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DEPARTMENT OF JUSTICE



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March 27, 1997

The Honorable John Vasconcellos
California State Senate
State Capitol, Room 2004
Sacramento, California 95814

RE: Opposition to Your Measure, SB 535 -- Marijuana:
implementation

Dear Senator Vasconcellos:

Your SB 535 proposes to amend certain provisions of Health and Safety Code 11362.5 and enact legislation to implement other provisions. With respect to your measure's amendment of Proposition 215 as adopted, there is no requirement that they be submitted to the electors for their adoption. This failure to provide for approval by the electors is contrary California Constitution Article II, section 10(c) which states:

"The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."

Health and Safety Code section 11362.5 does not contain language which permits any amendment or repeal by the Legislature.

Specifically, section 2(a) and (b) of your proposal purport to legislate what the intent of the electors was when they passed Proposition 215. This determination is typically made by the judicial branch of government through an examination of the language of the measure or analysis of the documents submitted to the electors (see *Hill v. N.C.A.A.* (1994) 7 Cal.4th 1, 16; and *San Francisco Taxpayer's Association v. Board of Supervisors* (1992) 2 Cal.4th 571, 579-580). Proposed section 2, subsection (c) is a stated effort to "clarify" that which the electors have chosen not to subject to legislative clarification. As such it is contrary to Article II, section 10(c).

Section 3(a) of SB 535 defines the word "physician," which the electors left undefined. However, the plain language of the section makes clear that physician used in the initiative must be a physician licensed under the laws of California (see section 11362.5(c)).

Section 3(b) purports to establish the right to assert the affirmative defense at a "pre-trial hearing" without prejudice to asserting the defense at a later time. You would accomplish this amendment to section 11362.5 through definition of the phrase, "Not subject to criminal prosecution," which the electors did not define. Penal Code section 866(a) expressly provides that a person may present this affirmative defense at a preliminary hearing and Penal Code section 1020 preserves the right to present the defense at trial.

Section 4 would state that section 11362.5 does not supersede smoking ordinances; section 5 would essentially restate section 11362.5(b)(2). It is clear from the language of section 11362.5(b)(2) that persons whose conduct endangers others are not able to assert the affirmative defense provided by section 11362.5.

Section 6 would incorporate some controls on minors' access to marijuana under section 11362.5. As you know, there is no medical study that supports the notion that minors can benefit from the ingestion of marijuana. Unfortunately, those who drafted this initiative chose to place no age limitation on access to marijuana. And, because the drafters also chose not to permit amendment, this section of your bill is contrary to Article II, section 10(c).

Proposed section 7 is not in conflict with the initiative statute. It is unfortunate, however, that it proposes a study which does not have as one of its parameters compliance with federal guidelines. As you know, the ultimate arbiter of the issue of medical use of marijuana will be the federal government.

Proposed section 8 may conflict with section 11362.5(b)(1)(c) in that it would create a statewide task force whereas the statute directs a joint ". . . federal and state . . ." government effort.

For the reasons stated, this office opposes SB 535.

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Notwithstanding our opposition to this bill, we would like to extend our willingness to work with you to promote public safety and advance sound public policy during the legislative session. To that end, should you or your staff have any further inquiries concerning this or other matters, please do not hesitate to contact our office.

Sincerely,

DANIEL E. LUNGREN
Attorney General

Jack R. Stevens
Assistant Attorney General
Legislative Affairs

cc: Mr. Charles Fennessey, Governor's Office

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BILL TEXT

AMENDED IN SENATE APRIL 10, 1997
AMENDED IN SENATE MARCH 31, 1997

INTRODUCED BY Senator Vasconcellos

FEBRUARY 24, 1997

An act to add Sections 11362.51, 11362.53, 11362.55, 11362.57, 11362.59, and 11362.62 to the Health and Safety Code, relating to marijuana, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 535, as amended, Vasconcellos. Marijuana: implementation.

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

This bill would define, for purposes of the act, the phrases "physician" and "not subject to criminal prosecution."

The bill would expressly prohibit the act from being construed to supersede or conflict with laws in force prior to November 6, 1996, relating to the state or local smoking laws in force prior to November 6, 1996, or with laws relating to engaging in conduct that endangers others.

The bill would prohibit a physician from recommending or approving the use of medical marijuana by an unemancipated minor, unless the physician explains the possible risks and benefits to at least one of the minor's parents or guardians and the parent or guardian makes an acknowledgement in writing.

The bill would authorize the University of California to create a California Medical Marijuana Research Center to develop and implement medical marijuana studies and to solicit proposals for research projects to be included in the studies. The bill would authorize the center to raise funds and to include other research projects in the studies.

The bill would appropriate \$6,000,000 \$2,000,000 from the General Fund to the center to conduct the studies.

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The bill would establish the Medical Marijuana Distribution System Task Force to research and design a statewide plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. The bill would set forth the membership of the task force and would appropriate \$140,000 from the General Fund to the task force.

The bill would state that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. This act shall be known and may be cited as the Proposition 215 Implementation Act of 1997.

