

WHERE WILL MEDICAL MARIJUANA PATIENTS OBTAIN THEIR MEDICINE?

**A whitepaper to guide communities in crafting
equitable regulations for medical cannabis access**

Prepared by
Americans for Safe Access

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ABOUT THIS REPORT

This report was produced by Americans for Safe Access (ASA). ASA is the largest national member-based organization of patients, medical professionals, scientists, and concerned citizens promoting safe and legal access to cannabis for therapeutic use and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. ASA has more than 100,000 active members in all 50 states. Learn more about ASA at AmericansForSafeAccess.org.

BACKGROUND

Since 1996, forty states, the District of Columbia, Puerto Rico, and Guam have passed laws that grant their residents the right to possess, cultivate, and/or obtain cannabis (marijuana) under the care of their physician.¹ These laws have been passed to address health-care needs of residents who may benefit from cannabis-based treatments, often where conventional medications have failed. These patient populations include people living with or treating cancer, multiple sclerosis, Crohn's Disease, ALS, epilepsy, Dravet's Syndrome (and other severe childhood epilepsy disorders), Post Traumatic Stress Disorder, and chronic pain. Twenty-three of these states and the District of Columbia have laws that include distribution programs regulated through state and local licensing and oversight. Medical cannabis patient access points, often called "dispensaries," are where most of these patients obtain their medicine. The final stage in implementing successful medical cannabis programs comes down to community zoning that allows these access points to operate in locations that take into consideration patients' needs.

"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses, law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parties in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Nancy J. Nadel, Oakland City Councilmember

Over the last twenty years, medical cannabis laws and regulations have evolved dramatically to address both consumer and community concerns, including product safety, zoning, and planning issues. Multiple studies have concluded that medical cannabis dispensaries have a positive impact on the communities in which they are located. Communities regulating these medical cannabis access points today can draw on the experiences of hundreds of cities and counties across the country to create policies that meet the needs of their patient populations while addressing concerns about community impact.

Americans for Safe Access (ASA) compiled this report to provide policy makers at the state, county, and municipal level with relevant data to consider as they implement their state's medical cannabis law. The report is meant to demystify "dispensaries" and the people they serve, as well as summarize the local impact of regulated medical cannabis access points. Twenty years of experience shows that cities and counties can effectively address community concerns without denying patients access due to unfounded fears (e.g. NIMBY-ism, etc.) or misinformation.

"DISPENSARIES"

1. Sixteen of the 40 states have adopted what are sometimes called "CBD laws," due to their focus on cannabidiol (CBD) rather than the full range of cannabinoids. Most of these laws have seizure disorders as the lone qualifying condition.

Dispensaries are highly regulated retail access points where qualified patients can obtain their medication. They are a preferred alternative to the potentially dangerous and unregulated illicit market. From Washington, D.C. to South Windsor, Connecticut to Phoenix, Arizona, communities have regulated medical cannabis access points, or “dispensaries,” to meet the needs of their residents. Successful medical cannabis programs

consider the ability of patient populations to access dispensaries, including safety, proximity, access to public transit, and more.

State regulations include a vetting process for the owners of medical cannabis business licenses, facility security protocols, and anti-diversion strategies. City and county regulations usually have the same permitting and mitigation discretion as any other types of business (e.g. zoning, hours of operation, and parking accommodation).

"When designing regulations, it is crucial to remember that at its core this is a healthcare issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

Nathan Miley, Alameda County Supervisor

These access points are the final step in a regulated supply chain developed to serve the patient population in a city or county.

Today, state regulatory programs are trending toward the adoption of product safety and quality control standards developed by the American Herbal Products Association (AHPA). These best-practice standards include cannabis product safety protocols, proper staff training, and guidance for dispensary security operations.

BENEFITS OF MEDICAL CANNABIS DISPENSARIES

After nearly two decades of existence, dispensaries have proven to be an asset to the populations they serve, as well as the larger community in which they operate. Research shows that once effective regulations are in place, dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large and that regulatory ordinances improve areas both socially and economically. Public officials in both urban and rural communities across the country have been outspoken in praise of the dispensary regulatory schemes they enacted and the benefits to the patients and others living in their communities.

Medical cannabis dispensaries provide a benefit to the community by allowing patients to have convenient, safe, and legal access to their physician-recommended therapeutic regimen. These retail access points provide a regulated system by which patients can obtain their medicine under controls for safety and reliability.

When a local government prohibits safe and legal access, patients are forced to make at least one of several sub-optimal choices. They may deal with the burden of travel, which means they will incur extra expense and lose time on the roundtrip journey to a

neighboring jurisdiction, if not further. These problems are compounded if the patient has mobility issues. If legal access proves to be too burdensome, patients may feel compelled to turn to the illicit market, which is completely unregulated and defeats the purpose of the state's intent in passing medical cannabis legislation.

