , Ken & Kathy Prather

12/07/09

RECEIVED

CORNING CITY CLERK

To; Corning Planning Commission,
Corning City Council & Staff,

Thank you for the copy of the city's latest Ordinance Proposal. We have read through the proposal and have many concerns for the lack of compliance to Prop 215, Senate Bill 420, and the Attorney Generals Office Guidelines.

Who created this?, is one question, what material did they reference, and what outside legal council input was referenced are the others??

The purpose and intent paragraph's state this ordinance is to secure cultivation indoors to ensure public safety, eliminate odor, and to control the non diversion of medicine to non medical users. It also states this ordinance will not criminalize cultivation pursuant to Prop 215, or H&S Code 11362.

Please read the following before reading my comments:

From: California Legislative Counsel's Digest

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program. This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and no diversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

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

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

- (1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.
 - (2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.
 - (3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.
 - (4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.
- (b) It is the intent of the Legislature, therefore, to do all of the following:
- (1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.
 - (2) Promote uniform and consistent application of the act among the counties within the state.
 - (3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.
- (c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.
- (d) The Legislature further finds and declares both of the following:
- (1) A state identification card program will further the goals outlined in this section.
 - (2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health

and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

INTRODUCED FEBRUARY 20, 2003 BY Senator Vasconcellos

PASSED SENATE SEPTEMBER 11, 2003

PASSED ASSEMBLY SEPTEMBER 10, 2003

(Principal coauthor: Assembly Member Leno. Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

An act to add Article 2.5 (commencing with Section 11362.7) to Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

From; Office of The Attorney General BILL LOCKYER
State of California Attorney General
2005

THE HONORABLE CHRISTINE KEHOE, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. Does the statewide registry and identification card program for medical marijuana users preempt the operation of a city's own registry and identification program?
2. May a city continue to operate its own registry and identification card program for medical marijuana users until the statewide registry and identification card program is implemented in the county in which the city is located?
3. May a county designate a city to perform the functions of the county health department under the statewide registry and identification card program for medical marijuana users?

CONCLUSIONS

1. The statewide registry and identification card program for medical marijuana users preempts the operation of a city's own registry and identification card program, but a city may adopt and enforce other ordinances consistent with the statewide program.
2. A city may continue to operate its own registry and identification card program for medical marijuana users until the statewide registry and identification card program is implemented in the county in which the city is located, except to the extent that the operation of the city's program would be inconsistent with state law.
3. A county may not designate a city to perform the functions of the county

health department under the statewide registry and identification card program for medical marijuana users.

ANALYSIS

On November 5, 1996, the voters of California adopted Proposition 215, an initiative statute authorizing the medical use of marijuana. (See *People v. Mower* (2002) 28 Cal.4th 457, 463; *People v. Bianco* (2001) 93 Cal.App.4th 748, 751; *People v. Rigo* (1999) 69 Cal.App.4th 409, 412.) The measure added section 11362.5 to the Health and Safety Code, and entitled the statute the “Compassionate Use Act of 1996.” (§§ 11362.5, subd. (a).) Section 11362.5 “creates an exception to California laws prohibiting the possession and cultivation of marijuana.” (*United States v. Oakland Cannabis Buyers’ Cooperative* (2001) 532 U.S. 483, 486.) “These prohibitions no longer apply to a patient or his primary caregiver who possesses or cultivates marijuana for the patient’s medical purposes upon the recommendation or approval of a physician.” (*Ibid.*; see *People v. Mower, supra*, 28 Cal.4th at pp. 471- 474; *People v. Galambos* (2002) 104 Cal.App.4th 1147, 1160 - 1162; *People v. Young* (2001) 92 Cal.App. 4th 229, 235.)²

The chief purposes of Proposition 215 are: (1) to give Californians the right to obtain and use marijuana in the medical treatment of illnesses for which it provides appropriate relief, as recommended by a physician, (2) to protect patients and primary caregivers, as defined, from criminal prosecution or other sanctions based on their possession, use, or distribution of marijuana for medical purposes, and (3) to encourage implementation of a cooperative governmental plan to make marijuana available and affordable to all patients in medical need thereof. (§ 11362.5, subd. (b)(1); see also § 11362.5, subd. (c) [barring punishment of physicians for recommending marijuana to patients]; 86 Ops.Cal.Atty.Gen. 180, 181 (2003).)

The three questions presented for analysis concern a recently established state program to facilitate implementation of Proposition 215. In 2003, the Legislature enacted sections 11362.7 through 11362.83 to provide a uniform system of “identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution” (Stats. 2003, ch. 875, § 1.) Under this legislation, the state Department of Health Services (“Department”) is directed to “establish and maintain a voluntary program for the issuance of identification cards” to qualified patients and primary caregivers, and to provide a process through which state and local law enforcement officers may immediately verify a card’s validity. (§ 11362.71, subd. (a); see also § 11362.71, subd. (d)(3).) Each county health department, or other “health-related governmental or nongovernmental entity or organization” designated by the county (§ 11362.71, subd. (c)), is to provide applications, receive and process completed applications, and issue identification cards. (§§ 11362.71, subd. (b); 11362.72-

11362.74.)³ Section 11362.77, subdivision (a), sets forth the maximum amount of marijuana and number of marijuana plants that a qualified patient or caregiver may possess without prosecution; however, local governments are expressly authorized to allow greater amounts. Subdivision (c) of section 11362.77 provides: "Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a)."⁴ Section 11362.83 additionally provides: "Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article."

1. Preemption of Local Programs

The first question to be resolved is whether the statewide registry and identification card program preempts the operation of a city's own registry and identification card program. We conclude that the statewide program preempts the operation of any local programs, but that cities may adopt and enforce other related ordinances if they are consistent with state law.

