

CITY OF OAKLAND

AGENDA REPORT

OFFICE OF THE CITY CLERK
2006 NOV 16 PM 4:28

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Oakland Police Department
DATE: November 28, 2006

RE: **A Report from the Chief of Police on the Oakland Police Department's Medical Marijuana Arrest Policy and the Effective Differences from the Medical Marijuana Arrest Policy Recently Adopted by the California Highway Patrol**

SUMMARY

The Oakland Police Department (OPD) implemented Training Bulletin III-W, the City of Oakland's Medical Cannabis Law Enforcement Policy on November 15, 2001 (*Attachment A*). The policy was written using recommendations and input from the Medical Marijuana Working Group and the Public Safety Committee, and defines arrest and seizure procedures for individuals found to be in possession of medical marijuana.

Recently the California Highway Patrol (CHP) modified its medical marijuana arrest and seizure policy (*Attachment B*) to settle a lawsuit with a medical marijuana patient advocacy group. After extensive review of the CHP policy, staff has determined that the current medical marijuana arrest policy being used the Department effectively satisfies all requirements of the State of California in respect to the use of medical marijuana. Staff therefore recommends that Council not adopt the proposed resolution (*Attachment C*) to amend the Oakland Police Department policy to reflect the policy instituted by the California Highway Patrol.

FISCAL IMPACT

There is no fiscal impact associated with this report.

BACKGROUND

In 1996 the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act, ensuring that patients suffering from serious illnesses may obtain, cultivate, and use marijuana for medical purposes with the approval or recommendation of a physician. In January 2004, California Senate Bill 420 (Medical Marijuana Program Act) became law (Health & Safety Code 11362.7).

KEY ISSUES AND IMPACTS

Americans for Safe Access (ASA) is a national organization devoted solely to protecting the rights of patients who use marijuana medicinally. Recently, ASA won a legal suit by challenging

Item: _____
Public Safety Committee
November 28, 2006

an illegal policy enforced by the California Highway Patrol (CHP) regarding the confiscation of medical marijuana from qualified California patients. As a result of a lawsuit filed by ASA in early 2006, the CHP revised its policy on August 22, 2006.

PROJECT DESCRIPTION

Oakland Police Department staff reviewed the amended CHP policy and compared it against Training Bulletin III-W, which is the policy currently used by the Police Department. The CHP policy requires that a person claiming the medical exemption to use marijuana either possess a California state or other government issued medical marijuana identification card, or a physician's recommendation. The Oakland Police Department's policy has no such requirement and relies upon the investigating officer's satisfaction (based on known facts) to determine if the individual has a legitimate need for medical marijuana.

Additionally, OPD policy requires "No medical cannabis related arrests will be effected without the consultation and approval of a command officer."

The CHP policy is more restrictive than the current OPD policy and will most likely result in a higher number of arrests involving medical marijuana claims. The CHP policy also relies on a voluntary registration program, established and maintained by the State Department of Health Services, to identify qualified patients claiming a medical exemption. The current OPD policy does not require any identification card or physician's written recommendation to lawfully claim an exemption.

Currently, OPD is not experiencing complaints alleging unlawful arrest or seizures related to medical marijuana, and staff cannot identify any added value by adopting the CHP amended policy.

SUSTAINABLE OPPORTUNITIES

Economic: None Identified

Environmental: None Identified

Social Equity: The Department's policies on medical cannabis law enforcement are more equitable and less restrictive than those used by CHP/

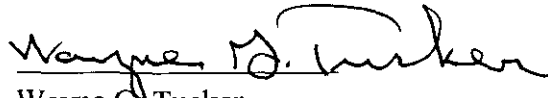
DISABILITY AND SENIOR CITIZEN ACCESS

There are no American with Disabilities Act (ADA) or senior access issues contained in this report.

RECOMMENDATION

Staff recommends acceptance of this report.

Respectfully submitted,



Wayne G. Tucker
Chief of Police

Prepared by:

Jeffrey Israel
Deputy Chief of Police
Bureau of Field Operations

APPROVED AND FORWARDED TO
THE PUBLIC SAFETY COMMITTEE


Office of the City Administrator

TRAINING



BULLETIN

Date of Issue / Revision:
25 Oct 01
CALEA Ref 43.1.1

Index Number: III-W
Alpha Index: Cannabis, Medical Cannabis

"Department Training Bulletins shall be used to advise members of current police techniques and procedures and shall constitute official policy."