SEC. 2. (a) It is the intent of the Legislature that Proposition 215, as approved by the voters on November 5, 1996, be implemented expediently and in a manner that is consistent with the understanding of the voters of California of the purpose and intent of the measure. It is the intent of the Legislature to enact this act by urgency in order to ensure that the Legislature keeps the faith and will of the people and addresses the immediate needs of Californians who have a legitimate medical use for marijuana.

(b) The Legislature finds and declares that by their approval of Proposition 215, California voters affirmed all of the following:

(1) Medical marijuana is a drug with appropriate uses for the treatment of thousands of Californians suffering from serious illnesses.

(2) Physician-recommended use of medical marijuana is a health issue and not a criminal justice issue.

(3) Patients who use medical marijuana in a manner consistent with the measure are not criminals and must not be treated as such.

(4) California should develop a method for the safe, affordable distribution of medical marijuana to all patients in need of it.

(c) The Legislature also finds and declares all of the following:

(1) In order to ensure that patients who use medical marijuana in a manner

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consistent with the measure are not treated as criminals, the Legislature must clarify certain aspects of the measure, because the only alternative is to leave important terms of the measure undefined.

(2) The greatest obstacle to patient access to medical marijuana in cases where it is medically appropriate is reticence on the part of some licensed physicians and surgeons to recommend it to seriously ill patients for the following reasons:

(A) There is a need for more, scientific research on the appropriate uses of medical marijuana.

(B) Physicians fear federal or state retribution for recommending or approving patient use of medical marijuana.

(3) The federal government has failed to conform its medical marijuana policy to the desires of the Legislature, as expressed in Resolution Chapter 70 of the Statutes of 1993, and, therefore, the implementation of Proposition 215 is an urgent issue for the health and safety of suffering Californians.

(4) The Legislature agrees with the article printed in the January 1997 issue of the New England Journal of Medicine entitled "Federal Foolishness."

(d) The Legislature hereby acts to resolve these impediments to the implementation of Proposition 215.

SEC. 3. Section 11362.51 is added to the Health and Safety Code, to read:

11362.51. For purposes of Section 11362.5, the following terms shall have the following meanings:

(a) "Physician" means a licensed physician and surgeon by the state.

(b) "Not subject to criminal prosecution" means that a person charged with an offense under this article shall have the right to have the claim of medicinal use of marijuana, pursuant to Section 11362.5, determined at a pretrial hearing, and shall retain the right to claim medicinal use of marijuana at any subsequent hearing.

SEC. 4. Section 11362.53 is added to the Health and Safety Code, to read:

11362.53. Section 11362.5 shall not be construed either to supersede or to conflict with state or local smoking laws in force prior to November 6, 1996.

SEC. 5. Section 11362.55 is added to the Health and Safety Code, to read:

11362.55. Section 11362.5 shall not be construed to supersede or to conflict with laws prohibiting persons from engaging in conduct that endangers others.

SEC. 6. Section 11362.57 is added to the Health and Safety Code, to read:

11362.57. For purposes of Section 11362.5, no physician shall recommend or approve use of medical marijuana by an unemancipated minor unless both of the following requirements are met:

(a) The physician explains the possible risks and benefits of the use to the minor and to at least one of the minor's parents or guardians.

(b) The parent or guardian has acknowledged in writing that he or she understands the possible risks and benefits.

SEC. 7. Section 11362.59 is added to the Health and Safety Code, to read:

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11362.59. (a) The University of California shall create a the California Medical Marijuana Research Center that, which shall develop and implement medical marijuana studies intended to ascertain the general medical safety and efficacy of marijuana and to develop medical guidelines for the use of marijuana. The center shall include the following elements:

(1) Key personnel, including clinicians or scientists and support personnel, who are prepared to develop a program of research on potential uses of medical marijuana.

(2) Procedures for outreach to patients with various medical conditions that may be suitable participants in research on medical marijuana.

(3) A patient registry.

(4) An information system that is designed to record information about possible study participants, investigators, and clinicians, and deposit and analyze data that accrues as part of clinical trials.

(5) Protocols suitable for research on medicinal marijuana addressing several diseases for which evidence exists that marijuana may be useful, including, but not limited to, wasting in AIDS, painful peripheral neuropathy in AIDS and other conditions, control of nausea and vomiting due to anticancer treatment, control of spasticity in conditions like multiple sclerosis, intraocular pressure in glaucoma, and seizure disorders.

(6) A specimen laboratory capable of housing plasma, urine, and other tissue specimens necessary to study the concentration of cannabinoids in various tissues, as well as housing specimens for related studies of possible toxic effects of medical marijuana.

(7) Establish a A laboratory capable of analyzing marijuana for purity and cannabinoid content and the capacity to detect contaminants.

(b) The center may immediately solicit proposals for research projects to be included in the medical marijuana studies. The center shall focus its efforts on medical indications where for which existing research shows marijuana use is most therapeutically promising: to be most promising therapeutically.

(c) The medical marijuana studies shall include the greatest amount of new scientific research possible on the medical uses of marijuana. The center shall consult with analogous agencies in other states in an attempt to avoid duplicative research and the wasting of research dollars.

(d) The medical marijuana studies shall be designed to include the broadest variety of patients, physicians, and medical conditions as possible.

