NB-2

Tom,

Councilmember Leece requested that we provide the list of land use zones referenced as acronyms on page 39 of 40 of the Medical Marijuana Draft Ordinance 14-12; related to New Business Item 2 on the City Council Agenda. These are provided below in the email from Mel Lee.

Gary

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Sec. 13-20. ZONING DISTRICTS

In order to classify, regulate, restrict and separate the uses of land and buildings, regulate the height and bulk of buildings and the area of yards and other open spaces about buildings, and regulate population density, the following classes of zones are established:

(a) **R1 Single-Family Residential District.** This district is intended to promote the development of single-family detached units located on lots with a minimum lot size of 6,000 square feet, and a maximum density of 7.26 dwelling units per gross acre.

(b) **R2-MD Multiple-Family Residential District, Medium Density.** This district is intended to promote the development of multi-family rental as well as ownership properties on lots with a minimum size of 12,000 square feet. The maximum density allowed is 3,630 square feet per dwelling unit, which equals 12 dwelling units per gross acre. Legal lots existing as of March 16, 1992 with a minimum lot area of 6,000 sq. ft. up to 7,260 sq. ft. are allowed 2 dwelling units.

(c) **R2-HD Multiple-Family Residential District, High Density.** This district is intended to promote the development of multi-family rental as well as ownership dwelling units on lots with a minimum size of 12,000 square feet. The maximum density allowed is 3,000 square feet per dwelling unit, which equals 14.52 dwelling units per gross acre.

(d) **R3 Multiple-Family Residential District.** Like the R2-MD and R2-HD districts, this district is intended to promote the development of multi-family rental as well as ownership dwelling units. The required minimum lot size is 12,000 square feet. The maximum density allowed is 2,178 square feet per dwelling unit, which equals 20 dwelling units per gross acre.

(e) **AP Administrative and Professional District.** This district is intended to establish areas within which public administrative, professional and business offices may be located. It is the further purpose of this district to limit the intensity of use within the district to be compatible with the types of activities generally associated with office developments.

(f) **CL Commercial Limited District.** This district is intended for unique areas of land which, due to the proximity of residential development or the potential for traffic circulation hazards, require special precautions to be taken to assure appropriate development. The district is also intended for industrial areas where commercial uses must be considered according to their compatibility with existing or permitted industrial uses.

(g) **C1 Local Business District.** This district is intended to meet the local business needs of the community by providing a wide range of goods and services in a variety of locations throughout the City. The permitted and conditional uses as well as development standards are aimed toward reducing impacts on surrounding properties especially in those areas where residential uses are in the vicinity.

(h) **C2 General Business District.** This district is intended to provide for those uses which offer a wide range of goods and services which are generally less compatible with more sensitive land uses of a residential or institutional nature.

(i) **C1-S Shopping Center District.** This district is intended for large commercial lots constructed as a unified and integrated development. It is the further purpose to provide a wide range of goods and services on a community and regional scale.

(j) **TC Town Center District.** This district is intended to allow intensely developed mixed commercial and residential uses within a very limited geographical area bounded by Sunflower Avenue to the north, I-405 to the south, Bristol Street to the west, and Avenue of the Arts to the east. Developments within this designation can range from one- and two-story office and retail buildings to mid- and high-rise buildings.

(k) **P Off-Street Parking District.** This district is intended to allow parking lots, and buildings incidental to the operation of the parking lot.

(l) **I&R Institutional and Recreational District.** This district is intended to allow land uses which provide recreation, open space, health and public service uses. Development in this designation may occur on either public or private property.

(m) **I&R-S Institutional and Recreational - School District.** This district is intended to allow public and private educational facilities on either public or private property.

(n) **MG General Industrial.** This district is intended for a variety of industrial areas which contain a wide range of light and general industrial activities. Development standards and the approval of conditional uses shall be aimed toward eliminating possible hazards to adjoining properties, especially in those areas where residential uses are in the vicinity.

(o) **MP Industrial Park.** This district is intended for large, concentrated industrial areas where the aim of development is to create a spacious environment in a park-like setting.

(p) **PDR-LD Planned Development Residential - Low Density (up to 8 dwelling units per acre);**
PDR-MD Planned Development Residential - Medium Density (up to 12 dwelling units per acre);
PDR-HD Planned Development Residential - High Density (up to 20 dwelling units per acre or higher pursuant to an adopted specific plan);
PDR-NCM Planned Development Residential - North Costa Mesa (25-35 dwelling units per acre).

These districts are intended to provide for excellence in the design of residential projects. Within the low-density zone typical designs include small-lot, single-family detached residential developments including clustered development, zero lot line development and conventional development.

Within the medium density, high density, and north Costa Mesa zones, site design could include single- and multiple-family residential developments containing any type or mixture of housing units, attached or detached, including but not limited to clustered development, townhouses, patio houses, detached houses, duplexes, garden apartments, high rise apartments or common interest developments. Complementary non-residential uses could also be included in the planned development.

(q) **PDC Planned Development Commercial.** This district is intended for retail shops, offices and service establishments, including but not limited to, hotels, restaurants, theaters, museums, financial

institutions, and health clubs. These uses are intended to serve adjacent residential areas, as well as the entire community and region. Complementary residential uses could also be included in the planned development.

(r) **PDI Planned Development Industrial.** This district is intended for large, concentrated industrial areas where the aim of development is to create a spacious environment in a park-like setting.

