



City of Morro Bay

Morro Bay, CA 93442

(805) 772-6200

August 28, 2012

Presiding Judge Barry T. LaBarbera
Superior Court of California
1050 Monterey Street
San Luis Obispo, California 93408

Re: Grand Jury Report entitled "Out of Sight, Out of Mind—Medical Marijuana in San Luis Obispo County"

Dear Judge LaBarbera:

This letter constitutes the response of the City of Morro Bay to the San Luis Obispo County Grand Jury report entitled "Out of Sight, Out of Mind—Medical Marijuana in San Luis Obispo County" (hereinafter the "Report") This response is submitted in compliance with Penal Code Section 933(c). A copy of this response is concurrently being transmitted to the Grand Jury.

Prior to responding to the findings and recommendations set forth in the Grand Jury Report it is very important for the Grand Jury to understand that in 1993 the City of Morro Bay passed a resolution supporting medical use of marijuana. This resolution was passed three years prior to the enactment of Proposition 215, the Compassionate Use Act, which protects qualified patients and their primary caregivers from prosecution under California laws for possession or cultivation of marijuana to treat serious illness pursuant to a doctor's recommendation. Unfortunately, the Federal Controlled Substances Act (21 USC 801 et seq.) still prohibits the possession, cultivation, and dispensing of marijuana, regardless of its purpose. Therefore, there exists a conflict between California and Federal law regarding medical marijuana, and for this reason, the City of Morro Bay has banned medical marijuana dispensaries until the law is settled.

The Grand Jury Report sets forth ten findings, and six recommendations. The City of Morro Bay has been required to respond to Findings 2 through 7, inclusive, and Recommendations 2 through 5, inclusive.

FINANCE
595 Harbor Street

ADMINISTRATION
595 Harbor Street

FIRE DEPT.
715 Harbor Street

PUBLIC SERVICES
955 Shasta Avenue

HARBOR DEPT.
1275 Embarcadero Road

CITY ATTORNEY
595 Harbor Street

POLICE DEPT.
850 Morro Bay Boulevard

RECREATION & PARKS
1001 Kennedy Way

Findings

2. Each incorporated city in the county has an ordinance prohibiting brick and mortar medical marijuana collectives within its city limits.

Response: The City of Morro Bay agrees that it has an ordinance, set forth in Chapter 9.06 of its municipal code that prohibits medical marijuana dispensaries within the City. As stated in the City's ordinance, a medical marijuana dispensary "is defined as any facility in a single fixed location where a primary caregiver makes available, sells, transmits, gives or otherwise provides medical marijuana, or cannabis, for medical purposes to two or more qualified patients or persons with an identification card in accordance with Health and Safety Code Section 11362.5." The City of Morro Bay cannot respond on the ordinances adopted by other cities or the county.

3. The county and incorporated cities in the county have not adopted an ordinance regarding medical marijuana mobile collective delivery services operating within their jurisdictions, with the exception of Atascadero.

Response: The City of Morro Bay agrees with this finding that it has not adopted an ordinance regarding medical marijuana mobile collective delivery services operating within its jurisdictions. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county.

4. Business licenses are required for all businesses operating in the incorporated and unincorporated areas of the county.

Response: The City of Morro Bay has adopted Chapter 5.04 of its municipal code, requiring business licenses for businesses operating within the City of Morro Bay. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county.

5. Many medical marijuana mobile collective delivery services operate in the incorporated and unincorporated areas of the county without a business license.

Response: The City of Morro Bay partially agrees with this finding as it pertains to the City of Morro Bay. The City of Morro Bay cannot comment on medical marijuana mobile collective delivery services in other cities or the county. The City of Morro Bay has not issued a business license to any medical marijuana mobile collective delivery services and therefore the City has no way to verify the statement that "*many*" such delivery services are operating in the City of Morro Bay. City staff has seen some medical marijuana mobile collective delivery services advertise in local newspapers and on the internet indicating that they deliver to collective members within the county, so it is assumed that these collectives are in operation in the county and possibly in the City of Morro Bay but it has no way to confirm that any medical marijuana mobile collective delivery services operate in the City.

