

**AGENDA
HAYDEN TOWN COUNCIL**

**THURSDAY, AUGUST 19, 2010
7:30 P.M.**

HAYDEN TOWN HALL – 178 WEST JEFFERSON AVENUE

WORK SESSION 7:00 P.M. – 7:30 P.M.

1. STAFF & COUNCILMEMBER REPORTS

REGULAR MEETING – 7:30 P.M.

1a. CALL TO ORDER

1b. OPENING PRAYER

1c. PLEDGE OF ALLEGIANCE

1d. ROLL CALL

2. CONSIDERATION OF MINUTES

3. CONSIDERATION OF BILLS

4. PUBLIC COMMENTS

5. PROCLAMATIONS/PRESENTATIONS

6. CONSENT ITEMS

1. Decision: ROUTT COUNTY FAIR PARADE PERMIT

7. OLD BUSINESS

1. 2nd Reading, Public Hearing & Decision: MEDICAL MARIJUANA INDUSTRY PROHIBITION ORDINANCE
2. Decision: TENNIS COURT RESURFACING BID AWARD

8. NEW BUSINESS

1. Decision: TENNIS COURT FENCING BID AWARD
2. Decision: TOWN MANAGER CITIZEN REVIEW COMMITTEE APPOINTMENTS

9. PULLED CONSENT ITEMS

10. STAFF AND COUNCILMEMBER REPORTS (CONTINUED, IF NECESSARY)

11. CORRESPONDENCE

12. EXECUTIVE SESSION

13. ADJOURNMENT

NOTICE: Agenda is subject to change. If you require special assistance in order to attend any of the Town's public meetings or events, please notify the Town of Hayden at (970) 276-3741 at least 48 hours in advance of the scheduled event so the necessary arrangements can be made.

Staff & Councilmember Reports

Mayor Johnson began the work session at 7:03 p.m. **Sergeant Booco** advised that the circus and Hayden Daze went well and there were no incidents. They are working with the new nuisance ordinance and will begin issuing more citations next week. There are problems with vandalism at the bathrooms at the 3rd Street Park and they are doing extra monitoring there. **Sam Barnes** stated that they completed cleaning sewers today and found a problem with oil in a sewer main which they are addressing with the responsible party. The sidewalk project is progressing well and Poplar Street is nearly complete. They are working on the sidewalks on 3rd Street now and are filling and raising the sidewalk level to allow for better snow removal. No poles need to be moved as the sidewalk width was reduced to accommodate the poles which would have cost over \$250,000 to move. The flashing school sign needs to be relocated to accommodate the sidewalk on Jefferson Avenue. The Hayden Parkway in Lake Villages was paved today and will be tested by NWCC at Vectra Bank's expense. **Tim Barnes** will be having surgery on his shoulder next week and will be off work for six to ten weeks. Dry Creek pond was stocked with 450 fish today which are about 15-18 inches long. The tree trimmer is supposed to be here in the next two weeks. **Councilmember Hagins** requested that the residents on Poplar be reminded that they cannot park on the sidewalk. **Sam Barnes** advised that signs are ordered and they are awaiting the posts to install them.

Regular Meeting

Mayor Johnson called the regular meeting of the Hayden Town Council to order at 7:30 p.m. with Councilmember Haskins, Councilmember Hayden, Councilmember Redmond, Councilmember Hagins, Councilmember Rogalski and Mayor Pro Tem Grobe present. Also present were Town Clerk, Susan Irvine, and Public Works Director, Sam Barnes.

Opening Prayer **Mayor Pro Tem Grobe** offered the opening prayer.

Pledge of Allegiance **Mayor Johnson** led the Pledge of Allegiance.

Consideration of Minutes **Councilmember Haskins** moved to approve the minutes for the regular meeting held on July 15, 2010 as written. **Mayor Pro Tem Grobe** seconded. Roll call vote. **Councilmember Haskins – aye. Councilmember Hayden – yes. Councilmember Redmond – aye. Councilmember Hagins – aye. Councilmember Rogalski – abstained. Mayor Pro Tem Grobe – aye. Mayor Johnson – aye. Motion carried unanimously.**

Consideration of Bills **Councilmember Redmond** asked about bills from Civil Design Consultants, Peak Mechanical Services, Osmun Sealing and Striping, Chaosink and Staples Credit. **Councilmember Hayden** felt that the cost of the printer for Parks and Recreation was excessive and asked about bills from David Hood, Intellichoice, Watercraft and McKendrick Holdings. **Councilmember Rogalski** moved to approve the bills dated August 2, 2010 in the amount of \$190,970.39. **Councilmember Hagins** seconded. Roll call vote. **Councilmember Haskins – aye. Councilmember Hayden – yes. Councilmember Redmond – aye. Councilmember Hagins – aye.**

Councilmember Rogalski – aye. Mayor Pro Tem Grobe – aye. Mayor Johnson – aye. Motion carried unanimously.

Public Comments **None.**

**Proclamations/
Presentations** **None.**

Consent Items **Mayor Pro Tem Grobe moved to approve the Consent Items. Councilmember Redmond seconded. Roll call vote. Councilmember Haskins – aye. Councilmember Hayden – yes. Councilmember Redmond – aye. Councilmember Hagins – aye. Councilmember Rogalski – aye. Mayor Pro Tem Grobe – aye. Mayor Johnson – aye. Motion carried unanimously.**

**Routt County Fair
Association Special
Events Permit**

Jill Altman, Routt County Fair Manager, advised that they attempted to get a beer garden for the fair this year but could not. The Commissioners did amend to allow for this next year if a plan and request are presented to them prior to June 1st. They will be working on the beer garden for next year's fair which will be operated by a non-profit vendor with the fair taking a percent of the sales. Extra security will be a requirement of the vendor operating the beer garden.

Old Business **None.**

New Business

**Solandt Hospital
Presentation**

Kathy Hockin, president of the Solandt Board, advised that they are working on the restoration of the Solandt Hospital building in three phases and are getting funding from various sources. There is a drainage problem which has caused damages to the building and this will be repaired in the first phase along with repairs to the bricks. They need \$30,000 in donations in order to receive a \$30,000 Anschutz Foundation grant. They would like for the Town to consider all or a portion of the \$10,000 funding which was pledged several years ago. Routt County Road & Bridge is donating \$75,000 worth of labor and equipment for the project. A new handicap ramp will also be installed at a cost of \$60,000. **Councilmember Hayden** asked about the elevator and **Ms. Hockin** replied that it will be repaired and functional as a part of Phase 1.

Councilmember Hayden moved to approve the waiver of \$477.63 in building permit and plan review fees. Mayor Pro Tem Grobe seconded. Roll call vote. Councilmember Haskins – aye. Councilmember Hayden – yes. Councilmember Redmond – aye. Councilmember Hagins – aye. Councilmember Rogalski – aye. Mayor Pro Tem Grobe – aye. Mayor Johnson – aye. Motion carried

unanimously.

Mayor Pro Tem Grobe asked about the \$10,000 and was told it was not budgeted this year. The Council agreed to look at additional funding when preparing the budget for 2011.

**Tennis Court
Resurfacing Bid
Award**

Mayor Johnson advised that 3 bids were received for this project and this is the highest bid. The total grant award was \$60,000 and **Kathy** was going to see if GOCO would amend the grant to apply the remaining funds to the fencing for the tennis court. The company recommended for approval has completed courts in Glenwood Springs. **Councilmember Haskins** asked about the durability of the surface and **Sam Barnes** replied that he thinks it has a ten-year warranty. **Consensus of the Council was that they needed additional information from Kathy Hockett and Mayor Johnson tabled the item until August 19th.**

**Staff &
Councilmember
Reports Continued**

Councilmember Redmond asked about the bid process and the Council's involvement. **Mayor Pro Tem Grobe** advised that the deadline for applications for Town Manager is August 23rd and he wanted to know when the deadline for citizen input was. **Mayor Johnson** announced the opportunity for a citizen review committee and advised that letters of interest needed to be turned in at the Town Hall by Friday, August 13th. **Councilmember Hagins** felt that the last spray for more mosquitoes was more effective and he would like to see another spray before the fair. **Councilmember Rogalski** advised that he received one proposal for the speedway and **Susan Irvine** stated that it was the only one received by the deadline. **Consensus of Council was that this should come forward as an agenda item at the 1st meeting in September.** **Mayor Johnson** stated that there is a meeting on August 11th at 7:00 p.m. with Landmark for an update on the Hospital Hill sidewalk feasibility study. **Mayor Johnson** advised that she has the old Town manager phone and is carrying it regularly. **Susan Irvine** stated that five of the Council seats were up for reelection in November and petitions had begun circulating. She stated that only one petition had gone out so far and was for the position of Mayor. **Susan** also asked about ratification of the Regional Economic Development strategy and was told to check with Scott Ford to see exactly what he needed from the Council. **Councilmember Haskins** advised that a handicapped citizen told him they were told that they could not park at the fence near the ball field at Dry Creek Park and he asked about the ability to park there.

Executive Session

None.

Adjournment

Mayor Johnson adjourned the meeting at 8:35 p.m.

Vendor	Vendor Name	Invoice No	Description	Inv Date	Net Inv Amt	Amount Paid	Date PD
1200	Bear River Valley Co-Op	072510	PD Vehicle Expense	07/25/2010	706.39		
			Streets Vehicle		85.87		
			Streets Maintenance		291.24		
			Weed Control		24.31		
			Parks R&M		9.50		
			Parks Vehicle		280.60		
			Parks Equipment Expense		268.95		
			Water Vehicle Expense		301.73		
			Water Plant R&M		17.36		
			Sewer R&M		21.05		
			Sewer Vehicle		475.51		
Total 1200					2,482.51	.00	
1630	Colorado Dept of Public Health	900012272	Safe Drinking Water Program Fee	08/03/2010	465.00		
Total 1630					465.00	.00	
2060	Davis Auto Parts Inc	072810	PD Vehicle	07/28/2010	284.08		
			Streets Vehicle		124.75		
			Streets General Op. Cost		6.36		
			Street Maintenance		2.99		
			Weed Control		35.35		
			Parks Vehicle		6.59		
			Parks Operating Cost		97.95		
			Water Plant R&M		8.58		
			Sewer Plant R&M		147.48		
Total 2060					714.13	.00	
2150	DPC Industries Inc	E7300701-10	Cylinder Rental	07/31/2010	6.00		
Total 2150					6.00	.00	
2430	Grand Junction Pipe & Supply	E2169806	Water R&M	08/12/2010	65.45		
Total 2430					65.45	.00	
2470	Haskins, Jim	080210	Janitorial Services	08/02/2010	200.00		
Total 2470					200.00	.00	
2580	Hayden Merc	080210	Board Snacks/Martin Reception	08/02/2010	114.72		
			Admin Supplies		12.58		
			HPD Building Supplies		2.49		
			Streets Operating Supplies		23.96		
			Hayden Daze		130.12		
			Parks Operating Supplies		25.50		
			Water Plant R&M		23.96		
			Sewer Plant R&M		21.45		
Total 2580					354.78	.00	
2730	Jackson's Office Supply	10300636	Restore Printer/Copier	07/06/2010	75.00		
Total 2730					75.00	.00	
2960	MJK Sales & Feed Inc	K48001	Weed Control	07/02/2010	143.98		
		K48006	Streets General Operating	07/02/2010	7.49		

Vendor	Vendor Name	Invoice No	Description	Inv Date	Net Inv Amt	Amount Paid	Date PD
		K48569	Parks R&M	07/08/2010	889.46		
		K49821	Walker Ditch r&m	07/20/2010	131.40		
		K50014	Parks R&M	07/22/2010	144.48		
		K50024	Weed Control	07/22/2010	42.99		
	Total 2960				1,359.80	.00	
3150	Pilot Office Outfitters	426372	Town Hall Printer/Copier	07/25/2010	86.83		
		426373	HPD Station Copier/Printer Contract	07/10/2010	27.05		
	Total 3150				113.88	.00	
3310	Respond First Aid Systems	017428	First Aid Supplies	08/11/2010	52.80		
	Total 3310				52.80	.00	
3400	Royal Flush Industries Inc	123664	Port-O-Lets Hayden Daze	07/29/2010	150.00		
		123842	Port-O-Lets-Elementary Fields	08/02/2010	13.93		
	Total 3400				163.93	.00	
3530	Steamboat Pilot	073110	Legals	07/31/2010	318.34		
			Planning Legals		6.91		
			Tennis Court Project Legals		274.41		
	Total 3530				599.66	.00	
3630	Temple Construction Inc	7758	Cobble Rock-DCP	07/30/2010	165.00		
	Total 3630				165.00	.00	
3740	Tri-State Equipment	8049	Spreader	08/11/2010	360.00		
			Spreader		360.00		
	Total 3740				720.00	.00	
3770	Qwest	080110	Water Phones	08/01/2010	118.00		
	Total 3770				118.00	.00	
3777	QWEST	080310	Adm Phones	08/03/2010	38.04		
			Water Phones		4.76		
			Sewer Phones		4.76		
	Total 3777				47.56	.00	
3860	High Desert Outdoor Power	113676	Weed Control	07/28/2010	243.08		
	Total 3860				243.08	.00	
3885	The UPS Store	0000000401	Water Sample Shipping	07/14/2010	47.33		
	Total 3885				47.33	.00	
4010	Yampa Valley Electric	072910	Street Lights	07/29/2010	2,004.39		
	Total 4010				2,004.39	.00	
4810	Woods, James	081110	Sewer Tap Reimbursement	08/11/2010	1,200.00		

Vendor	Vendor Name	Invoice No	Description	Inv Date	Net Inv Amt	Amount Paid	Date PD
Total 4810					1,200.00	.00	
4820	Peddie, John	081110	Sewer Tap Reimbursement	08/11/2010	1,200.00		
Total 4820					1,200.00	.00	
4910	Becker Tree Service	1159	Tree Trimming	08/16/2010	4,550.00		
Total 4910					4,550.00	.00	
4930	Button Brush Control	080510	Stump Removal	08/05/2010	660.00		
Total 4930					660.00	.00	
4990	Taber Plumbing & Heating	4830	Meter Installation	08/11/2010	678.05		
Total 4990					678.05	.00	
5060	ALSCO-American Linen Division	LGRA871001	Floor Mat	07/01/2010	17.58		
		LGRA877178	Floor Mat	07/15/2010	21.58		
		LGRA883280	Floor Mat	07/29/2010	21.58		
Total 5060					60.74	.00	
5120	Northwest Power Systems	081110	WWTP Generator Repair	08/11/2010	243.00		
Total 5120					243.00	.00	
5860	CH Diagnostic & Consulting	20100551	Water Testing Services	07/15/2010	360.00		
Total 5860					360.00	.00	
6060	Royal Supply Co.	R251973	Street General Operating Cost	07/29/2010	193.02		
Total 6060					193.02	.00	
6335	Drexel, Barrell & Co.	10603	Poplar Re-design	08/06/2010	3,096.00		
Total 6335					3,096.00	.00	
6540	Tri County Fire Protection	61961	Backflow Prevention Testing	07/30/2010	668.00		
		62031	Backflow Prevention Testing	07/30/2010	897.00		
Total 6540					1,565.00	.00	
6610	Department of Local Affairs	EIAF #4114B	Water Plant Loan Payment	07/16/2010	16,048.49		
		EIAF #4840	Water Plant Loan Payment	07/16/2010	15,216.79		
		EIAF #5819	Water Line (WET) Loan Payment	07/16/2010	18,527.79		
Total 6610					49,793.07	.00	
6645	Action Drain Services, Inc.	29558	Camera Sewer Line	08/03/2010	350.00		
		29560PT	Camera Sewer Line	08/10/2010	315.00		
		29570PT	Port-o-lets-Stokes Gulch	08/05/2010	90.00		
Total 6645					755.00	.00	
7070	USA BlueBook	191198	Hydrant Diffuser	07/14/2010	1,787.56		

Vendor	Vendor Name	Invoice No	Description	Inv Date	Net Inv Amt	Amount Paid	Date PD
Total 7070					1,787.56	.00	
7090	Samuelson's - Craig	854321	Water Plant R&M	07/06/2010	37.55		
Total 7090					37.55	.00	
7100	Boyle Equipment Company, Inc.	20100765	Sewer Machine Parts	08/02/2010	1,768.96		
Total 7100					1,768.96	.00	
7600	Univar USA Inc	DV-795254	Sodium Fluoride	08/02/2010	594.70		
Total 7600					594.70	.00	
7700	Katers & Associates	073110	Town Planning Services Rebel-Roux Conditional Use	07/31/2010	70.00 157.50		
Total 7700					227.50	.00	
7860	Landmark Consultants Inc	11869	RGR #37 Engineering & Redesign	07/31/2010	172.50		
Total 7860					172.50	.00	
8740	Visa	080310	Clock Plaque-Martin Court Postage Adm Postage 5 Yr. Domain Reg. for Website PD Postage Streets Postage Weed Whacker & Batteries Rec Postage Hayden Daze Parks R&M Water Postage Water Adm Postage Water Education Sewer Postage Sewer Education Sewer Adm Postage	08/03/2010	88.00 16.18 72.83 114.95 37.77 16.18 266.10 35.06 316.37 216.27 13.49 35.06 45.00 5.39 45.00 37.77		
Total 8740					1,361.42	.00	
9280	Resort Broadband LLC	43073	DCP Internet Service	08/03/2010	19.50		
			DCP Internet Service		19.50		
		43074	Shop Internet Service	08/03/2010	34.00		
			Water Plant Internet Service		44.00		
Total 9280					117.00	.00	
9410	Colorado Building Supply Inc.	072810	Town Hall Drip System Repair PD Building Supplies Streets General Operating Parks R&M Water R&M Water Plant R&M Washington Lift R&M	07/28/2010	52.59 2.04 12.22 79.42 40.39 44.39 8.04		

Vendor	Vendor Name	Invoice No	Description	Inv Date	Net Inv Amt	Amount Paid	Date PD
Total 9410					239.09	.00	
9780	Windemere Garden Center	53632	Landscaping Edging	08/01/2010	20.00		
Total 9780					20.00	.00	
10070	Eaton Sales & Service Inc	5120295	Key Pump Key	07/29/2010	11.00		
Total 10070					11.00	.00	
10530	Staples Advantage	8016124179	Computer Monitor	07/27/2010	119.98		
		8016195575	Adm Computer Supplies	08/07/2010	34.46		
			Street Office Supplies		77.88		
Total 10530					232.32	.00	
10600	Waste Management - Steamboat	080210	Residential Trash Service	08/02/2010	10,416.34		
Total 10600					10,416.34	.00	
10610	SAFEbuilt, Inc.	10689	Building Department Services	07/31/2010	2,565.28		
Total 10610					2,565.28	.00	
11553	Kruse Builders	072810	Building Use Tax Refund	07/28/2010	839.95		
Total 11553					839.95	.00	
11614	Ramos, Neftali & Lacey	2006.02	Utility Deposit Refund	08/12/2010	15.30		
Total 11614					15.30	.00	
11854	Ketterer, Melissa & Seth	1185.02	Utility Deposit Refund	08/03/2010	23.41		
Total 11854					23.41	.00	
11855	Bennett, Rebecca	2017.02	Utility Deposit Refund	08/09/2010	25.86		
Total 11855					25.86	.00	

Total Paid: -
 Total Unpaid: 94,807.92
 Grand Total: 94,807.92

TOWN OF HAYDEN – FINANCE REPORT
Month Ending July 31, 2010

Checking Account – Mountain Valley Bank

Reconciled Account Balance, June 30, 2010		\$ 412,995.36
Plus:		
Enterprise Receipts (Water & Sewer)	\$ 67,479.94	
Sales Tax	44,057.09	
Property Tax	96,827.02	
Car Rental Tax	3,570.02	
Lodging Tax	16.60	
Building Material Tax	635.54	
Miscellaneous Receipts	34,697.85	
Total Deposits		\$ 247,284.06
Less:		
Accounts Payable	\$ 117,705.93	
Net Payroll	57,160.24	
Payroll Taxes	17,923.71	
Total Disbursements		\$ 192,789.88
Reconciled Account Balance July 31, 2010		\$ 467,489.54
<u>Certificates of Deposit and COLOTRUST Account Balance:</u>		
Certificates of Deposit - Mtn. Valley Bank as of July 31, 2010		
Total Certificates of Deposit		\$ 0
COLOTRUST Account Balance 7/31/10		\$ 8,417.62
Total Cash and CD's, July 31, 2010		\$ 475,907.16

TOWN OF HAYDEN, COLORADO
REVENUES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEARNED	PCNT
<u>TAXES REVENUE</u>					
10-31-4000 GENERAL PROPERTY TAX	99,821.67	432,054.62	494,346.00	62,291.38	87.4
10-31-4002 SALES TAX	44,057.09	434,600.45	769,500.00	334,899.55	56.5
10-31-4003 CIGARETTE TAX	306.17	1,532.77	4,800.00	3,267.23	31.9
10-31-4004 FRANCHISE TAX	9,443.20	35,107.04	53,000.00	17,892.96	66.2
10-31-4006 BUILDING MATERIAL USE TAX	635.54	11,009.30	25,000.00	13,990.70	44.0
10-31-4007 LODGING TAX	16.60	202.43	1,200.00	997.57	16.9
10-31-4008 CAR RENTAL TAX	3,570.02	89,895.28	110,000.00	20,104.72	81.7
TOTAL TAXES REVENUE	157,850.29	1,004,401.89	1,457,846.00	453,444.11	68.9
<u>LICENSES & PERMITS REVENUES</u>					
10-32-4005 LIQUOR LICENSE (15%)	175.00	1,772.50	2,250.00	477.50	78.8
10-32-4006 SALES TAX APP. FEES	25.00	100.00	6,575.00	6,475.00	1.5
10-32-4008 ANIMAL LICENSES	.00	125.00	300.00	175.00	41.7
TOTAL LICENSES & PERMITS REVENUES	200.00	1,997.50	9,125.00	7,127.50	21.9
<u>INTERGOVERNMENTAL REVENUES</u>					
10-33-4010 SPECIFIC OWNERSHIP TAX	2,477.81	14,597.75	30,000.00	15,402.25	48.7
10-33-4011 MOTOR VEHICLE REG FEE	725.00	3,585.50	7,500.00	3,914.50	47.8
10-33-4012 HIGHWAY USERS TAX	4,809.07	28,195.68	55,548.47	27,352.79	50.8
10-33-4013 TOWN ROAD & BRIDGE	.00	.00	10,000.00	10,000.00	.0
10-33-4015 SEVERANCE TAX	.00	.00	25,000.00	25,000.00	.0
10-33-4016 MINERAL LEASE	.00	.00	10,000.00	10,000.00	.0
TOTAL INTERGOVERNMENTAL REVENUES	8,011.88	46,378.93	138,048.47	91,669.54	33.6
<u>CHARGES FOR SERVICES</u>					
10-34-4018 COURT COSTS & FEES	25.00	(705.00)	650.00	1,355.00	(108.5)
10-34-4019 ZONING & SUBDIVISION FEES	200.00	1,364.80	2,500.00	1,135.20	54.6
10-34-4024 MISCELLANEOUS PD CHARGES	80.00	370.00	700.00	330.00	52.9
10-34-4025 COPIES & FAX	5.15	44.75	300.00	255.25	14.9
10-34-4030 BUILDING PERMIT FEES	3,250.35	7,774.15	5,000.00	(2,774.15)	155.5
TOTAL CHARGES FOR SERVICES	3,560.50	8,848.70	9,150.00	301.30	96.7
<u>COURT FINES & FORFEITURES</u>					
10-35-4027 DOG FINES	.00	275.00	500.00	225.00	55.0
10-35-4028 TRAFFIC FINES	378.00	4,304.71	15,000.00	10,695.29	28.7
10-35-4029 NON-TRAFFIC FINES	40.00	(620.00)	1,000.00	1,620.00	(62.0)
TOTAL COURT FINES & FORFEITURES	418.00	3,959.71	16,500.00	12,540.29	24.0

TOWN OF HAYDEN, COLORADO
 REVENUES WITH COMPARISON TO BUDGET
 FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEARNED	PCNT
<u>MISCELLANEOUS REVENUES</u>					
10-36-4030 MISCELLANEOUS	295.05	3,612.24	12,000.00	8,387.76	30.1
10-36-4032 INTEREST INCOME	85.12	414.59	2,500.00	2,085.41	16.6
10-36-4037 AIRPORT SECURITY REIMBURSEMENT	.00	50,535.53	62,000.00	11,464.47	81.5
10-36-4044 REC PROGRAMS & EVENTS REVENUE	4,287.70	28,905.95	24,000.00	(2,905.95)	112.1
10-36-4046 DRY CREEK PARK BALLFIELDS	.00	45,000.00	45,000.00	.00	100.0
10-36-4048 ENERGY IMPACT GRANT-POPLAR	.00	.00	72,500.00	72,500.00	.0
10-36-4049 CDOT GRANT-SIDEWALKS/TRAILS	.00	.00	463,421.00	463,421.00	.0
TOTAL MISCELLANEOUS REVENUES	4,667.87	126,468.31	681,421.00	554,952.69	18.6
TOTAL FUND REVENUE	174,708.54	1,192,055.04	2,312,090.47	1,120,035.43	51.6

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>AIRPORT EXPENDITURES</u>					
10-45-6025 AIRPORT STREET MAINTENANCE	.00	12,163.00	12,163.00	.00	100.0
TOTAL AIRPORT EXPENDITURES	.00	12,163.00	12,163.00	.00	100.0
<u>LEGISLATIVE DEPARTMENT</u>					
10-46-5000 TRUSTEE SALARIES	625.00	4,375.00	7,500.00	3,125.00	58.3
10-46-5001 FICA - TOWN SHARE	38.75	271.25	465.00	193.75	58.3
10-46-5003 WORKERS COMPENSATION	36.16	137.75	190.00	52.25	72.5
10-46-5006 MEDICARE	9.06	63.42	110.00	46.58	57.7
10-46-6000 TRAVEL	.00	208.42	1,000.00	791.58	20.8
10-46-6002 AUDIT	.00	10,000.00	10,000.00	.00	100.0
10-46-6004 MISCELLANEOUS	13.55	212.19	4,500.00	4,287.81	4.7
10-46-6007 ADVERTISING & LEGAL NOTICES	.00	.00	250.00	250.00	.0
10-46-6012 TREASURER FEE EXP.	2,994.65	12,961.66	14,000.00	1,038.34	92.6
TOTAL LEGISLATIVE DEPARTMENT	3,717.17	28,229.69	38,015.00	9,785.31	74.3
<u>JUDICIAL DEPARTMENT</u>					
10-47-5000 JUDICIAL SALARIES	560.75	4,026.00	8,330.00	4,304.00	48.3
10-47-5001 FICA - TOWN SHARE	34.77	249.62	516.00	266.38	48.4
10-47-5002 UNEMPLOYMENT	4.63	9.17	25.00	15.83	36.7
10-47-5003 WORKERS COMPENSATION	18.08	68.89	95.00	26.11	72.5
10-47-5006 MEDICARE	8.13	58.37	121.00	62.63	48.2
10-47-6000 TRAVEL	.00	.00	500.00	500.00	.0
10-47-6003 OFFICE SUPPLIES	5.35	71.46	100.00	28.54	71.5
10-47-6010 EDUCATION / MEMBERSHIP	.00	40.00	200.00	160.00	20.0
TOTAL JUDICIAL DEPARTMENT	631.71	4,523.51	9,887.00	5,363.49	45.8
<u>EXECUTIVE DEPARTMENT</u>					
10-48-5000 MAYOR SALARY	150.00	1,050.00	1,800.00	750.00	58.3
10-48-5001 FICA - TOWN SHARE	9.30	65.10	112.00	46.90	58.1
10-48-5003 WORKERS COMPENSATION	18.08	68.89	95.00	26.11	72.5
10-48-5006 MEDICARE	2.18	15.26	26.00	10.74	58.7
10-48-6000 TRAVEL	.00	33.42	500.00	466.58	6.7
10-48-6004 MISCELLANEOUS	.00	.00	100.00	100.00	.0
TOTAL EXECUTIVE DEPARTMENT	179.56	1,232.67	2,633.00	1,400.33	46.8
<u>ELECTIONS DEPARTMENT</u>					
10-49-6009 PROFESSIONAL SERVICES	.00	.00	1,500.00	1,500.00	.0
TOTAL ELECTIONS DEPARTMENT	.00	.00	1,500.00	1,500.00	.0