(s) **MU Mixed-Use Overlay**. This district may overlay the R2-MD, R2-HD, R3, CL, C1, C2, MG, PDR-HD, PDR-MD, or I&R districts, and it is intended to allow development of residential and nonresidential uses as mixed, integrated projects. This overlay district shall only be applied to the Zoning Map in conjunction with the adoption of an urban plan for the designated area. The urban plan is a regulating plan that shall define the unique characteristics of the overlay area, include a matrix of permitted, conditionally permitted, and prohibited uses and provide development standards. The provisions of the mixed-use overlay shall be activated by adoption of a master plan.

Brenda: below are some questions for councilmember Genis, and my responses. I understand that these will be distributed to the whole council, as well as to the public.

Elena Q. Gerli
Jones & Mayer

- What are secondary effects of MMD in other cities? Specifically, what are police experiences with secondary effects?

The information we have is not current, but to some extent is still applicable. 3-4 years ago, when MMDs were proliferating out of control, the US DOJ stepped up its enforcement efforts. Primarily through the use of federal civil forfeiture procedures, and some criminal prosecutions, the federal authorities succeeded in shutting down many illegal pot shops. In 2009 and 2010, before the federal crackdown, two white papers, from the Cal Police Chiefs and the OC Police Chiefs and Sheriffs, outlined the types of secondary effects of MMDs. The secondary effects in sum: armed robberies and murders; burglaries; traffic, noise, and drug dealing; organized crime, money laundering, and firearms violations; poisonings. Secondary effects in the immediate vicinity: unjustified and fictitious physician recommendations; proliferation of grow houses in residential areas; life safety hazards created by grow hazards; increased organized gang activities; exposure of minors to marijuana; impaired public health; loss of business tax revenue; decreased quality of life in deteriorating neighborhoods, both business and residential.

These problems most likely stem from the fact that (a) California has no regulations whatsoever other than to provide a defense against criminal prosecution of certain state offenses relating to marijuana for medical use -- this may change with SB 1262, and if a measure legalizing recreational use passes; (b) mmj continues to be illegal under federal law, therefore black market forces often drive production and distribution.

Now that many illegal pot shops have been shut down, the secondary effects have been mitigated somewhat, though not eliminated.

- What are fiscal impacts in other jurisdictions?

Enforcement against illegal shops is expensive, and there is no effective way to recoup costs, unless proceed through public nuisance abatement administratively. It is unclear whether the city would still be dealing with illegal pot shops if the measure passes, but it is likely that a small number of them would pop up. It should be noted that some cities are imposing a special tax. Palm Springs implemented a 15-cents-on-the-dollar proceeds tax (Measure B), effective January 1, 2014. Actual revenues Jan-May 2014 (3 legal, 2 illegal MMDs): $414,000.

- What class drug is marijuana?

Marijuana is a Schedule I drug under both state and federal law. Cal Health & Saf 11054(d)(3), 11007; 21 USC 812, schedule 1(c)(10).

- What controls does pharmacy have on other drugs in the same class?

Schedule 1 substances cannot be prescribed. Medical marijuana can only be recommend pursuant to state law.

- What is the process for obtaining ID card in county, other jurisdictions?

Med mar cards are obtained by submitting an application to the California Dept of Public Health, through county health dept. In Orange County, applications are filed with the OC Dept of Health in Santa Ana.

- How is minor defined?

Younger than 18. Minors can obtain a mmj recommendation with parents'/guardians' written permission.

A copy of the 2008 atty general opinion re regulating guidelines.

See attached.

- How do we track the growing plants?

This is not something we have looked into. The ordinance provides that the City can issue regulations for the cultivation of marijuana, if the measure were to pass, the regulations would need to be drafted and practical issues would be researched at that time.

- Who or how do we regulate baked goods?

From the Food and Drug Branch of the California Dept of Public Health

- What is FDB's Processed Food Registration Program (PFR)?

General foods such as; bakery products, noodles, seafood (except molluscan shellfish), fruit juices, snacks, nuts, oils, processed or packaged vegetables, candy, etc. are regulated by the PFR program.

The registration is a basic license issued to firms that allows them to legally manufacture, package, label, or warehouse food in California. The PFR provides evidence to your customers and regulatory agencies that you are licensed and inspected by FDB.

The registration fee is set based on three major factors: 1) the size of the facility, 2) number of employees, and 3) your firm's activities (e.g., manufacturing or warehousing). The registration fees are received by FDB and deposited into a special account. The funds are used to support the Food Safety Inspection Program.

It appears therefore that baked goods, at least, would be regulated by the Dept of Public Health. The same is likely applicable to other edibles. The Food and Drug Branch mission is to protect and improve the health of all California residents by assuring that foods, drugs, medical devices and certain other consumer products are safe and are not adulterated, misbranded nor falsely advertised; and that drugs and medical devices are effective.

- Is there a blood test for detecting marijuana?

Marijuana can be detected through urinalysis, hair analysis and saliva tests. However, it is apparently difficult to determine impairment.

- Are the facilities separate for cultivation and retail?

That is not something that the proposed measure addresses.

- If it's a nonprofit, why do we call it a business?

The term business does not equal for-profit. It is commonly used to refer to the operation of a wide variety of for-profit and nonprofit organizations. Here it is a term that encompasses dispensaries as well as cultivation sites where money is exchanged for marijuana or where marijuana is grown to be dispensed in exchange for money or other consideration. It distinguishes, say, a cultivation site that supplies a dispensary from one that grows for no more than 1 o 2 people. Medical marijuana businesses are defined in the proposed measure.

EDMUND G. BROWN JR.
Attorney General

DEPARTMENT OF JUSTICE
State of California

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

August 2008

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

[1] Unless otherwise noted, all statutory references are to the Health & Safety Code.