(e) The center shall make every effort to recruit patients and physicians from throughout the state for the medical marijuana studies.

(f) The medical marijuana studies shall employ state-of-the-art research methodologies.

(g) The center shall ensure that all medical marijuana used in the studies is of the appropriate medical quality. The center may review, approve, or incorporate studies and research by independent groups presenting scientifically valid protocols for medical research regardless of whether the areas of study are being researched by the committee.

(h) Within six months of the operative date of this section, the center shall report to the Legislature on the progress of the medical marijuana studies.

(i) Thereafter, the center shall issue a report to the Legislature every

BILL TEXT

six months detailing the progress of the studies. The interim reports shall include, but shall not be limited to, data on all of the following:

(1) The names and number of diseases or conditions under studies.

(2) The number of patients enrolled in the study per disease.

(3) Any scientifically valid preliminary findings.

(j) (1) To enhance understanding of the efficacy and adverse effects of marijuana as a pharmacological agent, the center shall conduct focused controlled clinical trials on the usefulness of marijuana in conditions such as chronic pain, including AIDS neuropathy, utility of marijuana in treatment of nausea related to chronic disease or antineoplastic chemotherapy, utility as an anti-emetic, and usefulness in chronic inanition (wasting), and treatment of glaucoma. The trials shall focus on comparisons between routes of delivery, including inhalational and oral, evaluate possible uses of marijuana as a primary or adjunctive treatment, and develop further information on optimal dosage, timing, mode of administration, and variations in effects of different cannabinoids and varieties of marijuana.

(2) The center shall examine the safety of medicinal marijuana in patients with various medical disorders, including marijuana's interaction with other drugs, relative safety of inhalation versus oral forms, and the effects on mental function in medically ill persons.

(k) The center shall no longer receive funding for the medical marijuana studies after three years.

(l) In order to maximize the scope and size of the medical marijuana studies, the California Medical Marijuana Research Center may do both of the following:

(1) Solicit, apply for, and accept funds from foundations, private individuals, and all other funding sources that can be used to expand the scope or timeframe of the medical marijuana studies that are authorized under subdivision (a). In no case shall the center expend more than 5 percent of its allocated general fund funding in efforts to obtain money from outside sources.

(2) Include within the scope of the medical marijuana studies other medical marijuana research projects that are independently funded and that meet the requirements set forth in subdivision (a).

(m) No provision of this section or Section 11352.62 shall apply to the University of California except to the extent that the Regents of the University of California, by appropriate resolution, make that provision applicable.

(n) It is the intent of the Legislature that the California Medical Marijuana Research Center (CMMRC) be established as follows:

(1) The CMMRC shall be entered located at a University of California campus that has a core of faculty experienced in organizing multidisciplinary scientific endeavors and, in particular, strong experience in clinical trials involving psychopharmacologic agents. The campus at which the CMMRC is entered located shall accommodate the administrative offices, including the director, as well as a data management unit, and facilities for storage of specimens.

(2) The scientific and clinical operations of the center shall occur partly at the campus where the center is located, and partly at other campuses, both University of California and non-University of California, that have

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clinicians or scientists with expertise to conduct the required studies. If more than one proposal for a CMMRC is submitted, criteria for selection shall include the elements listed in subdivision (a) of Section 11362.59 and, additionally shall give particular weight to the organizational plan, leadership qualities of the director, and plans to involve investigators and patient populations from multiple sites.

(3) The funds received by the center shall be allocated to various research studies in accordance with a scientific plan developed by the group of investigators who wish to be part of the center. As the first wave of studies is completed, it is anticipated that the center will receive requests for funding of additional studies. These requests will shall be reviewed by a council of investigators consisting of senior scientists associated with the center, as well as by an advisory group of scientists and informed citizens.

(4) It is the intent of the Legislature that indirect cost recovery by the University of California shall be limited to a maximum of 15 percent of the annual state allocation to the CMMRC.

SEC. 8. Section 11362.62 is added to the Health and Safety Code, to read:

11362.62. (a) Pursuant to subparagraph (C) of paragraph (1) of subdivision (b) of Section 11362.5 and in keeping with the will of the voters, the Legislature hereby creates the Medical Marijuana Distribution System Task Force, which is charged with the research and design of a statewide plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana. The task force shall analyze the attributes of public and private distribution systems and the attributes of existing means of distribution.

(b) In order to provide breadth of perspective and public credibility, the task force shall consist of 12 members broadly reflective of the general public of California, including ethnic minorities, women, and persons of varying economic levels.

(c) The membership of the task force shall include all of the following:

(1) Three University of California faculty members appointed by the President of the University of California. One appointee shall be an expert in pharmacology, one in agriculture, and one in medicine. The President shall appoint one of the three faculty members to chair the task force.

(2) Three citizen members appointed by the Governor, one from each of the following categories: organized physicians' societies or groups, law enforcement or criminologists, and the health care industry.

(3) Three citizen members appointed by the Senate Committee on Rules, one from each of the following categories: law enforcement or criminologist, medical marijuana patients, either past or present, and organized registered nurses' societies or groups.

(4) Three citizen members appointed by the Speaker of the Assembly, one from each of the following categories: medical marijuana patient advocates, medical marijuana patients, either past or present, and the judiciary.