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>ADMINISTRATION DEPARTMENT</u>					
10-50-5000	11,161.38	83,709.38	153,105.00	69,395.62	54.7
10-50-5001	720.17	5,458.01	10,245.00	4,786.99	53.3
10-50-5002	78.63	156.03	330.00	173.97	47.3
10-50-5003	144.64	551.04	1,500.00	948.96	36.7
10-50-5004	4,948.34	30,122.52	60,165.00	30,042.48	50.1
10-50-5005	781.29	5,859.55	10,145.00	4,285.45	57.8
10-50-5006	168.41	1,276.46	2,395.00	1,118.54	53.3
10-50-5007	.00	815.20	2,000.00	1,184.80	40.8
10-50-6000	.00	31.50	1,000.00	968.50	3.2
10-50-6002	42.83	289.98	750.00	460.02	38.7
10-50-6003	96.16	863.24	2,300.00	1,436.76	37.5
10-50-6004	.00	136.73	1,000.00	863.27	13.7
10-50-6005	2,344.41	7,033.23	10,045.00	3,011.77	70.0
10-50-6007	47.10	214.56	2,000.00	1,785.44	10.7
10-50-6008	280.00	1,435.00	7,500.00	6,065.00	19.1
10-50-6009	.00	96.85	500.00	403.15	19.4
10-50-6010	.00	25.00	1,250.00	1,225.00	2.0
10-50-6012	.00	3,360.00	4,500.00	1,140.00	74.7
10-50-6021	500.00	5,750.00	10,000.00	4,250.00	57.5
10-50-7001	388.46	2,248.87	3,500.00	1,251.13	64.3
TOTAL ADMINISTRATION DEPARTMENT	21,701.82	149,433.15	284,230.00	134,796.85	52.6
<u>PLANNING DEPARTMENT</u>					
10-51-6007	.00	.00	750.00	750.00	.0
10-51-6008	.00	1,923.66	5,000.00	3,076.34	38.5
10-51-6010	.00	175.00	500.00	325.00	35.0
TOTAL PLANNING DEPARTMENT	.00	2,098.66	6,250.00	4,151.34	33.6
<u>DATA PROCESSING DEPARTMENT</u>					
10-52-6002	.00	.00	100.00	100.00	.0
10-52-6004	1,492.00	5,976.00	8,500.00	2,524.00	70.3
10-52-6005	1,677.92	1,677.92	2,000.00	322.08	83.9
10-52-6006	.00	42.50	2,000.00	1,957.50	2.1
TOTAL DATA PROCESSING DEPARTMENT	3,169.92	7,696.42	12,600.00	4,903.58	61.1
<u>BUILDING DEPARTMENT</u>					
10-53-6000	200.00	1,400.00	2,400.00	1,000.00	58.3
10-53-6005	1,562.94	5,142.31	6,535.00	1,392.69	78.7
10-53-6006	37.89	458.19	2,000.00	1,541.81	22.9
10-53-6011	76.43	653.83	2,400.00	1,746.17	27.2
10-53-6020	.00	.00	3,600.00	3,600.00	.0
10-53-7000	416.64	3,177.84	7,000.00	3,822.16	45.4
TOTAL BUILDING DEPARTMENT	2,293.90	10,832.17	23,935.00	13,102.83	45.3

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>PUBLIC SAFETY DEPARTMENT</u>					
10-54-5000 SALARIES & WAGES	22,238.13	206,996.23	326,274.00	119,277.77	63.4
10-54-5001 FICA - TOWN SHARE	1,419.92	13,200.60	22,092.00	8,891.40	59.8
10-54-5002 UNEMPLOYMENT	166.51	330.42	715.00	384.58	46.2
10-54-5003 WORKERS COMPENSATION	1,446.40	6,010.40	17,000.00	10,989.60	35.4
10-54-5004 HEALTH INSURANCE	6,527.15	46,188.44	94,245.00	48,056.56	49.0
10-54-5005 PENSION EXPENSE	1,310.66	9,792.91	15,045.00	5,252.09	65.1
10-54-5006 MEDICARE	332.08	3,087.25	5,170.00	2,082.75	59.7
10-54-5007 PUBLIC SAFETY OVERTIME	643.90	3,765.62	15,000.00	11,234.38	25.1
10-54-6000 TRAVEL	52.34	52.34	1,000.00	947.66	5.2
10-54-6002 AMMUNITION	.00	630.00	750.00	120.00	84.0
10-54-6003 OFFICE SUPPLIES	193.29	1,216.05	2,000.00	783.95	60.8
10-54-6005 INSURANCE	3,256.13	9,768.39	13,650.00	3,881.61	71.6
10-54-6006 REPAIRS & MAINTENANCE	.00	5.78	500.00	494.22	1.2
10-54-6007 ADVERTISING & LEGAL NOTICES	.00	.00	250.00	250.00	.0
10-54-6008 PROFESSIONAL SERVICES	.00	593.05	2,000.00	1,406.95	29.7
10-54-6009 VEHICLE EXPENSE	783.59	6,267.23	11,000.00	4,732.77	57.0
10-54-6010 EDUCATION / MEMBERSHIP	.00	730.00	2,000.00	1,270.00	36.5
10-54-6013 UNIFORMS	.00	.00	2,000.00	2,000.00	.0
10-54-6014 GENERAL OPERATING EXPENSE	58.91	1,613.91	8,500.00	6,886.09	19.0
10-54-6015 BUILDING	601.08	2,487.55	2,000.00 (	487.55)	124.4
10-54-6020 COMPUTER PROGRAMS/EQUIPMENT	.00	102.50	3,500.00	3,397.50	2.9
10-54-7000 UTILITIES	501.05	3,508.84	8,000.00	4,491.16	43.9
10-54-7001 TELEPHONE	371.82	2,465.49	4,500.00	2,034.51	54.8
10-54-9050 LEASE PAYMENT -POLICE STATION	.00	57,562.50	115,250.00	57,687.50	50.0
TOTAL PUBLIC SAFETY DEPARTMENT	39,902.96	376,375.50	672,441.00	296,065.50	56.0
<u>ECONOMIC DEVELOPMENT COMM</u>					
10-55-6010 EDUCATION / MEMBERSHIP	.00	475.00	1,000.00	525.00	47.5
10-55-6014 GENERAL OPERATING EXPENSE	140.11	392.49	600.00	207.51	65.4
10-55-8000 PROJECTS/PROGRAMS	4,062.00	9,637.00	4,000.00 (	5,637.00)	240.9
TOTAL ECONOMIC DEVELOPMENT COMM	4,202.11	10,504.49	5,600.00 (	4,904.49)	187.6

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>STREETS DEPARTMENT</u>					
10-56-5000 SALARIES & WAGES	9,633.41	59,428.59	105,664.00	46,235.41	56.2
10-56-5001 FICA - TOWN SHARE	752.10	4,397.28	7,415.00	3,017.72	59.3
10-56-5002 UNEMPLOYMENT	55.50	110.14	239.00	128.86	46.1
10-56-5003 WORKERS COMPENSATION	1,120.96	4,270.55	11,800.00	7,529.45	36.2
10-56-5004 HEALTH INSURANCE	3,322.31	20,260.88	43,500.00	23,239.12	46.6
10-56-5005 PENSION EXPENSE	459.36	3,387.60	6,200.00	2,812.40	54.6
10-56-5006 MEDICARE	175.86	1,028.34	1,719.00	690.66	59.8
10-56-5007 STREETS OVERTIME	2,037.78	8,107.90	8,000.00	(107.90)	101.4
10-56-6003 OFFICE SUPPLIES	24.09	112.76	400.00	287.24	28.2
10-56-6005 INSURANCE	1,172.21	3,970.12	4,825.00	854.88	82.3
10-56-6008 PROFESSIONAL SERVICES	.00	147.00	500.00	353.00	29.4
10-56-6009 VEHICLE EXPENSE	195.93	1,395.01	5,000.00	3,604.99	27.9
10-56-6010 EDUCATION / MEMBERSHIP	99.00	99.00	1,000.00	901.00	9.9
10-56-6014 GENERAL OPERATING EXPENSE	206.87	1,103.80	2,500.00	1,396.20	44.2
10-56-6015 TOOLS	162.79	1,584.58	6,000.00	4,415.42	26.4
10-56-6016 SIDEWALKS	1,591.00	12,252.92	468,421.00	456,168.08	2.6
10-56-6017 SNOW REMOVAL	.00	8,469.65	25,000.00	16,530.35	33.9
10-56-6018 STREET MAINTENANCE	257.34	4,242.29	15,000.00	10,757.71	28.3
10-56-6019 STREET IMPROVEMENTS	.00	.00	5,000.00	5,000.00	.0
10-56-6020 STREET CLEANING	.00	1,020.96	2,500.00	1,479.04	40.8
10-56-6021 STREET CALCIUM	.00	.00	2,000.00	2,000.00	.0
10-56-6022 WEED CONTROL	320.86	821.08	4,500.00	3,678.92	18.3
10-56-6023 TREE TRIMMING	.00	.00	4,000.00	4,000.00	.0
10-56-6024 STREET SIGNS	.00	599.43	1,500.00	900.57	40.0
10-56-7000 UTILITIES	2,538.66	14,705.08	27,000.00	12,294.92	54.5
10-56-7001 TELEPHONE	77.72	590.74	1,250.00	659.26	47.3
10-56-8000 POPLAR STREET PROJECT	.00	1,422.15	5,000.00	3,577.85	28.4
TOTAL STREETS DEPARTMENT	24,203.75	153,527.85	765,933.00	612,405.15	20.0
<u>RECREATION DEPARTMENT</u>					
10-57-5000 SALARIES & WAGES	2,252.73	10,303.18	21,685.00	11,381.82	47.5
10-57-5001 FICA - TOWN SHARE	156.50	657.44	1,345.00	687.56	48.9
10-57-5002 UNEMPLOYMENT	9.25	18.36	45.00	26.64	40.8
10-57-5003 WORKERS COMPENSATION	108.48	413.28	1,200.00	786.72	34.4
10-57-5006 MEDICARE	36.60	153.78	315.00	161.22	48.8
10-57-5007 REC OVERTIME	271.15	300.40	.00	(300.40)	.0
10-57-6000 TRAVEL	.00	43.25	500.00	456.75	8.7
10-57-6005 INSURANCE	260.49	913.47	1,350.00	436.53	67.7
10-57-6006 REPAIRS & MAINTENANCE	26.19	26.19	100.00	73.81	26.2
10-57-6008 PROFESSIONAL SERVICES	.00	56.00	100.00	44.00	56.0
10-57-6009 VEHICLE EXPENSE	.00	.00	200.00	200.00	.0
10-57-6010 EDUCATION / MEMBERSHIP	.00	.00	500.00	500.00	.0
10-57-6020 RECREATION OPERATING COSTS	26.77	148.95	1,000.00	851.05	14.9
10-57-6022 RECREATION PROGRAMS	251.34	9,081.83	14,000.00	4,918.17	64.9
10-57-6023 SPECIAL EVENTS	4,098.45	9,591.18	13,000.00	3,408.82	73.8
10-57-7000 UTILITIES	156.52	1,239.66	2,200.00	960.34	56.4
10-57-7001 TELEPHONE	102.43	293.14	1,500.00	1,206.86	19.5
TOTAL RECREATION DEPARTMENT	7,756.90	33,240.11	59,040.00	25,799.89	56.3

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>PARKS DEPARTMENT</u>					
10-58-5000 SALARIES & WAGES	6,583.20	22,594.89	48,400.00	25,805.11	46.7
10-58-5001 FICA - TOWN SHARE	476.62	1,534.11	3,075.00	1,540.89	49.9
10-58-5002 UNEMPLOYMENT	13.88	36.65	100.00	63.35	36.7
10-58-5003 WORKERS COMPENSATION	108.48	413.28	1,200.00	786.72	34.4
10-58-5004 HEALTH INSURANCE	255.56	1,557.22	3,090.00	1,532.78	50.4
10-58-5005 PENSION EXPENSE	35.34	260.57	455.00	194.43	57.3
10-58-5006 MEDICARE	111.46	358.78	720.00	361.22	49.8
10-58-5007 PARKS OVERTIME	1,069.18	1,888.63	750.00	(1,138.63)	251.8
10-58-6000 TRAVEL	.00	42.00	500.00	458.00	8.4
10-58-6005 INSURANCE	1,302.45	3,907.35	5,350.00	1,442.65	73.0
10-58-6006 REPAIRS & MAINTENANCE	324.08	2,487.09	5,000.00	2,512.91	49.7
10-58-6008 PROFESSIONAL SEVICES	.00	37.33	500.00	462.67	7.5
10-58-6009 VEHICLE EXPENSE	314.51	1,095.20	1,500.00	404.80	73.0
10-58-6010 EDUCATION / MEMBERSHIP	.00	215.00	300.00	85.00	71.7
10-58-6020 PARKS OPERATING COSTS	.00	49.40	1,000.00	950.60	4.9
10-58-6023 TREES	.00	.00	2,600.00	2,600.00	.0
10-58-6500 FIELDS	125.36	125.36	2,500.00	2,374.64	5.0
10-58-7000 UTILITIES	1,684.81	5,087.30	11,000.00	5,912.70	46.3
10-58-7500 TRAILS	.00	.00	2,000.00	2,000.00	.0
10-58-7800 EQUIPMENT EXPENSE	287.94	849.10	2,000.00	1,150.90	42.5
10-58-8200 DRY CREEK PARK BALLFIELDS	1,860.20	9,587.94	4,000.00	(5,587.94)	239.7
10-58-8500 DRY CREEK PARK PROJECT	2,524.85	2,524.85	.00	(2,524.85)	.0
TOTAL PARKS DEPARTMENT	17,077.92	54,652.05	96,040.00	41,387.95	56.9
<u>MOSQUITO CONTROL DEPARTMENT</u>					
10-59-5000 SALARIES & WAGES	1,127.00	1,684.00	7,500.00	5,816.00	22.5
10-59-5001 FICA - TOWN SHARE	80.38	116.12	475.00	358.88	24.5
10-59-5002 UNEMPLOYMENT	9.25	9.25	15.00	5.75	61.7
10-59-5003 WORKERS COMPENSATION	72.32	275.52	800.00	524.48	34.4
10-59-5006 MEDICARE	18.81	27.17	110.00	82.83	24.7
10-59-5007 MOSQ. CONTROL OVERTIME	169.50	189.00	200.00	11.00	94.5
10-59-6005 INSURANCE	130.25	390.75	505.00	114.25	77.4
10-59-6009 VEHICLE EXPENSE	.00	.00	500.00	500.00	.0
10-59-6014 GENERAL OPERATING SUPPLIES	2,890.85	2,890.85	6,000.00	3,109.15	48.2
10-59-6103 CHEMICALS	2,130.10	2,130.10	5,000.00	2,869.90	42.6
TOTAL MOSQUITO CONTROL DEPARTMENT	6,628.46	7,712.76	21,105.00	13,392.24	36.5
<u>CONTINGENCY DEPARTMENT</u>					
10-60-9000 CONTINGENCY	.00	.00	26,477.00	26,477.00	.0
10-60-9010 ENT. FUND CONTR.	3,750.00	26,250.00	45,000.00	18,750.00	58.3
TOTAL CONTINGENCY DEPARTMENT	3,750.00	26,250.00	71,477.00	45,227.00	36.7
TOTAL FUND EXPENDITURES	135,216.18	878,472.03	2,082,849.00	1,204,376.97	42.2

TOWN OF HAYDEN, COLORADO
 EXPENDITURES WITH COMPARISON TO BUDGET
 FOR THE 7 MONTHS ENDING JULY 31, 2010

GENERAL FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
NET REVENUE OVER EXPENDITURES	39,492.36	313,583.01	229,241.47	(84,341.54)	136.8

TOWN OF HAYDEN, COLORADO
 REVENUES WITH COMPARISON TO BUDGET
 FOR THE 7 MONTHS ENDING JULY 31, 2010

UTILITY ENTERPRISE FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEARNED	PCNT
<u>WATER INCOME</u>					
51-37-4100 WATER RENTS	19,126.67	133,393.13	226,250.00	92,856.87	59.0
51-37-4101 METERED USER FEE	39,323.78	123,183.83	250,020.00	126,836.17	49.3
51-37-4400 OTHER INCOME	596.17	3,827.09	10,000.00	6,172.91	38.3
51-37-4401 GENERAL FUND CONTR.	3,750.00	26,250.00	45,000.00	18,750.00	58.3
51-37-4500 TAP FEES	.00	9,600.00	48,000.00	38,400.00	20.0
51-37-4700 WALKER DITCH ASSESSMENTS	2,820.45	6,504.34	.00	(6,504.34)	.0
TOTAL WATER INCOME	65,617.07	302,758.39	579,270.00	276,511.61	52.3
<u>SEWER INCOME</u>					
51-38-4100 SEWER RENTS	5,704.78	39,826.46	66,150.00	26,323.54	60.2
51-38-4101 METERED USER FEE	9,400.04	68,254.32	121,710.00	53,455.68	56.1
51-38-4200 SEWER SERVICE CONTRACT	3,038.63	3,331.34	10,350.00	7,018.66	32.2
51-38-4400 OTHER INCOME	.00	.00	1,500.00	1,500.00	.0
51-38-4500 TAP FEES	.00	(1,400.00)	24,000.00	25,400.00	(5.8)
TOTAL SEWER INCOME	18,143.45	110,012.12	223,710.00	113,697.88	49.2
<u>REFUSE INCOME</u>					
51-39-4000 REFUSE COLLECTION	10,416.34	73,483.99	123,000.00	49,516.01	59.7
TOTAL REFUSE INCOME	10,416.34	73,483.99	123,000.00	49,516.01	59.7
TOTAL FUND REVENUE	94,176.86	486,254.50	925,980.00	439,725.50	52.5

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

UTILITY ENTERPRISE FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>WATER OPERATING EXPENSE</u>					
51-67-5000 SALARIES & WAGES	5,992.94	50,103.03	98,600.00	48,496.97	50.8
51-67-5001 FICA - TOWN SHARE	443.80	3,640.26	6,875.00	3,234.74	53.0
51-67-5002 UNEMPLOYMENT	50.88	100.96	225.00	124.04	44.9
51-67-5003 WORKERS COMPENSATION	289.28	1,102.08	3,000.00	1,897.92	36.7
51-67-5004 HEALTH INSURANCE	2,909.49	17,760.64	44,730.00	26,969.36	39.7
51-67-5005 PENSION EXPENSE	288.52	2,529.76	5,275.00	2,745.24	48.0
51-67-5006 MEDICARE	103.83	851.35	1,610.00	758.65	52.9
51-67-5007 WATER OVERTIME	914.93	6,374.24	7,000.00	625.76	91.1
51-67-6000 TRAVEL	.00	8.74	1,000.00	991.26	.9
51-67-6003 OFFICE SUPPLIES	26.77	120.59	500.00	379.41	24.1
51-67-6005 INSURANCE	2,344.41	7,033.23	9,550.00	2,516.77	73.7
51-67-6006 REPAIRS & MAINTENANCE	84.98	925.50	1,000.00	74.50	92.6
51-67-6008 PROFESSIONAL SERVICES	369.60	844.60	5,000.00	4,155.40	16.9
51-67-6009 VEHICLE EXPENSE	284.44	1,176.99	2,500.00	1,323.01	47.1
51-67-6010 EDUCATION/MEMBERSHIP	90.00	685.00	2,000.00	1,315.00	34.3
51-67-6016 TESTING	176.00	5,195.99	8,000.00	2,804.01	65.0
51-67-6101 BAD DEBTS-WATER	.00	353.81	.00	(353.81)	.0
51-67-7001 TELEPHONE	222.84	1,238.58	2,000.00	761.42	61.9
TOTAL WATER OPERATING EXPENSE	14,592.71	100,045.35	198,865.00	98,819.65	50.3
<u>WATER TREATMENT PLANT</u>					
51-68-6006 TREATMENT PLANT REP & MAINT	2,095.73	24,524.29	10,000.00	(14,524.29)	245.2
51-68-6100 LAB EQUIPMENT	.00	.00	1,000.00	1,000.00	.0
51-68-6101 BUILDING MAINTENANCE	.00	.00	1,000.00	1,000.00	.0
51-68-6103 CHEMICALS	.00	9,243.52	15,000.00	5,756.48	61.6
51-68-7000 TREATMENT PLANT UTILITIES	1,755.93	11,777.46	28,000.00	16,222.54	42.1
51-68-8000 CAPITAL IMPROVEMENTS	.00	.00	5,000.00	5,000.00	.0
TOTAL WATER TREATMENT PLANT	3,851.66	45,545.27	60,000.00	14,454.73	75.9
<u>GOLDEN MEADOWS DEPARTMENT</u>					
51-69-6006 GOLDEN REP & MAINT	.00	101.92	5,000.00	4,898.08	2.0
51-69-6101 BUILDING MAINTENANCE	.00	.00	150.00	150.00	.0
51-69-7000 GOLDEN MEADOWS UTILITIES	832.66	4,613.27	9,000.00	4,386.73	51.3
TOTAL GOLDEN MEADOWS DEPARTMENT	832.66	4,715.19	14,150.00	9,434.81	33.3
<u>HOSPITAL HILL DEPARTMENT</u>					
51-70-6006 HOSP HILL REPAIRS & MAINT.	.00	56.44	5,000.00	4,943.56	1.1
51-70-7000 HOSP HILL UTILITIES	682.01	4,350.18	9,000.00	4,649.82	48.3
TOTAL HOSPITAL HILL DEPARTMENT	682.01	4,406.62	14,000.00	9,593.38	31.5

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

UTILITY ENTERPRISE FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>METERS DEPARTMENT</u>					
51-71-6200 METER REPAIR	1,333.30	1,547.27	2,000.00	452.73	77.4
51-71-6201 INVENTORY	944.28	3,674.08	5,000.00	1,325.92	73.5
51-71-6205 BACKFLOW TESTING	.00	.00	3,000.00	3,000.00	.0
51-71-7000 KEY PUMP UTILITIES	56.12	485.81	800.00	314.19	60.7
TOTAL METERS DEPARTMENT	2,333.70	5,707.16	10,800.00	5,092.84	52.8
<u>WATER RIGHTS DEPARTMENT</u>					
51-72-6006 WALKER DITCH REPAIRS & MAINT.	13.80	2,826.30	5,000.00	2,173.70	56.5
51-72-6008 PROFESSIONAL SERVICES	.00	.00	1,000.00	1,000.00	.0
51-72-9200 WATER STORAGE	3,900.00	3,900.00	14,800.00	10,900.00	26.4
TOTAL WATER RIGHTS DEPARTMENT	3,913.80	6,726.30	20,800.00	14,073.70	32.3
<u>WATER DISTRIBUTION</u>					
51-73-6300 DISTRIBUTION REPAIR	209.63	342.99	20,000.00	19,657.01	1.7
51-73-6301 SAND & GRAVEL	.00	.00	1,000.00	1,000.00	.0
TOTAL WATER DISTRIBUTION	209.63	342.99	21,000.00	20,657.01	1.6
<u>WATER PRINCIPAL & INTEREST</u>					
51-74-8000 PRINCIPAL & INTEREST	.00	114,124.25	117,000.00	2,875.75	97.5
TOTAL WATER PRINCIPAL & INTEREST	.00	114,124.25	117,000.00	2,875.75	97.5
<u>WATER ADMINISTRATION</u>					
51-75-5000 ADMINISTRATION SALARY	1,834.22	13,756.65	24,000.00	10,243.35	57.3
51-75-5001 FICA - TOWN SHARE	118.64	889.90	1,600.00	710.10	55.6
51-75-5002 UNEMPLOYMENT	13.88	27.54	55.00	27.46	50.1
51-75-5003 WORKERS COMPENSATION	36.16	137.76	380.00	242.24	36.3
51-75-5004 HEALTH INSURANCE	807.26	4,914.44	9,800.00	4,885.56	50.2
51-75-5005 PENSION EXPENSE	128.39	962.98	1,685.00	722.02	57.2
51-75-5006 MEDICARE	27.74	208.10	375.00	166.90	55.5
51-75-6003 OFFICE SUPPLIES	72.28	1,107.77	1,500.00	392.23	73.9
TOTAL WATER ADMINISTRATION	3,038.57	22,005.14	39,395.00	17,389.86	55.9

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

UTILITY ENTERPRISE FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>SEWER OPERATING EXPENSE</u>					
51-77-5000 SALARIES & WAGES	4,881.12	41,897.95	84,325.00	42,427.05	49.7
51-77-5001 FICA - TOWN SHARE	352.93	3,024.39	5,810.00	2,785.61	52.1
51-77-5002 UNEMPLOYMENT	46.25	91.78	190.00	98.22	48.3
51-77-5003 WORKERS COMPENSATION	180.80	688.80	1,890.00	1,201.20	36.4
51-77-5004 HEALTH INSURANCE	2,398.34	14,629.11	38,500.00	23,870.89	38.0
51-77-5005 PENSION EXPENSE	217.84	2,008.59	4,375.00	2,366.41	45.9
51-77-5006 MEDICARE	82.53	707.35	1,360.00	652.65	52.0
51-77-5007 SEWER OVERTIME	632.10	5,164.93	5,000.00	(164.93)	103.3
51-77-6000 TRAVEL	.00	32.41	1,000.00	967.59	3.2
51-77-6003 OFFICE SUPPLIES	2.68	77.14	200.00	122.86	38.6
51-77-6005 INSURANCE	651.23	1,953.65	2,515.00	561.35	77.7
51-77-6006 REPAIRS & MAINTENANCE	137.41	239.24	.00	(239.24)	.0
51-77-6008 PROFESSIONAL SERVICES	.00	380.00	10,000.00	9,620.00	3.8
51-77-6009 VEHICLE EXPENSE	137.48	834.30	2,750.00	1,915.70	30.3
51-77-6010 EDUCATION/MEMBERSHIP	.00	110.00	1,000.00	890.00	11.0
51-77-6016 TESTING	.00	679.44	3,000.00	2,320.56	22.7
51-77-7001 TELEPHONE	99.62	474.86	1,000.00	525.14	47.5
TOTAL SEWER OPERATING EXPENSE	9,820.33	72,993.94	162,915.00	89,921.06	44.8
<u>SEWER TREATMENT PLANT</u>					
51-78-6006 TREATMENT PLANT REP & MAIN	2,772.28	4,967.48	10,000.00	5,032.52	49.7
51-78-6100 LAB EQUIPMENT	.00	.00	3,000.00	3,000.00	.0
51-78-6101 BUILDING MAINTENANCE	.00	270.00	1,000.00	730.00	27.0
51-78-6103 CHEMICALS	1,104.91	3,775.04	4,500.00	724.96	83.9
51-78-7000 TREATMENT PLANT UTILITIES	4,940.24	29,555.62	50,000.00	20,444.38	59.1
TOTAL SEWER TREATMENT PLANT	8,817.43	38,568.14	68,500.00	29,931.86	56.3
<u>WASHINGTON STREET</u>					
51-79-6006 WASH ST REPAIR & MAINT	.00	161.90	500.00	338.10	32.4
51-79-6103 WASH ST CHEMICALS	.00	.00	750.00	750.00	.0
51-79-7000 WASHINGTON STREET UTILITIES	40.07	616.75	1,200.00	583.25	51.4
TOTAL WASHINGTON STREET	40.07	778.65	2,450.00	1,671.35	31.8
<u>SEWER COLLECTION SYSTEM</u>					
51-80-6300 COLLECTION REPAIR	.00	225.19	5,000.00	4,774.81	4.5
51-80-6301 SAND & GRAVEL	513.28	513.28	1,000.00	486.72	51.3
TOTAL SEWER COLLECTION SYSTEM	513.28	738.47	6,000.00	5,261.53	12.3