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**:[2] 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

[2] On May 22, 2008, California's Second District Court of Appeal severed Health & Safety Code § 11362.77 from the MMP on the ground that the statute's possession guidelines were an unconstitutional amendment of Proposition 215, which does not quantify the marijuana a patient may possess. (See *People v. Kelly* (2008) 163 Cal.App.4th 124, 77 Cal.Rptr.3d 390.) The Third District Court of Appeal recently reached a similar conclusion in *People v. Phomphakdy* (July 31, 2008) --- Cal.Rptr.3d ---, 2008 WL 2931369. The California Supreme Court has granted review in *Kelly* and the Attorney General intends to seek review in *Phomphakdy*.

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 "co-op") 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 non-medical 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.

NB-2

Brenda, councilman Monahan has requested the following documents be distributed to the council.

Elena Q. Gerli
Jones & Mayer

Comparison of Three Possible Medical Marijuana Ordinances for City of Costa Mesa

July 10, 2014

REGULATION	City of Costa Mesa	Attorney Longwith *Proponents Taft and Gardner*	Attorney Welch *Proponents Webster and Levesque*
Alarm system	Yes	Yes	No
Security guard	Yes	Yes	No
Security cameras	Yes	No	No
Priority to old stores	No	Yes	Yes
Number of stores	No limit	Eight (minimum)	Four (minimum)
City Council may amend (not repeal)	Yes	No	Yes
Tax	No	Yes	Yes
Limit sales to medical marijuana and related items	Yes	No	No
Dispensary indemnify City if legal problems	Yes	Yes	No
Childproof containers	No	Yes	No
Pesticide testing	Yes (to be drafted)	No	No
Active ingredients testing	Yes (to be drafted)	No	No
On-site recommendations	No	Yes	Yes
Business license	Yes	Yes	Yes
Dispensary permit	Yes	No	Yes
Cultivation permit	Yes	No	No
Lawful zones	Commercial/industrial	Commercial/industrial	Commercial/industrial
Location restrictions	Yes	Yes	Yes
Non-concentration of stores	Yes	Yes	Yes
Hours	7am to 10pm	9am to 10pm	8am to 10pm
Quality control	Yes (to be drafted)	No	No
Cultivation standards	Yes (to be drafted)	No	No
Background checks	Yes	Yes	Yes
Patient confidentiality	Yes	Yes	Yes
Business records	Yes	No	No
Transaction records	Yes	No	No
Delivery records	Yes	No	No
Employee records	Yes	No	No
Employee training	Yes	No	No
General insurance	Yes	Yes	No
Delivery insurance	Yes	Yes	No
No Minors	Yes	Yes	Yes
Labeling	Yes	Yes	No
Outdoor lighting	Yes	No	Yes
Signage restrictions	Yes	Yes	No
Odor restrictions	Yes	Yes	No
Edibles regulations	Yes	Yes	No

CHAPTER VI. MEDICAL MARIJUANA DISPENSARIES AND CULTIVATION

Section 9-491	Purpose
Section 9.492	Operation prohibited without permit
Section 9.493	Definitions
Section 9-494	Medical Marijuana Dispensary Permit *and*
Section 9-495	Medical Marijuana Cultivation Permit

- Follow Chapter regulations
- Allow reasonable inspections by City
- Maintain contact information with City
- Transferable if new permit

Section 9-496. Applications for Medical Marijuana Dispensary and Cultivation Permits

- Address
- Site and floor plan
- Security plan (cameras / alarms / secure entrances / lighting)
- Names and addresses of manager and owners
- Proof of non-profit status
- Further information as deemed necessary by City CEO

Section 9-497. Obligation of Medical Marijuana Dispensary and/or Cultivation Operation

- Written agreement detailing obligations under code and any other conditions imposed
- Allow reasonable inspections by City
- Indemnify City
- Insurance
- Defend City if legal action
- Reimburse City of legal costs for any action against City and its employees/agents that arises from the Ordinance or operation of the MMDs.

Section 9-498. Review of Permit Applications

- Application shall be rejected if:
  - False/misleading statements
  - Proposed location violates locations restrictions
  - Applicant is not a primary caregiver, qualified patient or legal representative
  - History of unlawful, fraudulent, unfair, or deceptive business acts or

practices by applicant
  - Applicant has not satisfied all requirements of ordinance

Section 9-499. Action on Applications for Permits

- Incomplete applications must be completed within 30 days of notification
- Decision in 60 days
- Granted if meet all requirements of Chapter

Section 9-500. General Operating Standards and Restrictions

- Security (security guard / security cameras / alarm system / secure entrances)
- Authorize inspections by City
- Records (identification / inventory / deliveries / finances / live scan / insurance)
- Employees (certain felony restrictions / ID card and live scan for all / MMP ID card for owners & managers)
- Volume (limited to member needs)
- Only Medical Marijuana (and related products)
- No Recommendations On-site
- Signage (mandatory signs posted inside the business)
- No Alcohol
- No Lounge or Cafe
- Quality control (possibly disclose percentage level of certain compounds)
- Labeling (warning labels / date / weight / no packaging attractive to minors)
- Edibles
- Signage (exterior)
- Employee Training
- Supply (only from members)
- Operating Hours (7am to 10pm)
- Use Restrictions (no smoking or ingesting mmj products onsite)
- No Minors
- Odors (air treatment system / no off-site smell)
- Insurance
- Site management (business to monitor nuisance activities / written rules)
- Non-profit
- Delivery of Medical Marijuana (MMP ID card on deliverers / receipts / records)
- Hospice, etc. exemptions

Section 9-501. Medical Marijuana Cultivation Standards and Quality Control

City authorized (but not required) to create City Office of Cultivation Standards and Quality Control

- Cultivation Standards (model guidelines / publicize adherence)

- Quality Control (testing standards / publicize results)
- Labeling.
- Pesticides and Contaminants.