(d) The Governor shall appoint the vice chair of the task force.

(e) The Director of the California Medical Marijuana Research Center shall serve as a nonvoting member to facilitate information transfer between the center and the task force.

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(f) Each appointing authority shall make the required appointments within 30 days of the operative date of this section. The chair or his or her designee shall call the first meeting of the task force within 45 days of the operative date of this section.

(g) All members shall be appointed for a term of two years and shall serve without compensation.

(h) In the event of a resignation, the inability of a member to continue service, or other vacancy, a new member shall be appointed to the task force by the original appointing authority in accordance with the requirements applicable to an original appointment.

(i) Task force members shall be reimbursed for normal travel and per diem expenses required to attend meetings.

(j) The chairperson shall appoint a search committee reflective of the composition of the task force which shall, in turn, make recommendations concerning selection of appropriate staff.

(k) The task force shall hold at least four public hearings per year to gather public input regarding a medical marijuana implementation system. The public hearings shall be held in different regions of the state in order to gather input from the largest number of citizens.

(l) The task force shall complete its work and report to the Legislature within two years of the first meeting and shall provide the Legislature with an interim report of its progress within one year from that date.

(m) The task force's report shall recommend to the Legislature a medical marijuana distribution system that meets the criteria outlined in Section 11362.5.

SEC. 9. The Legislature hereby appropriates ~~six two million dollars~~ ~~(\$6,000,000)~~ (\$2,000,000) from the General Fund to the California Medical Marijuana Research Center to conduct the medical marijuana studies pursuant to Section 11352.59 of the Health and Safety Code. It is the intent of the Legislature to appropriate a like amount through the budget process for the second and third year years of the studies.

SEC. 10. The sum of one hundred forty thousand dollars (\$140,000) is hereby appropriated from the General Fund to the Medical Marijuana Distribution System Task Force for the purposes of Section 11352.62 of the Health and Safety Code. It is the intention of the Legislature to appropriate a like amount through the budget process for the second year of the task force.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the Legislature keeps the faith and will of the people, and addresses the immediate needs of Californians who have a legitimate medical use of marijuana, it is necessary that this act take effect immediately.

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 610

Introduced by Assembly Member Margett

February 25, 1997

An act to add Sections 11362.61, 11362.62, 11362.63, 11362.64, 11362.65, and 11362.66 to the Health and Safety Code, relating to marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 610, as introduced, Margett. Marijuana.

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

This bill would define, for purposes of the act, the phrases "recommend" and "patient's primary caregiver."

The bill would make the protections of the act applicable only if the patient, or the patient's primary caregiver, is in possession of a specified written prescription at the time of arrest for possession or cultivation of marijuana.

The bill would authorize marijuana for medical purposes to be grown only through a grower licensed by the Department of Agriculture, following certain guidelines. The bill would require a grower to pay \$20,000 as a licensing fee to the

Department of Agriculture to pay for the costs of monitoring growers, and a 10% tax on the sale of the product for education and enforcement by state law enforcement agencies and the Department of Agriculture. The bill would require a grower to complete a training program.

The bill would require a supplier of marijuana to be licensed by the State Board of Pharmacy. The bill would require a supplier to pay \$20,000 as a licensing fee to the State Board of Pharmacy to pay for the costs of administration and enforcement, and a 10% distribution tax on the sale of marijuana to establish an education public relations campaign.

The bill would constitute a change in a state tax for purposes increasing revenue under Section 3 of Article XIII A of the California Constitution, requiring the approval of 2/3 of the membership of each house of the Legislature for approval.

The bill would require a distributor of marijuana to complete a prescribed course.

The bill would require the sale and distribution of marijuana to be through a licensed pharmacist and would require any person selling or distributing marijuana other than through a licensed pharmacist to be in violation of the law regulating the sale and distribution of marijuana.

Vote: 2/3. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 11362.61 is added to the Health and Safety Code, to read:

11362.61. For purposes of Section 11362.5, the following terms shall have the following meanings:

(a) "Recommend" means to fill a written prescription by a licensed pharmacist.

(b) "Patient's primary caregiver" means a blood relative or in-law of the patient, if the patient's primary caregiver sells or distributes marijuana.

SEC. 2. Section 11362.62 is added to the Health and Safety Code, to read:

11362.62. Subdivision (d) of Section 11362.5 shall apply only if the patient, or the patient's primary caregiver, is in possession of the written prescription described in Section 11362.61, at the time of arrest for possession or cultivation of marijuana.

SEC. 3. Section 11362.63 is added to the Health and Safety Code, to read:

11362.63. For purposes of Section 11362.5, all of the following shall apply:

(a) Marijuana for medical purposes may be grown only through a grower, licensed by the Department of Agriculture, under the following guidelines:

(1) All plants shall contain less than 5 percent THC content.

(2) All plants shall be grown organically or with approved pesticides.

(3) Records shall be kept and be available at all times to the federal Drug Enforcement Agency and any state law enforcement agency.

