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May 11, 2009

VIA FACSIMILE, E-MAIL, AND REGULAR MAIL

Mayor and City Council
City of Oceanside
300 North Coast Highway
Oceanside, CA 92054

Re: Proposed Moratorium on "Medical Marijuana Dispensaries"

Dear Mayor and Council Members:

I am writing with respect to the proposed moratorium on "medical marijuana dispensaries" that the Oceanside City Council will consider on May 13, 2009. While I understand and appreciate the City's right to study and enact appropriate land use regulations, I am concerned that certain language in the proposed ordinance is overbroad, perhaps unintentionally, and would violate rights established by state law for the benefit of seriously ill patients and their caregivers.

Specifically, I am concerned with the definition of "medical marijuana dispensary," which includes "any … facility or location … where the owner(s) or operator(s) intends to or does possess and distribute marijuana for any purpose." Intentionally or not, this definition is extremely broad and creates a blanket prohibition of activity clearly permitted by state law.

Under this definition, the ordinance could be construed to prohibit, for instance, an individual caregiver from growing appropriate amounts of medical marijuana in a private residence for use by an individual qualified patient – or even the mere intent to engage in such conduct. The ordinance could also be construed to prohibit a small group of patients and/or caregivers from growing their marijuana collectively for personal medical use, as expressly permitted by Health and Safety Code section 11362.775.

Because the proposed ordinance provides that a "medical marijuana dispensary," as defined, is a "prohibited use in any zoning district of the city," the ordinance would apparently ban any primary caregiver or qualified patient from providing – or merely

intending to provide – any medical marijuana to any qualified patient, under any circumstances, no matter how small the amount of marijuana. Such activity is expressly permitted by state law. *See, e.g.*, Health & Safety Code §§ 11362.5(d), 11362.765, 11362.775.

A blanket ban on such activity, even if temporary, would conflict with state law. A city ordinance is preempted and thus invalid "if it is inimical to state law; i.e., it penalizes conduct that state law expressly authorizes …" *Suter v. City of Lafayette*, 57 Cal.App.4th 1109, 1124 (1997). While cities have a certain amount of authority to regulate in the area of medical marijuana, the Attorney General has made clear they may not do so in any way that "would directly contradict state law" or otherwise "be inconsistent with state law." Opinion No. 04-709 at pp. 7-8, 88 Ops. Cal. Atty. Gen. 113 (2005).

I urge you to refine the definition of "medical marijuana dispensary" to conform the proposed ordinance to state law. For your information and guidance, I am enclosing "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" adopted by the California Attorney General in August 2008. Specifically, pages 8 through 11 address guidelines regarding collectives and cooperatives.

I also urge you to consider whether a moratorium is necessary in light of the Attorney General's guidelines, and whether the City's legitimate objectives might be accomplished in a more narrowly focused manner. If the City does adopt a moratorium, I urge you to complete your study of this matter as quickly as possible, to avoid infringement of the rights of qualified patients and their caregivers.

Thank you for your attention to this matter. Please feel free to contact me if you have any questions or concerns.

Sincerely yours,

David Blair-Loy
Legal Director

cc: City Attorney