Under the California Constitution, each city and county is authorized to "make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Cal. Const., art. XI, § 7.) In *Candid Enterprises, Inc. v. Grossmont Union High School Dist.* (1985) 39 Cal.3d 878, 885, the Supreme Court examined the scope of this constitutional grant of authority: "Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise their power within their territorial limits and subordinate to state law. (Cal. Const., art. XI, §§ 7.) Apart from this limitation, the 'police power [of a county or city] under this provision . . . is as broad as the police power exercisable by the Legislature itself.' [Citation.]"

In addition, charter cities may adopt and enforce ordinances that conflict with general state laws, if the subject matter is a "municipal affair" and not a "statewide concern." (Cal. Const., art. XI, § 5; see *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1251; *Johnson v. Bradley* (1992) 4 Cal.4th 389, 399.)

Here, as we shall demonstrate, the statewide registry and identification card program is a subject of statewide concern; accordingly, if the operation of the city's program conflicts with state law, the local program is preempted and void. (See *American Financial Services Assn. v. City of Oakland*, *supra*, 34 Cal.4th at p. 1251; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 747; *Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 290; *Candid Enterprises v. Inc. v. Grossmont Union High School Dist.*, *supra*, 39 Cal.3d at p. 885; *City of Lodi v. Randtron* (2004) 118 Cal.App.4th 337, 351.)

A conflict between a state law and a local ordinance exists where "the ordinance duplicates or is coextensive therewith, is contradictory or inimical thereto, or

enters an area either expressly or impliedly fully occupied by general law.” (*American Financial Services Assn. v. City of Oakland*, *supra*, 34 Cal.4th at p. 1251; see *Sherwin-Williams Co. v. City of Los Angeles* (1993) 4 Cal.4th 893, 897-898.)

Initially, we note that the Legislature expressly did not intend to “fully occupy” all areas of law concerning the use of medical marijuana when it enacted the statewide registry and identification card program. To the contrary, the 2003 legislation affirmatively authorizes local governments to retain or establish guidelines permitting possession of greater amounts of marijuana (§ 11362.77, subd. (c)) and to adopt and enforce other “laws consistent with this article” (§ 11362.83). Hence, the state statutes at issue here do not expressly or impliedly preempt this entire field of regulation. (See *Malish v. City of San Diego* (2000) 84 Cal.App.4th 725, 728-729 [state law expressly permits local regulation of pawnbrokers and other secondhand dealers].)

On the other hand, the Legislature has demonstrated its intention to fully occupy a narrower, more specific field of regulation with respect to the use of medical marijuana: the establishment of a registry and identification card program designed to “facilitate the prompt identification of qualified patients and their designated primary caregivers” (Stats. 2003, ch. 875, § 1, subd. (b)(1).) This statewide program includes a mechanism by which law enforcement officers throughout the state “have immediate access to information necessary to verify the validity of an identification card.” (§ 11362.71, subd. (b).) The statutory provisions are elaborate, detailed, and comprehensive. (See, e.g., §§ 11362.7 [definitions]; 11362.77 [implementation duties of Department and each county health department]; 11362.715 [information required for applications]; 11362.72 [required steps for processing and issuing applications]; 11362.735 [required contents of identification cards]; 11362.74 [limited reasons for denial of application; appeal; waiting period to reapply]; 11362.745 [annual renewal of card]; 11362.755 [application and renewal fees].)

While patients’ and caregivers’ participation in the program is voluntary (§ 11362.71, subds. (a)(1), (f)), the statutes *mandate* that all necessary steps be taken by the Department and each county to make the program available to all applicants statewide (§ 11362.71, subds. (a)-(d)).

The statewide program is intended to “[p]romote uniform and consistent application of the act among the counties within the state.” (Stats. 2003, ch. 875, § 1, subd. (b)(2).) It follows that a local identification card program will be preempted, and rendered void, once the state program is implemented in the locality. At that point, any local program will “exceed the scope of local regulation permitted by” sections 11362.7 through 11362.83. (*Malish v. City of San Diego*, *supra*, 84 Cal.App.4th at p. 729.)⁶

We conclude that the statewide registry and identification card program for medical marijuana users preempts the operation of a city’s own registry and

identification card program, but a city may adopt and enforce other ordinances consistent with the statewide program.

2. Preemption Prior to Implementation of Statewide Program

The second question we are asked to address is whether a city may continue to operate its own program *until* the statewide program is implemented. We conclude that a local program may continue to be operated temporarily except for any element that is “contradictory to” state law.

A local ordinance, regulation, or program is contradictory to state law if it is “. . . inimical to state law; i.e., it penalizes conduct that state law expressly authorizes or permits conduct which state law forbids.” (*Suter v. City of Lafayette, supra*, 57 Cal.App.4th at p. 1124; see *Sherwin-Williams Co. v. City of Los Angeles, supra*, 4 Cal.4th at p. 898; 77 Ops.Cal.Atty.Gen. 147, 148 (1994).) Here, we are asked to consider a city ordinance that

(1) provides identification cards for patients and primary caregivers, (2) requires attending physicians to practice within the county where the city is located, (3) prohibits anyone under 18 years of age from receiving a card as a primary caregiver, (4) prohibits cardholders from being detained by city police officers longer than necessary to verify their status, (5) prohibits the seizure of medical marijuana by city police officers, (6) allows possession of marijuana in amounts different from the quantity specified in the statewide program, and (7) prohibits smoking marijuana in any public place. Do any of these elements of the local ordinance permit conduct that is prohibited by state law or forbid conduct that is permitted under state law?

We believe that a city may (1) continue to operate a local registry and identification program, (2) prohibit cardholders from being arrested by city police officers,

(3) prohibit the seizure of medical marijuana by city police officers, and (4) allow possession of marijuana in amounts greater than specified in the 2003 legislation. These elements of a local program would be consistent with state law. (See §§ 11362.71, subd. (e); 11362.77, subds. (a), (b), (c), (f); *Dublin v. City of Alameda* (1993) 14 Cal.App.4th 264, 275-277.)