(b) All growers shall pay twenty thousand dollars (\$20,000) as a licensing fee and a 10-percent tax on the sale of the marijuana. The moneys from the licensing fee shall be paid to the Department of Agriculture to pay the costs involved in monitoring growers. The revenue generated by the tax shall be used for the sole purpose of education and enforcement by state law enforcement agencies and the Department of Agriculture.

(c) All growers shall complete a training program conducted by the Department of Justice, the Department of Agriculture, and the California Pharmacy Association. The hours of training and content shall be determined by each organization. The training shall focus on ensuring that growers understand the law, growing requirements, and pharmacology.

SEC. 4. Section 11362.64 is added to the Health and Safety Code, to read:

11362.64. For purposes of Section 11362.5, all suppliers of marijuana shall be licensed by the State Board of Pharmacy with a special license for the sale of marijuana and shall pay twenty thousand dollars (\$20,000) as a

AB 610

1 licensing fee to the State Board of Pharmacy and a
 2 10-percent distribution tax on the sale of marijuana. The
 3 moneys from the licensing fee shall be used to reimburse
 4 the State Board of Pharmacy for expenses incurred to
 5 create guidelines, cover administrative costs, and ensure
 6 compliance with the law. The revenue generated by the
 7 tax shall be placed in an account for the purpose of
 8 establishing an education public relations campaign to
 9 educate the public that complies with all of the following:

10 (a) Educates regarding when and why a person may
 11 use marijuana, and the dangers, both legally and to one's
 12 health, of unrestricted use of marijuana.

13 (b) Focuses on educating children 18 years of age and
 14 younger to the dangers of marijuana and the special
 15 circumstances under which it may be used.

16 (c) The State Department of Education and the State
 17 Department of Health Services shall implement the
 18 campaign on or before July 1, 1998.

19 **SEC. 5.** Section 11362.65 is added to the Health and
 20 Safety Code, to read:

21 11362.65. For purposes of Section 11362.5, all
 22 distributors of marijuana shall complete a course on the
 23 law, growing guidelines, pharmacology, and medical
 24 training to be established by the appropriate agencies,
 25 including the California Medical Association for the
 26 portion on medical training.

27 **SEC. 6.** Section 11362.66 is added to the Health and
 28 Safety Code, to read:

29 11362.66. For purposes of Section 11362.5, all sale and
 30 distribution of marijuana shall be through a licensed
 31 pharmacist. Any other person selling or distributing
 32 marijuana shall be in violation of the law regulating sale
 33 and distribution of marijuana.

DANIEL E. LUNGREN
Attorney General

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March 27, 1997

The Honorable Bob Margett
California State Assembly
State Capitol, Room 4144
Sacramento, California 95814

RE: Opposition to Your Measure, AB 610 -- Marijuana

Dear Assembly Member Margett:

The Attorney General's Office regrets to inform you that we must oppose AB 610, your measure to amend certain provisions of Health and Safety Code 11362.5. Your bill does not require that its provisions be submitted to the electors for their adoption. This failure to provide for approval by the electors is contrary California Constitution Article II, section 10(c) which states:

"The Legislature may amend or repeal referendum statutes. It may amend or repeal an initiative statute by another statute that becomes effective only when approved by the electors unless the initiative statute permits amendment or repeal without their approval."

Health and Safety Code section 11362.5 does not contain language which permits any amendment or repeal by the Legislature.

Although the amendments that you suggest are intended as a constructive effort to prevent Health and Safety Code section 11362.5 from being abused, they are all contrary to the requirement imposed by California's Constitution.

For this reason, this office is compelled to oppose AB 610.

The Honorable Bob Margett
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Notwithstanding our opposition to this bill, we would like to extend our willingness to work with you to promote public safety and advance sound public policy during the legislative session. To that end, should you or your staff have any further inquiries concerning this or other matters, please do not hesitate to contact our office.

Sincerely,

DANIEL E. LUNGREN
Attorney General

JACK R. STEVENS
Assistant Attorney General
Legislative Affairs

cc: Charles Fennessey, Governor's Office

JRG:TR
3/28/97

ORDINANCE NO. 25280

AN URGENCY ORDINANCE OF THE CITY OF SAN JOSE ADDING A NEW PART 8 TO CHAPTER 20.08 OF TITLE 20 TO ESTABLISH REGULATIONS AND CRITERIA FOR MEDICAL MARIJUANA DISPENSARIES AND AMENDING SECTION 20.08.1230 OF TITLE 20 TO PROHIBIT A MEDICAL MARIJUANA DISPENSARY AS A HOME OCCUPATION AND SETTING FORTH THE FACTS CONSTITUTING SUCH URGENCY.

WHEREAS, this ordinance was found to be categorically exempt from environmental review, per the provisions of Section 15061(b)(3) of the California Environmental Quality Act of 1970 as amended, on March 21, 1997 under File No. 97-03-079.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1 A new Part 8 is added to Chapter 20.08 of Title 20 of the San Jose Municipal Code to be numbered, entitled and to read as follows:

Part 8

The Medical Marijuana Dispensary

20.08.800 Purpose of Part

- A.** The voters of the State of California overwhelmingly affirmed the medical use of marijuana by voting for Proposition 215 (codified as Health and Safety Code Section 11362.5). The intent of this Proposition was to enable persons who are in medical need of marijuana to be able to obtain and use it without fear of criminal prosecution. In order for this to occur,

JRG:TR
3/26/97

there must be places which dispense marijuana to those who qualify for its use in accordance with state law. The specific purposes of this Part are to safeguard the urban environment by permitting compliance with state law in a manner consistent with neighborhood concerns.