Dispensaries help revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They help provide a modest improvement to public safety by increasing the security presence in neighborhoods. While medical cannabis laws should not be designed or regulated to be a jobs program, these new businesses provide a secondary asset by employing members of the community.

Benefits to public health have also been identified. The availability of a robust state medical cannabis program correlates to significant reductions in unintentional opioid overdose deaths. An early study suggested that recommending "cannabis in place of opioids for neuropathic pain may reduce the morbidity and mortality rates associated with prescription pain medications and may be an effective harm reduction strategy."² That prediction has been borne out by recent studies.

A 2014 study published by JAMA Internal Medicine looked at ten medical cannabis states from 1999 to 2010 and found "[s]tates with medical cannabis laws had a 24.8% lower mean annual opioid overdose mortality rate...compared with states without medical cannabis laws."³ Most recently, a 2015 study by researchers associated with the RAND Corporation, the National Bureau of Economic Research and University of California, Irvine concluded:

...states permitting medical marijuana dispensaries experience a relative decrease in both opioid addictions and opioid overdose deaths compared to states that do not. Our findings suggest that providing broader access to medical marijuana may have the potential benefit of reducing abuse of highly addictive painkillers.⁴

"Medical cannabis dispensaries are serving a vital service to residents in the District of Columbia. Well regulated dispensaries are the only legal outlet where patients can obtain this physician-recommended therapeutic treatment option. Some of these patients may have previously not had access to cannabis prior to the program, while other may have been obtaining it through unregulated sources. In either case, it is far preferable to have our vulnerable patients obtaining their medicine from entities regulated by the Department of Health."

Dr. Rikin Mehta, Senior Deputy Director, D.C. Health Regulation and Licensing Administration

2. Collen, Mark, Prescribing Cannabis for Harm Reduction, Harm Reduct J. 2012; 9: 1., available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3295721>
3. Bachhuber, Marcus, et al., Medical Cannabis Laws and Opioid Analgesic Overdose Mortality in the United States, 1999-2010, JAMA Internal Medicine, Oct. 2014, available at: <http://archinte.jamanetwork.com/article.aspx?articleid=1898878>
4. Powell, David, et al. Do Medical Marijuana Laws Reduce Addictions and Deaths Related to Pain Killers? NBER Working Paper No. 21345, July 2015. Abstract available at: <https://www.aei.org/publication/increased-marijuana-use-for-chronic-pain-reduces-addictions-and-deaths-related-to-opioid-pain-killers/>

POPULATIONS SERVED BY DISPENSARIES

Under many of the early medical cannabis laws, patients were largely reliant upon personal cultivation or collective gardening as their means to obtain their physician-recommended medicine. But as more states have adopted medical cannabis laws, the emphasis from patient/caregiver cultivation has shifted towards the dispensary model. Dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the medicine their doctors' recommend: the most seriously ill

and injured. Over two million patients now have safe access to their medicine through dispensaries. This means that the patient population that is served by dispensaries is as diverse as the patient population itself.

The population served by medical cannabis dispensaries

"[D]ispensaries have not presented any harms to the communities where they are located. Once a dispensary opens, it tends to blend in with the rest of the community, but provides the added benefit of extra security cameras on the blocks where they are located."

Dr. Rikin Mehta, Senior Deputy Director, D.C. Health Regulation and Licensing Administration

reflects all walks of life. However, the specifics of a given state law can shape the demographics of the population served. For example, in the several states where distribution programs offer discounts to patients living with financial hardship, there is broader demographic inclusion. States without such provisions may inadvertently be excluding financially challenged patients because medical cannabis is not covered by health insurance. States that force their dispensaries to operate in industrial areas far from public transportation may also be at risk of unintentionally excluding financially vulnerable patients due to the time and cost burdens associated with obtaining medicine.

Additionally, the state's laws and regulations regarding qualifying conditions will impact who is eligible. Some states take the view that, unlike prescription medication, medical cannabis can only be recommended for certain conditions, that conditions must be of extreme severity, and that the patients must have exhausted all other available options before being able to gain safe and legal access. This means that patients who will not respond to conventional medication must experience pain, trauma, lost wages, and lost time with their loved ones before finding relief through medical cannabis. Because patients are subjected to these external discriminatory forces, the retail access points where patients obtain their medicine should not present additional hurdles such as onerous zoning that makes the closest or most reliable dispensary difficult to reach.

Ultimately, it is important to remember that medical cannabis patients look like ordinary people facing medical hardship. While critics of medical cannabis programs frequently claim that some patients who rely on medical cannabis do not look "sick enough" to justify medical cannabis access, it is often because they do not understand how effective this medicine can be. Medical cannabis can enable patients to return to work. And in other cases, it may allow a patient with a terminal condition to have quality time with their loved ones instead of being heavily drugged on morphine or other heavy prescription medication.