On the other hand, a city would be preempted from allowing possession of marijuana at levels *less than* what the state law permits and making identification cards a *mandatory* prerequisite for prohibiting detention and seizure, because such provisions would directly contradict state law. (See § 11362.77 [qualified patient or caregiver may have at least eight ounces of marijuana per patient; cities and counties may permit quantities that *exceed* state amounts]; § 11362.71, subd. (f) [identification card not required to claim Act’s protections].) Similarly, a city program that defined “attending physician” and “primary caregiver” more narrowly than state law would be preempted to the extent that it prohibited what state law expressly permitted. (Cf. §§ 11362.7, subd. (a) [defining “attending physician”], 11362.7, subd. (e) [permitting “primary caregiver” to be under 18

years of age under specified circumstances].)

Finally, with respect to regulating where persons may use medical marijuana, the Legislature has provided in section 11362.79:

“Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

“(a) In any place where smoking is prohibited by law.

“.....”

A city thus would not be preempted from continuing to prohibit marijuana use in any public place; such local limitation may in fact remain after the statewide program has been implemented. (See also § 11362.765, subd. (a); cf. *City of San Jose v. Department of Health Services* (1998) 66 Cal.App.4th 35, 42 [Legislature has left to local authorities the matter of regulating tobacco smoking in their respective jurisdictions absent a conflict with state law].)

We conclude in answer to the second question that a city may continue to operate its own registry and identification card program for medical marijuana users until the statewide program is implemented in the county in which the city is located, except to the extent that the operation of the city’s program would be inconsistent with state law.

3. Designated Health-Related Entity or Organization

The final question to be addressed concerns whether a city may be designated to perform the duties of the county health department under the statewide registry and identification card program for medical marijuana users. We conclude that a city would not be eligible for such designation.

Section 11362.71, subdivision (b), sets forth a number of duties to be performed by a county health department or by the county’s “designee” in implementing the statewide registry and identification card program: “Every county health department, or the county’s designee, shall do all of the following:

“(1) Provide applications upon request to individuals seeking to join the identification card program.

“(2) Receive and process completed applications in accordance with Section 11362.72.

“(3) Maintain records of identification card programs.

“(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

“(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.”⁷

Section 11362.71, subdivision (c), specifies the entities from which a “county designee,” as used in subdivision (b), may be selected: “The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes

marijuana.” The term “health-related . . . entity or organization” is not defined in the 2003 legislation (cf. § 11362.7), nor was the term used in Proposition 215 itself. (See § 11362.5.)

A county health department would, of course, be such an entity, as reflected by the Legislature’s use of the term “another” in section 11362.71, subdivision (c). Such department operates under the direction of the county health officer, who must be a graduate of a medical school. (§§ 101000, 101105; see Gov. Code, §§ 24000, subd. (s), 33201.) A county health department is responsible for preserving and protecting public health and sanitation, and for responding to public health emergencies. (§§ 101030-101085.) County mental health departments and welfare departments may also be considered health-related governmental entities. (See Gov. Code, § 33201.)

In this case, we think the phrase “health-related . . . entity or organization” is ordinarily understood to mean an organization whose principal focus is on matters involving physical and mental health, including directly providing medical and health services or administering public health programs, disease detection and prevention programs, and therapeutic and educational programs. (See Webster’s 3d New Internat. Dict. (2002) at pp. 1043 [“health,” “health department”], 1916 [“related”].)§

We reject the suggestion that a city may be characterized as a “health-related governmental . . . entity” because it has the authority to enact ordinances and take other measures for the protection and preservation of public health. To be sure, section 101450 does give cities certain health related responsibilities:

“The governing body of a city shall take measures necessary to preserve and protect the public health, including the regulation of sanitary matters in the city, and including if indicated, the adoption of ordinances, regulations and orders not in conflict with general laws.”

A city council may appoint a city health officer to discharge these responsibilities. (See §§ 101460-101470.)

However, unlike a county health department or another organization that specializes in matters of public health, a city is accountable for a broad spectrum of local activities, responsibilities, and programs that are *not* primarily “of, relating to, or engaged in welfare work directed to the cure and prevention of disease.” (Webster’s 3d New Internat. Dict., *supra*, at p. 1043.)

Consequently, we do not believe that a city would meet the usual definition of the term “health-related . . . entity or organization.”

Moreover, such a designation would result in a city’s undertaking *countywide* responsibilities for implementing the statewide program. In 63 Ops.Cal.Atty.Gen. 8 (1980), we concluded that a city could perform health related responsibilities for a county outside the city’s boundaries if authorized by the Legislature. (*Id.* at p. 10.)

Here, we find that the 2003 legislation has not authorized a city to perform these

services outside its boundaries. (Cf. *People v. Pina* (1977) 72 Cal.App.3d Supp. 35, 39-40 [county sheriff has statutory authority to empower city police officers to act as peace officers in any place within the county, including other cities].) In the absence of such a legislative grant of extra-territorial authority, a city's power to act is confined to its own boundaries absent "the urgency of extreme expediency or necessity." (*Harden v. Superior Court* (1955) 44 Cal.2d 630, 638; see 63 Ops.Cal.Atty.Gen. 539, 547-548 (1980).)

We conclude in answer to the third question that a county may not designate a city to perform the functions of the county health department under the statewide registry and identification card program for medical marijuana users.

¹ All references hereafter to the Health and Safety Code are by section number only.

² Possession and distribution of marijuana remain unlawful under the federal Controlled Substances Act (21 U.S.C. § 801 et seq.). (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1387, fn. 2.) Federal law contains no "compassionate use" exemption for medical necessity. (*Gonzales v. Raich* (2005) ___ U.S. ___, ___; *United States v. Oakland Cannabis Buyers' Cooperative*, supra, 532 U.S. at p. 486; *People v. Mower*, supra, 28 Cal.4th at p. 465, fn. 2; *People v. Bianco*, supra, 93 Cal.App.4th at p. 753.)

³ The Department is responsible for designing the applications and identification cards, developing protocols to process the applications, confirming the accuracy of the information submitted, and protecting the confidentiality of program records. (§ 11362.71, subd. (d).)