Section 9-502. Fees

- Council may impose fees to recover cost of implementing ordinance
- State Board of Equalization Seller's Permit Required.

Section 9-503. Location Restrictions

- 1000 feet from schools, libraries, youth centers
- 200 feet from residential zone (can apply for minor CUP)
- Only commercial, manufacturing or industrial zones
- 1000 feet from any other mmd

Section 9-504. Suspension and Revocation.

- Failure to follow Chapter requirements
- MMD ceases operations for 180 days
- Change ownership without new permit
- Failure to maintain security camera records
- Failure to allow City inspections

Section 9-505. Violations and Penalties.

- Misdemeanor

Section 9-506. Public Nuisance.

- Abatement and injunctions

Section 9-507. Appeals

- Pursuant to Chapter IX of Title 2

Section 9-508. Prohibited Operations and Nonconforming Use

- Follow California law
- No nonconforming use authorized

Section 9-509. Severability

Section 9-510. Amendment

- To further purposes of Chapter the ordinance may be amended

Section 9-511. Consistency with Statewide Regulation of Marijuana

- Statewide change in law to be accommodated as much as possible

OUTLINE

Hello Council Member Genis,

This is in response to your questions. If you have any further questions please feel free to contact us again.

"The signature verification must be completed in thirty days, excluding weekends and holidays. Does that mean, then, that they have up to thirty working days/6 weeks?"

Yes. If there are no holidays during that time period, then signature verification must be completed within approximately 6 weeks.

"Verification of signatures can be based on sampling, but if the sample shows 95-110% valid signatures, then all the signatures must be verified. Does that percent apply to the sort of election sought? e.g. if one needed 10,000 signatures and sampling showed 16,000 good signatures it would be 160% of the number needed for a general election so sampling would be OK, but only 106.7 % of the number needed for a special election, so sampling would not be an appropriate basis for scheduling a special election and all signatures would have to be verified? How is it decided whether to certify for a regular election or go ahead and do 100% verification for a potential special election? Who decides? Who would bear the cost?"

The City Clerk's office will request a counting and verification of signatures submitted, only up to the amount needed, and the City pays this cost. Because the proponents of the Medical Marijuana petition requested a special or general election in their papers, the type of election at which the proposed ordinance is submitted depends upon the number of valid signatures collected. Per Elections Code 9214, if the petition contains signatures representing 15% or more of the registered voters of the City, then, City Council has the ministerial duty to do one of the following:

1. *Adopt the proposed ordinance.*
2. *Immediately order a special election concerning the proposed ordinance to be held pursuant to Elections Code 1405(a)*
3. *Order a report pursuant to Elections Code 9212 at the regular meeting at which the certification of the petition is presented.*

On the other hand, similarly under Elections Code 9214 and 9215, if the petition contains signatures representing 10% but less than 15% of the registered voters of the City is certified by the City Council, then the City Council has the ministerial duty to do one of the following:

1. *Adopt the proposed ordinance.*
2. *Submit the proposed ordinance to the voters at a general election pursuant to Elections Code 1405(b).*
3. *Order a report pursuant to Elections Code 9212 at the regular meeting at which the certification of the petition is presented.*

"Since the City could take up to 30 days for the various potential studies, does that mean the council could then take up the matter at the next regularly scheduled meeting after the studies are done and actually take the time to look at the studies or would we have to meet and set an election on or before the 30th day?"

Pursuant to Election Code 9212(b), the report must be submitted to the City Council within 30 days after the sufficiency of the petition has been certified by the City Clerk. Once the report has been submitted to the City Council, then it has a ministerial duty to either adopt the proposed ordinance, as is, or order a special or general election depending upon the number of signatures certified/gathered as discussed above. Thus:

1. *If the petition qualifies for a special election, then the City Council must immediately order a special election pursuant to Elections Code 1405(a) and 9214 on the day that the report is submitted to the Council.*
2. *If the petition qualifies for the next general election, then the City Council must submit the proposed ordinance pursuant to the people Elections Code 1405(b) and 9215. The act of submission the proposed ordinance does not have to occur at the same time that the report is submitted to the City Council.*

Brenda Green
City Clerk
City of Costa Mesa
714/754-5221

From: GENIS, SANDRA
Sent: Sunday, August 03, 2014 3:02 PM
To: DUARTE, TOM; GREEN, BRENDA
Cc: HATCH, THOMAS
Subject: mmj, election schedules

Looking at elections schedules it appears that even if a petition were submitted on Monday, we would have a couple of months before setting an election, but would like to verify a couple of things.

The signature verification must be completed in thirty days, excluding weekends and holidays. Does that mean, then, that they have up to thirty working days/6 weeks?

Verification of signatures can be based on sampling, but if the sample shows 95-110% valid signatures, then all the signatures must be verified. Does that percent apply to the sort of election sought? e.g. if one needed 10,000 signatures and sampling showed 16,000 good signatures it would be 160% of the number needed for a general election so sampling would be OK, but only 106.7 % of the number needed for a special election, so sampling would not be an appropriate basis for scheduling a special election and all signatures would have to be verified? How is it decided whether to certify for a regular election or go ahead and do 100% verification for a potential special election? Who decides? Who would bear the cost?

Since the City could take up to 30 days for the various potential studies, does that mean the council could then take up the matter at the next regularly scheduled meeting after the studies are done and actually take the time to look at the studies or would we have to meet and set an election on or before the 30th day?

Hello Council Member Genis,

If when submitting the petitions I request a sampling of signatures and the count falls within the 95 – 110%, every signature would then be verified as the election codes states, "the elections official shall examine and verify each signature filed". Both the initiatives circulating includes provisions for both a special (15%) or a general (10%), so we would first need to determine if they have the 15% to qualify for a special. If they did not qualify for a special then the general (10%) would then apply.