TOWN OF HAYDEN, COLORADO
EXPENDITURES WITH COMPARISON TO BUDGET
FOR THE 7 MONTHS ENDING JULY 31, 2010

UTILITY ENTERPRISE FUND

	PERIOD ACTUAL	YTD ACTUAL	BUDGET	UNEXPENDED	PCNT
<u>AIRPORT LIFT STATION</u>					
51-81-6006 REPAIRS & MAINTENANCE	.00	283.61	1,200.00	916.39	23.6
51-81-6103 CHEMICALS	.00	769.36	750.00 (	19.36)	102.6
51-81-7000 UTILITIES	267.96	2,393.95	3,600.00	1,206.05	66.5
TOTAL AIRPORT LIFT STATION	267.96	3,446.92	5,550.00	2,103.08	62.1
<u>DRY CREEK LIFT STATION</u>					
51-82-6103 CHEMICALS	.00	625.00	300.00 (	325.00)	208.3
51-82-7000 UTILITIES	244.08	1,722.82	1,200.00 (	522.82)	143.6
TOTAL DRY CREEK LIFT STATION	244.08	2,347.82	1,500.00 (	847.82)	156.5
<u>WEST END LIFT STATION</u>					
51-83-6103 CHEMICALS	.00	.00	200.00	200.00	.0
TOTAL WEST END LIFT STATION	.00	.00	200.00	200.00	.0
<u>SEWER ADMINISTRATION</u>					
51-85-5000 ADMINISTRATION SALARY	1,834.22	13,756.65	24,000.00	10,243.35	57.3
51-85-5001 FICA - TOWN SHARE	118.61	889.81	1,600.00	710.19	55.6
51-85-5002 UNEMPLOYMENT	13.88	27.54	55.00	27.46	50.1
51-85-5003 WORKERS COMPENSATION	36.16	137.76	380.00	242.24	36.3
51-85-5004 HEALTH INSURANCE	807.25	4,914.39	9,800.00	4,885.61	50.2
51-85-5005 PENSION EXPENSE	128.40	963.00	1,685.00	722.00	57.2
51-85-5006 MEDICARE	27.75	208.09	375.00	166.91	55.5
51-85-6003 OFFICE SUPPLIES	48.20	1,076.00	1,500.00	424.00	71.7
TOTAL SEWER ADMINISTRATION	3,014.47	21,973.24	39,395.00	17,421.76	55.8
<u>CONTINGENCY</u>					
51-86-9000 CONTINGENCY	.00	.00	20,000.00	20,000.00	.0
TOTAL CONTINGENCY	.00	.00	20,000.00	20,000.00	.0
<u>REFUSE EXPENSE</u>					
51-87-6008 CONTRACT PAYMENT	10,405.31	63,067.65	123,000.00	59,932.35	51.3
TOTAL REFUSE EXPENSE	10,405.31	63,067.65	123,000.00	59,932.35	51.3
TOTAL FUND EXPENDITURES	62,577.67	507,533.10	925,520.00	417,986.90	54.8
NET REVENUE OVER EXPENDITURES	31,599.19 (	21,278.60)	460.00	21,738.60	(625.8)

Town of Hayden

Town Council Agenda Item

MEETING DATE: August 19, 2010

AGENDA ITEM TITLE: Routt County Fair Parade Permit

AGENDA SECTION: Consent Items

PRESENTED BY:

CAN THIS ITEM BE RESCHEDULED: No

BACKGROUND REVIEW: The Hayden Lion's Club is sponsoring the annual Routt County Fair Parade on August 21, 2010. The parade will begin on South 3rd Street and will run north onto Jefferson Avenue and east to Spruce Street. Traffic will be detoured via North 5th Street and North Maple Street and then on to Lincoln Avenue in both directions.

RECOMMENDATION: **Move to approve the Consent Item.**

STAFF RECOMMENDATION/COMMENTS: *Concur with recommendation.*



APPLICATION FOR PARADE/STREET CLOSURE

Date of Request	Aug 5 th 2010	
Name of Event	Routt County Fair Parade	
Type of Event	Athletic <input type="checkbox"/>	Special <input checked="" type="checkbox"/> Parade
Brief Description of Event	Annual Routt County Fair Parade	

Organization Information (please print or type):

Name	Hayden Lions Club	
Mailing Address	Box 774082	
City	Steamboat Spgs Colo	
State	Colo	
ZIP Code	80477	
Contact Person	Gary Gurney	
Title	Fair Parade Chairman	
Telephone	870 0837 home 824-2557 work	
Fax	824-2412	
E-Mail	YVPSYCH@amigo.net	

Description of Event (please print or type):

Dates	Beginning Date & Time:	Ending Date & Time:
Location of Line Up	8/21/10	8/21/10
Proposed Route (Attach map)	- Line up north/south 3 rd St (High School Parking lot) - go down 40 (Jefferson) to Conoco	
Proposed Detour (Attach map)		
Detailed Description of Event	Parade to include floats, band, nurses, politicians	

THE UNDERSIGNED HEREBY AGREES TO PAY FOR AND PROVIDE LIABILITY INSURANCE IN AN AMOUNT TO BE DETERMINED BY THE TOWN OF HAYDEN. THE UNDERSIGNED ALSO AGREES TO PROVIDE MANPOWER TO PLACE AND REMOVE THE BARRICADES (TOWN PROVIDED) AT THE DIRECTION OF THE HAYDEN POLICE DEPARTMENT.

I, THE UNDERSIGNED, FURTHER CERTIFY THAT THE STATEMENTS CONTAINED HEREIN OR ATTACHED HERETO ARE TRUE, ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Authorized signature		Date: 8/5/10
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FOR OFFICIAL USE ONLY (DO NOT WRITE BELOW THIS LINE)

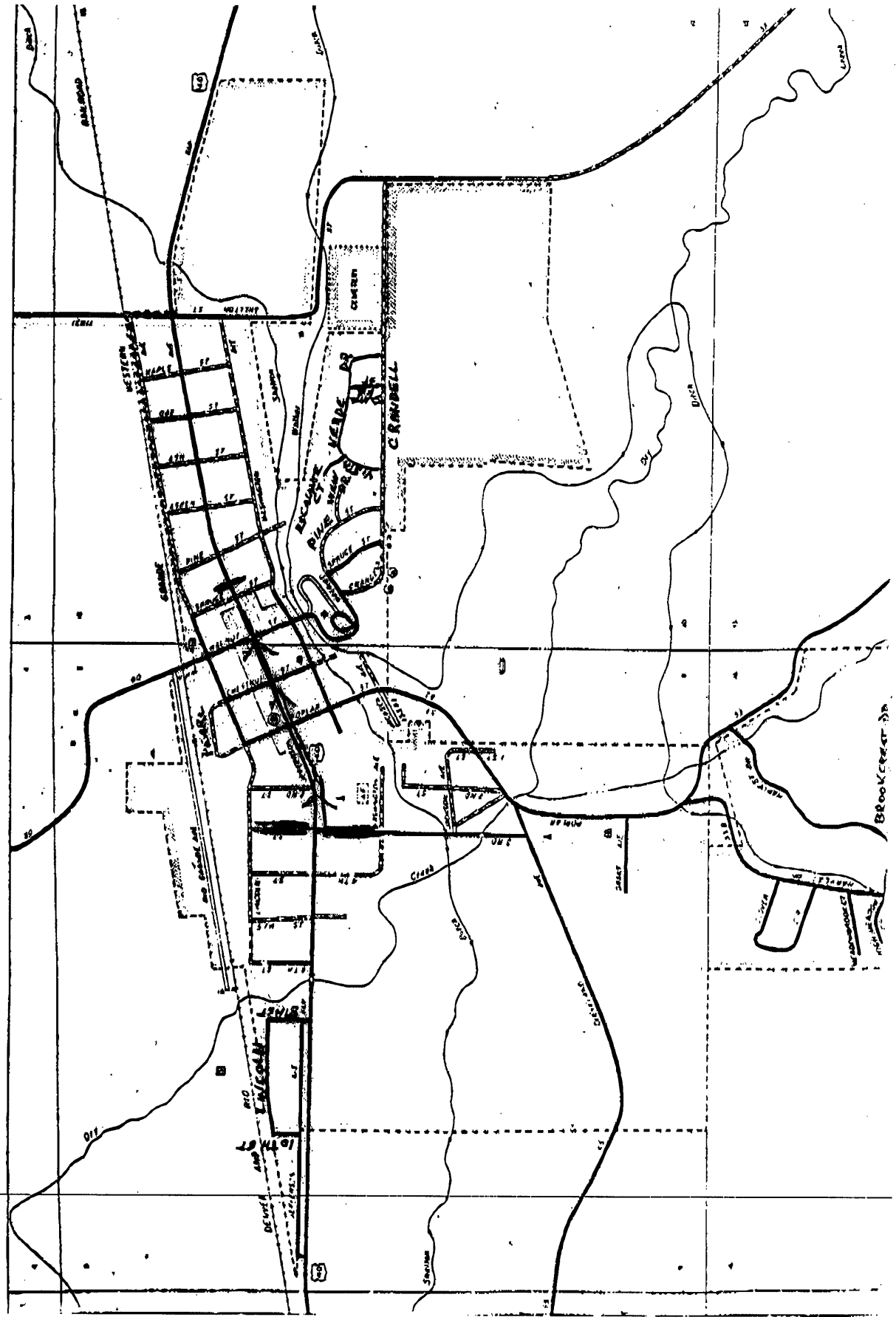
Conditions or Restrictions:

No objects (candy, toys, etc.) shall be thrown from parade floats.

SPONSORS AND/OR EVENT ORGANIZERS MUST FURNISH A CERTIFICATE OF INSURANCE OF A GENERAL LIABILITY INSURANCE COMPANY AND AN AUTO LIABILITY INSURANCE POLICY COVERING CLAIMS THAT MIGHT ARISE FROM THE EVENT, INCLUDING PARTICIPANT AND SPECTATOR LIABILITY. THESE POLICIES MUST HAVE A MINIMUM LIMIT OF \$ _____ PER OCCURRENCE AND MUST NAME THE TOWN OF HAYDEN AND ITS EMPLOYEES AS ADDITIONAL INSURED.

Authorized signature		Date:
Application has been:	Approved <input type="checkbox"/>	Denied <input type="checkbox"/>

HAYDEN
1980 POPULATION 1,720
1.6 mi 4.28 mi





CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/08/2010

PRODUCER
Wills of Illinois, Inc.
233 S. Wacker Drive, Suite 2000
Chicago, IL 60606
Phone: (800) 316-6705 Fax: (312) 234-0636

INSURED
6-West
Western Colorado

THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A ACE American Insurance Company	22667
INSURER B	
INSURER C	
INSURER D	
INSURER E	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR	INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER <input type="checkbox"/> POLICY <input type="checkbox"/> DD <input type="checkbox"/> SLECT <input checked="" type="checkbox"/> LOC	CSZ0313066	09/01/2009	09/01/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 1,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPOP AGG \$ 2,000,000 CAPPING LMTS END \$ 10,000,000
A		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	CSZ0313066	09/01/2009	09/01/2010	COMBINED SINGLE LIMIT (Ea accident) \$ INCLUDED BODILY INJURY (Per person) \$ IN ABOVE BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED <input type="checkbox"/> Y / N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> WC STAT L <input type="checkbox"/> OTHER <input type="checkbox"/> POLY LIMITS E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 Provisions of the policy apply to the named insured's participation in the following activity during the policy period shown above: Routt County Fair Parade
 PROVISIONS OF THE POLICY DO NOT APPLY TO THE SALE OR SERVING OF ALCOHOLIC BEVERAGES.

CERTIFICATE HOLDER
 City of Hayden Colorado
 City Hall, 178 W Jefferson
 Hayden, Colorado 81639

CANCELLATION
 SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE
John E. Adams

Town of Hayden

Town Council Agenda Item

MEETING DATE: August 19, 2010

AGENDA ITEM TITLE: Medical Marijuana Prohibition Ordinance

AGENDA SECTION: Old Business

PRESENTED BY: Lorraine Johnson/Susan Irvine

CAN THIS ITEM BE RESCHEDULED: No

BACKGROUND REVIEW: On August 12, 2010, a public hearing was held before the Planning Commission on the Ordinance to prohibit the medical marijuana industry in Town. The Planning Commission recommended that the Town Council approve this Ordinance by a unanimous vote. They expressed concern with a portion of the 7th Whereas which stated "there is documented evidence detailing the adverse impacts of dispensaries such as increased violent crime, increased traffic problems, increased organized gang activity and a decrease in the quality of life for those communities in which dispensaries are located, and". After discussions with Town Attorney, Mike Holloran, this was edited to include review of a "White Paper on Marijuana Dispensaries" which was prepared by the California Police Chiefs Association's Task Force on Marijuana Dispensaries, a copy of which is enclosed for your review. Mr. Holloran advised that this will lend more strength to the ordinance and the language of the 7th Whereas was changed to reflect this. Please note that the White Paper is only included for your review and is not part of the Ordinance itself. You should familiarize yourself with the impacts of dispensaries included in the White Paper but do not concern yourself with the document in its entirety.

At the recommendation of Mr. Holloran, another change was made in 16.03.150 A.1.e. to reflect that "the Town has determined that" no suitable location exists within the Town for the medical marijuana industry (added language shown in quotations). One other clause which read "4. Uses prohibited. It is unlawful for any person to operate, cause to be operated or permit to be operated a medical marijuana center, an optional premises cultivation operation, or a medical marijuana-infused products manufacturing facility in the Town." was removed as Mr. Holloran felt it was redundant and unnecessary. The Council must hold a public hearing prior to making a decision on this matter.

RECOMMENDATION: Move to approve Ordinance 631, an ordinance adopting certain text amendments to the Hayden Town Code Title 16, Articles 1 and 3 by the addition of definitions and a new section prohibiting certain uses relating to medical marijuana on second reading and ordering the ordinance to be published in full.

STAFF RECOMMENDATION/COMMENTS: *The Town attorney has reviewed the ordinance and his changes have been incorporated in the final version of the Ordinance before you. Concur with the recommendation.*

ORDINANCE NO. 631

AN ORDINANCE ADOPTING CERTAIN TEXT AMENDMENTS TO THE HAYDEN TOWN CODE TITLE 16, ARTICLES 1 AND 3 BY THE ADDITION OF DEFINITIONS AND A NEW SECTION PROHIBITING CERTAIN USES RELATING TO MEDICAL MARIJUANA

WHEREAS, the Colorado Legislature adopted legislation which in pertinent part added a new Article 43.3 to Title 12 of the Colorado Revised Statutes, to be known as the Colorado Medical Marijuana Code;

WHEREAS, the Colorado Medical Marijuana Code clarifies Colorado law regarding the scope and extent of Amendment 20 to the Colorado Constitution, Article XVIII, § 14, and at the same time authorizes a regulatory scheme for the retail sale, distribution, cultivation and dispensing of medical marijuana known as a "Medical Marijuana Center," and further authorizes licensing mechanisms known as an "Optional Premises Cultivation Operation" and a "Medical Marijuana-Infused Products Manufacturers' License";

WHEREAS, C.R.S. § 12-43.3-106 specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses";

WHEREAS, C.R.S. § 12-43.3-310 specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses . . . based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana that are more restrictive than this article";

WHEREAS, C.R.S. § 12-43.3-308(1)(c) provides that the state and local licensing authorities shall not receive or act upon a new application pursuant to the Colorado Medical Marijuana Code "for a location in an area where the cultivation, manufacture, and sale of medical marijuana as contemplated is not permitted under the applicable zoning laws of the municipality, city and county, or county";

WHEREAS, the Town Council has carefully considered Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code, and the secondary effects of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing on the health, safety and welfare of the Town of Hayden and its inhabitants;

WHEREAS, the Town Council has reviewed the California Police Chiefs Association's Task Force on Medical Marijuana Dispensaries "White Paper on Marijuana Dispensaries" detailing the adverse impacts of dispensaries such as increased violent crime, increased traffic problems, increased organized gang activity and a decrease in the quality of life for those communities in which dispensaries are located, and the Town Council has determined, as an exercise of its local land use authority, that such medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturing shall not be located within the corporate limits of the Town; and

WHEREAS, the Town Council recognizes the protections afforded by Article XVIII, § 14 of the Colorado Constitution, and affirms the ability of patients and primary caregivers to otherwise

be afforded the protections of Article XVIII, § 14 of the Colorado Constitution and C.R.S. § 25-1.5-106.

NOW THEREFORE BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO

The Hayden Town Code is hereby amended as follows:

Section 1. Article 1: General Provisions, Section 16.01.160 Definitions is hereby amended by the addition of the following new definitions:

346. Medical marijuana industry means the operation of a medical marijuana center, medical marijuana-infused products manufacturer or optional premises cultivation operation including, but not limited to, the following definitions:

- a. *Medical marijuana* means marijuana that is grown and sold for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution.
- b. *Medical marijuana center* means a person licensed to operate a business as described in the Colorado Medical Marijuana Code that sells medical marijuana and medical marijuana-infused products to registered patients or primary caregivers as defined in Article XVIII, § 14 of the Colorado Constitution, but is not a primary caregiver, which a municipality is authorized to prohibit as a matter of law.
- c. *Medical marijuana-infused products manufacturer* means a person licensed pursuant to the Colorado Medical Marijuana Code to operate a business manufacturing medical marijuana-infused products, which a municipality is authorized to prohibit as a matter of law.
- d. *Optional premises cultivation operation* means a person licensed pursuant to the Colorado Medical Marijuana Code to grow and cultivate marijuana for a purpose authorized by Article XVIII, § 14 of the Colorado Constitution, which a municipality is authorized to prohibit as a matter of law.
- e. *Patient* has the meaning set forth in Article XVIII, § 14(1)(c) of the Colorado Constitution.
- f. *Primary caregiver* has the meaning set forth in Article XVIII, §14 (1)(f) of the Colorado Constitution.

Section 2. Article 3 – Section 16.03 of the Hayden Land Use Code is hereby amended by the addition of a new Section 16.03.150, entitled "Prohibited Uses," to read as follows:

16.03.150. Prohibited Uses

A. Intent. The intent of this Section is to prohibit certain land uses from the Land Use Code.

1. Medical marijuana industry is strictly prohibited within the Town of Hayden based on the Town Council's following findings:

- a. The Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*, clarifies Colorado law regarding the scope and extent of Article XVIII, § 14 of the Colorado Constitution.
- b. The Colorado Medical Marijuana Code specifically authorizes the governing body of a municipality to "vote to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses."
- c. The Colorado Medical Marijuana Code specifically authorizes a municipality "to prohibit the operation of medical marijuana centers, optional premises cultivation operations, and medical marijuana-infused products manufacturers' licenses ... based on local government zoning, health, safety, and public welfare laws for the distribution of medical marijuana."
- d. Based on careful consideration of the Colorado Medical Marijuana Code, Article XVIII, § 14 of the Colorado Constitution, and the potential secondary effects of the cultivation and dispensing of medical marijuana, and the retail sale, distribution, and manufacturing of medical marijuana-infused products, such land uses have an adverse effect on the health, safety and welfare of the Town and its inhabitants.
- e. As a matter of the Town's local land use and zoning authority, and consistent with the authorization provided by the Colorado Medical Marijuana Code, the Town has determined that no suitable location exists within the Town for the operation of medical marijuana centers, medical marijuana cultivation operations or medical marijuana-infused products manufacturing.
- f. Patients and primary caregivers should otherwise be afforded the protections of Article XVIII, Section 14 of the Colorado Constitution and C.R.S. § 25-1.5-106.

2. Authority. The Town's authority to adopt this Section is found in: the Colorado Medical Marijuana Code, C.R.S. § 12-43.3-101, *et seq.*; the Local Government Land Use Control Enabling Act, C.R.S. 29-20-101, *et seq.*; C.R.S. 31-23-101, *et seq.* (municipal zoning powers); C.R.S. §§ 31-15-103, 31-15-401. (municipal police powers); C.R.S. § 31-15-501 (municipal authority to regulate businesses); and the Hayden Home Rule Charter.

3. Applicability. This Article shall apply to all property within the Town boundaries as such boundaries are defined, now or in the future.

4. Patients and primary caregivers. Nothing in this Section shall be construed to prohibit, regulate or otherwise impair the protections of the use of medical marijuana by patients as provided in the Article XVIII, § 14 of the Colorado Constitution, or the provision of medical marijuana by a primary caregiver to a patient in accordance with Article XVIII, § 14 of the Colorado Constitution, the Colorado Medical Marijuana Code and rules promulgated thereunder.

Section 3. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Effective Date. This Ordinance shall be in full force and effect fifteen (15) days after its publication.

Section 5. Public Hearing. A public hearing on this Ordinance was held on the 19th day of August, 2010, at 7:30 p.m. at the Hayden Town Hall, 178 West Jefferson Ave, Hayden, Colorado.

INTRODUCED, READ, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (d) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 15TH DAY OF JULY, 2010.

Lorraine M. Johnson, Mayor

ATTEST

Susan L. Irvine, Town Clerk

FINALLY ADOPTED, PASSED, APPROVED, AND ORDERED PUBLISHED PURSUANT TO SECTION 3-3 (h) OF THE HAYDEN HOME RULE CHARTER, BY THE TOWN COUNCIL OF THE TOWN OF HAYDEN, COLORADO, UPON A MOTION DULY MADE, SECONDED AND PASSED AT ITS REGULAR MEETING HELD AT THE TOWN OF HAYDEN, ON THE 19TH DAY OF AUGUST, 2010.

Lorraine M. Johnson, Mayor

ATTEST

Susan L. Irvine, Town Clerk

WHITE PAPER ON MARIJUANA DISPENSARIES

by

**CALIFORNIA POLICE CHIEFS ASSOCIATION'S
TASK FORCE ON MARIJUANA DISPENSARIES**

ACKNOWLEDGMENTS

Beyond any question, this White Paper is the product of a major cooperative effort among representatives of numerous law enforcement agencies and allies who share in common the goal of bringing to light the criminal nexus and attendant societal problems posed by marijuana dispensaries that until now have been too often hidden in the shadows. The critical need for this project was first recognized by the California Police Chiefs Association, which put its implementation in the very capable hands of CPCA's Executive Director Leslie McGill, City of Modesto Chief of Police Roy Wasden, and City of El Cerrito Chief of Police Scott Kirkland to spearhead. More than 30 people contributed to this project as members of CPCA's Medical Marijuana Dispensary Crime/Impact Issues Task Force, which has been enjoying the hospitality of Sheriff John McGinnis at regular meetings held at the Sacramento County Sheriff's Department's Headquarters Office over the past three years about every three months. The ideas for the White Paper's components came from this group, and the text is the collaborative effort of numerous persons both on and off the task force. Special mention goes to Riverside County District Attorney Rod Pacheco and Riverside County Deputy District Attorney Jacqueline Jackson, who allowed their Office's fine White Paper on Medical Marijuana: History and Current Complications to be utilized as a partial guide, and granted permission to include material from that document. Also, Attorneys Martin Mayer and Richard Jones of the law firm of Jones & Mayer are thanked for preparing the pending legal questions and answers on relevant legal issues that appear at the end of this White Paper. And, I thank recently retired San Bernardino County Sheriff Gary Penrod for initially assigning me to contribute to this important work.

Identifying and thanking everyone who contributed in some way to this project would be well nigh impossible, since the cast of characters changed somewhat over the years, and some unknown individuals also helped meaningfully behind the scenes. Ultimately, developing a *White Paper on Marijuana Dispensaries* became a rite of passage for its creators as much as a writing project. At times this daunting, and sometimes unwieldy, multi-year project had many task force members, including the White Paper's editor, wondering if a polished final product would ever really reach fruition. But at last it has! If any reader is enlightened and spurred to action to any degree by the White Paper's important and timely subject matter, all of the work that went into this collaborative project will have been well worth the effort and time expended by the many individuals who worked harmoniously to make it possible.

Some of the other persons and agencies who contributed in a meaningful way to this group venture over the past three years, and deserve acknowledgment for their helpful input and support, are:

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Crystal Spencer, California Department of Justice, Conference Planning Unit
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April 22, 2009

Dennis Tilton, Editor

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WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION'S TASK FORCE ON MARIJUANA DISPENSARIES

EXECUTIVE SUMMARY

INTRODUCTION

Proposition 215, an initiative authorizing the limited possession, cultivation, and use of marijuana by patients and their care providers for certain medicinal purposes recommended by a physician without subjecting such persons to criminal punishment, was passed by California voters in 1996. This was supplemented by the California State Legislature's enactment in 2003 of the Medical Marijuana Program Act (SB 420) that became effective in 2004. The language of Proposition 215 was codified in California as the Compassionate Use Act, which added section 11362.5 to the California Health & Safety Code. Much later, the language of Senate Bill 420 became the Medical Marijuana Program Act (MMPA), and was added to the California Health & Safety Code as section 11362.7 *et seq.* Among other requirements, it purports to direct all California counties to set up and administer a voluntary identification card system for medical marijuana users and their caregivers. Some counties have already complied with the mandatory provisions of the MMPA, and others have challenged provisions of the Act or are awaiting outcomes of other counties' legal challenges to it before taking affirmative steps to follow all of its dictates. And, with respect to marijuana dispensaries, the reaction of counties and municipalities to these nascent businesses has been decidedly mixed. Some have issued permits for such enterprises. Others have refused to do so within their jurisdictions. Still others have conditioned permitting such operations on the condition that they not violate any state or federal law, or have reversed course after initially allowing such activities within their geographical borders by either limiting or refusing to allow any further dispensaries to open in their community. This White Paper explores these matters, the apparent conflicts between federal and California law, and the scope of both direct and indirect adverse impacts of marijuana dispensaries in local communities. It also recounts several examples that could be emulated of what some governmental officials and law enforcement agencies have already instituted in their jurisdictions to limit the proliferation of marijuana dispensaries and to mitigate their negative consequences.