⁴ Even in the absence of more lenient local rules, patients and caregivers are not limited to the quantities of marijuana set forth in section 11362.77, subdivision (a); rather, they are entitled to possess and to use medical marijuana in any amounts consistent with the patients' needs, as reflected in doctors' recommendations. (§ 11362.77, subd. (b).) The amounts set forth in section 11362.77, subdivision (a), thus represent "threshold" quantities of marijuana – that is, the amounts up to which the protections of sections 11362.5, 11362.71, subdivision (e), and 11362.765 will automatically apply for every qualified user and possessor throughout the state. Whether *greater* amounts may be possessed and used depends on local rules and physicians' assessments of particular patients' needs.

⁵ As previously mentioned, charter cities may supersede state statutes "with respect to municipal affairs" involving "areas which are of intramural concern only." (*California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1, 17; accord, *Johnson v. Bradley*, supra, 4 Cal.4th at p. 399; see 85 Ops. Cal. Atty. Gen. 210, 213-214 (2002).) This constitutional grant of authority for charter cities has no application here, however, because the establishment and protection of a right to possess and use medical marijuana notwithstanding state criminal statutes is plainly a matter of statewide concern. Further, it is self evident that the procedures and protections afforded by the 2003 legislation are reasonably related to the resolution of this statewide concern. Hence, these state laws would prevail over any conflicting regulatory acts of a charter city. (See, e.g., *Johnson v. Bradley*, supra, 4 Cal.4th at p. 404; *Committee of Seven Thousand v. Superior Court* (1988) 45 Cal.3d, 491, 507; 83 Ops.Cal.Atty.Gen. 24, 26-29 (2000); 82 Ops.Cal.Atty.Gen. 165, 167-170 (1999).)

⁶ A local identification program would also be in conflict with the statewide program by being "duplicative." (See *Sherwin-Williams Co. v. City of Los Angeles*, supra, 4 Cal.4th at p. 897.)

⁷ Sections 11362.72 and 11362.74 describe steps to be followed by "a county health department or the county's designee" in processing applications and issuing cards.

From; Department of Justice
State of California
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Edmund G. Brown JR
Attorney General
State of California

GUIDELINES FOR THE SECURITY AND NON-DIVERSION OF MARIJUANA GROWN FOR MEDICAL USE

In 1996, California voters approved an initiative that exempted certain patients and their primary caregivers from criminal liability under state law for the possession and cultivation of marijuana. In 2003, the Legislature enacted additional legislation relating to medical marijuana.

One of those statutes requires the Attorney General to adopt "guidelines to ensure the security and nondiversion of marijuana grown for medical use." (Health & Saf. Code, § 11362.81(d).1) To fulfill this mandate, this Office is issuing the following guidelines to (1) ensure that marijuana grown for medical purposes remains secure and does not find its way to non-patients or illicit markets, (2) help law enforcement agencies perform their duties effectively and in accordance with California law, and (3) help patients and primary caregivers understand how they may cultivate, transport, possess, and use medical marijuana under California law.

I. SUMMARY OF APPLICABLE LAW

A. California Penal Provisions Relating to Marijuana.

The possession, sale, cultivation, or transportation of marijuana is ordinarily a crime under California law. (See, e.g., § 11357 [possession of marijuana is a misdemeanor]; § 11358 [cultivation of marijuana is a felony]; Veh. Code, § 23222 [possession of less than 1 oz. of marijuana while driving is a misdemeanor]; § 11359 [possession with intent to sell any amount of marijuana is a felony]; § 11360 [transporting, selling, or giving away marijuana in California is a felony; under 28.5 grams is a misdemeanor]; § 11361 [selling or distributing marijuana to minors, or using a minor to transport, sell, or give away marijuana, is a felony].)

B. Proposition 215 - The Compassionate Use Act of 1996.

On November 5, 1996, California voters passed Proposition 215, which decriminalized the cultivation and use of marijuana by seriously ill individuals upon a physician's recommendation. (§ 11362.5.) Proposition 215 was enacted to "ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana," and to "ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction." (§ 11362.5(b)(1)(A)-(B).)

The Act further states that "Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical

purposes of the patient upon the written or verbal recommendation or approval of a

physician.” (§ 11362.5(d).) Courts have found an implied defense to the transportation of medical marijuana when the “quantity transported and the method, timing and distance of the transportation are reasonably related to the patient’s current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1551.)

C. Senate Bill 420 - The Medical Marijuana Program Act.

On January 1, 2004, Senate Bill 420, the Medical Marijuana Program Act (MMP), became law. (§§ 11362.7-11362.83.) The MMP, among other things, requires the California Department of Public Health (DPH) to establish and maintain a program for the voluntary registration of qualified medical marijuana patients and their primary caregivers through a statewide identification card system. Medical marijuana identification cards are intended to help law enforcement officers identify and verify that cardholders are able to cultivate, possess, and transport certain amounts of marijuana without being subject to arrest under specific conditions. (§§ 11362.71(e), 11362.78.) It is mandatory that all counties participate in the identification card program by (a) providing applications upon request to individuals seeking to join the identification card program; (b) processing completed applications; (c) maintaining certain records; (d) following state implementation protocols; and (e) issuing DPH identification cards to approved applicants and designated primary caregivers. (§ 11362.71(b).)

Participation by patients and primary caregivers in the identification card program is voluntary. However, because identification cards offer the holder protection from arrest, are issued only after verification of the cardholder’s status as a qualified patient or primary caregiver, and are immediately verifiable online or via telephone, they represent one of the best ways to ensure the security and non-diversion of marijuana grown for medical use.

In addition to establishing the identification card program, the MMP also defines certain terms, sets possession guidelines for cardholders, and recognizes a qualified right to collective and cooperative cultivation of medical marijuana. (§§ 11362.7, 11362.77, 11362.775.)