However, the alternative method is when I submit the signatures I would request verification of every signature up to the amount needed. We did this method 2 years ago.

If at a regular meeting of the city council when the petition is being certified, the council orders a "30 day" report, the report must be presented back to the City Council within 30 days. When the report is presented to Council (within the 30 days), Council shall either adopt the ordinance within 10 days or immediately order a special election (at the same meeting).

If you have any further questions please feel free to contact me again. Thank you.

Brenda Green
City Clerk
City of Costa Mesa
714/754-5221

From: GENIS, SANDRA
Sent: Monday, August 04, 2014 10:26 PM
To: GREEN, BRENDA; HATCH, THOMAS; TOM DUARTE; Robert Khuu
Subject: RE: mmj, election schedules

This answered my first question, but not the others.

To clarify, the second question with another hypothetical: If based on sampling the number of signatures is 96% of those needed for a special election, i.e. well over the 10% needed for a general election but between 95-100% of the total signatures needed for a special election, would we then just go for a general election or would we be obligated to get a count based on review of every signature, referencing Elections Code Sec. 9114-9115. Would the review of all signatures be mandatory or at the option of the City?

RE the following question: It is still not clear to me if the council would be obligated to act within 30 days of requesting the studies or if the council could vote to adopt the ordinance or set for an election at the next regularly scheduled meeting following completion of the studies, which studies must be accomplished within the 30 day period.

From: Bob Simonson
Sent: Tuesday, August 05, 2014 11:42 AM
To: Sandra Genis; Wendy Leece
Cc: Robin Leffler
Subject: Marijuana

Hi Sandra & Wendy,

I was wondering last night about what state and federal laws address the trafficking of marijuana and if adequate funding is provided to enforce them. Even within the City do we have laws about transporting marijuana if one is just a delivery person and does not own the product being transported? Can marijuana be cultivated locally, solely for the purpose of retail sale and then shipped to Colorado or even Canada for that matter? It would certainly be a valuable cargo and might need armored transporters. I don't know how that works.

Take care, Bob

Payment Ref.	Date	Remittance to:	Remittance ID:	Payment Amount	Explanation of payment
0181767	7/25/14	Midori Gardens Inc	17059	$44,001.67	**Does Midori work on wetlands? Do they have the experience for wetlands?** Midori provides supplemental services to the Wetlands that the existing contractor, Endemic, cannot supply. Typically, Midori performs trimming of vegetation along the narrow walking paths, irrigation repair, weed control or other non-environmentally sensitive tasks. They work at the direction of the Parks Project Manager or his staff.
0181897	7/25/14	Randstad Technologies	22571	$11,760.00	**What is this?** IT Dept. GIS Consulting services from 6/2/14 to 7/6/14. IT Department uses a staffing agency Randstad for GIS (mapping) expertise. This is for a position in the IT Application Department for a GIS programmer who oversees maintenance and development of maps for City, Police, Fire.
0181918	7/25/14	Freedom Committees of OC	22091	$1,347.22	**Is this a Costa Mesa Foundation Grant?** Yes
	7/18/14	Apple Computer	14215	$2,585.52	**What is this for and where?** IT Dept. This is a laptop for after hours support of the computer room used by the Operations Supervisor. The laptop needs to support all servers, firewalls, and network gear in the event a problem occurs after hours and a solution is needed remotely. The operations supervisor uses this laptop to accomplish that mission.
	7/18/14	RPW Services	12440	$3,854.08	**Does RPW know how to do this? What are we spraying and why?** RPW is the contracted herbicide application contractor for the City. They also provide other specialty services. They are very knowledgeable, skilled, licensed and reliable. They expertly apply chemicals or perform other services at the direction of Maintenance Services.

					At TeWinkle Lake RPW provided labor assistance during the draining and valve replacement project. At Fairview Park – Train Station: RPW treated the 'Joe Bogart Memorial Tree' to address insect and disease that was stressing the tree. At TeWinkle Park – the Herman Torres Memorial Tree was given soil injected pesticide to address insect caused damage and decline. At Fairview Park – RPW provided targeted applications of herbicide to control weeds in the walking paths and other areas at the direction of the Parks Project Manager/Staff.
	7/18/14	Wakeland Housing & Development Corp	181740	$7,865.00	**What have they done for the city?** Market study and architectural services for the supportive housing project.

PUBLIC LAW CENTER

PROVIDING ACCESS TO JUSTICE
FOR ORANGE COUNTY'S LOW INCOME RESIDENTS

August 5, 2014

Mayor Jim Righeimer
Costa Mesa City Council
City of Costa Mesa
77 Fair Drive
Costa Mesa, CA 92626

Re: Objection to Second Reading of Ordinance No. 14-11 for Code Amendment CO-13-03 to Title 13, Chapter IX, Article 8 Governing Motels
August 5, 2014 City Council Agenda, Old Business Item No. 1.

Dear Mayor Righeimer and Councilmembers:

Public Law Center strongly objects to the proposed ordinance that will eliminate long-term occupancy from motels in the City of Costa Mesa. Public Law Center is a pro bono law firm that represents the interest of low-income residents in Orange County, including Costa Mesa. Public Law Center believes in the availability of affordable housing in all communities and the preservation of low-income housing where affordable housing is not adequately available.