Department General Order A-7; 21 July 1989

City of Oakland's Medical Cannabis Law Enforcement Policy

Introduction

The Oakland City Council has established the policy outlined in this Training Bulletin regarding growth and possession of medical cannabis in the City of Oakland.

The policy will go into effect on November 15, 2001.



**Conditions Under Which Officers Will Not Arrest Or Cite Persons
And Cannabis Will Not Be Seized**

Officers will not cite or arrest persons nor seize cannabis in their possession if all of the following three conditions are met:

1. Status as Caregiver or Patient

Patient The person establishes medicinal use status to the satisfaction of the officer.

A patient has a written recommendation by a licensed physician that the patient has a condition requiring the use of medical cannabis. Patients may delete any diagnosis or personal medical information on the documentation.

or

The patient does not have a written recommendation from his/her physician, but based on the totality of circumstances, the patient's claim of medical use is credible, and the patient establishes medicinal use status to the officer's satisfaction. If the patient does not have a written recommendation from a licensed physician, the patient should provide proof of medicinal use to the satisfaction of the Police Department within two business days after the police contact.

Caregiver The person establishes primary caregiver status to the satisfaction of the officer.

A primary caregiver means a person who has been designated by the patient's physician as the patient's primary caregiver and who has consistently assumed responsibility for the patient's housing, health, or safety.

A primary caregiver must have a written recommendation by a licensed physician that the person named is capable of providing primary care to the patient and that the patient requires medical cannabis.

Caregivers or growing collectives must keep written documentation from a licensed physician available on the premises at all times. There is no requirement to possess such written documentation while transporting medical cannabis for patients.



2. Amount of Cannabis

Processed (Dried) A medical cannabis patient may possess no more than three pounds of medical cannabis.

A caregiver may possess no more than three pounds of processed medical cannabis for each patient for whom he or she is the primary caregiver.

Plants A medical cannabis patient may possess indoor plants contained within a growing area of no more than thirty-two square feet, which in no case may contain more than seventy-two indoor plants, or the patient may possess twenty outdoor plants.

A primary caregiver or growing collective may possess the amount specified above for each patient for whom proof of primary caregiver or medicinal use status is posted or available on the premises.

3. The person signs a written statement admitting ownership, possession, and amount.

Medical Need Exception

Patients who have a licensed physician's written statement that Oakland's medical cannabis guidelines do not meet the patient's medical needs may possess dried cannabis and plants consistent with those needs.

The intent of this section is that patients who convince their physicians that they need more medical cannabis than is allowed by this policy may possess as much as they can convince their doctors that they need. Most of this policy can be ignored if a doctor agrees with the patient.

Additional Provisions

The Oakland Police Department will not initiate a criminal investigation against the Cannabis Buyers' Cooperative unless citizen complaints or other reports or information dictates such action.

Persons who fail to establish medicinal use or primary caregiver status to the satisfaction of officers and whose claim of such status is determined not to be credible may be cited and arrested, and the cannabis in their possession may be seized in accordance with standard procedure.

No medical-cannabis-related arrests will be effected without the consultation and approval of a command officer.

These guidelines are not intended to and shall not be interpreted to override the judgement and discretion of an officer based on a case-by-case evaluation of the totality of circumstances or to interfere with an officer's sworn duty to enforce applicable law.

6. CONTROLLED SUBSTANCES ARRESTS.

a. Policy.

(1) Arrests for offenses involving possession of controlled substances as defined in the California Uniform Controlled Substances Act (Division 10 of the Health and Safety [H&S] Code) should be handled to conclusion provided supplemental investigation is not required. Notwithstanding this policy, Division chiefs may require individual Areas to refer controlled substances arrests to local authorities in the event coordination problems are encountered.

(2) Arrests requiring supplemental investigation or resulting in the confiscation of large quantities of controlled substances are to be referred to the appropriate narcotics task force or allied agency. These cases may qualify for seizure and asset forfeiture. They should be handled in accordance with the policies and procedures Contained in Chapter 2 of HPM 81.5, Drug Programs Manual.