FEDERAL LAW

Except for very limited and authorized research purposes, federal law through the Controlled Substances Act absolutely prohibits the use of marijuana for any legal purpose, and classifies it as a banned Schedule I drug. It cannot be legally prescribed as medicine by a physician. And, the federal regulation supersedes any state regulation, so that under federal law California medical marijuana statutes do not provide a legal defense for cultivating or possessing marijuana—even with a physician's recommendation for medical use.

CALIFORNIA LAW

Although California law generally prohibits the cultivation, possession, transportation, sale, or other transfer of marijuana from one person to another, since late 1996 after passage of an initiative (Proposition 215) later codified as the Compassionate Use Act, it has provided a limited affirmative defense to criminal prosecution for those who cultivate, possess, or use limited amounts of marijuana for medicinal purposes as qualified patients with a physician's recommendation or their designated primary caregiver or cooperative. Notwithstanding these limited exceptions to criminal culpability, California law is notably silent on any such available defense for a storefront marijuana dispensary, and California Attorney General Edmund G. Brown, Jr. has recently issued guidelines that generally find marijuana dispensaries to be unprotected and illegal drug-trafficking enterprises except in the rare instance that one can qualify as a true cooperative under California law. A primary caregiver must consistently and regularly assume responsibility for the housing, health, or safety of an authorized medical marijuana user, and nowhere does California law authorize cultivating or providing marijuana—medical or non-medical—for profit.

California's Medical Marijuana Program Act (Senate Bill 420) provides further guidelines for mandated county programs for the issuance of identification cards to authorized medical marijuana users on a voluntary basis, for the chief purpose of giving them a means of certification to show law enforcement officers if such persons are investigated for an offense involving marijuana. This system is currently under challenge by the Counties of San Bernardino and San Diego and Sheriff Gary Penrod, pending a decision on review by the U.S. Supreme Court, as is California's right to permit any legal use of marijuana in light of federal law that totally prohibits any personal cultivation, possession, sale, transportation, or use of this substance whatsoever, whether for medical or non-medical purposes.

PROBLEMS POSED BY MARIJUANA DISPENSARIES

Marijuana dispensaries are commonly large money-making enterprises that will sell marijuana to most anyone who produces a physician's written recommendation for its medical use. These recommendations can be had by paying unscrupulous physicians a fee and claiming to have most any malady, even headaches. While the dispensaries will claim to receive only donations, no marijuana will change hands without an exchange of money. These operations have been tied to organized criminal gangs, foster large grow operations, and are often multi-million-dollar profit centers.

Because they are repositories of valuable marijuana crops and large amounts of cash, several operators of dispensaries have been attacked and murdered by armed robbers both at their storefronts and homes, and such places have been regularly burglarized. Drug dealing, sales to minors, loitering, heavy vehicle and foot traffic in retail areas, increased noise, and robberies of customers just outside dispensaries are also common ancillary byproducts of their operations. To repel store invasions, firearms are often kept on hand inside dispensaries, and firearms are used to hold up their proprietors. These dispensaries are either linked to large marijuana grow operations or encourage home grows by buying marijuana to dispense. And, just as destructive fires and unhealthy mold in residential neighborhoods are often the result of large indoor home grows designed to supply dispensaries, money laundering also naturally results from dispensaries' likely unlawful operations.

LOCAL GOVERNMENTAL RESPONSES

Local governmental bodies can impose a moratorium on the licensing of marijuana dispensaries while investigating this issue; can ban this type of activity because it violates federal law; can use zoning to control the dispersion of dispensaries and the attendant problems that accompany them in unwanted areas; and can condition their operation on not violating any federal or state law, which is akin to banning them, since their primary activities will always violate federal law as it now exists—and almost surely California law as well.

LIABILITY

While highly unlikely, local public officials, including county supervisors and city council members, could potentially be charged and prosecuted for aiding and abetting criminal acts by authorizing and licensing marijuana dispensaries if they do not qualify as “cooperatives” under California law, which would be a rare occurrence. Civil liability could also result.

ENFORCEMENT OF MARIJUANA LAWS

While the Drug Enforcement Administration has been very active in raiding large-scale marijuana dispensaries in California in the recent past, and arresting and prosecuting their principals under federal law in selective cases, the new U.S. Attorney General, Eric Holder, Jr., has very recently announced a major change of federal position in the enforcement of federal drug laws with respect to marijuana dispensaries. It is to target for prosecution only marijuana dispensaries that are exposed as fronts for drug trafficking. It remains to be seen what standards and definitions will be used to determine what indicia will constitute a drug trafficking operation suitable to trigger investigation and enforcement under the new federal administration.

Some counties, like law enforcement agencies in the County of San Diego and County of Riverside, have been aggressive in confronting and prosecuting the operators of marijuana dispensaries under state law. Likewise, certain cities and counties have resisted granting marijuana dispensaries business licenses, have denied applications, or have imposed moratoria on such enterprises. Here, too, the future is uncertain, and permissible legal action with respect to marijuana dispensaries may depend on future court decisions not yet handed down.

Largely because the majority of their citizens have been sympathetic and projected a favorable attitude toward medical marijuana patients, and have been tolerant of the cultivation and use of marijuana, other local public officials in California cities and counties, especially in Northern California, have taken a “hands off” attitude with respect to prosecuting marijuana dispensary operators or attempting to close down such operations. But, because of the life safety hazards caused by ensuing fires that have often erupted in resultant home grow operations, and the violent acts that have often shadowed dispensaries, some attitudes have changed and a few political entities have reversed course after having previously licensed dispensaries and authorized liberal permissible amounts of marijuana for possession by medical marijuana patients in their jurisdictions. These “patients” have most often turned out to be young adults who are not sick at all, but have secured a physician’s written recommendation for marijuana use by simply paying the required fee demanded for this document without even first undergoing a physical examination. Too often “medical marijuana” has been used as a smokescreen for those who want to legalize it and profit off it, and storefront dispensaries established as cover for selling an illegal substance for a lucrative return.

WHITE PAPER ON MARIJUANA DISPENSARIES

by

CALIFORNIA POLICE CHIEFS ASSOCIATION

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INTRODUCTION

In November of 1996, California voters passed Proposition 215. The initiative set out to make marijuana available to people with certain illnesses. The initiative was later supplemented by the Medical Marijuana Program Act. Across the state, counties and municipalities have varied in their responses to medical marijuana. Some have allowed businesses to open and provide medical marijuana. Others have disallowed all such establishments within their borders. Several once issued business licenses allowing medical marijuana stores to operate, but no longer do so. This paper discusses the legality of both medical marijuana and the businesses that make it available, and more specifically, the problems associated with medical marijuana and marijuana dispensaries, under whatever name they operate.

FEDERAL LAW

Federal law clearly and unequivocally states that all marijuana-related activities are illegal. Consequently, all people engaged in such activities are subject to federal prosecution. The United States Supreme Court has ruled that this federal regulation supersedes any state's regulation of marijuana – even California's. (*Gonzales v. Raich* (2005) 125 S.Ct. 2195, 2215.) “The Supremacy Clause unambiguously provides that if there is any conflict between federal law and state law, federal law shall prevail.” (*Gonzales v. Raich, supra.*) Even more recently, the 9th Circuit Court of Appeals found that there is no fundamental right under the United States Constitution to even use medical marijuana. (*Raich v. Gonzales* (9th Cir. 2007) 500 F.3d 850, 866.)

In *Gonzales v. Raich*, the High Court declared that, despite the attempts of several states to partially legalize marijuana, it continues to be wholly illegal since it is classified as a Schedule I drug under federal law. As such, there are no exceptions to its illegality. (21 USC secs. 812(c), 841(a)(1).) Over the past thirty years, there have been several attempts to have marijuana reclassified to a different schedule which would permit medical use of the drug. All of these attempts have failed. (See *Gonzales v. Raich* (2005) 125 S.Ct. 2195, fn 23.) The mere categorization of marijuana as “medical” by some states fails to carve out any legally recognized exception regarding the drug. Marijuana, in any form, is neither valid nor legal.

Clearly the United States Supreme Court is the highest court in the land. Its decisions are final and binding upon all lower courts. The Court invoked the United States Supremacy Clause and the Commerce Clause in reaching its decision. The Supremacy Clause declares that all laws made in pursuance of the Constitution shall be the “supreme law of the land” and shall be legally superior to any conflicting provision of a state constitution or law.¹ The Commerce Clause states that “the

Congress shall have power to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”²

Gonzales v. Raich addressed the concerns of two California individuals growing and using marijuana under California’s medical marijuana statute. The Court explained that under the Controlled Substances Act marijuana is a Schedule I drug and is strictly regulated.³ “Schedule I drugs are categorized as such because of their high potential for abuse, lack of any accepted medical use, and absence of any accepted safety for use in medically supervised treatment.”⁴ (21 USC sec. 812(b)(1).) The Court ruled that the Commerce Clause is applicable to California individuals growing and obtaining marijuana for their own personal, medical use. Under the Supremacy Clause, the federal regulation of marijuana, pursuant to the Commerce Clause, supersedes any state’s regulation, including California’s. The Court found that the California statutes did not provide any federal defense if a person is brought into federal court for cultivating or possessing marijuana.

Accordingly, there is no federal exception for the growth, cultivation, use or possession of marijuana and all such activity remains illegal.⁵ California’s Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 do not create an exception to this federal law. All marijuana activity is absolutely illegal and subject to federal regulation and prosecution. This notwithstanding, on March 19, 2009, U.S. Attorney General Eric Holder, Jr. announced that under the new Obama Administration the U.S. Department of Justice plans to target for prosecution only those marijuana dispensaries that use medical marijuana dispensing as a front for dealers of illegal drugs.⁶

CALIFORNIA LAW

Generally, the possession, cultivation, possession for sale, transportation, distribution, furnishing, and giving away of marijuana is unlawful under California state statutory law. (See Cal. Health & Safety Code secs. 11357-11360.) But, on November 5, 1996, California voters adopted Proposition 215, an initiative statute authorizing the medical use of marijuana.⁷ The initiative added California Health and Safety code section 11362.5, which allows “seriously ill Californians the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician”⁸ The codified section is known as the Compassionate Use Act of 1996.⁹ Additionally, the State Legislature passed Senate Bill 420 in 2003. It became the Medical Marijuana Program Act and took effect on January 1, 2004.¹⁰ This act expanded the definitions of “patient” and “primary caregiver”¹¹ and created guidelines for identification cards.¹² It defined the amount of marijuana that “patients,” and “primary caregivers” can possess.¹³ It also created a limited affirmative defense to criminal prosecution for qualifying individuals that collectively gather to cultivate medical marijuana,¹⁴ as well as to the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana for a person who qualifies as a “patient,” a “primary caregiver,” or as a member of a legally recognized “cooperative,” as those terms are defined within the statutory scheme. Nevertheless, there is no provision in any of these laws that authorizes or protects the establishment of a “dispensary” or other storefront marijuana distribution operation.

Despite their illegality in the federal context, the medical marijuana laws in California are specific. The statutes craft narrow affirmative defenses for particular individuals with respect to enumerated marijuana activity. All conduct, and people engaging in it, that falls outside of the statutes’ parameters remains illegal under California law. Relatively few individuals will be able to assert the affirmative defense in the statute. To use it a person must be a “qualified patient,” “primary caregiver,” or a member of a “cooperative.” Once they are charged with a crime, if a person can prove an applicable legal status, they are entitled to assert this statutory defense.

Former California Attorney General Bill Lockyer has also spoken about medical marijuana, and strictly construed California law relating to it. His office issued a bulletin to California law enforcement agencies on June 9, 2005. The office expressed the opinion that *Gonzales v. Raich* did not address the validity of the California statutes and, therefore, had no effect on California law. The office advised law enforcement to not change their operating procedures. Attorney General Lockyer made the recommendation that law enforcement neither arrest nor prosecute “individuals within the legal scope of California’s Compassionate Use Act.” Now the current California Attorney General, Edmund G. Brown, Jr., has issued guidelines concerning the handling of issues relating to California’s medical marijuana laws and marijuana dispensaries. The guidelines are much tougher on storefront dispensaries—generally finding them to be unprotected, illegal drug-trafficking enterprises if they do not fall within the narrow legal definition of a “cooperative”—than on the possession and use of marijuana upon the recommendation of a physician.

When California’s medical marijuana laws are strictly construed, it appears that the decision in *Gonzales v. Raich* does affect California law. However, provided that federal law does not preempt California law in this area, it does appear that the California statutes offer some legal protection to “individuals within the legal scope of” the acts. The medical marijuana laws speak to patients, primary caregivers, and true collectives. These people are expressly mentioned in the statutes, and, if their conduct comports to the law, they may have some state legal protection for specified marijuana activity. Conversely, all marijuana establishments that fall outside the letter and spirit of the statutes, including dispensaries and storefront facilities, are not legal. These establishments have no legal protection. Neither the former California Attorney General’s opinion nor the current California Attorney General’s guidelines present a contrary view. Nevertheless, without specifically addressing marijuana dispensaries, Attorney General Brown has sent his deputies attorney general to defend the codified Medical Marijuana Program Act against court challenges, and to advance the position that the state’s regulations promulgated to enforce the provisions of the codified Compassionate Use Act (Proposition 215), including a statewide database and county identification card systems for marijuana patients authorized by their physicians to use marijuana, are all valid.

1. Conduct

California Health and Safety Code sections 11362.765 and 11362.775 describe the conduct for which the affirmative defense is available. If a person qualifies as a “patient,” “primary caregiver,” or is a member of a legally recognized “cooperative,” he or she has an affirmative defense to possessing a defined amount of marijuana. Under the statutes no more than eight ounces of dried marijuana can be possessed. Additionally, either six mature or twelve immature plants may be possessed.¹⁵ If a person claims patient or primary caregiver status, and possesses more than this amount of marijuana, he or she can be prosecuted for drug possession. The qualifying individuals may also cultivate, plant, harvest, dry, and/or process marijuana, but only while still strictly observing the permitted amount of the drug. The statute may also provide a limited affirmative defense for possessing marijuana for sale, transporting it, giving it away, maintaining a marijuana house, knowingly providing a space where marijuana can be accessed, and creating a narcotic nuisance.¹⁶

However, for anyone who cannot lay claim to the appropriate status under the statutes, all instances of marijuana possession, cultivation, planting, harvesting, drying, processing, possession for the purposes of sales, completed sales, giving away, administration, transportation, maintaining of marijuana houses, knowingly providing a space for marijuana activity, and creating a narcotic nuisance continue to be illegal under California law.

2. Patients and Cardholders

A dispensary obviously is not a patient or cardholder. A “qualified patient” is an individual with a physician’s recommendation that indicates marijuana will benefit the treatment of a qualifying illness. (Cal. H&S Code secs. 11362.5(b)(1)(A) and 11362.7(f).) Qualified illnesses include cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or *any other illness for which marijuana provides relief*.¹⁷ A physician’s recommendation that indicates medical marijuana will benefit the treatment of an illness is required before a person can claim to be a medical marijuana patient. Accordingly, such proof is also necessary before a medical marijuana affirmative defense can be claimed.

A “person with an identification card” means an individual who is a qualified patient who has applied for and received a valid identification card issued by the State Department of Health Services. (Cal. H&S Code secs. 11362.7(c) and 11362.7(g).)

3. Primary Caregivers

The only person or entity authorized to receive compensation for services provided to patients and cardholders is a primary caregiver. (Cal. H&S Code sec. 11362.77(c).) However, nothing in the law authorizes any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.765(a).) It is important to note that it is almost impossible for a storefront marijuana business to gain true primary caregiver status. Businesses that call themselves “cooperatives,” but function like storefront dispensaries, suffer this same fate. In *People v. Mower*, the court was very clear that the defendant had to prove he was a primary caregiver in order to raise the medical marijuana affirmative defense. Mr. Mower was prosecuted for supplying two people with marijuana.¹⁸ He claimed he was their primary caregiver under the medical marijuana statutes. This claim required him to prove he “**consistently** had assumed responsibility for either one’s **housing, health, or safety**” before he could assert the defense.¹⁹ (Emphasis added.)

The key to being a primary caregiver is not simply that marijuana is provided for a patient’s health; the responsibility for the health must be consistent; it must be independent of merely providing marijuana for a qualified person; and such a primary caregiver-patient relationship must begin before or contemporaneously with the time of assumption of responsibility for assisting the individual with marijuana. (*People v. Mentch* (2008) 45 Cal.4th 274, 283.) Any relationship a storefront marijuana business has with a patient is much more likely to be transitory than consistent, and to be wholly lacking in providing for a patient’s health needs beyond just supplying him or her with marijuana.

A “primary caregiver” is an individual or facility that has “consistently assumed responsibility for the housing, health, or safety of a patient” over time. (Cal. H&S Code sec. 11362.5(e).) “Consistency” is the key to meeting this definition. A patient can elect to patronize any dispensary that he or she chooses. The patient can visit different dispensaries on a single day or any subsequent day. The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. But, in light of the holding in *People v. Mentch, supra*, to qualify as a primary caregiver, more aid to a person’s health must occur beyond merely dispensing marijuana to a given customer.

Additionally, if more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. And, in most circumstances the primary caregiver must be at least 18 years of age.

The courts have found that the act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. (*See People ex rel. Lungren v. Peron* (1997) 59 Cal.App.4th 1383, 1390: "One maintaining a source of marijuana supply, from which all members of the public qualified as permitted medicinal users may or may not discretionarily elect to make purchases, does not thereby become the party 'who has consistently assumed responsibility for the housing, health, or safety' of that purchaser as section 11362.5(e) requires.")

The California Legislature had the opportunity to legalize the existence of dispensaries when setting forth what types of facilities could qualify as "primary caregivers." Those included in the list clearly show the Legislature's intent to restrict the definition to one involving a significant and long-term commitment to the patient's health, safety, and welfare. The only facilities which the Legislature authorized to serve as "primary caregivers" are clinics, health care facilities, residential care facilities, home health agencies, and hospices which actually provide medical care or supportive services to qualified patients. (Cal. H&S Code sec. 11362.7(d)(1).) Any business that cannot prove that its relationship with the patient meets these requirements is not a primary caregiver. Functionally, the business is a drug dealer and is subject to prosecution as such.

4. Cooperatives and Collectives

According to the California Attorney General's recently issued *Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use*, unless they meet stringent requirements, dispensaries also cannot reasonably claim to be cooperatives or collectives. In passing the Medical Marijuana Program Act, the Legislature sought, in part, to enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation programs. (*People v. Urziceanu* (2005) 132 Cal.App.4th 747, 881.) The Act added section 11362.775, which provides that "Patients and caregivers who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions" for the crimes of marijuana possession, possession for sale, transportation, sale, furnishing, cultivation, and maintenance of places for storage, use, or distribution of marijuana. However, there is no authorization for any individual or group to cultivate or distribute marijuana for profit. (Cal. H&S Code sec. 11362.77(a).) If a dispensary is only a storefront distribution operation open to the general public, and there is no indication that it has been involved with growing or cultivating marijuana for the benefit of members as a non-profit enterprise, it will not qualify as a cooperative to exempt it from criminal penalties under California's marijuana laws.

Further, the common dictionary definition of "collectives" is that they are organizations jointly managed by those using its facilities or services. Legally recognized cooperatives generally possess "the following features: control and ownership of each member is substantially equal; members are limited to those who will avail themselves of the services furnished by the association; transfer of ownership interests is prohibited or limited; capital investment receives either no return or a limited return; economic benefits pass to the members on a substantially equal basis or on the basis of their patronage of the association; members are not personally liable for obligations of the association in the absence of a direct undertaking or authorization by them; death, bankruptcy, or withdrawal of one or more members does not terminate the association; and [the] services of the association are furnished primarily for the use of the members."²⁰ Marijuana businesses, of any kind, do not normally meet this legal definition.

Based on the foregoing, it is clear that virtually all marijuana dispensaries are not legal enterprises under either federal or state law.

LAWS IN OTHER STATES

Besides California, at the time of publication of this White Paper, thirteen other states have enacted medical marijuana laws on their books, whereby to some degree marijuana recommended or prescribed by a physician to a specified patient may be legally possessed. These states are Alaska, Colorado, Hawaii, Maine, Maryland, Michigan, Montana, Nevada, New Mexico, Oregon, Rhode Island, Vermont, and Washington. And, possession of marijuana under one ounce has now been decriminalized in Massachusetts.²¹

STOREFRONT MARIJUANA DISPENSARIES AND COOPERATIVES

Since the passage of the Compassionate Use Act of 1996, many storefront marijuana businesses have opened in California.²² Some are referred to as dispensaries, and some as cooperatives; but it is how they operate that removes them from any umbrella of legal protection. These facilities operate as if they are pharmacies. Most offer different types and grades of marijuana. Some offer baked goods that contain marijuana.²³ Monetary donations are collected from the patient or primary caregiver when marijuana or food items are received. The items are not technically sold since that would be a criminal violation of the statutes.²⁴ These facilities are able to operate because they apply for and receive business licenses from cities and counties.

Federally, all existing storefront marijuana businesses are subject to search and closure since they violate federal law.²⁵ Their mere existence violates federal law. Consequently, they have no right to exist or operate, and arguably cities and counties in California have no authority to sanction them.

Similarly, in California there is no apparent authority for the existence of these storefront marijuana businesses. The Medical Marijuana Program Act of 2004 allows *patients* and *primary caregivers* to grow and cultivate marijuana, and no one else.²⁶ Although California Health and Safety Code section 11362.775 offers some state legal protection for true collectives and cooperatives, no parallel protection exists in the statute for any storefront business providing any narcotic.

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Actual medical dispensaries are commonly defined as offices in hospitals, schools, or other institutions from which medical supplies, preparations, and treatments are dispensed. Hospitals, hospices, home health care agencies, and the like are specifically included in the code as primary caregivers as long as they have “consistently assumed responsibility for the housing, health, or safety” of a patient.²⁸ Clearly, it is doubtful that any of the storefront marijuana businesses currently

existing in California can claim that status. Consequently, they are not primary caregivers and are subject to prosecution under both California and federal laws.

HOW EXISTING DISPENSARIES OPERATE

Despite their clear illegality, some cities do have existing and operational dispensaries. Assuming, *arguendo*, that they may operate, it may be helpful to review the mechanics of the business. The former Green Cross dispensary in San Francisco illustrates how a typical marijuana dispensary works.²⁹

A guard or employee may check for medical marijuana cards or physician recommendations at the entrance. Many types and grades of marijuana are usually available. Although employees are neither pharmacists nor doctors, sales clerks will probably make recommendations about what type of marijuana will best relieve a given medical symptom. Baked goods containing marijuana may be available and sold, although there is usually no health permit to sell baked goods. The dispensary will give the patient a form to sign declaring that the dispensary is their "primary caregiver" (a process fraught with legal difficulties). The patient then selects the marijuana desired and is told what the "contribution" will be for the product. The California Health & Safety Code specifically prohibits the sale of marijuana to a patient, so "contributions" are made to reimburse the dispensary for its time and care in making "product" available. However, if a calculation is made based on the available evidence, it is clear that these "contributions" can easily add up to millions of dollars per year. That is a very large cash flow for a "non-profit" organization denying any participation in the retail sale of narcotics. Before its application to renew its business license was denied by the City of San Francisco, there were single days that Green Cross sold \$45,000 worth of marijuana. On Saturdays, Green Cross could sell marijuana to forty-three patients an hour. The marijuana sold at the dispensary was obtained from growers who brought it to the store in backpacks. A medium-sized backpack would hold approximately \$16,000 worth of marijuana. Green Cross used many different marijuana growers.

It is clear that dispensaries are running as if they are businesses, not legally valid cooperatives. Additionally, they claim to be the "primary caregivers" of patients. This is a spurious claim. As discussed above, the term "primary caregiver" has a very specific meaning and defined legal qualifications. A primary caregiver is an individual who has "consistently assumed responsibility for the housing, health, or safety of a patient."³⁰ The statutory definition includes some clinics, health care facilities, residential care facilities, and hospices. If more than one patient designates the same person as the primary caregiver, all individuals must reside in the same city or county. In most circumstances the primary caregiver must be at least 18 years of age.

It is almost impossible for a storefront marijuana business to gain true primary caregiver status. A business would have to prove that it "**consistently** had assumed responsibility for [a patient's] **housing, health, or safety.**"³¹ The key to being a primary caregiver is not simply that marijuana is provided for a patient's health: the responsibility for the patient's health must be **consistent**.

As seen in the Green Cross example, a storefront marijuana business's relationship with a patient is most likely transitory. In order to provide a qualified patient with marijuana, a storefront marijuana business must create an instant "primary caregiver" relationship with him. The very fact that the relationship is instant belies any consistency in their relationship and the requirement that housing, health, or safety is consistently provided. Courts have found that a patient's act of signing a piece of paper declaring that someone is a primary caregiver does not necessarily make that person one. The

consistent relationship demanded by the statute is mere fiction if it can be achieved between an individual and a business that functions like a narcotic retail store.

ADVERSE SECONDARY EFFECTS OF MARIJUANA DISPENSARIES AND SIMILARLY OPERATING COOPERATIVES

Of great concern are the adverse secondary effects of these dispensaries and storefront cooperatives. They are many. Besides flouting federal law by selling a prohibited Schedule I drug under the Controlled Substances Act, marijuana dispensaries attract or cause numerous ancillary social problems as byproducts of their operation. The most glaring of these are other criminal acts.