- B. Due to fact that all distribution of marijuana was previously illegal, it has never been allowed within the provisions of this Title. No use which purports to have distributed marijuana prior to the enactment of this Part 8 shall be deemed to have been a legally established use under the provisions of this Title and such use shall not be entitled to claim legal nonconforming status pursuant to Part 4 of Chapter 20.08 of this Title.

20.08.810 Medical Marijuana Dispensary

A "Medical Marijuana Dispensary" is a facility where marijuana is made available for medical purposes in accordance with Health and Safety Code Section 11362.5 (Proposition 215).

20.08.820 Special Use Permit Required.

- A. No person shall operate or allow or suffer the operation of a Medical Marijuana Dispensary except in compliance with a Special Use Permit issued pursuant to Part 5 of Chapter 20.44.
- B. The application for such Special Use Permit may be filed by the operator of the Medical Marijuana Dispensary and shall be countersigned by the owner of the subject lot or parcel, or by the authorized agent of the owner, pursuant to the requirements of Section 20.44.1020 of Part 5 of Chapter 20.44.

JRG:TR
3/26/97

20.08.830 Special Use Permit Not Applicable.

Nothing in this Part shall regulate or prohibit the following uses which comply with Proposition 215:

- A. The cultivation or possession of marijuana for medical use by a single patient or caregiver; or
- B. The cultivation or possession of marijuana by a cooperative of three or less patients;

20.08.840 Allowed Districts.

Medical Marijuana Dispensaries may be permitted only in the C, C-1, C-2, C-3, or in those Planned Development (PD) districts which allow C-1, C-2 or C-3 uses.

20.08.850 Standards for Medical Marijuana Dispensaries.

- A. No Dispensary shall be located closer than a minimum of five hundred (500) feet from any school; child daycare center or church or closer than a minimum of one hundred fifty (150) feet from property used for residential purposes.
- B. Distance shall be measured from the building which contains the Dispensary to the property line of the enumerated use using the most direct vehicular or pedestrian access route, whichever is shorter.

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20.08.880 Findings.

- A. The Special Use Permit shall be granted only if the Director or the Planning Commission, on appeal, makes all of the following findings of fact:
1. The Medical Marijuana Dispensary, as proposed and at the location requested, will not create a potentially adverse impact on surrounding uses ; and
 2. The proposed Medical Marijuana Dispensary, and at the location requested, will be compatible with the adjacent uses; and
 3. The proposed Medical Marijuana Dispensary will not result in the substantial aggravation of crime problems or make law enforcement unduly difficult; and
 4. The proposed Medical Marijuana Dispensary will not be detrimental to the public peace, health, safety and welfare.
- B. The Director, or Planning Commission, on appeal, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate each such finding.

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20.03.890 Conditions.

- A. The use shall be conducted in compliance with the provisions of Health and Safety Code Section 11362.5.
- B. No smoking or consumption of medical marijuana shall be allowed on the site of the Dispensary.
- C. No persons under the age of 18 (eighteen) shall be permitted in the Dispensary at any time.
- D. No retail sales of any products other than medical marijuana are permitted at the Dispensary.
- E. The Dispensary shall be operated in strict compliance with the Regulations adopted by the Chief of Police:
1. The Regulations shall address, but are not limited to such issues as, record keeping, proper identification for patients, storage of marijuana on the site, on-site cultivation and maximum amount dispensed in any single transaction; and
 2. The Regulations may be amended from time to time by the Chief. The Dispensary shall be operated in strict compliance with the most currently adopted regulations sent by certified mail to the operator of the Dispensary.
- F. All transactions shall occur at the Dispensary and all medical marijuana shall be dispensed directly to the patient or the designated caregiver. No

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- employee, owner or volunteer of the Dispensary may make a delivery of medical marijuana.
- G. Cultivation of medical marijuana on-site is only allowed if specifically authorized by the Special Use Permit.
- H. Hours of operation shall be limited to the hours between 9:00 a.m. and 9:00 p.m.
- I. The operator and/or property owner shall be required to report any illegal activity occurring on the site or associated with the Dispensary.
- J. Each Dispensary, shall display in a manner legible and visible to its clientele:
1. Notice that Persons under the age of 18 (eighteen) are not allowed in the Dispensary; and
 2. Notice that all illegal activity will be reported to the police; and
 3. A request that there be no smoking of the medical marijuana in the vicinity of the Dispensary.