D. Taxability of Medical Marijuana Transactions.

In February 2007, the California State Board of Equalization (BOE) issued a Special Notice confirming its policy of taxing medical marijuana transactions, as well as its requirement that businesses engaging in such transactions hold a Seller’s Permit. (<http://www.boe.ca.gov/news/pdf/medseller2007.pdf>.) According to the Notice, having a Seller’s Permit does not allow individuals to make unlawful sales, but instead merely provides a way to remit any sales and use taxes due. BOE further clarified its policy in a June 2007 Special Notice that addressed several frequently asked questions concerning taxation of medical marijuana transactions. (<http://www.boe.ca.gov/news/pdf/173.pdf>.)

E. Medical Board of California.

The Medical Board of California licenses, investigates, and disciplines California physicians. (Bus. & Prof. Code, § 2000, et seq.) Although state law prohibits punishing a physician simply for recommending marijuana for treatment of a serious medical condition (§ 11362.5(c)), the Medical Board can and does take disciplinary action against physicians who fail to comply with accepted medical standards when recommending marijuana. In a May 13, 2004 press release, the Medical Board clarified that these accepted standards are the same ones that a reasonable and prudent physician would

follow when recommending or approving any medication. They include the following:

1. Taking a history and conducting a good faith examination of the patient;
2. Developing a treatment plan with objectives;
3. Providing informed consent, including discussion of side effects;
4. Periodically reviewing the treatment's efficacy;
5. Consultations, as necessary; and
6. Keeping proper records supporting the decision to recommend the use of medical marijuana. (http://www.mbc.ca.gov/board/media/releases_2004_05-13_marijuana.html.)

Complaints about physicians should be addressed to the Medical Board (1-800-633-2322 or www.mbc.ca.gov), which investigates and prosecutes alleged licensing violations in conjunction with the Attorney General's Office.

F. The Federal Controlled Substances Act.

Adopted in 1970, the Controlled Substances Act (CSA) established a federal regulatory system designed to combat recreational drug abuse by making it unlawful to manufacture, distribute, dispense, or possess any controlled substance. (21 U.S.C. § 801, et seq.; *Gonzales v. Oregon* (2006) 546 U.S. 243, 271-273.) The CSA reflects the federal government's view that marijuana is a drug with "no currently accepted medical use." (21 U.S.C. § 812(b)(1).) Accordingly, the manufacture, distribution, or possession of marijuana is a federal criminal offense. (*Id.* at §§ 841(a)(1), 844(a).)

"The incongruity between federal and state law has given rise to understandable confusion, but no legal conflict exists merely because state law and federal law treat marijuana differently". Indeed, California's medical marijuana laws have been challenged unsuccessfully in court on the ground that they are preempted by the CSA. (*County of San Diego v. San Diego NORML* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2930117.) Congress has provided that states are free to regulate in the area of controlled substances, including marijuana, provided that state law does not positively conflict with the CSA. (21 U.S.C. § 903.) Neither Proposition 215, nor the MMP, conflict with the CSA because, in adopting these laws, California did not "legalize" medical marijuana, but instead exercised the state's reserved powers to not punish certain marijuana offenses under state law when a physician has recommended its use to treat a serious medical condition. (See *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 371-373, 381-382.)

In light of California's decision to remove the use and cultivation of physician recommended marijuana from the scope of the state's drug laws, this Office recommends that state and local law enforcement officers not arrest individuals or seize marijuana under federal law when the officer determines from the facts available that the cultivation, possession, or transportation is permitted under California's medical marijuana laws.

II. DEFINITIONS

A. Physician's Recommendation: Physicians may not prescribe marijuana because the federal Food and Drug Administration regulates prescription drugs and, under the CSA, marijuana is a Schedule I drug, meaning that it has no recognized medical use. Physicians may, however, lawfully issue a verbal or written recommendation under California law indicating that marijuana would be a beneficial treatment for a serious

medical condition. (§ 11362.5(d); *Conant v. Walters* (9th Cir. 2002) 309 F.3d 629, 632.)

B. Primary Caregiver: A primary caregiver is a person who is designated by a qualified patient and “has consistently assumed responsibility for the housing, health, or safety” of the patient. (§ 11362.5(e).) California courts have emphasized the consistency element of the patient-caregiver relationship. Although a “primary caregiver who consistently grows and supplies . . . medicinal marijuana for a section 11362.5 patient is serving a health need of the patient,” someone who merely maintains a source of marijuana does not automatically become the party “who has consistently assumed responsibility for the housing, health, or safety” of that purchaser. (*People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390, 1400.) A person may serve as primary caregiver to “more than one” patient, provided that the patients and caregiver all reside in the same city or county. (§ 11362.7(d)(2).) Primary caregivers also may receive certain compensation for their services. (§ 11362.765(c) [“A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided . . . to enable [a patient] to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, . . . Shall not, on the sole basis of that fact, be subject to prosecution” for possessing or transporting marijuana].)

C. Qualified Patient: A qualified patient is a person whose physician has recommended the use of marijuana to treat a serious illness, including cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief. (§ 11362.5(b)(1)(A).)

D. Recommending Physician: A recommending physician is a person who (1) possesses a license in good standing to practice medicine in California; (2) has taken responsibility for some aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient; and (3) has complied with accepted medical standards (as described by the Medical Board of California in its May 13, 2004 press release) that a reasonable and prudent physician would follow when recommending or approving medical marijuana for the treatment of his or her patient.

III. GUIDELINES REGARDING INDIVIDUAL QUALIFIED PATIENTS AND PRIMARY CAREGIVERS

A. State Law Compliance Guidelines.

1. Physician Recommendation: Patients must have a written or verbal recommendation for medical marijuana from a licensed physician. (§ 11362.5(d).)

2. State of California Medical Marijuana Identification Card: Under the MMP, qualified patients and their primary caregivers may voluntarily apply for a card issued by DPH identifying them as a person who is authorized to use, possess, or transport marijuana grown for medical purposes. To help law enforcement officers verify the cardholder’s identity, each card bears a unique identification number, and a verification database is available online (www.calmmp.ca.gov). In addition, the cards contain the name of the county health department that approved the application, a 24-hour verification telephone number, and an expiration date. (§§ 11362.71(a); 11362.735(a)(3)-(4); 11362.745.)