ANCILLARY CRIMES

A. ARMED ROBBERIES AND MURDERS

Throughout California, many violent crimes have been committed that can be traced to the proliferation of marijuana dispensaries. These include armed robberies and murders. For example, as far back as 2002, two home occupants were shot in Willits, California in the course of a home-invasion robbery targeting medical marijuana.³² And, a series of four armed robberies of a marijuana dispensary in Santa Barbara, California occurred through August 10, 2006, in which thirty dollars and fifteen baggies filled with marijuana on display were taken by force and removed from the premises in the latest holdup. The owner said he failed to report the first three robberies because “medical marijuana is such a controversial issue.”³³

On February 25, 2004, in Mendocino County two masked thugs committed a home invasion robbery to steal medical marijuana. They held a knife to a 65-year-old man’s throat, and though he fought back, managed to get away with large amounts of marijuana. They were soon caught, and one of the men received a sentence of six years in state prison.³⁴ And, on August 19, 2005, 18-year-old Demarco Lowrey was “shot in the stomach” and “bled to death” during a gunfight with the business owner when he and his friends attempted a takeover robbery of a storefront marijuana business in the City of San Leandro, California. The owner fought back with the hooded home invaders, and a gun battle ensued. Demarco Lowrey was hit by gunfire and “dumped outside the emergency entrance of Children’s Hospital Oakland” after the shootout.³⁵ He did not survive.³⁶

Near Hayward, California, on September 2, 2005, upon leaving a marijuana dispensary, a patron of the CCA Cannabis Club had a gun put to his head as he was relieved of over \$250 worth of pot. Three weeks later, another break-in occurred at the Garden of Eden Cannabis Club in September of 2005.³⁷

Another known marijuana-dispensary-related murder occurred on November 19, 2005. Approximately six gun- and bat-wielding burglars broke into Les Crane’s home in Laytonville, California while yelling, “This is a raid.” Les Crane, who owned two storefront marijuana businesses, was at home and shot to death. He received gunshot wounds to his head, arm, and abdomen.³⁸ Another man present at the time was beaten with a baseball bat. The murderers left the home after taking an unknown sum of U.S. currency and a stash of processed marijuana.³⁹

Then, on January 9, 2007, marijuana plant cultivator Rex Farrance was shot once in the chest and killed in his own home after four masked intruders broke in and demanded money. When the homeowner ran to fetch a firearm, he was shot dead. The robbers escaped with a small amount of

cash and handguns. Investigating officers counted 109 marijuana plants in various phases of cultivation inside the house, along with two digital scales and just under 4 pounds of cultivated marijuana.⁴⁰

More recently in Colorado, Ken Gorman, a former gubernatorial candidate and dispenser of marijuana who had been previously robbed over twelve times at his home in Denver, was found murdered by gunshot inside his home. He was a prominent proponent of medical marijuana and the legalization of marijuana.⁴¹

B. BURGLARIES

In June of 2007, after two burglarizing youths in Bellflower, California were caught by the homeowner trying to steal the fruits of his indoor marijuana grow, he shot one who was running away, and killed him.⁴² And, again in January of 2007, Claremont Councilman Corey Calaycay went on record calling marijuana dispensaries “crime magnets” after a burglary occurred in one in Claremont, California.⁴³

On July 17, 2006, the El Cerrito City Council voted to ban all such marijuana facilities. It did so after reviewing a nineteen-page report that detailed a rise in crime near these storefront dispensaries in other cities. The crimes included robberies, assaults, burglaries, murders, and attempted murders.⁴⁴ Even though marijuana storefront businesses do not currently exist in the City of Monterey Park, California, it issued a moratorium on them after studying the issue in August of 2006.⁴⁵ After allowing these establishments to operate within its borders, the City of West Hollywood, California passed a similar moratorium. The moratorium was “prompted by incidents of armed burglary at some of the city’s eight existing pot stores and complaints from neighbors about increased pedestrian and vehicle traffic and noise”⁴⁶

C. TRAFFIC, NOISE, AND DRUG DEALING

Increased noise and pedestrian traffic, including nonresidents in pursuit of marijuana, and out of area criminals in search of prey, are commonly encountered just outside marijuana dispensaries,⁴⁷ as well as drug-related offenses in the vicinity—like resales of products just obtained inside—since these marijuana centers regularly attract marijuana growers, drug users, and drug traffickers.⁴⁸ Sharing just purchased marijuana outside dispensaries also regularly takes place.⁴⁹

Rather than the “seriously ill,” for whom medical marijuana was expressly intended,⁵⁰ “‘perfectly healthy’ young people frequenting dispensaries” are a much more common sight.⁵¹ Patient records seized by law enforcement officers from dispensaries during raids in San Diego County, California in December of 2005 “showed that 72 percent of patients were between 17 and 40 years old”⁵² Said one admitted marijuana trafficker, “The people I deal with are the same faces I was dealing with 12 years ago but now, because of Senate Bill 420, they are supposedly legit. I can totally see why cops are bummed.”⁵³

Reportedly, a security guard sold half a pound of marijuana to an undercover officer just outside a dispensary in Morro Bay, California.⁵⁴ And, the mere presence of marijuana dispensaries encourages illegal growers to plant, cultivate, and transport ever more marijuana, in order to supply and sell their crops to these storefront operators in the thriving medical marijuana dispensary market, so that the national domestic marijuana yield has been estimated to be 35.8 billion dollars, of which a 13.8 billion dollar share is California grown.⁵⁵ It is a big business. And, although the operators of some dispensaries will claim that they only accept monetary contributions for the products they

dispense, and do not sell marijuana, a patron will not receive any marijuana until an amount of money acceptable to the dispensary has changed hands.

D. ORGANIZED CRIME, MONEY LAUNDERING, AND FIREARMS VIOLATIONS

Increasingly, reports have been surfacing about organized crime involvement in the ownership and operation of marijuana dispensaries, including Asian and other criminal street gangs and at least one member of the Armenian Mafia.⁵⁶ The dispensaries or “pot clubs” are often used as a front by organized crime gangs to traffic in drugs and launder money. One such gang whose territory included San Francisco and Oakland, California reportedly ran a multi-million dollar business operating ten warehouses in which vast amounts of marijuana plants were grown.⁵⁷ Besides seizing over 9,000 marijuana plants during surprise raids on this criminal enterprise’s storage facilities, federal officers also confiscated three firearms,⁵⁸ which seem to go hand in hand with medical marijuana cultivation and dispensaries.⁵⁹

Marijuana storefront businesses have allowed criminals to flourish in California. In the summer of 2007, the City of San Diego cooperated with federal authorities and served search warrants on several marijuana dispensary locations. In addition to marijuana, many weapons were recovered, including a stolen handgun and an M-16 assault rifle.⁶⁰ The National Drug Intelligence Center reports that marijuana growers are employing armed guards, using explosive booby traps, and murdering people to shield their crops. Street gangs of all national origins are involved in transporting and distributing marijuana to meet the ever increasing demand for the drug.⁶¹ Active Asian gangs have included members of Vietnamese organized crime syndicates who have migrated from Canada to buy homes throughout the United States to use as grow houses.⁶²

Some or all of the processed harvest of marijuana plants nurtured in these homes then wind up at storefront marijuana dispensaries owned and operated by these gangs. Storefront marijuana businesses are very dangerous enterprises that thrive on ancillary grow operations.

Besides fueling marijuana dispensaries, some monetary proceeds from the sale of harvested marijuana derived from plants grown inside houses are being used by organized crime syndicates to fund other legitimate businesses for profit and the laundering of money, and to conduct illegal business operations like prostitution, extortion, and drug trafficking.⁶³ Money from residential grow operations is also sometimes traded by criminal gang members for firearms, and used to buy drugs, personal vehicles, and additional houses for more grow operations,⁶⁴ and along with the illegal income derived from large-scale organized crime-related marijuana production operations comes widespread income tax evasion.⁶⁵

E. POISONINGS

Another social problem somewhat unique to marijuana dispensaries is poisonings, both intentional and unintentional. On August 16, 2006, the Los Angeles Police Department received two such reports. One involved a security guard who ate a piece of cake extended to him from an operator of a marijuana clinic as a “gift,” and soon afterward felt dizzy and disoriented.⁶⁶ The second incident concerned a UPS driver who experienced similar symptoms after accepting and eating a cookie given to him by an operator of a different marijuana clinic.⁶⁷

OTHER ADVERSE SECONDARY IMPACTS IN THE IMMEDIATE VICINITY OF DISPENSARIES

Other adverse secondary impacts from the operation of marijuana dispensaries include street dealers lurking about dispensaries to offer a lower price for marijuana to arriving patrons; marijuana smoking in public and in front of children in the vicinity of dispensaries; loitering and nuisances; acquiring marijuana and/or money by means of robbery of patrons going to or leaving dispensaries; an increase in burglaries at or near dispensaries; a loss of trade for other commercial businesses located near dispensaries; the sale at dispensaries of other illegal drugs besides marijuana; an increase in traffic accidents and driving under the influence arrests in which marijuana is implicated; and the failure of marijuana dispensary operators to report robberies to police.⁶⁸

SECONDARY ADVERSE IMPACTS IN THE COMMUNITY AT LARGE

A. UNJUSTIFIED AND FICTITIOUS PHYSICIAN RECOMMENDATIONS

California's legal requirement under California Health and Safety Code section 11362.5 that a physician's recommendation is required for a patient or caregiver to possess medical marijuana has resulted in other undesirable outcomes: wholesale issuance of recommendations by unscrupulous physicians seeking a quick buck, and the proliferation of forged or fictitious physician recommendations. Some doctors link up with a marijuana dispensary and take up temporary residence in a local hotel room where they advertise their appearance in advance, and pass out medical marijuana use recommendations to a line of "patients" at "about \$150 a pop."⁶⁹ Other individuals just make up their own phony doctor recommendations,⁷⁰ which are seldom, if ever, scrutinized by dispensary employees for authenticity. Undercover DEA agents sporting fake medical marijuana recommendations were readily able to purchase marijuana from a clinic.⁷¹ Far too often, California's medical marijuana law is used as a smokescreen for healthy pot users to get their desired drug, and for proprietors of marijuana dispensaries to make money off them, without suffering any legal repercussions.⁷²

On March 11, 2009, the Osteopathic Medical Board of California adopted the proposed decision revoking Dr. Alfonso Jimenez's Osteopathic Physician's and Surgeon's Certificate and ordering him to pay \$74,323.39 in cost recovery. Dr. Jimenez operated multiple marijuana clinics and advertised his services extensively on the Internet. Based on information obtained from raids on marijuana dispensaries in San Diego, in May of 2006, the San Diego Police Department ran two undercover operations on Dr. Jimenez's clinic in San Diego. In January of 2007, a second undercover operation was conducted by the Laguna Beach Police Department at Dr. Jimenez's clinic in Orange County. Based on the results of the undercover operations, the Osteopathic Medical Board charged Dr. Jimenez with gross negligence and repeated negligent acts in the treatment of undercover operatives posing as patients. After a six-day hearing, the Administrative Law Judge (ALJ) issued her decision finding that Dr. Jimenez violated the standard of care by committing gross negligence and repeated negligence in care, treatment, and management of patients when he, among other things, issued medical marijuana recommendations to the undercover agents without conducting adequate medical examinations, failed to gain proper informed consent, and failed to consult with any primary care and/or treating physicians or obtain and review prior medical records before issuing medical marijuana recommendations. The ALJ also found Dr. Jimenez engaged in dishonest behavior by preparing false and/or misleading medical records and disseminating false and misleading advertising to the public, including representing himself as a "Cannabis Specialist" and "Qualified Medical Marijuana Examiner" when no such formal specialty or qualification existed. Absent any

requested administrative agency reconsideration or petition for court review, the decision was to become effective April 24, 2009.

B. PROLIFERATION OF GROW HOUSES IN RESIDENTIAL AREAS

In recent years the proliferation of grow houses in residential neighborhoods has exploded. This phenomenon is country wide, and ranges from the purchase for purpose of marijuana grow operations of small dwellings to "high priced McMansions . . ."⁷³ Mushrooming residential marijuana grow operations have been detected in California, Connecticut, Florida, Georgia, New Hampshire, North Carolina, Ohio, South Carolina, and Texas.⁷⁴ In 2007 alone, such illegal operations were detected and shut down by federal and state law enforcement officials in 41 houses in California, 50 homes in Florida, and 11 homes in New Hampshire.⁷⁵ Since then, the number of residences discovered to be so impacted has increased exponentially. Part of this recent influx of illicit residential grow operations is because the "THC-rich 'B.C. bud' strain" of marijuana originally produced in British Columbia "can be grown only in controlled indoor environments," and the Canadian market is now reportedly saturated with the product of "competing Canadian gangs," often Asian in composition or outlaw motorcycle gangs like the Hells Angels.⁷⁶ Typically, a gutted house can hold about 1,000 plants that will each yield almost half a pound of smokable marijuana; this collectively nets about 500 pounds of usable marijuana per harvest, with an average of three to four harvests per year.⁷⁷ With a street value of \$3,000 to \$5,000 per pound" for high-potency marijuana, and such multiple harvests, "a successful grow house can bring in between \$4.5 million and \$10 million a year . . ."⁷⁸ The high potency of hydroponically grown marijuana can command a price as much as six times higher than commercial grade marijuana.⁷⁹

C. LIFE SAFETY HAZARDS CREATED BY GROW HOUSES

In Humboldt County, California, structure fires caused by unsafe indoor marijuana grow operations have become commonplace. The city of Arcata, which sports four marijuana dispensaries, was the site of a house fire in which a fan had fallen over and ignited a fire; it had been turned into a grow house by its tenant. Per Arcata Police Chief Randy Mendosa, altered and makeshift "no code" electrical service connections and overloaded wires used to operate high-powered grow lights and fans are common causes of the fires. Large indoor marijuana growing operations can create such excessive draws of electricity that PG&E power pole transformers are commonly blown. An average 1,500-square-foot tract house used for growing marijuana can generate monthly electrical bills from \$1,000 to \$3,000 per month. From an environmental standpoint, the carbon footprint from greenhouse gas emissions created by large indoor marijuana grow operations should be a major concern for every community in terms of complying with Air Board AB-32 regulations, as well as other greenhouse gas reduction policies. Typically, air vents are cut into roofs, water seeps into carpeting, windows are blacked out, holes are cut in floors, wiring is jury-rigged, and electrical circuits are overloaded to operate grow lights and other apparatus. When fires start, they spread quickly.

The May 31, 2008 edition of the *Los Angeles Times* reported, "Law enforcement officials estimate that as many as 1,000 of the 7,500 homes in this Humboldt County community are being used to cultivate marijuana, slashing into the housing stock, spreading building-safety problems and sowing neighborhood discord." Not surprisingly, in this bastion of liberal pot possession rules that authorized the cultivation of up to 99 plants for medicinal purpose, most structural fires in the community of Arcata have been of late associated with marijuana cultivation.⁸⁰ Chief of Police Mendosa clarified that the actual number of marijuana grow houses in Arcata has been an ongoing subject of public debate. Mendosa added, "We know there are numerous grow houses in almost every neighborhood in and around the city, which has been the source of constant citizen complaints." House fires caused by

grower-installed makeshift electrical wiring or tipped electrical fans are now endemic to Humboldt County.⁸¹

Chief Mendosa also observed that since marijuana has an illicit street value of up to \$3,000 per pound, marijuana grow houses have been susceptible to violent armed home invasion robberies. Large-scale marijuana grow houses have removed significant numbers of affordable houses from the residential rental market. When property owners discover their rentals are being used as grow houses, the residences are often left with major structural damage, which includes air vents cut into roofs and floors, water damage to floors and walls, and mold. The June 9, 2008 edition of the *New York Times* shows an unidentified Arcata man tending his indoor grow; the man claimed he can make \$25,000 every three months by selling marijuana grown in the bedroom of his rented house.⁸² Claims of ostensible medical marijuana growing pursuant to California's medical marijuana laws are being advanced as a mostly false shield in an attempt to justify such illicit operations.

Neither is fire an uncommon occurrence at grow houses elsewhere across the nation. Another occurred not long ago in Holiday, Florida.⁸³ To compound matters further, escape routes for firefighters are often obstructed by blocked windows in grow houses, electric wiring is tampered with to steal electricity, and some residences are even booby-trapped to discourage and repel unwanted intruders.⁸⁴

D. INCREASED ORGANIZED GANG ACTIVITIES

Along with marijuana dispensaries and the grow operations to support them come members of organized criminal gangs to operate and profit from them. Members of an ethnic Chinese drug gang were discovered to have operated 50 indoor grow operations in the San Francisco Bay area, while Cuban-American crime organizations have been found to be operating grow houses in Florida and elsewhere in the South. A Vietnamese drug ring was caught operating 19 grow houses in Seattle and Puget Sound, Washington.⁸⁵ In July of 2008, over 55 Asian gang members were indicted for narcotics trafficking in marijuana and ecstasy, including members of the Hop Sing Gang that had been actively operating marijuana grow operations in Elk Grove and elsewhere in the vicinity of Sacramento, California.⁸⁶

E. EXPOSURE OF MINORS TO MARIJUANA

Minors who are exposed to marijuana at dispensaries or residences where marijuana plants are grown may be subtly influenced to regard it as a generally legal drug, and inclined to sample it. In grow houses, children are exposed to dangerous fire and health conditions that are inherent in indoor grow operations.⁸⁷ Dispensaries also sell marijuana to minors.⁸⁸

F. IMPAIRED PUBLIC HEALTH

Indoor marijuana grow operations emit a skunk-like odor,⁸⁹ and foster generally unhealthy conditions like allowing chemicals and fertilizers to be placed in the open, an increased carbon dioxide level within the grow house, and the accumulation of mold,⁹⁰ all of which are dangerous to any children or adults who may be living in the residence,⁹¹ although many grow houses are uninhabited.

G. LOSS OF BUSINESS TAX REVENUE

When business suffers as a result of shoppers staying away on account of traffic, blight, crime, and the undesirability of a particular business district known to be frequented by drug users and traffickers, and organized criminal gang members, a city's tax revenues necessarily drop as a direct consequence.

H. DECREASED QUALITY OF LIFE IN DETERIORATING NEIGHBORHOODS, BOTH BUSINESS AND RESIDENTIAL

Marijuana dispensaries bring in the criminal element and loiterers, which in turn scare off potential business patrons of nearby legitimate businesses, causing loss of revenues and deterioration of the affected business district. Likewise, empty homes used as grow houses emit noxious odors in residential neighborhoods, project irritating sounds of whirring fans,⁹² and promote the din of vehicles coming and going at all hours of the day and night. Near harvest time, rival growers and other uninvited enterprising criminals sometimes invade grow houses to beat "clip crews" to the site and rip off mature plants ready for harvesting. As a result, violence often erupts from confrontations in the affected residential neighborhood.⁹³

ULTIMATE CONCLUSIONS REGARDING ADVERSE SECONDARY EFFECTS

On balance, any utility to medical marijuana patients in care giving and convenience that marijuana dispensaries may appear to have on the surface is enormously outweighed by a much darker reality that is punctuated by the many adverse secondary effects created by their presence in communities, recounted here. These drug distribution centers have even proven to be unsafe for their own proprietors.

POSSIBLE LOCAL GOVERNMENTAL RESPONSES TO MARIJUANA DISPENSARIES

A. IMPOSED MORATORIA BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While in the process of investigating and researching the issue of licensing marijuana dispensaries, as an interim measure city councils may enact date-specific moratoria that expressly prohibit the presence of marijuana dispensaries, whether for medical use or otherwise, and prohibiting the sale of marijuana in any form on such premises, anywhere within the incorporated boundaries of the city until a specified date. Before such a moratorium's date of expiration, the moratorium may then either be extended or a city ordinance enacted completely prohibiting or otherwise restricting the establishment and operation of marijuana dispensaries, and the sale of all marijuana products on such premises.

County supervisors can do the same with respect to marijuana dispensaries sought to be established within the unincorporated areas of a county. Approximately 80 California cities, including the cities of Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill, and 6 counties, including Contra Costa County, have enacted moratoria banning the existence of marijuana dispensaries. In a novel approach, the City of Arcata issued a moratorium on any new dispensaries in the downtown area, based on no agricultural activities being permitted to occur there.⁹⁴

B. IMPOSED BANS BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

While the Compassionate Use Act of 1996 permits seriously ill persons to legally obtain and use marijuana for medical purposes upon a physician's recommendation, it is silent on marijuana dispensaries and does not expressly authorize the sale of marijuana to patients or primary caregivers.

Neither Proposition 215 nor Senate Bill 420 specifically authorizes the dispensing of marijuana in any form from a storefront business. And, no state statute presently exists that expressly permits the licensing or operation of marijuana dispensaries.⁹⁵ Consequently, approximately 39 California cities, including the Cities of Concord and San Pablo, and 2 counties have prohibited marijuana dispensaries within their respective geographical boundaries, while approximately 24 cities, including the City of Martinez, and 7 counties have allowed such dispensaries to do business within their jurisdictions. Even the complete prohibition of marijuana dispensaries within a given locale cannot be found to run afoul of current California law with respect to permitted use of marijuana for medicinal purposes, so long as the growing or use of medical marijuana by a city or county resident in conformance with state law is not proscribed.⁹⁶

In November of 2004, the City of Brampton in Ontario, Canada passed The Grow House Abatement By-law, which authorized the city council to appoint inspectors and local police officers to inspect suspected grow houses and render safe hydro meters, unsafe wiring, booby traps, and any violation of the Fire Code or Building Code, and remove discovered controlled substances and ancillary equipment designed to grow and manufacture such substances, at the involved homeowner's cost.⁹⁷ And, after state legislators became appalled at the proliferation of for-profit residential grow operations, the State of Florida passed the Marijuana Grow House Eradication act (House Bill 173) in June of 2008. The governor signed this bill into law, making owning a house for the purpose of cultivating, packaging, and distributing marijuana a third-degree felony; growing 25 or more marijuana plants a second-degree felony; and growing "25 or more marijuana plants in a home with children present" a first-degree felony.⁹⁸ It has been estimated that approximately 17,500 marijuana grow operations were active in late 2007.⁹⁹ To avoid becoming a dumping ground for organized crime syndicates who decide to move their illegal grow operations to a more receptive legislative environment, California and other states might be wise to quickly follow suit with similar bills, for it may already be happening.¹⁰⁰

C. IMPOSED RESTRICTED ZONING AND OTHER REGULATION BY ELECTED LOCAL GOVERNMENTAL OFFICIALS

If so inclined, rather than completely prohibit marijuana dispensaries, through their zoning power city and county officials have the authority to restrict owner operators to locate and operate so-called "medical marijuana dispensaries" in prescribed geographical areas of a city or designated unincorporated areas of a county, and require them to meet prescribed licensing requirements before being allowed to do so. This is a risky course of action though for would-be dispensary operators, and perhaps lawmakers too, since federal authorities do not recognize any lawful right for the sale, purchase, or use of marijuana for medical use or otherwise anywhere in the United States, including California. Other cities and counties have included as a condition of licensure for dispensaries that the operator shall "violate no federal or state law," which puts any applicant in a "Catch-22" situation since to federal authorities any possession or sale of marijuana is automatically a violation of federal law.

Still other municipalities have recently enacted or revised comprehensive ordinances that address a variety of medical marijuana issues. For example, according to the City of Arcata Community

Development Department in Arcata, California, in response to constant citizen complaints from what had become an extremely serious community problem, the Arcata City Council revised its Land Use Standards for Medical Marijuana Cultivation and Dispensing. In December of 2008, City of Arcata Ordinance #1382 was enacted. It includes the following provisions:

“Categories:

1. Personal Use
2. Cooperatives or Collectives

Medical Marijuana for Personal Use: An individual qualified patient shall be allowed to cultivate medical marijuana within his/her private residence in conformance with the following standards:

1. Cultivation area shall not exceed 50 square feet and not exceed ten feet (10') in height.
 - a. Cultivation lighting shall not exceed 1200 watts;
 - b. Gas products (CO₂, butane, etc.) for medical marijuana cultivation or processing is prohibited.
 - c. Cultivation and sale is prohibited as a Home Occupation (sale or dispensing is prohibited).
 - d. Qualified patient shall reside in the residence where the medical marijuana cultivation occurs;
 - e. Qualified patient shall not participate in medical marijuana cultivation in any other residence.
 - f. Residence kitchen, bathrooms, and primary bedrooms shall not be used primarily for medical marijuana cultivation;
 - g. Cultivation area shall comply with the California Building Code § 1203.4 Natural Ventilation or § 402.3 Mechanical Ventilation.
 - h. The medical marijuana cultivation area shall not adversely affect the health or safety of the nearby residents.
2. City Zoning Administrator may approve up to 100 square foot:
 - a. Documentation showing why the 50 square foot cultivation area standard is not feasible.
 - b. Include written permission from the property owner.
 - c. City Building Official must inspect for California Building Code and Fire Code.
 - d. At a minimum, the medical marijuana cultivation area shall be constructed with a 1-hour firewall assembly of green board.
 - e. Cultivation of medical marijuana for personal use is limited to detached single family residential properties, or the medical marijuana cultivation area shall be limited to a garage or self-contained outside accessory building that is secured, locked, and fully enclosed.

Medical Marijuana Cooperatives or Collectives.

1. Allowed with a Conditional Use Permit.
2. In Commercial, Industrial, and Public Facility Zoning Districts.
3. Business form must be a cooperative or collective.
4. Existing cooperative or collective shall be in full compliance within one year.
5. Total number of medical marijuana cooperatives or collectives is limited to four and ultimately two.
6. Special consideration if located within
 - a. A 300 foot radius from any existing residential zoning district,
 - b. Within 500 feet of any other medical marijuana cooperative or collective.

- c. Within 500 feet from any existing public park, playground, day care, or school.
7. Source of medical marijuana.
- a. Permitted Cooperative or Collective. On-site medical marijuana cultivation shall not exceed twenty-five (25) percent of the total floor area, but in no case greater than 1,500 square feet and not exceed ten feet (10') in height.
 - b. Off-site Permitted Cultivation. Use Permit application and be updated annually.
 - c. Qualified Patients. Medical marijuana acquired from an individual qualified patient shall received no monetary remittance, and the qualified patient is a member of the medical marijuana cooperative or collective. Collective or cooperative may credit its members for medical marijuana provided to the collective or cooperative, which they may allocate to other members.
8. Operations Manual at a minimum include the following information:
- a. Staff screening process including appropriate background checks.
 - b. Operating hours.
 - c. Site, floor plan of the facility.
 - d. Security measures located on the premises, including but not limited to, lighting, alarms, and automatic law enforcement notification.
 - e. Screening, registration and validation process for qualified patients.
 - f. Qualified patient records acquisition and retention procedures.
 - g. Process for tracking medical marijuana quantities and inventory controls including on-site cultivation, processing, and/or medical marijuana products received from outside sources.
 - h. Measures taken to minimize or offset energy use from the cultivation or processing of medical marijuana.
 - i. Chemicals stored, used and any effluent discharged into the City's wastewater and/or storm water system.
9. Operating Standards.
- a. No dispensing medical marijuana more than twice a day.
 - b. Dispense to an individual qualified patient who has a valid, verified physician's recommendation. The medical marijuana cooperative or collective shall verify that the physician's recommendation is current and valid.
 - c. Display the client rules and/or regulations at each building entrance.
 - d. Smoking, ingesting or consuming medical marijuana on the premises or in the vicinity is prohibited.
 - e. Persons under the age of eighteen (18) are precluded from entering the premises.
 - f. No on-site display of marijuana plants.
 - g. No distribution of live plants, starts and clones on through Use Permit.
 - h. Permit the on-site display or sale of marijuana paraphernalia only through the Use Permit.
 - i. Maintain all necessary permits, and pay all appropriate taxes. Medical marijuana cooperatives or collectives shall also provide invoices to vendors to ensure vendor's tax liability responsibility;
 - j. Submit an "Annual Performance Review Report" which is intended to identify effectiveness of the approved Use Permit, Operations Manual, and Conditions of Approval, as well as the identification and implementation of additional procedures as deemed necessary.
 - k. Monitoring review fees shall accompany the "Annual Performance Review Report" for costs associated with the review and approval of the report.
10. Permit Revocation or Modification. A use permit may be revoked or modified for non-compliance with one or more of the items described above."

LIABILITY ISSUES

With respect to issuing business licenses to marijuana storefront facilities a very real issue has arisen: counties and cities are arguably aiding and abetting criminal violations of federal law. Such actions clearly put the counties permitting these establishments in very precarious legal positions. Aiding and abetting a crime occurs when someone commits a crime, the person aiding that crime knew the criminal offender intended to commit the crime, and the person aiding the crime intended to assist the criminal offender in the commission of the crime.

The legal definition of aiding and abetting could be applied to counties and cities allowing marijuana facilities to open. A county that has been informed about the *Gonzales v. Raich* decision knows that all marijuana activity is federally illegal. Furthermore, such counties know that individuals involved in the marijuana business are subject to federal prosecution. When an individual in California cultivates, possesses, transports, or uses marijuana, he or she is committing a federal crime.

A county issuing a business license to a marijuana facility knows that the people there are committing federal crimes. The county also knows that those involved in providing and obtaining marijuana are intentionally violating federal law.