SECTION 2. Section 20.08.1230 of Chapter 20.08 of Title 20 of the San Jose Municipal Code is amended to read as follows:

20.08.1230 Prohibited uses.

The following are not permitted as home occupations:

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- A. Animal breeding.
- B. Appliance repair, other than the repair of small household appliances.
- C. Firearm sales and service.
- D. Motorized garden tool repair such as, but not limited to, lawnmowers, chain saws and leaf blowers.
- E. Massage parlor, as provided in Part 2 of Chapter 20.08 of this Title, and the business of massage as provided in Section 6.44.010, subsection A., of Chapter 6.44 of Title 6.
- F. Pest control.
- G. Upholstery and furniture repair.
- H. Food catering.
- I. Vehicle-related uses such as, but not limited to, the following: cleaning, dismantling, embellishment, installation, manufacture, repair or service, sale, lease or rental, and towing, excluding the dispatching of vehicles such as limousines, taxicabs and ambulances.
- J. Welding.
- K. Any use which requires a hazardous materials permit from the Fire Department.

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L. Any other use which does not comply with each of the criteria provided in this Part.

M. Medical Marijuana Dispensary.

SECTION 3. This Ordinance is declared by the City Council to be an urgency measure necessary for the immediate preservation of the public peace, health or safety. The facts constituting such urgency are: several individuals have announced their intent to open "cannabis clubs" in the City of San Jose. The District Attorney and Police Chief have announced that cooperatives or cannabis clubs may be able to distribute medical marijuana in accordance with Section 11362.5 of the California Health and Safety Code. If legal, these uses need to comply with all zoning regulations. While the City's zoning code addresses all kinds of medical and related uses, it currently does not address the medicinal distribution of marijuana as such activity was illegal. To the extent that distribution is allowed by law, it must be in an appropriate location and subject to easy monitoring. This means that the City must create a zoning category to permit the distribution for medical purposes, in accordance with law, with proper limitations, conditions and controls.

In addition, this distribution does not fit into the traditional "home occupation" concept. It never was envisioned that "cannabis clubs" would exist in single family residences. Home occupations are not appropriate for a use which needs to be highly regulated and monitored. It is not intended for uses with a large number of clients visiting the facility. There the zoning code must be amended to clearly prohibit this use as a home occupation.

SECTION 4. This ordinance shall become effective immediately upon its adoption pursuant to Section 605 of the Charter of the City of San Jose and shall remain effective until the adoption of a superseding ordinance.

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ADOPTED this 25th day of March, 1997 by the following vote:

AYES: DANDO, DIAZ, DIQUISTO, FERNANDES, FISCALINI, JOHNSON,
PANDORI, POWERS, SHIRAKAWA, WOODY; HAMMER

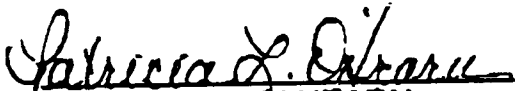
NOES: NONE

ABSENT: NONE



SUSAN HAMMER
Mayor

ATTEST



PATRICIA L. O' HEARN
City Clerk

JRG:TBR
3/26/97

RESOLUTION NO 67208

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING PROCEEDINGS ON ITS OWN MOTION TO AMEND TITLE 20 OF THE SAN JOSE MUNICIPAL CODE ADDING A NEW PART 8 TO CHAPTER 20.08 OF TITLE 20 TO ESTABLISH REGULATIONS AND CRITERIA FOR MEDICAL MARIJUANA DISPENSARIES AND AMENDING SECTION 20.08.1230 OF TITLE 20 TO PROHIBIT A MEDICAL MARIJUANA DISPENSARY AS A HOME OCCUPATION.

BE IT RESOLVED by the Council of the City of San Jose:

SECTION 1. Pursuant to provisions of Chapter 20.40 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, "AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN JOSE ADDING A NEW PART 8 TO CHAPTER 20.08 OF TITLE 20 TO ESTABLISH REGULATIONS AND CRITERIA FOR MEDICAL MARIJUANA DISPENSARIES AND AMENDING SECTION 20.08.1230 OF TITLE 20 TO PROHIBIT A MEDICAL MARIJUANA DISPENSARY AS A HOME OCCUPATION."

SECTION 2. The above-mentioned ordinance is hereby referred to the Planning Commission for its report and comments, and the City Clerk is hereby directed to send a copy of this resolution to said Planning Commission.

SECTION 3. June 3, 1997, at the hour of 7:00 p.m., in the Council Chambers of the Council of the City of San Jose in the City Hall of said City, is the time and place for hearing on the proposal to adopt the above-mentioned ordinance. The City Clerk is hereby directed

JRG:TBR
3/25/97

to publish notice thereof as required by Chapter 20.40 of Title 20 of the San Jose Municipal Code.

ADOPTED this 25th day of March, 1997, by the following vote:

AYES: DANDO, DIAZ, DIQUISTO, FERNANDES, FISCALINI, JOHNSON,
PANDORI, POWERS, SEIRAKAWA, WOODY; HAMMER

NOES: NONE

ABSENT: NONE

SUSAN HAMMER, Mayor

ATTEST:

PATRICIA L. O'HEARN, City Clerk

COUNCIL AGENDA: March 25, 1997

ITEM NUMBER: 8a

CITY OF SAN JOSÉ - MEMORANDUM

TO: HONORABLE MAYOR
AND CITY COUNCIL


FROM: JOAN R. GALLO
City Attorney

SUBJECT: Correction to Medical Marijuana
Dispensary Ordinance

DATE: March 25, 1997

The memorandum that you received from this Office on the Medical Marijuana Dispensary Urgency Ordinance mistakenly stated that no persons under the age of 21 shall enter the Dispensary. This should be changed to persons under the age of 18.