3. Proof of Qualified Patient Status: Although verbal recommendations are technically permitted under Proposition 215, patients should obtain and carry

written proof of their physician recommendations to help them avoid arrest. A state identification card is the best form of proof, because it is easily verifiable and provides immunity from arrest if certain conditions are met (see section III.B.4, below). The next best forms of proof are a city- or county-issued patient identification card, or a written recommendation from a physician.

4. Possession Guidelines:

a) **MMP:** Qualified patients and primary caregivers who possess a state issued identification card may possess 8 oz. of dried marijuana, and may maintain no more than 6 mature or 12 immature plants per qualified patient. (§ 11362.77(a).) But, if “a qualified patient or primary caregiver has a doctor’s recommendation that this quantity does not meet the qualified patient’s medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient’s needs.” (§ 11362.77(b).) Only the dried mature processed flowers or buds of the female cannabis plant should be considered when determining allowable quantities of medical marijuana for purposes of the MMP. (§ 11362.77(d).)

b) **Local Possession Guidelines:** Counties and cities may adopt regulations that allow qualified patients or primary caregivers to possess medical marijuana in amounts that exceed the MMP’s possession guidelines. (§ 11362.77(c).)

c) **Proposition 215:** Qualified patients claiming protection under Proposition 215 may possess an amount of marijuana that is “reasonably related to [their] current medical needs.” (*People v. Trippet* (1997) 56 Cal.App.4th 1532, 1549.)

B. Enforcement Guidelines.

1. **Location of Use:** Medical marijuana may not be smoked (a) where smoking is prohibited by law, (b) at or within 1000 feet of a school, recreation center, or youth center (unless the medical use occurs within a residence), (c) on a school bus, or (d) in a moving motor vehicle or boat. (§ 11362.79.)

2. **Use of Medical Marijuana in the Workplace or at Correctional Facilities:** The medical use of marijuana need not be accommodated in the workplace, during work hours, or at any jail, correctional facility, or other penal institution. (§ 11362.785(a); *Ross v. RagingWire Telecomms., Inc.* (2008) 42 Cal.4th 920, 933 [under the Fair Employment and Housing Act, an employer may terminate an employee who tests positive for marijuana use].)

3. **Criminal Defendants, Probationers, and Parolees:** Criminal defendants and probationers may request court approval to use medical marijuana while they are released on bail or probation. The court’s decision and reasoning must be stated on the record and in the minutes of the court. Likewise, parolees who are eligible to use medical marijuana may request that they be allowed to continue such use during the period of parole. The written conditions of parole must reflect whether the request was granted or denied. (§ 11362.795.)

4. State of California Medical Marijuana Identification Cardholders:

When a person invokes the protections of Proposition 215 or the MMP and he or she possesses a state medical marijuana identification card, officers should:

a) Review the identification card and verify its validity either by calling the telephone number printed on the card, or by accessing DPH’s card verification website

(<http://www.calmmp.ca.gov>); and

b) If the card is valid and not being used fraudulently, there are no other indicia of illegal activity (weapons, illicit drugs, or excessive amounts of cash), and the person is within the state or local possession guidelines, the individual should be released and the marijuana should not be seized.

Under the MMP, “no person or designated primary caregiver in possession of a valid state medical marijuana identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana.” (§ 11362.71(e).) Further, a “state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.” (§ 11362.78.)

5. Non-Cardholders: When a person claims protection under Proposition 215 or the MMP and only has a locally-issued (i.e., non-state) patient identification card, or a written (or verbal) recommendation from a licensed physician, officers should use their sound professional judgment to assess the validity of the person’s medical-use claim:

- a) Officers need not abandon their search or investigation. The standard search and seizure rules apply to the enforcement of marijuana-related violations. Reasonable suspicion is required for detention, while probable cause is required for search, seizure, and arrest.
- b) Officers should review any written documentation for validity. It may contain the physician’s name, telephone number, address, and license number.
- c) If the officer reasonably believes that the medical-use claim is valid based upon the totality of the circumstances (including the quantity of marijuana, packaging for sale, the presence of weapons, illicit drugs, or large amounts of cash), and the person is within the state or local possession guidelines or has an amount consistent with their current medical needs, the person should be released and the marijuana should not be seized.
- d) Alternatively, if the officer has probable cause to doubt the validity of a person’s medical marijuana claim based upon the facts and circumstances, the person may be arrested and the marijuana may be seized. It will then be up to the person to establish his or her medical marijuana defense in court.
- e) Officers are not obligated to accept a person’s claim of having a verbal physician’s recommendation that cannot be readily verified with the physician at the time of detention.

6. Exceeding Possession Guidelines: If a person has what appears to be valid medical marijuana documentation, but exceeds the applicable possession guidelines identified above, all marijuana may be seized.

7. Return of Seized Medical Marijuana: If a person whose marijuana is seized by law enforcement successfully establishes a medical marijuana defense in court, or the case is not prosecuted, he or she may file a motion for return of the marijuana. If a court grants the motion and orders the return of marijuana seized incident to an arrest, the individual or entity subject to the order must return the property. State law enforcement officers who handle controlled substances in the course of their official duties are immune from

liability under the CSA. (21 U.S.C. § 885(d).) Once the marijuana is returned, federal authorities are free to exercise jurisdiction over it. (21 U.S.C. §§ 812(c)(10), 844(a); *City of Garden Grove v. Superior Court (Kha)* (2007) 157 Cal.App.4th 355, 369, 386, 391.)

IV. GUIDELINES REGARDING COLLECTIVES AND COOPERATIVES

Under California law, medical marijuana patients and primary caregivers may “associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes.” (§ 11362.775.) The following guidelines are meant to apply to qualified patients and primary caregivers who come together to collectively or cooperatively cultivate physician-recommended marijuana.