(3) Pursuant to Section 11591 H&S, upon the arrest of a public school employee for controlled substances offenses, enumerated in Section 11590 H&S, commands shall ensure that notifications are made by telephone to the Superintendent of Schools of the school district employing the arrestee, within one business day after the arrest. Commands shall also give written notice of the arrest to the Commission on Teacher Credentialing and to the Superintendent of Schools in the county were the person is employed, within one business day after the arrest.

(4) Pursuant to Section 11591 H&S, upon the arrest of a private school employee for controlled substance offenses enumerated in Section 11590 H&S, commands shall ensure that notifications are made by telephone to the private school authority employing the arrestee within one business day after the arrest. Commands shall also give written notice of the arrest to the private school authority within one business day after the arrest

(5) Commands shall ensure that standard operating procedures are established for the above types of arrests. Notifications made pursuant to these requirements shall be documented in the arrest report.

b. Procedure.

(1) Commanders are to establish procedures to assure coordination of controlled substances arrests with allied agencies in cases where a desire to become involved is expressed or where good judgment indicates a need for

such involvement, such as with large quantities of drugs, evidence of drug manufacturing operations, or large sums of money linked to drug transactions.

(2) Commanders unable to develop satisfactory referral arrangements with allied agencies shall notify Division.

(3) If satisfactory arrangements cannot be made at the Division level, Assistant Commissioner, Field shall be informed by memorandum.

7. MEDICAL MARIJUANA ARRESTS.

a. Supplemental Compassionate Use Act of 1996.

(1) On November 5, 1996. California voters approved Proposition 215 (the Compassionate Use Act of 1996). With its passage, Proposition 215 added Section 11362.5 H&S.

(2) In part. Section 11362.5 H&S states it was enacted "to ensure seriously ill Californians" the right to "obtain and use marijuana for medical purposes" where deemed appropriate" and "recommended by a physician" and "to ensure [those] patients and their primary caregivers who obtain and use marijuana . . . are not subject to criminal prosecution . . ." Section 11362.5 H&S further states that Sections 11357 H&S (possession) and 11358 H&S (cultivation) "shall not apply to a patient" or the "patient's primary caregiver" who so possesses or cultivates the marijuana. Thus, the intent of the proposition was to authorize physician recommended medical use of marijuana to seriously ill persons.

b. Senate Bill 420 - Medical Marijuana.

(1) General.

(a) On January 1, 2004, Senate Bill (SB) 420 (Medical Marijuana) became statute. With its passage, SB 420 added Article 2.5 (commencing with Section 11362.7 H&S) and requires the State Department of Health Services (DHS) to establish and maintain a voluntary program for the issuance of state medical marijuana identification cards to qualified patients and to establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes.

(b) Therefore, any law enforcement agency or officer shall not refuse to accept a state medical marijuana identification card issued by DHS 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.

(c) Section 11362.71 (e) H&S states “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...”

(d) Section 11362.7 H&S also allows local cities and counties to establish their own limits of possession of medical marijuana which could exceed the state limit of eight ounces of dried marijuana or no more than six mature or 12 immature marijuana plants per qualified patient.

(2) Definitions:

(a) Marijuana: Pursuant to Section 11018 H&S, marijuana is defined to include “every. . . mixture or preparation of the plant. . .” which would therefore include hashish, concentrated cannabis, and any such marijuana plant derivative. Section 11362.5 H&S makes no distinction regarding the above mentioned forms of marijuana. Therefore, the Section 11362.5 H&S defense may be applicable to the more concentrated forms of marijuana.

(b) Medical Marijuana: Pursuant to Section 11362.7 H&S, only the dried mature processed flowers or buds of the female cannabis plant or the plant conversion (e.g., hashish, hash oil) shall be considered when determining allowable quantities of medical marijuana.

(c) Attending Physician: An individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(d) Qualified Patient: A person who is entitled to the protections of Section 11362.5 H&S, but who does not have a valid state medical marijuana identification card.

(e) Qualified Person with a valid identification card: An individual who is a qualified patient who has applied for and received a valid state medical marijuana identification card.