The proposed ordinance will detrimentally affect the low-income residents of Costa Mesa because they would lose access to last-resort accommodations. This letter outlines our objections to the elimination of long-term occupancy at the motels. As detailed herein, we object to the ordinance for the following reasons:

1. Long-term motel residencies meet a necessary housing need in Costa Mesa;
2. Through the ordinance, the City would eliminate essential housing for its low-income residents;
3. The intent of the ordinance is not accomplished through elimination of long-term occupancy;
4. The ordinance improperly conflicts with the General Plan;
5. The "Grandfather Clause" does not save the ordinance;
6. The availability of conditional use permits does not save the ordinance;
7. The ordinance discriminates against and disproportionately impacts protected classes, and;
8. The CEQA declaration fails to analyze the effects of the loss of housing units on the environment.

601 Civic Center Drive West · Santa Ana, CA 92701-4002 · (714) 541-1010 · Fax (714) 541-5157

1. **Long-Term Motel Occupancy Meets a Necessary Housing Need**

The City of Costa Mesa does not have adequate affordable housing for its residents. Today, many low-income residents, families and working individuals reside as long-term occupants in the motels of Costa Mesa because there are no other affordable alternatives.

The long-term occupants in the motels stay as tenants for many reasons: job loss, catastrophic medical expenditures, a reduction in income, or simply because they do not earn enough income for more traditional forms of housing. These residents include families with young children and disabled individuals. The motels afford temporary housing while these residents and families work on obtaining more permanent living arrangements. Due to the varied economic status of the residents, some stay as long-term occupants for a month, while other residents stay for years. The majority of long-term residents stay for many months so they can save up money for a security deposit on a rental property, look for employment, or take care of medical or legal issues that arise. Long-term occupancy in motels provides residents with an economical alternative to traditional rental housing.

2. **Through the Ordinance, the City Would Eliminate Essential Housing for its Low-Income Residents**

Under current law, up to 25% of a motel's rooms may be used for extended stay (i.e., beyond 28 days). The excerpted unofficial Planning Commission minutes, attachment 2 to the July 15, 2014 City Council Agenda Report, explains, "The amendments would reduce the total number of rooms that could be utilized as extended occupancy rooms at any motel site from 25% to as little as 0%." Thus, it is clear that the aim of the ordinance is to eliminate long-term stays. The proposed ordinance accomplishes this end via a variety of means:

1. It forbids stays beyond 30 days absent a conditional use permit. Ord. §13-173(A).
2. It requires motels to keep for one year a record of the guest's name, verified identity, car make and model, dates of occupancy, length of stay and room rate. Ord. §13-173(E).
3. Despite the inclusion of a "grandfather clause" purporting to allow current occupants to stay, the ordinance forbids the re-leasing of units vacated by long-term occupants to another long-term occupant and requires that long-term occupants' personal information be provided to the City of Costa Mesa within 30 days of the effective date of the ordinance. Ord. §§13-175, 13-176.
4. It establishes a new conditional use provision permitting long-term occupancy in motels as a conditional use if the motel has at least seventy-five rooms, has fireproof safety deposit boxes, provides regular maid service, "is compatible with the surrounding neighborhood, uses, zoning and general plan," and if the room has a kitchen. Ord. §13-177.

3. **The Intent of the Ordinance Is Not Accomplished Through Elimination of Long-Term Occupancy**

The Planning Commission of Costa Mesa states the purpose behind this proposed ordinance is to "ensure all property maintenance and health and safety standards are being maintained." City Council Agenda Report, July 15, 2014, Attachment 2 pp. 14.

If the City of Costa Mesa wants better operations and standards for its motels, it should create an ordinance that **directly** affects the motels' operations and standards, not an ordinance that directly affects low-income residents of the City who are in desperate need of more affordable housing options. Through all the public comments and reports from the City of Costa Mesa, the City complains about subpar operations and standards at the motels, and the possibility of health and safety violations at the motels. The City states its intention is to build in more standards so the motels are better places to stay. However, there is no causal link between eliminating long-term occupancy at the motels and improving the motel operations and standards. The purpose and intent of this proposed ordinance state the City's issues with the motels, yet its enactment will only directly affect the current low-income residents of the City of Costa Mesa.

Public Law Center has vehemently objected to the City's ongoing campaign to eliminate the stock of low-income housing while no other alternatives are made available for the low-income residents of Costa Mesa. The proposed ordinance's minor carve-out to grandfather in the current long-term occupants does not address the fact that many residents of Costa Mesa will need to use the motels as last-resort housing in the future. This community needs the motels to serve as a housing backstop when residents of Costa Mesa fall on difficult financial times. With the current shortage of affordable housing options in Costa Mesa, there is no reason to limit last-resort accommodations until the City is able to provide a meaningful and viable alternative.

4. The Proposed Ordinance Improperly Conflicts with the General Plan

Zoning ordinances are invalid unless they are consistent with the General Plan. Government Code section 65860; Lesher Communications, Inc. v. City of Walnut Creek, 52 Cal.3d 531, 541 (1990). Under state law, the City's General Plan, specifically the housing element, must plan for housing that meets the needs of all economic segments of the community. §65580(d).[1] The Housing Element must identify and analyze "existing and projected housing needs," and state goals, policies, quantified objectives and programs "for the preservation, improvement and development of housing." §65583. Specifically, the "existing and projected needs" to be identified and analyzed "shall include the locality's share of the regional housing need," or Regional Housing Needs Allocation, assigned by the local council of governments. §65583(a)(1). All subsequent land use decisions, including the adoption and amendment of zoning ordinances, must be consistent with the General Plan and its elements, including the Housing Element. §§65583(b)(2), (c)(3).

Here the zoning ordinance conflicts with the Housing Element by *taking away* needed affordable housing. As acknowledged by the Planning Commission Agenda Report on April 28, 2014, the City of Costa Mesa is aware that at least 140 units are currently being used as long-term occupancy, and based on number of units at the motels, potentially 239 units are available for long-term occupancy among the affected motels. Planning Commission Agenda Report: Code Amendment CO-13-03, City of Costa Mesa, April 28, 2014.