A. Business Forms: Any group that is collectively or cooperatively cultivating and distributing marijuana for medical purposes should be organized and operated in a manner that ensures the security of the crop and safeguards against diversion for non-medical purposes. The following are guidelines to help cooperatives and collectives operate within the law, and to help law enforcement determine whether they are doing so.

1. Statutory Cooperatives: A cooperative must file articles of incorporation with the state and conduct its business for the mutual benefit of its members. (Corp. Code, § 12201, 12300.) No business may call itself a “cooperative” (or “coop”) unless it is properly organized and registered as such a corporation under the Corporations or Food and Agricultural Code. (*Id.* at § 12311(b).) Cooperative corporations are “democratically controlled and are not organized to make a profit for themselves, as such, or for their members, as such, but primarily for their members as patrons.” (*Id.* at § 12201.) The earnings and savings of the business must be used for the general welfare of its members or equitably distributed to members in the form of cash, property, credits, or services. (*Ibid.*) Cooperatives must follow strict rules on organization, articles, elections, and distribution of earnings, and must report individual transactions from individual members each year. (See *id.* at § 12200, et seq.) Agricultural cooperatives are likewise nonprofit corporate entities “since they are not organized to make profit for themselves, as such, or for their members, as such, but only for their members as producers.” (Food & Agric. Code, § 54033.) Agricultural cooperatives share many characteristics with consumer cooperatives. (See, e.g., *id.* at § 54002, et seq.)

Cooperatives should not purchase marijuana from, or sell to, non-members; instead, they should only provide a means for facilitating or coordinating transactions between members.

2. Collectives: California law does not define collectives, but the dictionary defines them as “a business, farm, etc., jointly owned and operated by the members of a group.” (*Random House Unabridged Dictionary*; Random House, Inc. © 2006.) Applying this definition, a collective should be an organization that merely facilitates the collaborative efforts of patient and caregiver members – including the allocation of costs and revenues. As such, a collective is not a statutory entity, but as a practical matter it might have to organize as some form of business to carry out its activities. The collective should not purchase marijuana from, or sell to, non-members; instead, it should only provide a means for facilitating or coordinating transactions between members.

B. Guidelines for the Lawful Operation of a Cooperative or Collective:

Collectives and cooperatives should be organized with sufficient structure to ensure security, non-diversion of marijuana to illicit markets, and compliance with all state and local laws. The following are some suggested guidelines and practices for operating collective growing operations to help ensure lawful operation.

1. Non-Profit Operation: Nothing in Proposition 215 or the MMP authorizes collectives, cooperatives, or individuals to profit from the sale or distribution of marijuana. (See, e.g., § 11362.765(a) ["nothing in this section shall authorize . . .any individual or group to cultivate or distribute marijuana for profit"].)

2. Business Licenses, Sales Tax, and Seller's Permits: The State Board of Equalization has determined that medical marijuana transactions are subject to sales tax, regardless of whether the individual or group makes a profit, and those engaging in transactions involving medical marijuana must obtain a Seller's Permit. Some cities and counties also require dispensing collectives and cooperatives to obtain business licenses.

3. Membership Application and Verification: When a patient or primary caregiver wishes to join a collective or cooperative, the group can help prevent the diversion of marijuana for non-medical use by having potential members complete a written membership application. The following application guidelines should be followed to help ensure that marijuana grown for medical use is not diverted to illicit markets:

a) Verify the individual's status as a qualified patient or primary caregiver. Unless he or she has a valid state medical marijuana identification card, this should involve personal contact with the recommending physician (or his or her agent), verification of the physician's identity, as well as his or her state licensing status. Verification of primary caregiver status should include contact with the qualified patient, as well as validation of the patient's recommendation. Copies should be made of the physician's recommendation or identification card, if any;

b) Have the individual agree not to distribute marijuana to non-members;

c) Have the individual agree not to use the marijuana for other than medical purposes;

d) Maintain membership records on-site or have them reasonably available;

e) Track when members' medical marijuana recommendation and/or identification cards expire; and

f) Enforce conditions of membership by excluding members whose identification card or physician recommendation are invalid or have expired, or who are caught diverting marijuana for non-medical use.

4. Collectives Should Acquire, Possess, and Distribute Only Lawfully Cultivated Marijuana: Collectives and cooperatives should acquire marijuana only from their constituent members, because only marijuana grown by a qualified patient or his or her primary caregiver may lawfully be transported by, or distributed to, other members of a collective or cooperative. (§§ 11362.765, 11362.775.) The collective or cooperative may then allocate it to other members of the group. Nothing allows marijuana to be purchased from outside the collective or cooperative for distribution to its members. Instead, the cycle should be a closed circuit of marijuana cultivation and consumption with no purchases or sales to or from non-members. To help prevent diversion of medical marijuana to nonmedical markets, collectives and cooperatives should document each member's contribution of labor, resources, or money to the enterprise. They also should

track and record the source of their marijuana.

5. Distribution and Sales to Non-Members are Prohibited: State law allows primary caregivers to be reimbursed for certain services (including marijuana cultivation), but nothing allows individuals or groups to sell or distribute marijuana to non-members. Accordingly, a collective or cooperative may not distribute medical marijuana to any person who is not a member in good standing of the organization. A dispensing collective or cooperative may credit its members for marijuana they provide to the collective, which it may then allocate to other members. (§ 11362.765(c).) Members also may reimburse the collective or cooperative for marijuana that has been allocated to them. Any monetary reimbursement that members provide to the collective or cooperative should only be an amount necessary to cover overhead costs and operating expenses.

6. Permissible Reimbursements and Allocations: Marijuana grown at a collective or cooperative for medical purposes may be:

- a) Provided free to qualified patients and primary caregivers who are members of the collective or cooperative;
- b) Provided in exchange for services rendered to the entity;
- c) Allocated based on fees that are reasonably calculated to cover overhead costs and operating expenses; or
- d) Any combination of the above.