This very problem is why some counties are re-thinking the presence of marijuana facilities in their communities. There is a valid fear of being prosecuted for aiding and abetting federal drug crimes. Presently, two counties have expressed concern that California's medical marijuana statutes have placed them in such a precarious legal position. Because of the serious criminal ramifications involved in issuing business permits and allowing storefront marijuana businesses to operate within their borders, San Diego and San Bernardino Counties filed consolidated lawsuits against the state seeking to prevent the State of California from enforcing its medical marijuana statutes which potentially subject them to criminal liability, and squarely asserting that California medical marijuana laws are preempted by federal law in this area. After California's medical marijuana laws were all upheld at the trial level, California's Fourth District Court of Appeal found that the State of California could mandate counties to adopt and enforce a voluntary medical marijuana identification card system, and the appellate court bypassed the preemption issue by finding that San Diego and San Bernardino Counties lacked standing to raise this challenge to California's medical marijuana laws. Following this state appellate court decision, independent petitions for review filed by the two counties were both denied by the California Supreme Court.

Largely because of the quandary that county and city peace officers in California face in the field when confronted with alleged medical marijuana with respect to enforcement of the total federal criminal prohibition of all marijuana, and state exemption from criminal penalties for medical marijuana users and caregivers, petitions for a writ of certiorari were then separately filed by the two counties seeking review of this decision by the United States Supreme Court in the consolidated cases of *County of San Diego, County of San Bernardino, and Gary Penrod, as Sheriff of the County of San Bernardino v. San Diego Norml, State of California, and Sandra Shewry, Director of the California Department of Health Services in her official capacity*, Ct.App. Case No. D-5-333.) The High Court has requested the State of California and other interested parties to file responsive briefs to the two counties' and Sheriff Penrod's writ petitions before it decides whether to grant or deny review of these consolidated cases. The petitioners would then be entitled to file a reply to any filed response. It is anticipated that the U.S. Supreme Court will formally grant or deny review of these consolidated cases in late April or early May of 2009.

In another case, *City of Garden Grove v. Superior Court* (2007) 157 Cal.App.4th 355, although the federal preemption issue was not squarely raised or addressed in its decision, California's Fourth District Court of Appeal found that public policy considerations allowed a city standing to challenge a state trial court's order directing the return by a city police department of seized medical marijuana to a person determined to be a patient. After the court-ordered return of this federally banned substance was upheld at the intermediate appellate level, and not accepted for review by the California Supreme Court, a petition for a writ of certiorari was filed by the City of Garden Grove to the U.S. Supreme Court to consider and reverse the state appellate court decision. But, that petition was also denied. However, the case of *People v. Kelly* (2008) 163 Cal.App.4th 124—in which a successful challenge was made to California's Medical Marijuana Program's maximum amounts of marijuana and marijuana plants permitted to be possessed by medical marijuana patients (Cal. H&S Code sec. 11362.77 *et seq.*), which limits were found at the court of appeal level to be without legal authority for the state to impose—has been accepted for review by the California Supreme Court on the issue of whether this law was an improper amendment to Proposition 215's Compassionate Use Act of 1996.

A SAMPLING OF EXPERIENCES WITH MARIJUANA DISPENSARIES

1. MARIJUANA DISPENSARIES-THE SAN DIEGO STORY

After the passage of Proposition 215 in 1996, law enforcement agency representatives in San Diego, California met many times to formulate a comprehensive strategy of how to deal with cases that may arise out of the new law. In the end it was decided to handle the matters on a case-by-case basis. In addition, questionnaires were developed for patient, caregiver, and physician interviews. At times patients without sales indicia but large grows were interviewed and their medical records reviewed in making issuing decisions. In other cases where sales indicia and amounts supported a finding of sales the cases were pursued. At most, two cases a month were brought for felony prosecution.

In 2003, San Diego County's newly elected District Attorney publicly supported Prop. 215 and wanted her newly created Narcotics Division to design procedures to ensure patients were not caught up in case prosecutions. As many already know, law enforcement officers rarely arrest or seek prosecution of a patient who merely possesses personal use amounts. Rather, it is those who have sales amounts in product or cultivation who are prosecuted. For the next two years the District Attorney's Office proceeded as it had before. But, on the cases where the patient had too many plants or product but not much else to show sales—the DDAs assigned to review the case would interview and listen to input to respect the patient's and the DA's position. Some cases were rejected and others issued but the case disposition was often generous and reflected a "sin no more" view.

All of this changed after the passage of SB 420. The activists and pro-marijuana folks started to push the envelope. Dispensaries began to open for business and physicians started to advertise their availability to issue recommendations for the purchase of medical marijuana. By spring of 2005 the first couple of dispensaries opened up—but they were discrete. This would soon change. By that summer, 7 to 10 dispensaries were open for business, and they were selling marijuana openly. In fact, the local police department was doing a small buy/walk project and one of its target dealers said he was out of pot but would go get some from the dispensary to sell to the undercover officer (UC); he did. It was the proliferation of dispensaries and ancillary crimes that prompted the San Diego Police Chief (the Chief was a Prop. 215 supporter who sparred with the Fresno DEA in his prior job over this issue) to authorize his officers to assist DEA.

The Investigation

San Diego DEA and its local task force (NTF) sought assistance from the DA's Office as well as the U.S. Attorney's Office. Though empathetic about being willing to assist, the DA's Office was not sure how prosecutions would fare under the provisions of SB 420. The U.S. Attorney had the easier road but was noncommittal. After several meetings it was decided that law enforcement would work on using undercover operatives (UCs) to buy, so law enforcement could see exactly what was happening in the dispensaries.

The investigation was initiated in December of 2005, after NTF received numerous citizen complaints regarding the crime and traffic associated with "medical marijuana dispensaries." The City of San Diego also saw an increase in crime related to the marijuana dispensaries. By then approximately 20 marijuana dispensaries had opened and were operating in San Diego County, and investigations on 15 of these dispensaries were initiated.

During the investigation, NTF learned that all of the business owners were involved in the transportation and distribution of large quantities of marijuana, marijuana derivatives, and marijuana food products. In addition, several owners were involved in the cultivation of high grade marijuana. The business owners were making significant profits from the sale of these products and not properly reporting this income.

Undercover Task Force Officers (TFO's) and SDPD Detectives were utilized to purchase marijuana and marijuana food products from these businesses. In December of 2005, thirteen state search warrants were executed at businesses and residences of several owners. Two additional follow-up search warrants and a consent search were executed the same day. Approximately 977 marijuana plants from seven indoor marijuana grows, 564.88 kilograms of marijuana and marijuana food products, one gun, and over \$58,000 U.S. currency were seized. There were six arrests made during the execution of these search warrants for various violations, including outstanding warrants, possession of marijuana for sale, possession of psilocybin mushrooms, obstructing a police officer, and weapons violations. However, the owners and clerks were not arrested or prosecuted at this time—just those who showed up with weapons or product to sell.

Given the fact most owners could claim mistake of law as to selling (though not a legitimate defense, it could be a jury nullification defense) the DA's Office decided not to file cases at that time. It was hoped that the dispensaries would feel San Diego was hostile ground and they would do business elsewhere. Unfortunately this was not the case. Over the next few months seven of the previously targeted dispensaries opened, as well as a slew of others. Clearly prosecutions would be necessary.

To gear up for the re-opened and new dispensaries prosecutors reviewed the evidence and sought a second round of UC buys wherein the UC would be buying for themselves and they would have a second UC present at the time acting as UCI's caregiver who also would buy. This was designed to show the dispensary was not the caregiver. There is no authority in the law for organizations to act as primary caregivers. Caregivers must be individuals who care for a marijuana patient. A primary caregiver is defined by Proposition 215, as codified in H&S Code section 11362.5(e), as, "For the purposes of this section, 'primary caregiver' means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person." The goal was to show that the stores were only selling marijuana, and not providing care for the hundreds who bought from them.

In addition to the caregiver-controlled buys, another aim was to put the whole matter in perspective for the media and the public by going over the data that was found in the raided dispensary records, as well as the crime statistics. An analysis of the December 2005 dispensary records showed a breakdown of the purported illness and youthful nature of the patients. The charts and other PR aspects played out after the second take down in July of 2006.

The final attack was to reveal the doctors (the gatekeepers for medical marijuana) for the fraud they were committing. UCs from the local PD went in and taped the encounters to show that the pot docs did not examine the patients and did not render care at all; rather they merely sold a medical MJ recommendation whose duration depended upon the amount of money paid.

In April of 2006, two state and two federal search warrants were executed at a residence and storage warehouse utilized to cultivate marijuana. Approximately 347 marijuana plants, over 21 kilograms of marijuana, and \$2,855 U.S. currency were seized.

Due to the pressure from the public, the United States Attorney's Office agreed to prosecute the owners of the businesses with large indoor marijuana grows and believed to be involved in money laundering activities. The District Attorney's Office agreed to prosecute the owners in the other investigations.

In June of 2006, a Federal Grand Jury indicted six owners for violations of Title 21 USC, sections 846 and 841(a)(1), Conspiracy to Distribute Marijuana; sections 846 and 841(a), Conspiracy to Manufacture Marijuana; and Title 18 USC, Section 2, Aiding and Abetting.

In July of 2006, 11 state and 11 federal search warrants were executed at businesses and residences associated with members of these businesses. The execution of these search warrants resulted in the arrest of 19 people, seizure of over \$190,000 in U.S. currency and other assets, four handguns, one rifle, 405 marijuana plants from seven grows, and over 329 kilograms of marijuana and marijuana food products.

Following the search warrants, two businesses reopened. An additional search warrant and consent search were executed at these respective locations. Approximately 20 kilograms of marijuana and 32 marijuana plants were seized.

As a result, all but two of the individuals arrested on state charges have pled guilty. Several have already been sentenced and a few are still awaiting sentencing. All of the individuals indicted federally have also pled guilty and are awaiting sentencing.

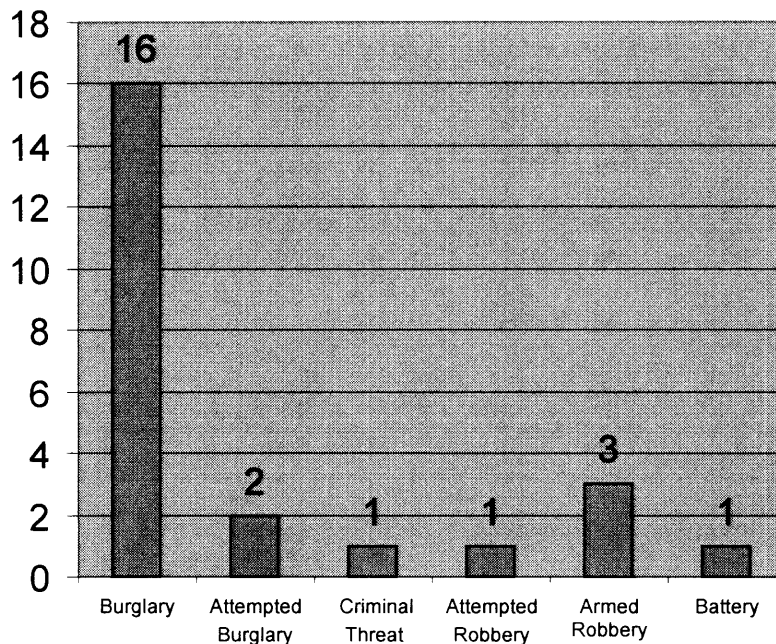
After the July 2006 search warrants a joint press conference was held with the U.S. Attorney and District Attorney, during which copies of a complaint to the medical board, photos of the food products which were marketed to children, and the charts shown below were provided to the media.

Directly after these several combined actions, there were no marijuana distribution businesses operating in San Diego County. Law enforcement agencies in the San Diego region have been able to successfully dismantle these businesses and prosecute the owners. As a result, medical marijuana advocates have staged a number of protests demanding DEA allow the distribution of marijuana. The closure of these businesses has reduced crime in the surrounding areas.

The execution of search warrants at these businesses sent a powerful message to other individuals operating marijuana distribution businesses that they are in violation of both federal law and California law.

Press Materials:

**Reported Crime at Marijuana Dispensaries
From January 1, 2005 through June 23, 2006**



Information showing the dispensaries attracted crime:

The marijuana dispensaries were targets of violent crimes because of the amount of marijuana, currency, and other contraband stored inside the businesses. From January 1, 2005 through June 23, 2006, 24 violent crimes were reported at marijuana dispensaries. An analysis of financial records seized from the marijuana dispensaries showed several dispensaries were grossing over \$300,000 per month from selling marijuana and marijuana food products. The majority of customers purchased marijuana with cash.

Crime statistics inadequately reflect the actual number of crimes committed at the marijuana dispensaries. These businesses were often victims of robberies and burglaries, but did not report the crimes to law enforcement on account of fear of being arrested for possession of marijuana in excess of Prop. 215 guidelines. NTF and the San Diego Police Department (SDPD) received numerous citizen complaints regarding every dispensary operating in San Diego County.

Because the complaints were received by various individuals, the exact number of complaints was not recorded. The following were typical complaints received:

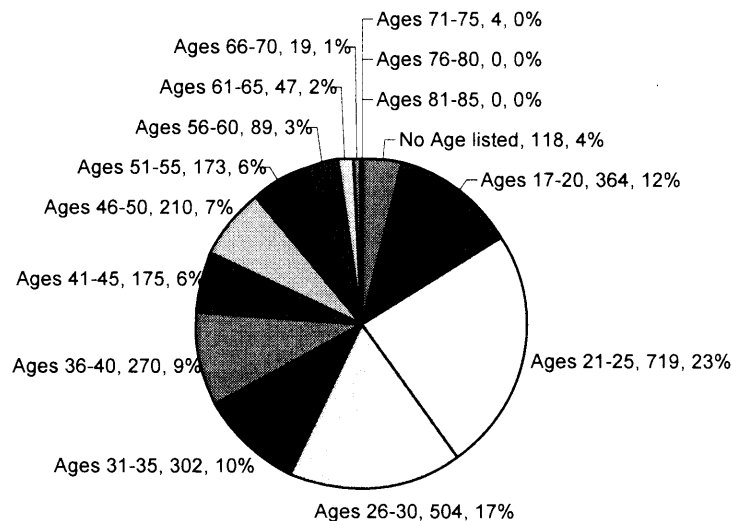
- high levels of traffic going to and from the dispensaries
- people loitering in the parking lot of the dispensaries
- people smoking marijuana in the parking lot of the dispensaries

- vandalism near dispensaries
- threats made by dispensary employees to employees of other businesses
- citizens worried they may become a victim of crime because of their proximity to dispensaries

In addition, the following observations (from citizen activists assisting in data gathering) were made about the marijuana dispensaries:

- Identification was not requested for individuals who looked under age 18
- Entrance to business was not refused because of lack of identification
- Individuals were observed loitering in the parking lots
- Child-oriented businesses and recreational areas were situated nearby
- Some businesses made no attempt to verify a submitted physician's recommendation

Dispensary Patients By Age



An analysis of patient records seized during search warrants at several dispensaries show that 52% of the customers purchasing marijuana were between the ages of 17 to 30. 63% of primary caregivers purchasing marijuana were between the ages of 18 through 30. Only 2.05% of customers submitted a physician's recommendation for AIDS, glaucoma, or cancer.

Why these businesses were deemed to be criminal--not compassionate:

The medical marijuana businesses were deemed to be criminal enterprises for the following reasons:

- Many of the business owners had histories of drug and violence-related arrests.
- The business owners were street-level marijuana dealers who took advantage of Prop. 215 in an attempt to legitimize marijuana sales for profit.
- Records, or lack of records, seized during the search warrants showed that all the owners were not properly reporting income generated from the sales of marijuana. Many owners were involved in money laundering and tax evasion.
- The businesses were selling to individuals without serious medical conditions.
- There are no guidelines on the amount of marijuana which can be sold to an individual. For

example, an individual with a physician's recommendation can go to as many marijuana distribution businesses and purchase as much marijuana as he/she wants.

- California law allows an individual to possess 6 mature or 12 immature plants per qualified person. However, the San Diego Municipal Code states a "caregiver" can only provide care to 4 people, including themselves; this translates to 24 mature or 48 immature plants total. Many of these dispensaries are operating large marijuana grows with far more plants than allowed under law. Several of the dispensaries had indoor marijuana grows inside the businesses, with mature and/or immature marijuana plants over the limits.
- State law allows a qualified patient or primary caregiver to possess no more than eight ounces of dried marijuana per qualified patient. However, the San Diego Municipal Code allows primary caregivers to possess no more than two pounds of processed marijuana. Under either law, almost every marijuana dispensary had over two pounds of processed marijuana during the execution of the search warrants.
- Some marijuana dispensaries force customers to sign forms designating the business as their primary caregiver, in an attempt to circumvent the law.

2. EXPERIENCES WITH MARIJUANA DISPENSARIES IN RIVERSIDE COUNTY

There were some marijuana dispensaries operating in the County of Riverside until the District Attorney's Office took a very aggressive stance in closing them. In Riverside, anyone that is not a "qualified patient" or "primary caregiver" under the Medical Marijuana Program Act who possesses, sells, or transports marijuana is being prosecuted.

Several dispensary closures illustrate the impact this position has had on marijuana dispensaries. For instance, the Palm Springs Caregivers dispensary (also known as Palm Springs Safe Access Collective) was searched after a warrant was issued. All materials inside were seized, and it was closed down and remains closed. The California Caregivers Association was located in downtown Riverside. Very shortly after it opened, it was also searched pursuant to a warrant and shut down. The CannaHelp dispensary was located in Palm Desert. It was searched and closed down early in 2007. The owner and two managers were then prosecuted for marijuana sales and possession of marijuana for the purpose of sale. However, a judge granted their motion to quash the search warrant and dismissed the charges. The District Attorney's Office then appealed to the Fourth District Court of Appeal. Presently, the Office is waiting for oral arguments to be scheduled.

Dispensaries in the county have also been closed by court order. The Healing Nations Collective was located in Corona. The owner lied about the nature of the business in his application for a license. The city pursued and obtained an injunction that required the business to close. The owner appealed to the Fourth District Court of Appeal, which ruled against him. (*City of Corona v. Ronald Naulls et al.*, Case No. E042772.)

3. MEDICAL MARIJUANA DISPENSARY ISSUES IN CONTRA COSTA COUNTY CITIES AND IN OTHER BAY AREA COUNTIES

Several cities in Contra Costa County, California have addressed this issue by either banning dispensaries, enacting moratoria against them, regulating them, or taking a position that they are simply not a permitted land use because they violate federal law. Richmond, El Cerrito, San Pablo, Hercules, and Concord have adopted permanent ordinances banning the establishment of marijuana dispensaries. Antioch, Brentwood, Oakley, Pinole, and Pleasant Hill have imposed moratoria against dispensaries. Clayton, San Ramon, and Walnut Creek have not taken any formal action regarding the establishment of marijuana dispensaries but have indicated that marijuana dispensaries

are not a permitted use in any of their zoning districts as a violation of federal law. Martinez has adopted a permanent ordinance regulating the establishment of marijuana dispensaries.

The Counties of Alameda, Santa Clara, and San Francisco have enacted permanent ordinances regulating the establishment of marijuana dispensaries. The Counties of Solano, Napa, and Marin have enacted neither regulations nor bans. A brief overview of the regulations enacted in neighboring counties follows.

A. Alameda County

Alameda County has a nineteen-page regulatory scheme which allows the operation of three permitted dispensaries in unincorporated portions of the county. Dispensaries can only be located in commercial or industrial zones, or their equivalent, and may not be located within 1,000 feet of other dispensaries, schools, parks, playgrounds, drug recovery facilities, or recreation centers. Permit issuance is controlled by the Sheriff, who is required to work with the Community Development Agency and the Health Care Services agency to establish operating conditions for each applicant prior to final selection. Adverse decisions can be appealed to the Sheriff and are ruled upon by the same panel responsible for setting operating conditions. That panel's decision may be appealed to the Board of Supervisors, whose decision is final (subject to writ review in the Superior Court per CCP sec. 1094.5). Persons violating provisions of the ordinance are guilty of a misdemeanor.

B. Santa Clara County

In November of 1998, Santa Clara County passed an ordinance permitting dispensaries to exist in unincorporated portions of the county with permits first sought and obtained from the Department of Public Health. In spite of this regulation, neither the County Counsel nor the District Attorney's Drug Unit Supervisor believes that Santa Clara County has had *any* marijuana dispensaries in operation at least through 2006.

The only permitted activities are the on-site cultivation of medical marijuana and the distribution of medical marijuana/medical marijuana food stuffs. No retail sales of any products are permitted at the dispensary. Smoking, ingestion or consumption is also prohibited on site. All doctor recommendations for medical marijuana must be verified by the County's Public Health Department.

C. San Francisco County

In December of 2001, the Board of Supervisors passed Resolution No. 012006, declaring San Francisco to be a "Sanctuary for Medical Cannabis." City voters passed Proposition S in 2002, directing the city to explore the possibility of establishing a medical marijuana cultivation and distribution program run by the city itself.

San Francisco dispensaries must apply for and receive a permit from the Department of Public Health. They may only operate as a collective or cooperative, as defined by California Health and Safety Code section 11362.7 (see discussion in section 4, under "California Law" above), and may only sell or distribute marijuana to members. Cultivation, smoking, and making and selling food products may be allowed. Permit applications are referred to the Departments of Planning, Building Inspection, and Police. Criminal background checks are required but exemptions could still allow the operation of dispensaries by individuals with prior convictions for violent felonies or who have had prior permits suspended or revoked. Adverse decisions can be appealed to the Director of

Public Health and the Board of Appeals. It is unclear how many dispensaries are operating in the city at this time.

D. Crime Rates in the Vicinity of MariCare

Sheriff's data have been compiled for "Calls for Service" within a half-mile radius of 127 Aspen Drive, Pacheco. However, in research conducted by the El Cerrito Police Department and relied upon by Riverside County in recently enacting its ban on dispensaries, it was recognized that not all crimes related to medical marijuana take place in or around a dispensary. Some take place at the homes of the owners, employees, or patrons. Therefore, these statistics cannot paint a complete picture of the impact a marijuana dispensary has had on crime rates.

The statistics show that the overall number of calls decreased (3,746 in 2005 versus 3,260 in 2006). However, there have been **increases** in the numbers of crimes which appear to be related to a business which is an attraction to a criminal element. Reports of commercial burglaries increased (14 in 2005, 24 in 2006), as did reports of residential burglaries (13 in 2005, 16 in 2006) and miscellaneous burglaries (5 in 2005, 21 in 2006).

Tender Holistic Care (THC marijuana dispensary formerly located on N. Buchanan Circle in Pacheco) was forcibly burglarized on June 11, 2006. \$4,800 in cash was stolen, along with marijuana, hash, marijuana food products, marijuana pills, marijuana paraphernalia, and marijuana plants. The total loss was estimated to be \$16,265.

MariCare was also burglarized within two weeks of opening in Pacheco. On April 4, 2006, a window was smashed after 11:00 p.m. while an employee was inside the business, working late to get things organized. The female employee called "911" and locked herself in an office while the intruder ransacked the downstairs dispensary and stole more than \$200 worth of marijuana. Demetrio Ramirez indicated that since they were just moving in, there wasn't much inventory.

Reports of vehicle thefts increased (4 in 2005, 6 in 2006). Disturbance reports increased in nearly all categories (Fights: 5 in 2005, 7 in 2006; Harassment: 4 in 2005, 5 in 2006; Juveniles: 4 in 2005, 21 in 2006; Loitering: 11 in 2005, 19 in 2006; Verbal: 7 in 2005, 17 in 2006). Littering reports increased from 1 in 2005 to 5 in 2006. Public nuisance reports increased from 23 in 2005 to 26 in 2006.

These statistics reflect the complaints and concerns raised by nearby residents. Residents have reported to the District Attorney's Office, as well as to Supervisor Piepho's office, that when calls are made to the Sheriff's Department, the offender has oftentimes left the area before law enforcement can arrive. This has led to less reporting, as it appears to local residents to be a futile act and residents have been advised that law enforcement is understaffed and cannot always timely respond to all calls for service. As a result, Pacheco developed a very active, visible Neighborhood Watch program. The program became much more active in 2006, according to Doug Stewart. Volunteers obtained radios and began frequently receiving calls directly from local businesses and residents who contacted them **instead** of law enforcement. It is therefore significant that there has still been an increase in many types of calls for law enforcement service, although the overall number of calls has decreased.

Other complaints from residents included noise, odors, smoking/consuming marijuana in the area, littering and trash from the dispensary, loitering near a school bus stop and in the nearby church parking lot, observations that the primary patrons of MariCare appear to be individuals under age 25,

and increased traffic. Residents observed that the busiest time for MariCare appeared to be from 4:00 p.m. to 6:00 p.m. On a typical Friday, 66 cars were observed entering MariCare's facility; 49 of these were observed to contain additional passengers. The slowest time appeared to be from 1:00 p.m. to 3:00 p.m. On a typical Saturday, 44 cars were counted during this time, and 29 of these were observed to have additional passengers. MariCare has claimed to serve 4,000 "patients."

E. Impact of Proposed Ordinance on MedDelivery Dispensary, El Sobrante

It is the position of Contra Costa County District Attorney Robert J. Kochly that a proposed ordinance should terminate operation of the dispensary in El Sobrante because the land use of that business would be inconsistent with both state and federal law. However, the Community Development Department apparently believes that MedDelivery can remain as a "legal, non-conforming use."

F. Banning Versus Regulating Marijuana Dispensaries in Unincorporated Contra Costa County

It is simply bad public policy to allow the proliferation of any type of business which is illegal and subject to being raided by federal and/or state authorities. In fact, eight locations associated with the New Remedies dispensary in San Francisco and Alameda Counties were raided in October of 2006, and eleven Southern California marijuana clinics were raided by federal agents on January 18, 2007. The Los Angeles head of the federal Drug Enforcement Administration told CBS News after the January raids that "Today's enforcement operations show that these establishments are nothing more than drug-trafficking organizations bringing criminal activities to our neighborhoods and drugs near our children and schools." A Lafayette, California resident who owned a business that produced marijuana-laced foods and drinks for marijuana clubs was sentenced in federal court to five years and 10 months behind bars as well as a \$250,000 fine. Several of his employees were also convicted in that case.

As discussed above, there is absolutely no exception to the federal prohibition against marijuana cultivation, possession, transportation, use, and distribution. Neither California's voters nor its Legislature authorized the existence or operation of marijuana dispensing businesses when given the opportunity to do so. These enterprises cannot fit themselves into the few, narrow exceptions that were created by the Compassionate Use Act and Medical Marijuana Program Act.

Further, the presence of marijuana dispensing businesses contributes substantially to the existence of a secondary market for illegal, street-level distribution of marijuana. This fact was even recognized by the United States Supreme Court: "The exemption for cultivation by patients and caregivers can only increase the supply of marijuana in the California market. The likelihood that all such production will promptly terminate when patients recover or will precisely match the patients' medical needs during their convalescence seems remote; whereas the danger that excesses will satisfy some of the admittedly enormous demand for recreational use seems obvious." (*Gonzales v. Raich, supra*, 125 S.Ct. at p. 2214.)

As outlined below, clear evidence has emerged of such a secondary market in Contra Costa County.