In the Housing Element of 2008-2013, the City acknowledged that the long-term occupancy or extended stay units available at motels provide necessary affordable housing. The City at that

[1] Sections refer to the California Government Code unless otherwise stated.

time said, "The City recognizes a need to use motel/hotel rooms as a housing alternative for extended stay… The extended stay units provide alternative affordable housing choices." Housing Element Costa Mesa, 2008-2013, adopted 2008, pp. 85. The City went on to project that "about 20 percent of [its 789 room] motel inventory may become alternative long-term housing options to low/very low-income households. This amounts to approximately 78 [single room occupancy, family room occupancy] or extended stay units by Year 2014." *Id.* The Housing Element then goes on to include 80 motel units as contributing to meeting its regional housing needs allocation for 2008-2014. *Id.*

In its most recent adopted Housing Element, Costa Mesa acknowledged that it did not meet its Regional Housing Needs Allocation for lower income households in the prior planning period. 2013-2021 Housing Element, page HOU-55-56. It acknowledged that "very low and extremely low income households are not able to afford the rent in the City without the cost being a burden." *Id.* at HOU-30. It also acknowledged that low-income families need *expanded* housing opportunities, and so it adopted a program to encourage "the development of or conversion of hotel rooms into small housing units that are geared toward small households." *Id.* at HOU-23. The City of Costa Mesa further determined that housing element programs to preserve motels as a source of affordable housing were not necessary because they already provide affordable housing. The City said, "Currently most motels in the City *already incorporate an extended stay component*." *Id. at* HOU-A14. Nevertheless, Costa Mesa said it would encourage adaptive reuse of motels to permanent housing for families. *Id.*

The City is just eliminating affordable housing stock and is not replacing it with any alternative housing options that obviously exist for low-income households in the community. By taking action to eliminate long-term residency in motels, Costa Mesa's action improperly conflicts with the Housing Element. The City of Costa Mesa identified that only one low-income unit was constructed between 2006 and 2014, and zero units were constructed for the very low-income group. *Id.* at HOU-10. The Regional Housing Needs Assessment ("RHNA") was not met; there is a need of 244 units for the very low-income group and 201 units for the low-income group. *Id.* at HOU-10-11.

The ordinance at issue here is expressly intended to reduce long-term stays in motels to as little as 0% of motel stays, *without providing for any replacement*. Rather than encourage needed use and/or adaptive reuse of motels as a housing option, the ordinance instead makes conversion to a permitted long-term use nearly impossible by imposing a conditional use permit process that improperly limits long-term stays to those few motels with over 75 rooms and larger rooms. *See* June 23, 2014 Planning Commission Agenda Report re Item PH-2, pp 13-14 (140 rooms in 11 motels would not meet the criteria in Ord. §13-77). These actions thereby conflict with the City's Housing Element.

5. The "Grandfather Clause" Does Not Save the Ordinance

Although the ordinance includes a "grandfather clause" allowing long-term residents to stay in current motels if the owner meets certain criteria (Ord. § 13-175), the clause fails to address the aforementioned problems for several reasons. First, as previously noted, the clause forbids motel owners from re-leasing units vacated by long-term occupants to another long-term occupant. As a result, if a long-term occupant were to move from one motel to another motel, as many often

do, he or she would not receive the protection of the grandfather clause and could not obtain long-term occupancy at the second motel. In short, the grandfather clause fails to take into account the reality that people frequently move locations.

Second, the grandfather clause does not protect the many residents of Costa Mesa who will need to use the motels as last-resort housing in the future. Instead, it only protects current residents (and even then, it only protects them to the extent they stay in the same motel).

Third, motel owners may find it difficult to comply with the ordinance's onerous requirement that they provide long-term occupants' personal information to the City of Costa Mesa within 30 days of the effective date of the ordinance. (Ord. § 13-176.) As a result, the grandfather clause may actually disincentivize motel owners from offering long-term occupancy.

Finally, the clause ignores the fact that motel stays are part of the housing stock for Costa Mesa's lower income families, as acknowledged by the City's own Housing Element.

6. The Availability of Conditional Use Permits Does Not Save the Ordinance

Although the ordinance allows motels to continue offering long-term occupancy if they obtain a conditional use permit (Ord. § 13-177), as a practical matter that does little to preserve extended occupancy. Under the proposed ordinance, conditional use permits are only allowed for motels with more than 75 rooms (a requirement that has never been adequately explained or justified). This requirement alone would eliminate 140 units that are currently being used as long-term housing in 11 motels. Additionally, conditional use permits are publicly noticed and subject to the vague criteria that the use be "compatible with the surrounding neighborhood, uses, zoning and general plan." These criteria are exceedingly vague, making enforcement and implementation difficult and unpredictable, and the City has performed no analysis to determine whether long-term stays are likely to meet these criteria. In short, the ordinance's provisions on conditional use permits provide illusory protection for long-term residents and the intent of the ordinance is plainly to eliminate long-term stays altogether.

7. The Proposed Ordinance Discriminates Against and Has a Disproportionate Impact on Disabled Individuals and Family Structure in Violation of Government Code Section 65008.

This ordinance will prevent current long-term residents from being able to move motels because they will only be able to stay long-term at the one motel where they have been grandfathered in. This ordinance eliminates affordable housing for families or disabled individuals who pay rent week by week. Long-term residents will lose the ability to choose a better motel option for their individual need.