(f) Primary Caregiver: An individual "designated" by a qualified patient or by a person with a state medical marijuana identification card who has "consistently assumed responsibility for the housing, health, or safety of that patient or person."

(g) State Identification Card: A state document issued by DHS that identifies a person authorized to engage in medical use of marijuana and the person's designated primary caregiver. The state medical marijuana identification card (see Annex H) shall contain the following information:

- 1 A unique user identification number of the cardholder;
- 2 The date of expiration of the identification card;
- 3 The name and telephone number of the county health department or the county's designee that has approved the application;
- 4 DHS will maintain an internet website (www.calmmp.ca.gov) that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the state medical marijuana identification card.

(h) Local identification card: A document issued by a governmental entity (e.g., county/city) (see Annex H).

(i) Physician's recommendation: A document issued and signed by a licensed physician which may contain the physician's name, telephone number, address, and physician license number.

c. Policy.

(1) Continuous efforts shall be directed toward the enforcement of marijuana related laws.

(2) It is the policy of the CHP that officers shall not conduct traffic enforcement stops for the primary purpose of drug interdiction in the absence of probable cause or reasonable suspicion to believe the motorist or an occupant of the vehicle is involved in illegal drug-related activity.

(3) When a Section 11362.5 and/or 11362.7 H&S exemption is claimed and the individual possesses a state/local governmental medical marijuana identification card (designating whether the individual is a patient or primary caregiver), or a physician's written recommendation officers shall:

(a) Review the state medical marijuana identification card for validity and contact the local dispatch/communications center for access to the DHS internet website (www.calmmp.ca.gov)

(b) Review the local (city/county) governmental card for validity and contact the telephone number on the card.

(c) Review the physician's written recommendation for validity. The document may contain the physician's name, telephone number, address, and physician license number.

(d) If the state medical marijuana identification card is valid, and the individual is within the state limits designated under SB 420, (eight ounces of dried marijuana, or the plant conversion, and no more than six mature or 12 immature marijuana plants) **the individual is to be released and the marijuana is not to be seized.**

Note: The state (SB 420) limit of eight ounces does not apply if there is a higher limit in the locality in which the individual is stopped. "Authorized local limits SUPERCEDE the state limit."

(e) If an individual claims Section 11382.5 or 11362.7 H&S and possesses an identification card from another governmental entity (e.g., city/county identification card), or a written recommendation from a licensed physician, officers shall use sound professional judgment to determine the validity of the person's medical claim. Based on the totality of the circumstances present, if the officer reasonably believes the medical claim is valid, and the individual is within the state/local limits (whichever applies) **the individual is to be released and the marijuana is not to be seized.**

(f) If an individual has valid medical marijuana documentation, but is over the state/local limit (whichever applies), **enforcement action shall be taken and all the marijuana shall be seized.**

(g) Those individuals claiming a need for the marijuana should be advised to file a motion with the appropriate court seeking an "Order of Return." Area commanders should apprise the district attorney's office of the seizure and potential for such an order being sought.

(h) Thoroughly investigate and document the incident. Officers should be particularly alert for (and document) indications of non-medical use of marijuana such as pay/owe sheets, large quantities of marijuana, packaging for sale, and large amounts of cash. Section 11362.77 H&S states that a qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient. However, Section 11362.77 H&S states that counties and cities may establish their own limits.

(i) It is the responsibility of Area commands to meet with local district attorney(s) and court officials to determine guidelines for authorized possession amounts for cities and counties within their jurisdiction.

(4) Discussion:

(a) Section 11362.7 H&S affects only certain persons under a narrow set of circumstances. In general, this section protects:

1 The qualified patient who uses marijuana for medicinal purposes upon recommendation from a physician and possesses a valid state medical marijuana identification card. .

2 The primary and designated caregiver who provides the marijuana to the patient and possesses a valid state medical marijuana identification card.

3 The physician who provides either written or oral recommendation for the use of medicinal marijuana.

(b) The standard search and seizure liability rules remain applicable to the enforcement of marijuana related violations. Reasonable suspicion is required for detention and probable cause is required for search and seizure. Officers should be particularly alert for (and document) indications of non-medical use of marijuana such as pay/owe sheets, large quantities of marijuana, packaging for sale, and large amounts of cash.