- In September of 2004, police responded to reports of two men pointing a gun at cars in the parking lot at Monte Vista High School during an evening football game/dance. Two 19-year-old Danville residents were located in the parking lot (which was full of vehicles and pedestrians) and in possession of a silver Airsoft pellet pistol designed to replicate a

real Walther semi-automatic handgun. Marijuana, hash, and hash oil with typical dispensary packaging and labeling were also located in the car, along with a gallon bottle of tequila (1/4 full), a bong with burned residue, and rolling papers. The young men admitted to having consumed an unknown amount of tequila at the park next to the school and that they both pointed the gun at passing cars "as a joke." They fired several BBs at a wooden fence in the park when there were people in the area. The owner of the vehicle admitted that the marijuana was his and that he was **not** a medicinal marijuana user. He was able to buy marijuana from his friend "Brandon," who used a Proposition 215 card to purchase from a cannabis club in Hayward.

- In February of 2006, Concord police officers responded to a report of a possible drug sale in progress. They arrested a high school senior for two outstanding warrants as he came to buy marijuana from the cannabis club located on Contra Costa Boulevard. The young man explained that he had a cannabis club card that allowed him to purchase marijuana, and admitted that he planned to re-sell some of the marijuana to friends. He also admitted to possession of nearly 7 grams of cocaine which was recovered. A 21-year-old man was also arrested on an outstanding warrant. In his car was a marijuana grinder, a baggie of marijuana, rolling papers, cigars, and a "blunt" (hollowed out cigar filled with marijuana for smoking) with one end burned. The 21-year-old admitted that he did **not** have a physician's recommendation for marijuana.
- Also in February of 2006, a 17-year-old Monte Vista High School senior was charged with felony furnishing of marijuana to a child, after giving a 4-year-old boy a marijuana-laced cookie. The furnishing occurred on campus, during a child development class.
- In March of 2006, police and fire responded to an explosion at a San Ramon townhouse and found three young men engaged in cultivating and manufacturing "honey oil" for local pot clubs. Marijuana was also being sold from the residence. Honey oil is a concentrated form of cannabis chemically extracted from ground up marijuana with extremely volatile **butane** and a special "honey oil" extractor tube. The butane extraction operation *exploded* with such force that it blew the garage door partially off its hinges. Sprinklers in the residence kept the fire from spreading to the other homes in the densely packed residential neighborhood. At least one of the men was employed by Ken Estes, owner of the Dragonfly Holistic Solutions pot clubs in Richmond, San Francisco, and Lake County. They were making the "honey oil" with marijuana and butane that they brought up from one of Estes' San Diego pot clubs after it was shut down by federal agents.
- Also in March of 2006, a 16-year-old El Cerrito High School student was arrested after selling pot cookies to fellow students on campus, many of whom became ill. At least four required hospitalization. The investigation revealed that the cookies were made with a butter obtained outside a marijuana dispensary (a secondary sale). Between March of 2004 and May of 2006, the El Cerrito Police Department conducted seven investigations at the high school and junior high school, resulting in the arrest of eight juveniles for selling or possessing with intent to sell marijuana on or around the school campuses.
- In June of 2006, Moraga police officers made a traffic stop for suspected driving under the influence of alcohol. The car was seen drifting over the double yellow line separating north and southbound traffic lanes and driving in the bike lane. The 20-year-old driver denied having consumed any alcohol, as he was the "designated driver." When asked about his bloodshot, watery, and droopy eyes, the college junior explained that he had

smoked marijuana earlier (confirmed by blood tests). The young man had difficulty performing field sobriety tests, slurred his speech, and was ultimately arrested for driving under the influence. He was in possession of a falsified California Driver's License, marijuana, hash, a marijuana pipe, a scale, and \$12,288. The marijuana was in packaging from the Compassionate Collective of Alameda County, a Hayward dispensary. He explained that he buys the marijuana at "Pot Clubs," sells some, and keeps the rest. He only sells to close friends. About \$3,000 to \$4,000 of the cash was from playing high-stakes poker, but the rest was earned selling marijuana while a freshman at Arizona State University. The 18-year-old passenger had half an ounce of marijuana in her purse and produced a doctor's recommendation to a marijuana club in Oakland, the authenticity of which could not be confirmed.

Another significant concern is the proliferation of marijuana usage at community schools. In February of 2007, the Healthy Kids Survey for Alameda and Contra Costa Counties found that youthful substance abuse is more common in the East Bay's more affluent areas. These areas had higher rates of high school juniors who admitted having been high from drugs. The regional manager of the study found that the affluent areas had higher alcohol and marijuana use rates. *USA Today* recently reported that the percentage of 12th Grade students who said they had used marijuana has increased since 2002 (from 33.6% to 36.2% in 2005), and that marijuana was the most-used illicit drug among that age group in 2006. KSDK News Channel 5 reported that high school students are finding easy access to medical marijuana cards and presenting them to school authorities as a legitimate excuse for getting high. School Resource Officers for Monte Vista and San Ramon Valley High Schools in Danville have reported finding marijuana in prescription bottles and other packaging from Alameda County dispensaries. Marijuana has also been linked to psychotic illnesses.¹⁰¹ A risk factor was found to be starting marijuana use in adolescence.

For all of the above reasons, it is advocated by District Attorney Kochly that a ban on land uses which violate state or federal law is the most appropriate solution for the County of Contra Costa.

4. SANTA BARBARA COUNTY

According to Santa Barbara County Deputy District Attorney Brian Cota, ten marijuana dispensaries are currently operating within Santa Barbara County. The mayor of the City of Santa Barbara, who is an outspoken medical marijuana supporter, has stated that the police must place marijuana **behind** every other police priority. This has made it difficult for the local District Attorney's Office. Not many marijuana cases come to it for filing. The District Attorney's Office would like more regulations placed on the dispensaries. However, the majority of Santa Barbara County political leaders and residents are very liberal and do not want anyone to be denied access to medical marijuana if they say they need it. Partly as a result, no dispensaries have been prosecuted to date.

5. SONOMA COUNTY

Stephan R. Passalocqua, District Attorney for the County of Sonoma, has recently reported the following information related to distribution of medical marijuana in Sonoma County. In 1997, the Sonoma County Law Enforcement Chiefs Association enacted the following medical marijuana guidelines: a qualified patient is permitted to possess three pounds of marijuana and grow 99 plants in a 100-square-foot canopy. A qualified caregiver could possess or grow the above-mentioned amounts for each qualified patient. These guidelines were enacted after Proposition 215 was overwhelmingly passed by the voters of California, and after two separate unsuccessful prosecutions in Sonoma County. Two Sonoma County juries returned "not guilty" verdicts for three defendants

who possessed substantially large quantities of marijuana (60 plants in one case and over 900 plants in the other) where they asserted a medical marijuana defense. These verdicts, and the attendant publicity, demonstrated that the community standards are vastly different in Sonoma County compared to other jurisdictions.

On November 6, 2006, and authorized by Senate Bill 420, the Sonoma County Board of Supervisors specifically enacted regulations that allow a qualified person holding a valid identification card to possess up to three pounds of dried cannabis a year and cultivate 30 plants per qualified patient. No individual from any law enforcement agency in Sonoma County appeared at the hearing, nor did any representative publicly oppose this resolution.

With respect to the *People v. Sashon Jenkins* case, the defendant provided verified medical recommendations for five qualified patients prior to trial. At the time of arrest, Jenkins said that he had a medical marijuana card and was a care provider for multiple people, but was unable to provide specific documentation. Mr. Jenkins had approximately 10 pounds of dried marijuana and was growing 14 plants, which number of plants is consistent with the 2006 Sonoma County Board of Supervisors' resolution.

At a preliminary hearing held In January of 2007, the defense called five witnesses who were proffered as Jenkins' "patients" and who came to court with medical recommendations. Jenkins also testified that he was their caregiver. After the preliminary hearing, the assigned prosecutor conducted a thorough review of the facts and the law, and concluded that a Sonoma County jury would not return a "guilty" verdict in this case. Hence, no felony information was filed. With respect to the return of property issue, the prosecuting deputy district attorney never agreed to release the marijuana despite dismissing the case.

Other trial dates are pending in cases where medical marijuana defenses are being alleged. District Attorney Passalacqua has noted that, given the overwhelming passage of proposition 215, coupled with at least one United States Supreme Court decision that has not struck it down to date, these factors present current challenges for law enforcement, but that he and other prosecutors will continue to vigorously prosecute drug dealers within the boundaries of the law.

6. ORANGE COUNTY

There are 15 marijuana dispensaries in Orange County, and several delivery services. Many of the delivery services operate out of the City of Long Beach in Los Angeles County. Orange County served a search warrant on one dispensary, and closed it down. A decision is being made whether or not to file criminal charges in that case. It is possible that the United States Attorney will file on that dispensary since it is a branch of a dispensary that the federal authorities raided in San Diego County.

The Orange County Board of Supervisors has ordered a study by the county's Health Care Department on how to comply with the Medical Marijuana Program Act. The District Attorney's Office's position is that any activity under the Medical Marijuana Program Act beyond the mere issuance of identification cards violates federal law. The District Attorney's Office has made it clear to County Counsel that if any medical marijuana provider does not meet a strict definition of "primary caregiver" that person will be prosecuted.

PENDING LEGAL QUESTIONS

Law enforcement agencies throughout the state, as well as their legislative bodies, have been struggling with how to reconcile the Compassionate Use Act ("CUA"), Cal. Health & Safety Code secs. 11362.5, et seq., with the federal Controlled Substances Act ("CSA"), 21 U.S.C. sec. 801, et seq., for some time. Pertinent questions follow.

QUESTION

- 1. Is it possible for a storefront marijuana dispensary to be legally operated under the Compassionate Use Act of 1996 (Health & Saf. Code sec. 11362.5) and the Medical Marijuana Program Act (Health & Saf. Code secs. 11362.7-11362.83)?**

ANSWER

- 1. Storefront marijuana dispensaries may be legally operated under the CUA and the Medical Marijuana Program Act ("MMPA"), Cal. Health & Safety Code secs. 11362.7-11362.83, as long as they are "cooperatives" under the MMPA.**

ANALYSIS

The question posed does not specify what services or products are available at a "storefront" marijuana dispensary. The question also does not specify the business structure of a "dispensary." A "dispensary" is often commonly used nowadays as a generic term for a facility that distributes medical marijuana.

The term "dispensary" is also used specifically to refer to marijuana facilities that are operated more like a retail establishment, that are open to the public and often "sell" medical marijuana to qualified patients or caregivers. By use of the term "store front dispensary," the question may be presuming that this type of facility is being operated. For purposes of this analysis, we will assume that a "dispensary" is a generic term that does not contemplate any particular business structure.¹ Based on that assumption, a "dispensary" might provide "assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person" and be within the permissible limits of the CUA and the MMPA. (Cal. Health & Safety Code sec. 11362.765 (b)(3).)

¹ As the term "dispensary" is commonly used and understood, marijuana dispensaries would *not* be permitted under the CUA or the MMPA, since they "sell" medical marijuana and are not operated as true "cooperatives."

The CUA permits a "patient" or a "patient's primary caregiver" to possess or cultivate marijuana for personal medical purposes with the recommendation of a physician. (Cal. Health & Safety Code sec. 11362.5 (d).) Similarly, the MMPA provides that "patients" or designated "primary caregivers" who have voluntarily obtained a valid medical marijuana identification card shall not be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in specified quantities. (Cal. Health & Safety Code sec. 11362.71 (d) & (e).) A "storefront dispensary" would not fit within either of these categories.

However, the MMPA also provides that "[q]ualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who *associate* within the State of California in order collectively or *cooperatively* to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under section 11357 [possession], 11358 [planting, harvesting or processing], 11359 [possession for sale], 11360 [unlawful transportation, importation, sale or gift], 11366 [opening or maintaining place for trafficking in controlled substances], 11366.5 [providing place for manufacture or distribution of controlled substance; Fortifying building to suppress law enforcement entry], or 11570 [Buildings or places deemed nuisances subject to abatement]." (Cal. Health & Safety Code sec. 11362.775.) (Emphasis added.)

Since medical marijuana cooperatives are permitted pursuant to the MMPA, a "storefront dispensary" that would qualify as a cooperative *would* be permissible under the MMPA. (Cal. Health & Safety Code sec. 11362.775. See also *People v. Urziceanu* (2005) 132 Cal. App. 4th 747 (finding criminal defendant was entitled to present defense relating to operation of medical marijuana cooperative).) In granting a re-trial, the appellate court in *Urziceanu* found that the defendant could present evidence which might entitle him to a defense under the MMPA as to the operation of a medical marijuana cooperative, including the fact that the "cooperative" verified physician recommendations and identities of individuals seeking medical marijuana and individuals obtaining medical marijuana paid membership fees, reimbursed defendant for his costs in cultivating the medical marijuana by way of donations, and volunteered at the "cooperative." (*Id.* at p. 785.)

Whether or not "sales" are permitted under *Urziceanu* and the MMPA is unclear. The *Urziceanu* Court did note that the incorporation of section 11359, relating to marijuana "sales," in section 11362.775, allowing the operation of cooperatives, "contemplates the formation and operation of medicinal marijuana cooperatives that would receive reimbursement for marijuana and the services provided in conjunction with the provision of that marijuana." Whether "reimbursement" may be in the form only of donations, as were the facts presented in *Urziceanu*, or whether "purchases" could be made for medical marijuana, it does seem clear that a medical marijuana "cooperative" may not make a "profit," but may be restricted to being reimbursed for actual costs in providing the marijuana to its members and, if there are any "profits," these may have to be reinvested in the "cooperative" or shared by its members in order for a dispensary to

be truly considered to be operating as a "cooperative."² If these requirements are satisfied as to a "storefront" dispensary, then it will be permissible under the MMPA. Otherwise, it will be a violation of both the CUA and the MMPA.

QUESTION

2. If the governing body of a city, county, or city and county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, can an individual board or council member be found to be acting illegally and be subject to federal criminal charges, including aiding and abetting, or state criminal charges?

ANSWER

2. If a city, county, or city and county authorizes and regulates marijuana dispensaries, individual members of the legislative bodies may be held criminally liable under state or federal law.³

ANALYSIS

A. *Federal Law*

Generally, legislators of federal, state, and local legislative bodies are absolutely immune from liability for legislative acts. (U.S. Const., art. I, sec. 6 (Speech and Debate Clause, applicable to members of Congress); Fed. Rules Evid., Rule 501 (evidentiary privilege against admission of legislative acts); *Tenney v. Brandhove* (1951) 341 U.S. 367 (legislative immunity applicable to state legislators); *Bogan v. Scott-Harris* (1998) 523 U.S. 44 (legislative immunity applicable to local legislators).) However, while federal legislators are absolutely immune from *both* criminal *and* civil liability for purely legislative acts, local legislators are *only* immune from *civil* liability under federal law. (*United States v. Gillock* (1980) 445 U.S. 360.)

Where the United States Supreme Court has held that federal regulation of marijuana by way of the CSA, including any "medical" use of marijuana, is within Congress' Commerce Clause power, federal law stands as a bar to local action in direct violation of the CSA. (*Gonzales v. Raich* (2005) 545 U.S. 1.) In fact, the CSA itself provides that federal regulations do not

² A "cooperative" is defined as follows: An enterprise or organization that is owned or managed jointly by those who use its facilities or services. THE AMERICAN HERITAGE DICTIONARY OF THE ENGLISH LANGUAGE, by Houghton Mifflin Company (4th Ed. 2000).

³ Indeed, the same conclusion would seem to result from the adoption by state legislators of the MMPA itself, in authorizing the issuance of medical marijuana identification cards. (Cal. Health & Safety Code secs. 11362.71, et seq.)

exclusively occupy the field of drug regulation "unless there is a positive conflict between that provision of this title [the CSA] and that state law so that the two cannot consistently stand together." (21 U.S.C. sec. 903.)

Based on the above provisions, then, legislative action by local legislators *could* subject the individual legislators to federal criminal liability. Most likely, the only violation of the CSA that could occur as a result of an ordinance approved by local legislators authorizing and regulating medical marijuana would be aiding and abetting a violation of the CSA.

The elements of the offense of aiding and abetting a criminal offense are: (1) specific intent to facilitate commission of a crime by another; (2) guilty knowledge on the part of the accused; (3) that an offense was being committed by someone; and (4) that the accused assisted or participated in the commission of an offense. (*United States v. Raper* (1982) 676 F.2d 841; *United States v. Staten* (1978) 581 F.2d 878.)

Criminal aiding and abetting liability, under 18 U.S.C. section 2, requires proof that the defendants in some way associated themselves with the illegal venture; that they participated in the venture as something that they wished to bring about; and that they sought by their actions to make the venture succeed. (*Central Bank, N.A. v. First Interstate Bank, N.A.* (1994) 511 U.S. 164.) Mere furnishing of company to a person engaged in a crime does not render a companion an aider or abettor. (*United States v. Garguilo* (2d Cir. 1962) 310 F.2d 249.) In order for a defendant to be an aider and abettor he must know that the activity condemned by law is actually occurring and must intend to help the perpetrator. (*United States v. McDaniel* (9th Cir. 1976) 545 F.2d 642.) To be guilty of aiding and abetting, the defendant must willfully seek, by some action of his own, to make a criminal venture succeed. (*United States v. Ehrenberg* (E.D. Pa. 1973) 354 F. Supp. 460 *cert. denied* (1974) 94 S. Ct. 1612.)

The question, as posed, may presume that the local legislative body has acted in a manner that affirmatively supports marijuana dispensaries. As phrased by Senator Kuehl, the question to be answered by the Attorney General's Office assumes that a local legislative body has adopted an ordinance that "authorizes" medical marijuana facilities. What if a local public entity adopts an ordinance that explicitly indicates that it does *not* authorize, legalize, or permit any dispensary that is in violation of federal law regarding controlled substances? If the local public entity grants a permit, regulates, or imposes locational requirements on marijuana dispensaries with the announced understanding that it does not thereby allow any *illegal* activity and that dispensaries are required to comply with all applicable laws, including federal laws, then the public entity should be entitled to expect that all laws will be obeyed.

It would seem that a public entity is not intentionally acting to encourage or aid acts in violation of the CSA merely because it has adopted an ordinance which regulates dispensaries; even the issuance of a "permit," if it is expressly *not* allowing violations of federal law, cannot necessarily support a charge or conviction of aiding and abetting violation of the CSA. A public entity should be entitled to presume that dispensaries will obey all applicable laws and that lawful business will be conducted at dispensaries. For instance, dispensaries could very well *not* engage in actual medical marijuana distribution, but instead engage in education and awareness activities as to the medical effects of marijuana; the sale of other, legal products that aid in the suffering of

ailing patients; or even activities directed at effecting a change in the federal laws relating to regulation of marijuana as a Schedule I substance under the CSA.

These are examples of legitimate business activities, and First Amendment protected activities at that, in which dispensaries could engage relating to medical marijuana, but *not* apparently in violation of the CSA. Public entities should be entitled to presume that legitimate activities can and will be engaged in by dispensaries that are permitted and/or regulated by local regulations. In fact, it seems counterintuitive that local public entities within the state should be expected to be the watchdogs of federal law; in the area of controlled substances, at least, local public entities do not have an affirmative obligation to discern whether businesses are violating federal law.

The California Attorney General's Office will note that the State Board of Equalization ("BOE") has already done precisely what has been suggested in the preceding paragraph. In a special notice issued by the BOE this year, it has indicated that sellers of medical marijuana must obtain a seller's permit. (See <http://www.boe.ca.gov/news/pdf/medseller2007.pdf> (Special Notice: Important Information for Sellers of Medical Marijuana).) As the Special Notice explicitly indicates to medical marijuana facilities, "[h]aving a seller's permit does not mean you have authority to make unlawful sales. The permit only provides a way to remit any sales and use taxes due. The permit states, 'NOTICE TO PERMITTEE: You are required to obey all federal and state laws that regulate or control your business. This permit does not allow you to do otherwise.'"

The above being said, however, there is no guarantee that criminal charges would not actually be brought by the federal government or that persons so charged could not be successfully prosecuted. It does seem that arguments contrary to the above conclusions could be persuasive in convicting local legislators. By permitting and/or regulating marijuana dispensaries by local ordinance, some legitimacy and credibility may be granted by governmental issuance of permits or authorizing and allowing dispensaries to exist or locate within a jurisdiction.⁴

All of this discussion, then, simply demonstrates that individual board or council members can, indeed, be found criminally liable under federal law for the adoption of an ordinance authorizing and regulating marijuana dispensaries that promote the use of marijuana as medicine. The actual likelihood of prosecution, and its potential success, may depend on the particular facts of the regulation that is adopted.

⁴ Of course, the question arises as to how far any such liability be taken. Where can the line be drawn between any permit or regulation adopted specifically with respect to marijuana dispensaries and other permits or approvals routinely, and often *ministerially*, granted by local public entities, such as building permits or business licenses, which are discussed *infra*? If local public entities are held responsible for adopting an ordinance authorizing and/or regulating marijuana dispensaries, cannot local public entities also be subject to liability for providing general public services for the illegal distribution of "medical" marijuana? Could a local public entity that knew a dispensary was distributing "medical" marijuana in compliance with state law be criminally liable if it provided electricity, water, and trash services to that dispensary? How can such actions really be distinguished from the adoption of an ordinance that authorizes and/or regulates marijuana dispensaries?

B. *State Law*

Similarly, under California law, aside from the person who directly commits a criminal offense, no other person is guilty as a principal unless he aids and abets. (*People v. Dole* (1898) 122 Cal. 486; *People v. Stein* (1942) 55 Cal. App. 2d 417.) A person who innocently aids in the commission of the crime cannot be found guilty. (*People v. Fredoni* (1910) 12 Cal. App. 685.)

To authorize a conviction as an aider and abettor of crime, it must be shown not only that the person so charged aided and assisted in the commission of the offense, but also that he abetted the act—that is, that he criminally or with guilty knowledge and intent aided the actual perpetrator in the commission of the act. (*People v. Terman* (1935) 4 Cal. App. 2d 345.) To "abet" another in commission of a crime implies a consciousness of guilt in instigating, encouraging, promoting, or aiding the commission of the offense. (*People v. Best* (1941) 43 Cal. App. 2d 100.) "Abet" implies knowledge of the wrongful purpose of the perpetrator of the crime. (*People v. Stein, supra.*)

To be guilty of an offense committed by another person, the accused must not only aid such perpetrator by assisting or supplementing his efforts, but must, with knowledge of the wrongful purpose of the perpetrator, abet by inciting or encouraging him. (*People v. Le Grant* (1946) 76 Cal. App. 2d 148, 172; *People v. Carlson* (1960) 177 Cal. App. 2d 201.)

The conclusion under state law aiding and abetting would be similar to the analysis above under federal law. Similar to federal law immunities available to local legislators, discussed above, state law immunities provide some protection for local legislators. Local legislators are certainly immune from civil liability relating to legislative acts; it is unclear, however, whether they would also be immune from criminal liability. (*Steiner v. Superior Court*, 50 Cal.App.4th 1771 (assuming, but finding no California authority relating to a "criminal" exception to absolute immunity for legislators under state law).⁵ Given the apparent state of the law, local legislators could only be certain that they would be immune from civil liability and could not be certain that

⁵ Although the *Steiner* Court notes that "well-established federal law supports the exception," when federal case authority is applied in a state law context, there may be a different outcome. Federal authorities note that one purpose supporting criminal immunity as to federal legislators from federal prosecution is the separation of powers doctrine, which does not apply in the context of *federal* criminal prosecution of *local* legislators. However, if a state or county prosecutor brought criminal charges against a local legislator, the separation of powers doctrine may bar such prosecution. (Cal. Const., art. III, sec. 3.) As federal authorities note, bribery, or other criminal charges that do not depend upon evidence of, and cannot be said to further, any legislative acts, can still be prosecuted against legislators. (See *Bruce v. Riddle* (4th Cir. 1980) 631 F.2d 272, 279 ["Illegal acts such as bribery are obviously not in aid of legislative activity and legislators can claim no immunity for illegal acts."]; *United States v. Brewster*, 408 U.S. 501 [indictment for bribery not dependent upon how legislator debated, voted, or did anything in chamber or committee; prosecution need only show acceptance of money for promise to vote, not carrying through of vote by legislator]; *United States v. Swindall* (11th Cir. 1992) 971 F.2d

they would be at all immune from criminal liability under state law. However, there would not be any criminal violation if an ordinance adopted by a local public entity were in compliance with the CUA and the MMPA. An ordinance authorizing and regulating medical marijuana would not, by virtue solely of its subject matter, be a violation of state law; only if the ordinance itself permitted some activity inconsistent with state law relating to medical marijuana would there be a violation of state law that could subject local legislators to criminal liability under state law.

QUESTION

3. If the governing body of a city, city and county, or county approves an ordinance authorizing and regulating marijuana dispensaries to implement the Compassionate Use Act of 1996 and the Medical Marijuana Program Act, and subsequently a particular dispensary is found to be violating state law regarding sales and trafficking of marijuana, could an elected official on the governing body be guilty of state criminal charges?

ANSWER

3. After adoption of an ordinance authorizing or regulating marijuana dispensaries, elected officials could not be found criminally liable under state law for the subsequent violation of state law by a particular dispensary.

ANALYSIS

Based on the state law provisions referenced above relating to aiding and abetting, it does not seem that a local public entity would be liable for any actions of a marijuana dispensary in violation of state law. Since an ordinance authorizing and/or regulating marijuana dispensaries would necessarily only be authorizing and/or regulating to the extent already *permitted* by state law, local elected officials could not be found to be aiding and abetting a *violation* of state law. In fact, the MMPA clearly contemplates local regulation of dispensaries. (Cal. Health & Safety Code sec. 11362.83 ("Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.")) Moreover, as discussed above, there may be legislative immunity applicable to the legislative acts of individual elected officials in adopting an ordinance, especially where it is consistent with state law regarding marijuana dispensaries that dispense crude marijuana as medicine.

1531, 1549 [evidence of legislative acts was essential element of proof and thus immunity applies].) Therefore, a criminal prosecution that relates *solely* to legislative acts cannot be maintained under the separation of powers rationale for legislative immunity.

QUESTION

4. Does approval of such an ordinance open the jurisdictions themselves to civil or criminal liability?

ANSWER

4. Approving an ordinance authorizing or regulating marijuana dispensaries may subject the jurisdictions to civil or criminal liability.

ANALYSIS

Under federal law, criminal liability is created solely by statute. (*Dowling v. United States* (1985) 473 U.S. 207, 213.) Although becoming more rare, municipalities have been, and still may be, criminally prosecuted for violations of federal law, where the federal law provides not just a penalty for imprisonment, but a penalty for monetary sanctions. (See Green, Stuart P., *The Criminal Prosecution of Local Governments*, 72 N.C. L. Rev. 1197 (1994) (discussion of history of municipal criminal prosecution).)

The CSA prohibits persons from engaging in certain acts, including the distribution and possession of Schedule I substances, of which marijuana is one. (21 U.S.C. sec. 841.) A person, for purposes of the CSA, includes "any individual, corporation, government or governmental subdivision or agency, business trust, partnership, association, or other legal entity." (21 C.F.R. sec. 1300.01 (34). See also 21 C.F.R. sec. 1301.02 ("Any term used in this part shall have the definition set forth in section 102 of the Act (21 U.S.C. 802) or part 1300 of this chapter.")) By its very terms, then, the CSA may be violated by a local public entity. If the actions of a local public entity otherwise satisfy the requirements of aiding and abetting a violation of the CSA, as discussed above, then local public entities may, indeed, be subject to criminal prosecution for a violation of federal law.