JOAN R. GALLO
City Attorney

By: 
THOMAS B. RUBY
Deputy City Attorney

cc: Regina V.K. Williams
James R. Derryberry

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SAN JOSE CITY CLERK

COUNCIL AGENDA: March 25, 1997ITEM NUMBER: 8a**CITY OF SAN JOSÉ - MEMORANDUM**

TO: HONORABLE MAYOR
AND CITY COUNCIL

SUBJECT: Medical Marijuana Dispensary
Ordinance

FROM: JOAN R. GALLO
City Attorney

DATE: March 21, 1997

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SAN JOSE CITY CLERK

RECOMMENDATION

1. Adoption of an Urgency Ordinance to establish a zoning category and criteria for Medical Marijuana Dispensaries and to prohibit a Medical Marijuana Dispensary as a Home Occupation.
2. Adoption of a Resolution initiating proceedings to add a new Part 8 to Chapter 20.08 of Title 20 to establish a zoning category and criteria for Medical Marijuana Dispensaries and amend Section 20.08.1230 of Title 20 to prohibit a Medical Marijuana Dispensary as a Home Occupation, setting a Public Hearing on June 3, 1997 at 7:00 p.m. and referring the Ordinance to the Planning Commission for its review and recommendation.

BACKGROUND

In the past several weeks, several individuals have announced immediate plans to open "cannabis clubs" in San Jose. These proposals are the result of the passage of Proposition 215 which allows the medical use of marijuana. One of the stated purposes of the Proposition is "(t)o encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." The Police Department and the District Attorney's Office have announced their intent to interpret Proposition 215 in a manner which takes into account the humanitarian purposes of the Proposition, and which allow for some reasonable production and distribution for medicinal use only. In light of the fact that the Police Department and the District Attorney will not prosecute persons distributing marijuana in compliance with Proposition 215, the City Council needs to address the issue in the Zoning Code.

While the Zoning Code addresses a variety of medical and related uses, it does not address the medicinal distribution of marijuana. To the extent that such distribution is allowed, it must be in an appropriate location and subject to easy monitoring. This means that the City needs to create a zoning category and permit the distribution of marijuana for medical purposes, in accordance with Proposition 215, with proper limitations, conditions and controls.

HONORABLE MAYOR AND CITY COUNCIL
RE: Medical Marijuana Dispensary Ordinance
March 21, 1997
PAGE 2

DISCUSSION

The urgency ordinance amends the Zoning Code in the following manner:

1. To clarify that the sale of marijuana in accordance with Proposition 215 does not qualify as a "home occupation" and cannot be conducted from single family dwellings; and
2. To specify that a Medical Marijuana Dispensary may be approved in the commercial zoning districts (C, C-1, C-2, C-3) with a Special Use Permit if the Dispensary is not located any closer than 150 feet from any school, child daycare center, church or property used for residential purposes. The distance will be measured from the building which contains the Dispensary to the property line of the enumerated use using the most direct vehicular or pedestrian access route, whichever is shorter.

All Special Use Permits for Medical Marijuana Dispensaries must include the following conditions:

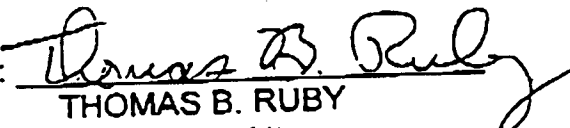
1. The use shall be conducted in compliance with the provisions of Proposition 215.
2. No smoking or consumption of medical marijuana will be allowed on the site of the Dispensary.
3. No persons under the age of 21 will be permitted in the Dispensary at any time.
4. No retail sales of any products other than medical marijuana will be permitted at the Dispensary.
5. The Dispensary must be operated in strict compliance with the Regulations adopted by the Chief of Police. Those regulations are intended to ensure that the distribution is in compliance with the Proposition, that there is adequate security, and that the use does not become a nuisance.
6. All medical marijuana must be dispensed directly to the patient or the designated caregiver. No employee, owner or volunteer of the Dispensary will be allowed to make a delivery of medical marijuana.
7. Cultivation of medical marijuana on-site is only allowed if specifically authorized by the Special Use Permit.
8. Hours of operation will be limited to the hours between 9:00 a.m. and 9:00 p.m.

HONORABLE MAYOR AND CITY COUNCIL
RE: Medical Marijuana Dispensary Ordinance
March 21, 1997
PAGE 3

9. The operator and/or property owner will be required to report any illegal activity occurring on the site or associated with the Dispensary.
10. Each Dispensary will be required to have displays advising its clientele that no person under the age of 21 is allowed in the Dispensary, all illegal activity will be reported to the police, and no marijuana should be smoked in the vicinity of the Dispensary.

In addition to adopting the ordinance on an urgency basis, the Ordinance should be sent to the Planning Commission for review so that the final long term Ordinance can have sufficient public input.

JOAN R. GALLO
City Attorney

By: 
THOMAS B. RUBY
Deputy City Attorney

cc: Regina V.K. Williams
James R. Derryberry