While the medical cannabis population is as diverse as the general population, one thing patients have in common is that the overwhelming majority of them now rely on dispensaries for their access to medical cannabis.

Demographics

A peer-reviewed study that examined California medical cannabis patient data found that the population is fairly evenly distributed by age, with about 18% ages 18-24; 28% ages 25-34; 22% ages 35-44; 19% ages 45-54; and 13% over 55. The report also found that medical cannabis patients do not “immediately seek marijuana recommendations as the first strategy to deal with their symptoms,” but rather that “these individuals tried more traditional forms of medicine.”⁵

The most recent set of data made available by the Arizona Department of Health Services shows that patients ages 18-30 make up about 24% of the patient population; ages 31-40: 20%; ages 41-50: 16%; ages 51-60: 20%; ages 60+: 20%.⁶ The New Mexico Department of Health conducted a patient survey finding that the states patients typically “range from 19 to 83 years of age, with an average age of 49.9 years old.”⁷

“There should be 6,000 registered patients by the end of the year [a 50% increase from June 2015]....This is not just about today, this is about being ahead of the curve.”

Jonathan Harris, Connecticut Commissioner of Consumer Protection on proposal to approve the maximum number of new dispensaries

A small study of one Michigan dispensary yielded similar age distribution, noting that, “on average, participants in this study were 41.5 years of age (SD = 12.6), with half of them at least 50 years of age. The report also found that medical marijuana therapy demonstrated efficacy as, “returning patients reported somewhat lower scores on measures of current pain and slightly higher scores on measures of mental health and physical functioning than did first time patients.”⁸

DISPENSARIES AND CRIME – PERCEPTION VS. REALITY

Looking at nearly two decades of data, crime statistics and the accounts of local officials indicate that crime is reduced by the presence of a dispensary. In fact, the overwhelming preponderance of studies point in the direction that dispensaries have either a neutral or slightly dampening effect upon crime in the community.

5. Nunberg, Helen, et al., An Analysis of Applicants Presenting to a Medical Marijuana Specialty Practice in California, *J Drug Policy Anal.* 2011 Feb; 4(1): 1., available at: <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3673028/>

6. Arizona Medical Marijuana Program July 2015 Monthly Report, Arizona Dept. of Health Services, available at: <http://azdhs.gov/documents/licensing/medical-marijuana/reports/2015/2015-july-monthly-report.pdf>

7. Medical Cannabis Survey 2013, New Mexico Dept. of Health, available at: <http://nmhealth.org/publication/view/report/140/>

8. Ilgen MA, et al., Characteristics of Adults Seeking Medical Marijuana Certification, *Drug Alcohol Depend.* 2013 Oct 1;132(3):654-9, available at: <http://www.ncbi.nlm.nih.gov/pubmed/23683791>

The presence of a dispensary in the neighborhood can improve public safety and reduce crime.⁹ Most dispensaries take security for their members and staff more seriously than many other businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems

"The areas around the dispensaries may be some of the safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed."

Barbara Killey, Oakland city administrator responsible for oversight of dispensaries

on the street. Those likely to engage in such activities tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

An ordinance in Oakland requires dispensaries to develop a security plan that had must be reviewed by regulatory officials prior

to licensure. Other communities in California have followed suit with similar local ordinances. This emphasis on security that was developed in the California medical cannabis system has since evolved and become the national gold standard, from Nevada to Maryland, Maine, and Illinois.

Studies on Dispensaries and Crime

The absence of any connection between dispensaries and increased local crime can be seen in data from Los Angeles, San Diego, Denver, and Colorado Springs. After reviewing a study he commissioned, Los Angeles Police Chief Charlie Beck observed that, "banks are more likely to get robbed than medical cannabis dispensaries," and that the claim that dispensaries attract crime "doesn't really bear out."¹⁰

In San Diego, where some officials have made allegations about increased crime associated with dispensaries, an examination of city police reports by a local paper, the San

"I don't think the data really supports [the idea that dispensaries] are more likely to be targeted at this point."

Sgt. Darrin Abbink, Colorado Springs Police spokesperson, commenting on crime rates

Diego CityBeat, found that as of late 2009 the number of crimes in areas with dispensaries was frequently lower than it was before the dispensary opened or, at worst, stayed the same.¹¹

A 2009 analysis of robbery and burglary rates at medical cannabis dispensaries conducted by the Denver, Colorado Police Department at the request of the Denver City Council found that the robbery and burglary rates at dispensaries were lower than area

9. See review of available studies in subsection below. There is one non-peer reviewed study, by PhD. candidate Catherine Alfred of the University of Virginia, that reached the conclusion that dispensaries may increase certain kinds of crime when not accompanied by the right to home cultivation. She speculates that the exacerbating factor may have been the result of slow implementation and low statutory caps on the number of dispensaries, citing New Jersey as an example. The suggestion that dispensaries increase crime runs counter to other evidence.