7. Possession and Cultivation Guidelines: If a person is acting as primary caregiver to more than one patient under section 11362.7(d)(2), he or she may aggregate the possession and cultivation limits for each patient. For example, applying the MMP's basic possession guidelines, if a caregiver is responsible for three patients, he or she may possess up to 24 oz. of marijuana (8 oz. per patient) and may grow 18 mature or 36 immature plants. Similarly, collectives and cooperatives may cultivate and transport marijuana in aggregate amounts tied to its membership numbers. Any patient or primary caregiver exceeding individual possession guidelines should have supporting records readily available when:

- a) Operating a location for cultivation;
- b) Transporting the group's medical marijuana; and
- c) Operating a location for distribution to members of the collective or cooperative.

8. Security: Collectives and cooperatives should provide adequate security to ensure that patients are safe and that the surrounding homes or businesses are not negatively impacted by nuisance activity such as loitering or crime. Further, to maintain security, prevent fraud, and deter robberies, collectives and cooperatives should keep accurate records and follow accepted cash handling practices, including regular bank runs and cash drops, and maintain a general ledger of cash transactions.

C. Enforcement Guidelines: Depending upon the facts and circumstances, deviations from the guidelines outlined above, or other indicia that marijuana is not for medical use, may give rise to probable cause for arrest and seizure. The following are additional guidelines to help identify medical marijuana collectives and cooperatives that are operating outside of state law.

1. Storefront Dispensaries: Although medical marijuana "dispensaries" have been operating in California for years, dispensaries, as such, are not recognized under the law. As noted above, the only recognized group entities are cooperatives and collectives. (§

11362.775.) It is the opinion of this Office that a properly organized and operated collective or cooperative that dispenses medical marijuana through a storefront may be lawful under California law, but that dispensaries that do not substantially comply with the guidelines set forth in sections IV(A) and (B), above, are likely operating outside the protections of Proposition 215 and the MMP, and that the individuals operating such entities may be subject to arrest and criminal prosecution under California law. For example, dispensaries that merely require patients to complete a form summarily designating the business owner as their primary caregiver – and then offering marijuana in exchange for cash “donations” – are likely unlawful. (*Peron, supra*, 59 Cal.App.4th at p. 1400 [cannabis club owner was not the primary caregiver to thousands of patients where he did not consistently assume responsibility for their housing, health, or safety].)

2. Indicia of Unlawful Operation: When investigating collectives or cooperatives, law enforcement officers should be alert for signs of mass production or illegal sales, including (a) excessive amounts of marijuana, (b) excessive amounts of cash, (c) failure to follow local and state laws applicable to similar businesses, such as maintenance of any required licenses and payment of any required taxes, including sales taxes, (d) weapons, (e) illicit drugs, (f) purchases from, or sales or distribution to, non-members, or (g) distribution outside of California.

With all of this information you as city officials cannot believe that Adding Chapter 17 will not violate several areas of The California State Medical Marijuana Program rendering it void in a court of law.

Prop 215, Senate Bill 420, and The State Attorney General's office provide written and implied regulation in all areas of cultivation, possession, transportation, and sales of medical marijuana.

The only area not provided for is business form zoning regulation. This was established by the State Board of Equalization in 2007, prior to the release of the Attorney General's Guidelines.

The State Board of Equalization issues Sellers Permits to legally established collectives/cooperatives under Code 27 “MEDICINES & PRESCRIPTIONS. You should be able to figure this out from there. Locate as a drugstore, or medical office that dispenses medicine! Remember SB Grand Jury investigation? Ordinance? In addition, we believe that trying to change your nonconforming codes to only restrict “medical marijuana patient parcels” would constitute discrimination. A Medical Patient, or Corporation that is legally operating prior to the enactment of your ordinances will

qualify for nonconforming land use, as dictated in your existing land use ordinances. The information you read above includes this information. If you skipped the small print, you need to read it!

You also cannot restrict what a person does on their own property, or in their own home, or force people to incur unreasonable cost to produce their own medicine. Who pays for all the lighting equipment, fans, filter, grow trays, grow medium, fertilizers for hydroponics(indoor growing solution), electric wiring installation-sub panels-breakers, ect = \$2500-\$10,000 startup + \$350-\$650 per month power bills just for the indoor grow? All this to "try and grow quality medicine".

What is apparent is none of you are medical marijuana patients. You are not suffering, or dieing, as the medical patients are, and you are trying to implement ordinances that restrict legal activity under the state medical marijuana program

The city of Red Bluff is also poised for a legal litigation battle in the court system over the same actions you are debating adding to your code of ordinances.

We ask you to not produce the same result, and save our city, and citizens that cost.

This matter needs to be addressed at the county level, and we have addressed the county board of supervisors about this issue, as I am sure you already know. We will continue our attempt to create a countywide program that does not conflict with Prop 215, SB 420, or the AG Guidelines.

BELL CARTER FOODS creates more **SMELLS** of **BRINE** **EVERYDAY** and carries further than any marijuana garden in town, and it smells especially bad every night. **LINDSEY OLIVES** makes it one on the either side of town.

Foam over flows through the walls, covers the sidewalk to the street, until someone there notices and washes it up hours later. You can hear the equipment running all night and day, with high diesel truck traffic.

Noise, pollution, and smell 24 hour a day, 7 days a week, 365 days a year. No restrictions!

Marijuana Grows for aprox 5months total, and produces smell for 50-60 days.

Medical marijuana is a Far less nuisance in any area discussed about garden smells (odor).

This proposed chapter creates restriction that will produce civil sanctions against patients that cultivate medical marijuana which are not present under state regulation, Prop 215, SB 420, or the AG Guidelines.

We request you stop all actions in regards to the state medical marijuana program, or table this matter for future review and let California law, State legislation, the Secretary of the State, and the State Attorney General's Office dictate the legal activity of medical marijuana patients who live in Corning.

**Respectfully, Ken & Kathy Prather
THC INC**

**For Prop 215 / SB420
"Expert" Legal Advice**

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California State Board of Equal.
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