Public Law Center has spoken to many long-term residents who rely on long-term occupancy to provide stable shelter for their families when they do not have other options. We have also spoken to many residents and long-term occupants who have moved motels based on their different needs, including better access for disabled individuals or a playground for their children to play. Our interactions with the long-term residents of the motels revealed that there will be a disproportionate impact on low-income families and low-income disabled individuals. Many

low-income families and low-income disabled individuals live as long-term residents of the motels because they need a stable environment, have no other viable affordable housing options and are not as mobile as other low-income individuals.

We have also spoken to many families and many disabled individuals who rely on the affordability that the long-term occupancy motels provide. The low-income families and disabled individuals are a vulnerable population that will be disproportionately impacted and displaced in their community if this ordinance passes.

8. **The CEQA Mitigated Negative Declaration Fails to Analyze the Effect of the Loss of Housing Units on the Environment.**

As required by state law, the proposed ordinance should undergo a CEQA analysis under the guidelines. Government Code §15061. However, the City Council incorrectly concluded that this ordinance was exempt, ignoring the fact that there will be an environmental effect with the loss of so many affordable housing units in Costa Mesa. Currently, the City released numbers that 140 motel units house low-income households and the loss of these units will displace many individuals. Coupled with the lack of other affordable units, the practical effect of this ordinance creates a gap in affordable housing for the low-income residents of Costa Mesa.

This proposed ordinance should not be exempted from a CEQA analysis and we ask that one be conducted under the guidelines and made available to the public.

Conclusion

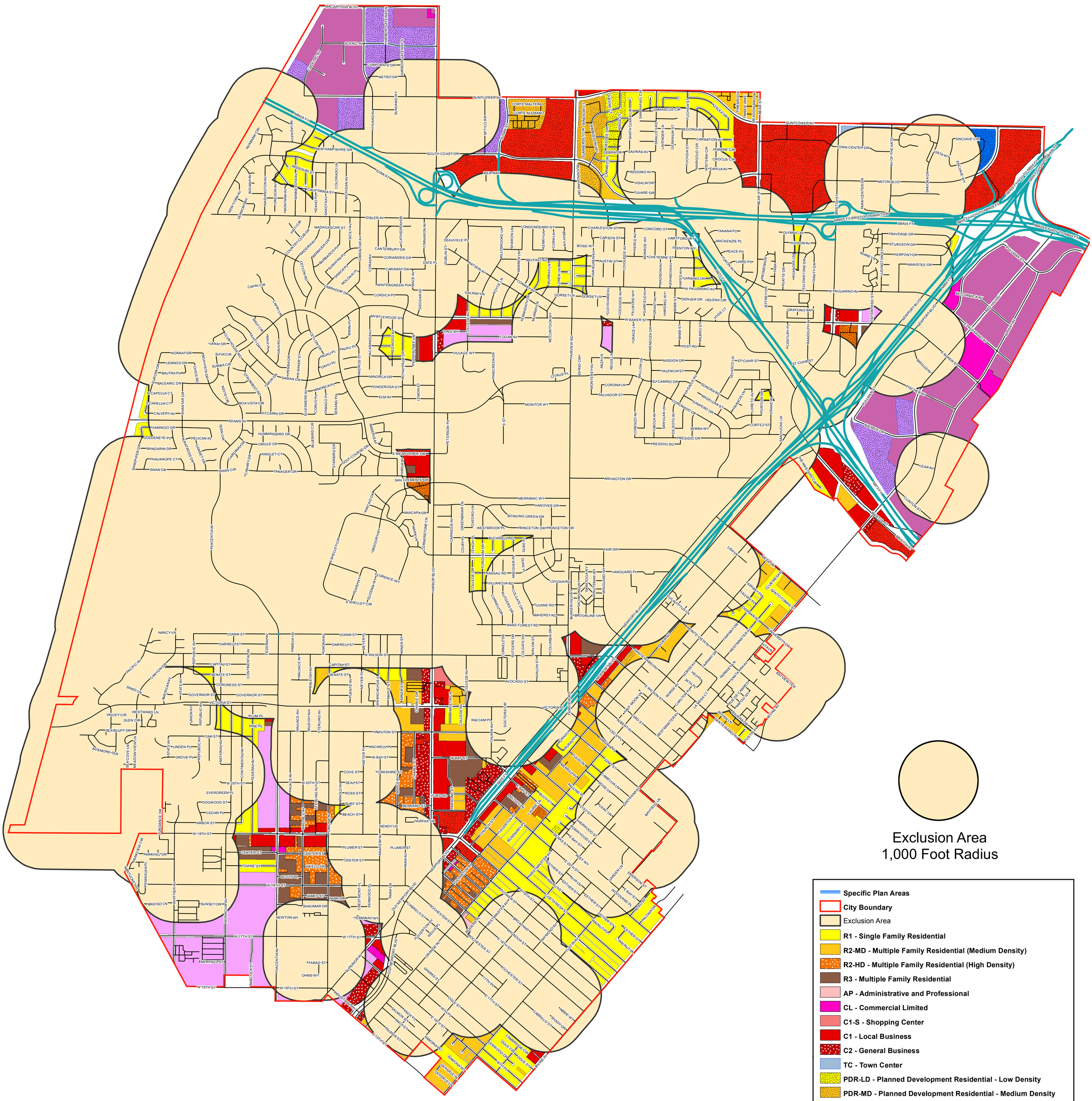
It is not in the best interest of the residents of Costa Mesa to eliminate long-term occupancy in a city that cannot provide affordable housing for its low-income residents. The proposed ordinance stands to violate state planning and land use law, among other applicable laws. We therefore urge you to vote against today's proposed ordinance.

Sincerely,

Lili Graham
Public Law Center

City of Costa Mesa

Medical Marijuana Dispensaries Exclusion Areas



Minor Conditional Use Permit (MCUP)
Required for sites within 200 feet if Residential Zones

August 5, 2014