(5) Criminal Violations Unaffected by Sections 11362.5 and 11362.7 H&S.

(a) Section 11360(8) H&S - Sale (only). Although Proposition 215 made reference to the cultivation of marijuana, there was no defense created for the sale of marijuana. Thus, even if for eventual medical use, there is no Section 11362.5 and/or 11362.7 H&S application to an observed sale of marijuana.

(b) Section 11359 H&S - Possession for Sale. Section 11362.5 H&S defenses are not applicable to "possession for sale" of marijuana. Although Section 11362.5 H&S failed to define quantitative limits. Section 11362.7 H&S establishes the limit of eight ounces per qualified patient/caregiver, and possession of large amounts of marijuana is indicative of such prohibited use. If an individual exceeds the state limit/local limit, the officer should investigate appropriately. Where large quantities of marijuana are observed, officers should further investigate for other indicia of sale, such as pay/owe sheets and packaging for sale.

Note: The state (SB 420) limit of eight ounces does not apply if there is a higher limit in the locality in which the individual is stopped. "Authorized local limits SUPERCEDE the state limit."

(6) Criminal Violations Affected by Sections 11362.5 and 11362.7 H&S.

(a) Section 11357 H&S - Possession of Marijuana. Sections 11362.5 and 11362.7 H&S apply only to the medical use of marijuana. Non-medical use receives no protection.

(b) Section 11358 H&S - Cultivation of Marijuana. Pursuant to Sections 11362.5 and 11362.7 H&S, qualified patients and primary caregivers in possession of a valid state medical marijuana identification card may cultivate marijuana for "personal" medical use by the patient. Commercial cultivation of marijuana, however, is not protected. (The Statute permits six mature or 12 immature plants; however, local limits may be higher.) Caregivers, as previously defined, must have a direct relationship with the individual patient. Thus, their ability to cultivate is limited. Likewise, "clubs" that show a profit or that can be shown to produce more than necessary for medical use are not protected.

(c) Section 11360(a) H&S – Transportation, Furnishing or Giving Away. - Patients and primary caregivers may assert a Section 11362.5/11362.7 H&S defense for transporting, furnishing, or giving away, etc., of marijuana.

Officers should be alert for indications of mass production such as excessive quantities and special packaging. Utilizing Section 11362.5 H&S as a defense applies only to "personal" use. The "caregiver" defense is limited by the necessity of having a direct relationship with a patient and possessing a valid state medical marijuana identification card. As such, the patient must have obtained a recommendation from a physician that marijuana is needed for treatment of a medical condition. Thus, large quantities indicative of something other than medical use are outside the applicability of Sections 11362.5 and 11362.7 H&S. The defense is also not applicable to the Section 11360(a) H&S prohibition regarding the sale of marijuana.

(d) Section 11362.5/11362.7 H&S permits the limit of eight ounces per qualified patient/primary caregiver, however local limits may be higher. Measurable amounts as described in Section (e) are general estimates only. Officers should only seize the medical marijuana if the amounts are obviously in excess of the allowable limit. Further questions regarding descriptions and measurement procedures for larger quantities should be referred to the local Narcotics Task Force or Field Support Section.

(e) Measuring Procedure - Medical Marijuana. The following table lists typical marijuana exhibits and the number of items contained in an ounce. These amounts are general estimates only.

Exhibit Type	Number of Items/Ounce
Dried female buds – 1 sandwich bag	1 ounce
Dried female buds – 1 Gallon freezer bag	1 pound = 16 ounces

(7) Annex 1-C contains several scenarios which may be helpful in understanding how to apply the provisions of Section 11362.5/11362.7 H&S.

d. Supplemental Marijuana Procedure - (Not Medical Marijuana).

(1) Depending upon the offense, persons involved with marijuana and who do not possess a valid state medical marijuana identification card may be arrested and charged as follows:

(a) A felony, Sections 11357(a), possession of concentrated cannabis, and/or 11360(a) H&S, transport, import, sell, furnish, administer, or give away marijuana, or offer to do any of the above.

(b) A misdemeanor with mandatory cite and release provisions, Sections 11357(b) and/or 11360(b) H&S, possessing, transporting, or giving

away not more than 28.5 grams (one ounce) of marijuana (other than concentrated cannabis).