Under either federal or state law, local public entities would not be subject to civil liability for the mere adoption of an ordinance, a legislative act. As discussed above, local legislators are absolutely immune from civil liability for legislative acts under both federal and state law. In addition, there is specific immunity under state law relating to any issuance or denial of permits.

QUESTION

5. Does the issuance of a business license to a marijuana dispensary involve any additional civil or criminal liability for a city or county and its elected governing body?

ANSWER

5. Local public entities will likely *not* be liable for the issuance of business licenses to marijuana dispensaries that plan to dispense crude marijuana as medicine.

ANALYSIS

Business licenses are imposed by cities within the State of California oftentimes solely for revenue purposes, but are permitted by state law to be imposed for revenue, regulatory, or for both revenue and regulatory purposes. (Cal. Gov. Code sec. 37101.) Assuming a business license ordinance is for revenue purposes only, it seems that a local public entity would not have any liability for the mere collection of a tax, whether on legal or illegal activities. However, any liability that would attach would be analyzed the same as discussed above. In the end, a local public entity could hardly be said to have aided and abetted the distribution or possession of marijuana in violation of the CSA by its mere collection of a generally applicable tax on all business conducted within the entity's jurisdiction.

OVERALL FINDINGS

All of the above further exemplifies the catch-22 in which local public entities are caught, in trying to reconcile the CUA and MMPA, on the one hand, and the CSA on the other. In light of the existence of the CUA and the MMPA, and the resulting fact that medical marijuana *is* being used by individuals in California, local public entities have a need and desire to regulate the location and operation of medical marijuana facilities within their jurisdiction.^{6 102}

However, because of the divergent views of the CSA and California law regarding whether there is any accepted "medical" use of marijuana, state and local legislators, as well as local public entities themselves, could be subject to criminal liability for the adoption of statutes or ordinances furthering the possession, cultivation, distribution, transportation (and other act prohibited under the CSA) as to marijuana. Whether federal prosecutors would pursue federal criminal charges against state and/or local legislators or local public entities remains to be seen. But, based on past practices of locally based U.S. Attorneys who have required seizures of large amounts of marijuana before federal filings have been initiated, this can probably be considered unlikely.

⁶ Several compilations of research regarding the impacts of marijuana dispensaries have been prepared by the California Police Chiefs Association and highlight some of the practical issues facing local public entities in regulating these facilities. Links provided are as follows: "Riverside County Office of the District Attorney," [White Paper, Medical Marijuana: History and Current Complications, September 2006]; "Recent Information Regarding Marijuana and Dispensaries [El Cerrito Police Department Memorandum, dated January 12, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Marijuana Memorandum" [El Cerrito Police Department Memorandum, dated April 18, 2007, from Commander M. Regan, to Scott C. Kirkland, Chief of Police]; "Law Enforcement Concerns to Medical Marijuana Dispensaries" [Impacts of Medical Marijuana Dispensaries on communities between 75,000 and 100,000 population: Survey and council agenda report, City of Livermore].

CONCLUSIONS

In light of the United States Supreme Court's decision and reasoning in *Gonzales v. Raich*, the United States Supremacy Clause renders California's Compassionate Use Act of 1996 and Medical Marijuana Program Act of 2004 suspect. No state has the power to grant its citizens the right to violate federal law. People have been, and continue to be, federally prosecuted for marijuana crimes. The authors of this White Paper conclude that medical marijuana is not legal under federal law, despite the current California scheme, and wait for the United States Supreme Court to ultimately rule on this issue.

Furthermore, storefront marijuana businesses are prey for criminals and create easily identifiable victims. The people growing marijuana are employing illegal means to protect their valuable cash crops. Many distributing marijuana are hardened criminals.¹⁰³ Several are members of stepped criminal street gangs and recognized organized crime syndicates, while others distributing marijuana to the businesses are perfect targets for thieves and robbers. They are being assaulted, robbed, and murdered. Those buying and using medical marijuana are also being victimized. Additionally, illegal so-called "medical marijuana dispensaries" have the potential for creating liability issues for counties and cities. All marijuana dispensaries should generally be considered illegal and should not be permitted to exist and engage in business within a county's or city's borders. Their presence poses a clear violation of federal and state law; they invite more crime; and they compromise the health and welfare of law-abiding citizens.

Town of Hayden

Town Council Agenda Item

MEETING DATE: August 19, 2010

AGENDA ITEM TITLE: Tennis Court Resurfacing Bid Award

AGENDA SECTION: Old Business

PRESENTED BY: Kathy Hockett

CAN THIS ITEM BE RESCHEDULED: Not Preferred

BACKGROUND REVIEW: Kathy Hockett will be present to answer questions on the tennis court resurfacing bids. She is recommending that we award the bid to Coatings, Inc. in the amount of \$53,500.

RECOMMENDATION: Move to award the contract for the tennis court resurfacing in the amount of \$53,500 to Coatings, Inc.

STAFF RECOMMENDATION/COMMENTS: *This is the recommendation from Parks and Recreation Coordinator, Kathy Hockett.*

Town of Hayden

Town Council Agenda Item

MEETING DATE: August 19, 2010

AGENDA ITEM TITLE: Tennis Court Fencing Bid Award

AGENDA SECTION: New Business

PRESENTED BY: Kathy Hockett

CAN THIS ITEM BE RESCHEDULED: Not Preferred

BACKGROUND REVIEW: Kathy Hockett will be present to answer questions on the tennis court fencing bids. Copies of the bids are attached for your reference.

RECOMMENDATION: **Move to award the contract for the tennis court fencing in the amount of \$ _____ to _____.**

STAFF RECOMMENDATION/COMMENTS: *This will come from Parks and Recreation Coordinator, Kathy Hockett, at the meeting. The Parks and Recreation Board will be discussing this matter on Wednesday, August 18th, and Kathy will bring forth their recommendation.*

TOWN & COUNTRY FENCE CO, INC.

POB 294
PIERCE, CO 80650
970-834-9022 OFFICE
970-834-2380 FAX

tmhampton@qwestoffice.net

TO: TOWN OF HAYDEN

DATE: August 10, 2010

PROJECT: TENNIS COURT FENCE REPLACEMENT
BID DATE: AUGUST 12 2010

PLEASE ACCEPT OUR BID FOR FENCE ON THIS PROJECT

TOWN & COUNTRY FENCE CO. AGREES TO PROVIDE MATERIAL, LABOR AND EQUIPMENT TO COMPLETE THE FOLLOWING:

INSTALLATION OF APPROXIMATELY 460LF OF NEW 10' TALL CHAINLINK FENCE AROUND EXISTING TENNIS COURT. PRICE INCLUDES REMOVAL AND STOCKPILE OF EXISTING FENCE IN TOWNS YARD, AND CONSTRUCTION OF NEW FENCE ACCORDING TO SPECIFICATIONS PROVIDED. ALL POSTS WILL BE SET IN CONCRETE PER SPECS. ALL MATERIAL WILL BE GALVANIZED EXCEPT FOR THE CHAINLINK FABRIC WHICH WILL BE GREEN VINYL COATED. (11 GA CORE WITH AN 8 GA FINISH). ALL PIPE WILL BE SCH 40. PRICE INCLUDES ALL MOBILIZATION FEES AND APPLICABLE TAXES.

PRICE FOR ABOVE WORK:

\$15,879.00

DUE TO THE SPECIFICATIONS PLEASE ALLOW 3-4 WEEKS FOR THE GREEN VINYL FABRIC TO ARRIVE. TOWN AND COUNTRY FENCE DOES NOT GUARANTEE DELIVERY OF MATERIAL UNLESS ORDERED WITHIN THIS TIME FRAME.

ADDENDA RECEIVED:

PRICES DO NOT INCLUDE SALES TAX

IF BOND IS REQUIRED ADD 3%
IF YOU HAVE ANY QUESTIONS PLEASE CALL

RANDY PECK
TRAVIS HAMPTON
970-567-0007 RANDY CELL
970-567-2007 TRAVIS CELL

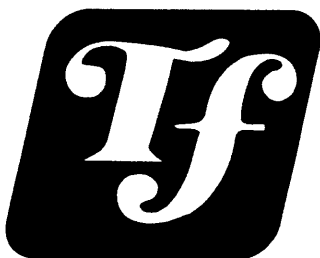
TAYLOR FENCE COMPANY OF GRAND JUNCTION

832 21 1/2 ROAD P.O. BOX 3125

GRAND JUNCTION, CO 81502

970-241-1473

FAX 970-241-1475



SYMBOL OF QUALITY AND WORKMANSHIP

SUBMITTED TO

NAME: Hayden Parks & Recreation Attn: Kathy Hockett DATE: 8/10/2010

ADDRESS _____

CITY: _____ PHONE: 970-734-4168

WE PROPOSE TO FURNISH MATERIALS AND/OR PERFORM WORK DESCRIBED AND PRICED AS FOLLOWS ON TERMS AND CONDITIONS APPEARING ON THIS FORM.

FENCE HEIGHT: 10' WIRE GAUGE: 8 ga Finish TERMINAL POST SIZE: 3" Pipe LINE POST SIZE: 2 3/8 Pipe

TOP RAIL SIZE: 1 5/8 Pipe GATES: See below TYPE: Tennis Court Fencing

PROJECT: Tennis Court Fencing Project

The total includes all material, cement and labor per plans and specifications for the above project. The job breakout is as follows:

460'	10' x 1 3/4" x 8 ga Extruded bonded vinyl chain link, color green
4	3" Pipe ends / gate posts with bracing
2	3" Pipe corners with bracing
2	4' x 7' Walk gates
2	4' x 3' Transom panels.

Removal of all existing fence, stays on site for Hayden Parks & Rec use

TOTAL FURNISHED AND INSTALLED \$ 15,987.00

NOTES:

1. Chain link fabric only to be vinyl coated, balance of material to be galvanized.
2. All chain link fence to be installed prior to final court surfacing.
3. The above price reflects having open access.
4. Certificate of insurance available upon request.

THIS QUOTATION IS FOR MATERIAL ONLY () MATERIAL AND LABOR (X) LABOR ONLY ()

THIS QUOTATION IS SUBJECT TO BUYERS ACCEPTANCE WITHIN 30 DAYS.

YOUR ACCEPTANCE WILL CONSTITUTE AN ORDER, WHICH, WITH OUR OFFICE APPROVAL, WILL BECOME AN AGREEMENT BETWEEN US.

PLEASE SIGN ORIGINAL

METHOD OF PAYMENT

RESPECTFULLY SUBMITTED,

DATE ACCEPTED

TAYLOR FENCE CO OF GRAND JUNCTION:

BUYER:

BY


Todd M Jurgens

BY _____



Rob Brouillette
Unit #4, Riverfront Park
1900 Bridge Lane
Steamboat Springs, CO 80487
(970)-819-6752 fax 816-228-1659
www.guierfence.com
rbrouillette@guierfence.com

PROJECT QUOTATION

Company: Town of Hayden
Project Name: Hayden Town Park Tennis Court Fencing Project
Project Address: Hayden Town Park
Attn: Kathy Hockett
Phone #: 970-276-4168
Fax #: 970-276-3644

Date: 08-10-2010
E-mail: khockett@hayden-co.gov
Cell #: 970-734-4168

Thank you for the opportunity to bid on your project.

Guier Fence Company, Inc. proposes to furnish Prevailing Wage and materials for the above referenced project according to the specifications below:

Project Details: 2

Tennis Courts

Install 460' ln. ft. of 10' tall green galvanized fence with two gates 4' by 7'. Posts will be set in concrete as specified in scope of work per Town of Hayden. **Materials, labor, and installation complete at:**

\$ 14,952.00

Removal of Existing Tennis Courts

Take out and remove all existing chain link fabric and posts. In addition to this remove and excavate concrete with post at 460' ln. ft. **Labor, Equipment, and Removal complete at:**

\$ 1,035.00

Total Price \$15,987.00

Guier Fence Company, Inc. has been in business since 1979 and uses only professional installation crews and prime materials. Guier Fence Company Inc. is bonded and fully insured, with a certificate of insurance available upon request.

Acceptance Signature X _____

Respectfully submitted,

Tom Rogalski

Guier Fence Company

Residential Sales

Cell #: 970-819-5554

www.guierfence.com

E-mail: trogalski@guierfence.com

This bid is not binding on Guier Fence Co., Inc. until a signed original copy of this bid is submitted to Guier Fence Co., Inc. The prices and terms herein are guaranteed for a period of 30 days from the date of acceptance of the bid. After 30 days, prices are subject to increase without notice due to fluctuations in market pricing. Pricing will be increased at the sole discretion of Guier Fence Co., Inc. Materials may be ordered and paid in full to avoid a price increase. Guier Fence Co., Inc. must be paid upon delivery and placed at a secure storage area of your choice to await installation. Guier Fence Co., Inc. is not responsible for material damage or loss, not cause by Guier Fence Co., Inc., purchased in advance of the installation of your project. If you have any questions or concerns, please do not hesitate to contact the undersigned representative of Guier Fence Co., Inc. Again, we appreciate the opportunity to bid on your project, and look forward to doing business with you in the future.

Flattops Fencing & Supply

Estimate

1424 Enterprise Ct.
Rifle, CO. 81650

Phone # 970-625-5723
Fax # 970-625-8003

DATE	ESTIMATE #
8/6/2010	10345

Web Site

www.flattopsfence.com

BILLING ADDRESS
Town of Haden Parks & Recreation Tennis Courts

Ship To

P.O. #	FAX NUMBER	UNCC TICKET NUMBER	PHONE NUMBER
	970-276-3644		970-734-4168

ITEM	DESCRIPTION	QNT	PRICE	TOTAL
Material /Sales	920' of 1 3/4"x8ga.x10' Grnvinyl chain link , including: 2 7/8" 40wt. terminals / 2 3/8" 40wt. lines 1 5/8" 40wt. top rail / Tension wire 2 - 4' OPG x 7' Industrial single swing gates, complete As per Design Detail Spec.	1	17,079.99	17,079.99T
Labor / Installation	Installation of above described fencing, complete Equipment Accessible As per Design Detail Spec. Rifle, Colorado & Garfield County Sales Tax	1	8,000.00	8,000.00
			1,263.92	1,263.92

Thank you for the opportunity to bid on this project. Please call if you have any questions.	TOTAL	\$26,343.91
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I understand that a signed copy of this estimate along with a signed copy of the contract, and a deposit of 1/2 down is required before this project shall be scheduled.

Signature: _____

Estimate is valid for 30 days. We gladly accept Visa and Mastercard. Thank you!!

Town of Hayden

Town Council Agenda Item

MEETING DATE: August 19, 2010

AGENDA ITEM TITLE: Town Manager Application Review Committee Appointments

AGENDA SECTION: New Business

PRESENTED BY: Susan Irvine

CAN THIS ITEM BE RESCHEDULED: No

BACKGROUND REVIEW: At the August 5th meeting, the Town Council requested that a committee be formed to review applications for Town Manager. The committee will narrow the applications down to the top ten or so and then forward them to the Town Council for further consideration. We received seven letters of interest and copies are attached for your review.

RECOMMENDATION: **Move to appoint Donna Hellyer, Ed Corriveau, Joyce Cless, Pamela Gann, Jim Lewis, Bill Irvine and Brian Hoza to the Town Manager Application Review Committee.**

STAFF RECOMMENDATION/COMMENTS: *The original idea was to appoint 5-7 people to serve on this committee. It is the recommendation of the Mayor and staff to appoint all 7 interested parties to the committee. They provide a diverse sampling of community members and should have valuable input.*

8/6/10

To whom it may concern,

This is a note to the Town Council that I am very interested in being a part of the committee to review the applications for Town Manager.

Sincerely,
Lena Hoelger
276-1658

302 Crandall
Hayden

Hayden Town Council
c/o: Hayden Town Hall
178 West Jefferson Avenue
Hayden, CO. 81639

August 9th, 2010

Mayor Johnson and Town Council Member,

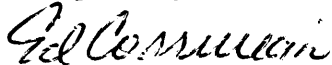
I am writing this letter to express my interest in serving on the search committee you will be forming to assist with the hiring of a new Town Manager.

I have worked for the Town of Hayden for nearly ten years and have resided here, with my family, for nine. During this time I have come to understand the important role the Town Manager plays in our community. I have had the opportunity, through my employment and involvement within the community, to work closely with two very distinctly different Town Managers and their associated management styles. As a result of this experience, I believe I will offer a unique perspective and insight to the committee.

I look forward to your decision and the privilege to play a key role in shaping the future of our local government and community. Should you have any further questions, please feel free to contact me using the information listed below.

Thank You in advance for your consideration.

Respectfully Submitted,



Ed Corriveau
265 South 1st Street
P.O. Box 1603
Hayden, CO. 81639
(970) 276-1361 – home
(970) 734-4594 – cell

Aug. 10, 2010

I would like to express my interest in the selection of a new Town Manager. I have done this in the past, 10-12 years ago and would like to be involved again.

Jayce Cless
276-3879

8/10/2010

Hayden Town Board,

I am very interested in serving on the committee to help choose Hayden's next Town Manager.

I am running for a council member seat in the up coming election.

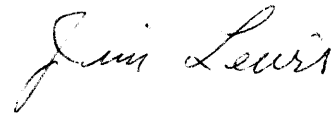
A handwritten signature in cursive script, reading "Pamela J. Sann". The signature is written in black ink and is centered below the text of the letter.

Aug. 11, 2010

Hayden Town Council,

This is to inform you of my desire to serve on the committee to screen applicants for the Hayden Town Manager position. Having attended numerous council meetings I feel that I have a good understanding of the skills required for the position.

Sincerely,

A handwritten signature in cursive script that reads "Jim Lewis". The signature is written in dark ink and is positioned above the printed name.

Jim Lewis

**BILL IRVINE
PO BOX 1028
HAYDEN, CO 81639-1029
(970) 276-3621**

August 13, 2010

Dear Hayden Town Council:

I am writing this letter to express my interest in serving on the manager application citizen review committee. I have served for the Town of Hayden on the Parks & Recreation Board, Board of Adjustment and Home Rule Charter Commission. I feel that this gives me some insight into the operations of the Town and would like to be involved in reviewing the applicants for a new Town Manager.

Thank you for your time and consideration.

Bill Irvine

Lisa Dowling

From: Hoza, Brian [bhoza@coloradomtn.edu]
Sent: Friday, August 13, 2010 2:42 PM
To: Hayden Town Hall
Subject: Hayden Town Manager Screening Committee

To Whom it May Concern:

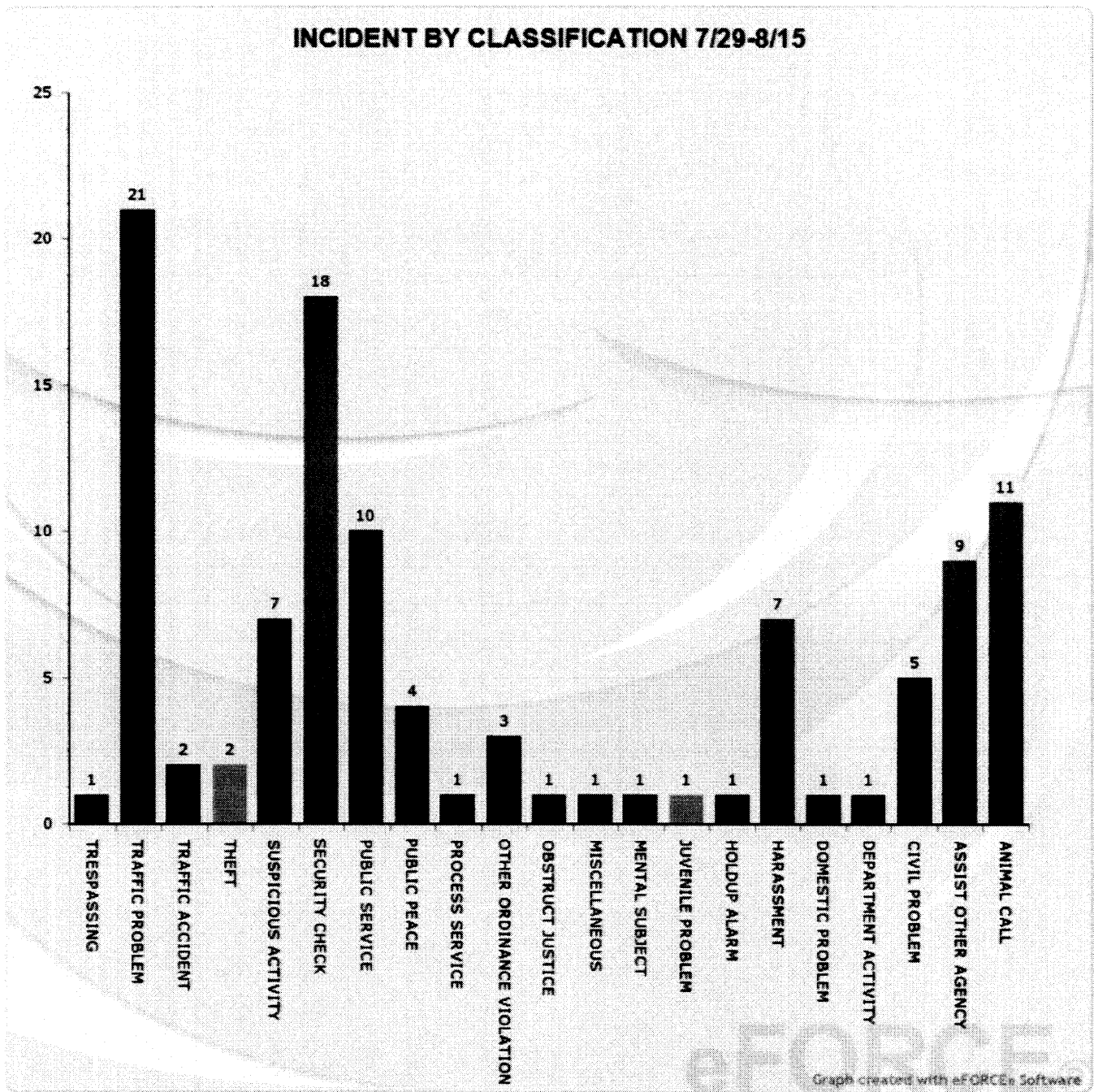
I would be interested in serving on the Hayden Town Manager Screening Committee. I am willing to assist if you would like my services. It might be particularly important to have someone on the screening committee representing the Hayden School District as well as other community interests. If you need more information, please let me know.

Brian Hoza

295 Harvest Drive; Hayden, CO 81639
Home Email: brian@hoza.net
Ph: 970-276-8019 / Cell: 970-846-4006

Work Email: bhoza@coloradomtn.edu
Ph: 970.870.4463 / Cell: 970.846.4006 / Fax: 970.870.0485

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PRIVACY WARNING: For auditing purposes, a copy of this message has been saved in a permanent database.



Citation Report



HAYDEN PD
07/29/2010 – 08/15/2010

Citation No	Date Cited	Cited By	Code	Violation Type	Description
101536	07/30/2010	CORRIVEAUE	MTC_1211	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1211 LIMITATIONS ON BACKING
A101492	08/02/2010	DAVISR	WPARKING	PARKING VIOL	ILLEGAL PARKING
A101491	08/02/2010	DAVISR	WPARKING	PARKING VIOL	ILLEGAL PARKING
101569	08/03/2010	DAVISR	MTC_1101 10-19MPH	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1101 SPEED LIMITS
101583	08/05/2010	CORRIVEAUE	MTC_1006	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1006 ONE WAY ROADWAYS AND ROTARY TRAFFIC ISL.
101583	08/05/2010	CORRIVEAUE	MTC_710	TRAFFIC VIOL-ORDINANCE	CRS 42-4-710 EMERGING FROM OR ENTERING ALLEY DRIVEWAY
101584	08/05/2010	CORRIVEAUE	MTC_1006	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1006 ONE WAY ROADWAYS AND ROTARY TRAFFIC ISL.
101584	08/05/2010	CORRIVEAUE	MTC_710	TRAFFIC VIOL-ORDINANCE	CRS 42-4-710 EMERGING FROM OR ENTERING ALLEY DRIVEWAY
A101511	08/05/2010	CORRIVEAUE	WPARKING	PARKING VIOL	ILLEGAL PARKING
A101512	08/05/2010	CORRIVEAUE	WPARKING	PARKING VIOL	ILLEGAL PARKING
101610	08/09/2010	DAVISR	MTC_1101 10-19MPH	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1101 SPEED LIMITS
101609	08/09/2010	DAVISR	MTC_1101 10-19MPH	TRAFFIC VIOL-ORDINANCE	CRS 42-4-1101 SPEED LIMITS

TOTAL: 12

CASES SET FOR COURT ON AUGUST 2, 2010

No.	Name	Ticket No.	Violation	Officer	Arraignment or Trial
1.	ADAM JAMES NINNEMAN GRIFFIN	PA 0286	PASSING VIOLATION	CORRIVEAU	ARRAIGNMENT
	<u>FAILED TO APPEAR.</u> Send default judgment for \$75.				
2.	ROBERT L. LILLARD	PA 0307	SPEEDING 43/30	DAVIS	-----
	Requests point deferrment by mail. Court will grand deferred judgment if approved by Police Dept. \$50 will be assessed for deferred judgment.				
			<i>Carolyn (Beth) Lundberg, Court Clerk</i>		

Russell Martin

From: Jane Whitt [jane.whitt@agnc.org]

Sent: Tuesday, August 10, 2010 3:13 PM

To: adanner@moffatcounty.net; Aron Diaz; Chuck Grobe; Craig Meis; 'Diane Mitsch Bush'; Doug Monger; 'Jay Haygood'; 'Jennifer Riley'; Jim Ferree; 'John Martin'; Kai Turner; Keith Lambert; Ken Parsons; Mike Samson; msamson2616@gmail.com; Russell Martin; Teresa Anderson; Tom Gray; Tom Mathers; Bryan Fleming; Dave Moore; Dave Sturges; 'Dinosaur'; Meg Bentley; 'Mike Braaten'; Paul Taylor; Peter Brixius; Richard Baca; Rick Aluise; Robert Knight; Sharon Day; Town of Yampa; Wendy DuBord

Subject: Western Colorado Coal Conference

FYI Hello everyone,

The Western Colorado Coal conference is taking place in Delta this year.

The dates are Wed. 1-6pm Sept. 22 thru Friday 8-1 Sept 24

Registration for the Wed thru Fri event is \$75 if you register before Sept. 1

If you register after that it is \$100.

If you google Western Colorado coal conference the event comes up with all the information. AGNC encourages you to participate.

Jane

Jane Whitt
AGNC Admin
PO Box 351
Rifle, CO 81650
970-625-1723
Fax 970-625-1147

My name is Tyler Boyer and I am a participant of the Good Times 4-H Club. I would like to invite you to come to our 4-H Animal Sale on Saturday, August 21st from 3:00 to 5:00 pm in the In Door Arena at the Routt County Fair Grounds, Hayden CO. We are also having a BBQ and I have enclosed two tickets for you to come and enjoy some really good food.

I am 10 years old and this is my first year at raising a steer and it has been a great learning experience for me and so much fun. Our club has many animals that will be for sale. I would really like to be able to raise another steer next year I would like you to stop by and visit my steer and chat with me about my experience. He's name is Lando, but he is best known as Steer #1052.

I look forward to seeing you at our sale.

Thanks very much for your support

Tyler Boyer