6. There is currently no way to determine the exact number of medical marijuana mobile collective delivery services operating in the incorporated and unincorporated areas of the county or on the Cal Poly Campus.

Response: Agree.

7. There is no protocol for medical marijuana mobile collective delivery service recordkeeping.

Response: The City of Morro Bay partially disagrees with this finding as it pertains to the City. The City of Morro Bay cannot comment on the ordinances adopted by other cities or the county. The Morro Bay Municipal Code does not contain provisions specific to recordkeeping protocol for medical marijuana mobile collective delivery services. However, the California State Board of Equalization issued a Special Notice in June 2007 confirming its policy requiring a seller's permit of anyone selling medical marijuana and to pay sales tax on those sales. Some record keeping is required to comply with this requirement. Further, the California Attorney General issued "Guidelines for the Security and Non-Diversion of Marijuana Grown for Medical Use" in August 2008. These guidelines include "suggested guidelines and practices for operating a collective growing operation to help ensure lawful operation." Suggested recordkeeping practices are identified to "help ensure that marijuana grown for medical use is not diverted to illicit markets" such as maintaining membership records and tracking when members' medical marijuana recommendation and/or identification cards expire.

Recommendations:

The Grand Jury recommends that:

2. The county and incorporated cities in the county should develop an ordinance regarding medical marijuana mobile collective delivery services within their respective jurisdictions.

Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of, and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not issue business licenses to medical marijuana dispensaries, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Further, this is an inopportune time to develop any amendments to our ordinance given the fact that the California Supreme Court has agreed to review at least four cases related to how local jurisdictions regulate medical marijuana. It is expected that the rulings to be issued as a result of this review will clarify much of the legal confusion that has existed around medical marijuana related laws. These rulings may not be issued for at least another year.

3. By code or ordinance, the county and each incorporated city in the county should require medical marijuana mobile collective delivery services operating within their jurisdiction to possess a business license and seller's permit.

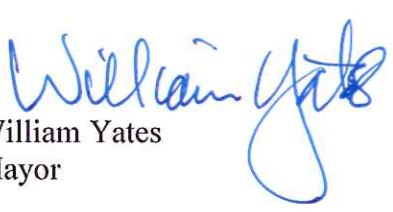
Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not issue business licenses or seller's permits to medical marijuana mobile collective delivery services since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Also as noted above, this is an inopportune time to develop local regulations given the fact the California Supreme Court is expected to issue rulings in the next few years related to how local jurisdictions regulate medical marijuana.

4. Using business license records, seller's permits and sales taxes, the county and each incorporated city in the county should compile a list of medical marijuana mobile collective delivery services operating within their jurisdictions.

Respondent disagrees with this recommendation. The recommendation will not be implemented because it is not warranted. Possession of and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not compile lists of medical marijuana dispensaries, whether mobile or fixed, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law. Also as noted above, this is an inopportune time to develop local regulations given the fact the California Supreme Court is expected to issue rulings in the next few years related to how local jurisdictions regulate medical marijuana. Further, the County Board of Supervisors is of the opinion that the most appropriate approach to this matter of public policy is a State statute, given that these mobile collectives often travel through and make sales and deliveries in several different jurisdictions around the state. A single set of operating statutes and related regulations would provide for consistent and effective public protection. In the absence of a statewide effort, the potential exists for different and potentially conflicting regulations in various jurisdictions which would make compliance much more challenging for these collectives.

5. By code or ordinance, the county and each incorporated city in the county should require medical marijuana collectives and mobile collective delivery services to keep current records.

Response: The recommendation will not be implemented because it is not warranted. Possession of, and distribution of marijuana, whether for medical or other purposes, is prohibited by Federal law. The City of Morro Bay will not require medical marijuana dispensaries, whether mobile or fixed, to keep any records, since they are prohibited from operating in any zone of the City, and they operate in violation of Federal law.


William Yates
Mayor

cc: San Luis Obispo County Grand Jury