(c) A misdemeanor with optional cite and release provisions.
Section 11357(c) H&S, possessing more than 28.5 grams of marijuana where neither the amount nor the circumstances indicate an intent to sell.

(d) A misdemeanor with mandatory cite and release provisions.
Section 23222(b) VC, driving a motor vehicle while possessing not more than one ounce of marijuana.

NOTE: The optional "Booking Required" box on the CHP 215 shall not be used for violations under (b) and (d) above. These are not "recordable" offenses as defined in GO 100.28, Criminal Fingerprinting and the JUS 8715, Disposition of Arrest and Court Action.

(2) The mandatory cite and release provisions of the marijuana law apply to juveniles as well as adults.

(3) To provide reasonable flexibility in any county where the district attorney has not provided specific direction, marijuana offenses should be handled in accordance with the following guidelines:

(a) All felons shall be physically arrested as prescribed by law (see paragraph 2.a.[1] of this chapter).

(b) A person charged with possessing, transporting, giving away, or driving a motor vehicle while in possession of marijuana in any amount of 28.5 grams or less must be cited and released after being satisfactorily identified and signing a CHP 215. (Section 11375[b] H&S.)

1 If the amount in these cases does not exceed 28.5 grams, cite and release is mandatory.

2 If subsequent weighing establishes the amount to be in excess of 28.5 grams, the complaint may be amended to the appropriate section.

(c) A person arrested for simple possession of marijuana where the amount is clearly in excess of 28.5 grams should be physically arrested. However, the cite and release option may be considered in cases where a court appearance is reasonably assured.

(4) Measuring Procedure.

(a) When weighed, and the amount of marijuana is in excess of 28.5 grams, an appropriate tolerance should be applied to allow for scale inaccuracies, any container weight, and possible dehydration of the substance.

(b) Visual determination of marijuana in the amount of 28.5 grams may vary widely due to individual expertise, material density, and container differences. The following table lists typical marijuana exhibits and the number of items contained in 28.5 grams. The figures presented are not absolute values; however, they represent averages based on weighing a large number of exhibits and may serve as a guideline.

Exhibit Type	Number or Items/Ounce
Marijuana Cigarette, slender "matchstick" type, 3/16" diameter.	83+ cigarettes
Marijuana Cigarette, more commonly encountered homemade cigarette size, 5/16" diameter.	53+ cigarettes
Marijuana Cigarette, commercial cigarette emptied of tobacco and refilled with marijuana, 5/16" diameter.	31+ cigarettes
Marijuana, bulk, contents of 35mm film canister, weight varies with composition and density.	4+ canisters
Marijuana, bulk, "Cigarette Box," weight varies with composition and density.	3+ boxes

e. Destruction of Controlled Substances. There are two methods to dispose of controlled substances. Some allied agencies may accept controlled substances from the CHP as a courtesy, which they will burn with their drugs at no charge, or the Department may conduct its own burn. Areas shall follow the procedures contained in HPM 70.1 relating to the disposition of seized hazardous materials and controlled substances or court ordered releases of medical marijuana.

8. HATE CRIME ARRESTS.

Definition. A "Hate Crime" or "Bias Crime" is defined by the Federal Bureau of Investigation as any criminal offense committed against a person or property which is motivated, in whole or in part, by the offender's bias against a race, religion, ethnic/national origin, or sexual orientation. The California Department of Justice

2006 NOV 16 PM 4:28

Oakland City Attorney's Office

OAKLAND CITY COUNCIL

Resolution No. **DRAFT** C.M.S.

INTRODUCED BY COUNCILMEMBER NANCY NADEL

**Resolution Urging Oakland Law Enforcement to Adopt
CHP Policy on Medical Marijuana Arrests and Seizures**

WHEREAS, in 1996 the voters of the State of California approved Proposition 215, also known as the Compassionate Use Act of 1996, set forth in Health and Safety Code 11362.5, ensuring that patients suffering from serious illnesses may obtain, cultivate, and use marijuana for medical purposes with the approval or recommendation of a physician (Qualified Patients), and that the primary caregivers for such patients be provided with an affirmative legal defense for such activities; and

WHEREAS, on January 1, 2004, California Senate Bill 420, or Medical Marijuana Program Act, became law (Health & Safety Code §11362.7), and established a voluntary identification program, the implementation of which was mandated to the State Department of Health Services (DHS), as well as rights and responsibilities for qualified patients and primary caregivers; and

WHEREAS, H&S Code §11362.71 (e) states "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..." ; and

WHEREAS, H&S Code §11362.765 states "it shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5"; and

WHEREAS, the Attorney General's Office of the State of California has stated that a failure to comply with the Health and Safety Code "would likely amount to a violation of the California Constitution," citing Article III, section 3.5 of the California Constitution; and

WHEREAS, the absence of adequate law enforcement standards for ensuring compliance with H&S Code §§11362.5 and 11362.7 could have the unintended consequence of diverting limited resources from crime prevention and harmfully impacting persons engaged in legal activity; and

WMAF

WHEREAS, on February 15, 2005, Americans for Safe Access, a medical marijuana patient advocacy group, filed suit against the California Highway Patrol (CHP) for its unconstitutional policy of seizing medical marijuana from qualified patients and caregivers without regard to the legality of their actions under state law, and

WHEREAS, on August 22, 2005, the CHP significantly amended its policy on medical marijuana encounters, providing qualified patients and primary caregivers the protections afforded to them under state law, and

WHEREAS, law enforcement officers require guidelines established by policies that are clear in regard to procedures for evaluating patient or caregiver status, for determining legal possession and cultivation amounts, and whether citation, arrest or seizure is necessary; and

WHEREAS, pursuant to the Constitution of the State of California, Amendment III, Sec. 3.5(c), it is in the public interest for the City Council to recognize, support, and memorialize said standards; and

WHEREAS, this resolution does not address the enforcement of federal law.

NOW, THEREFORE, BE IT RESOLVED that the Oakland City Council does hereby support, recognize, and memorialize the following standards to ensure compliance with H&S Code §§11362.5 and 11362.7 as stated in the California Highway Patrol Medical Marijuana Enforcement Policy and urge the Oakland Police Department to observe the following procedures.

When a medical marijuana exemption is claimed and the individual possesses a state-issued identification card or a physician's recommendation, officers shall:

- a) Review the state medical marijuana identification card presented by a qualified patient for validity and contact the local dispatch/communications center for access to the department of Health Services website (www.calmmp.ca.gov)
- b) Review the local governmental card for validity and contact the telephone number on the card.
- c) Review the physicians written recommendation for validity. The document may contain the physician's name, telephone number, address, and physician license number.
- d) If the state medical marijuana card is valid, and the individual is within the state limits designated under SB 420 (eight ounces of dried marijuana, or the plant conversion, and no more than six mature or twelve immature plants) the individual is to be released and the marijuana is not to be seized.

DRAFT

Note: The state (SB 420) limit of eight ounces does not apply if there is a higher limit in the locality in which the individual is stopped. "Authorized local limits SUPERCEDE the state limit."

e) If an individual claims Section 11362.5 or 11362.7 H&S and possesses an identification card from another governmental entity (e.g. city/county identification card), or a written recommendation from a licensed physician, officers shall use sound professional judgment to determine the validity of the person's medical claim. Based on the totality of the circumstances present, if the officer reasonably believes the medical claim is valid, and the individual is within the stat/local limits (whichever applies), the individual is to be released and the marijuana is not to be seized.

f) If an individual has valid medical marijuana documentation, but is over the state/local limit (whichever applies) enforcement action shall be taken and all the marijuana shall be seized.

g) Those individuals claiming a need for the marijuana should be advised to file a motion with the appropriate court seeking an "Order of Return." Area commanders should apprise the district attorney's office of the seizure and potential for such an order being sought.

h) It is the responsibility of Area commands to meet with the local district attorney(s) and court officials to determine guidelines for authorized possession amounts for cities within their jurisdiction.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

AYES - BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE

NOES -

ABSENT -

ABSTENTION -

ATTEST:

DRAFT

LATONDA SIMMONS
City Clerk and Clerk of the Council of
the City of Oakland, California

Attachment C

~~Form # 8
Rules & Legislation
October 26, 2006~~