10. Castro, Tony. "LAPD chief: Pot clinics not plagued by crime." *LA Daily News*, Jan 17, 2010.

11. Maass, Dave. "Prosecutors use dubious claims to attack collectives." *San Diego City Beat*, Oct 26, 2011.

banks and liquor stores, and on par with those of pharmacies. Specifically, the report found a 16.8 percent burglary and robbery rate for dispensaries, equal to that of pharmacies. That's lower than the 19.7 percent rate for liquor stores and the 33.7 percent rate for banks the analysis found.¹²

A 2010 analysis by the Colorado Springs Police Department found that robbery and burglary rates at area dispensaries were on par with those of other businesses.¹³

In 2012, a study published in the *Journal of Studies on Alcohol and Drugs* explored the issue of dispensaries and crime in Sacramento, California. Among the conclusions of the report is the following:

"They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Kriss Worthington, Berkeley City Councilmember

There were no observed cross-sectional associations between the density of medical marijuana dispensaries and either violent or property crime rates in this study. These results suggest that the density of medical marijuana dispensaries may not be associated with crime rates or that other factors, such as measures dispensaries take to reduce crime (i.e., doormen, video cameras), may increase guardianship such that it deters possible motivated offenders.¹⁴

A 2013 report found no difference in crime rate changes between neighborhoods in Denver with dispensaries and those without, noting that "crime near dispensaries was up 1.8 percent, *in line with the slight increase in crime in the whole city for that period.*" [emphasis added].¹⁵

A multi-state study published in 2014 noted that medical cannabis laws are associated with a small but measurable decrease in crime, including some surprising decreases in subsequent years. Among the study's findings were:

First, the impact of MML [medical marijuana law] on crime was negative or not statistically significant in all but one of the models, suggesting *the passage of MML may have a dampening effect on certain crimes*. The second key finding was that the coefficients capturing the impact of MML on homicide and assault were the only two that emerged as statistically significant. Specifically, the results indicate approximately a 2.4 percent reduction in homicide and assault, respectively, for each additional year the law is in effect. [emphasis added]

12. Ingold, John. "Analysis: Denver pot shops' robbery rate lower than banks." *Denver Post*. Jan 27, 2010.

13. Rogers, Jakob "Marijuana shops not magnets for crime, police say," *Fort Collins Gazette*, September 14, 2010.

14. Kepple NJ, Freisthler B. "Exploring the ecological association between crime and medical marijuana dispensaries." *Stud Alcohol Drugs*. 2012 Jul;73(4):523-30. Accessible at <http://www.ncbi.nlm.nih.gov/pubmed/22630790>

15. Ingold, John and Meyers, Jeremy. "Slight increase in crimes near Denver medical-marijuana dispensaries." *Denver Post*, Aug 1, 2013.

The report concluded by saying:

The central finding gleaned from the present study was that MML is not predictive of higher crime rates and may be related to reductions in rates of homicide and assault. Interestingly, robbery and burglary rates were unaffected by medicinal marijuana legislation, which runs counter to the claim that dispensaries and grow houses lead to an increase in victimization due to the opportunity structures linked to the amount of drugs and cash that are present. Although, this is in line with prior research suggesting that medical marijuana dispensaries may actually reduce crime in the immediate vicinity....¹⁶

In sum, these findings run counter to arguments suggesting the legalization of marijuana for medical purposes poses a danger to public health in terms of exposure to violent crime and property crimes. To be sure, medical marijuana laws were not found to have a crime exacerbating effect on any of the seven crime types.

UNFOUNDED FEARS CONCERNING TEEN USE

A common fear that dispensaries will increase teen use of marijuana often result in overly restrictive zoning for patient access. However, the available evidence suggests that those fears are unfounded. Two recent studies have concluded that teen marijuana has decreased nationally. Federal data states that from 2002 to 2014, as medical cannabis programs proliferated across the country, teen use (ages 12-17) of cannabis in

"(C)oncerns that increased adolescent marijuana use is an unintended effect of state medical marijuana laws seem unfounded."

Lancet 2015

the previous 30 days fell from 8.2% to 7.4% and that past year dependence of cannabis by the same age group fell by about 10%.¹⁷

A study by Johns Hopkins University Bloomberg School of Public Health examining the impact of changes in cannabis laws on

teen use from 1999 to 2013 found, "[d]espite considerable changes in state marijuana policies over the past 15 years, marijuana use among high school students has largely declined."¹⁸

A July 2015 study published by the Lancet that looked directly at the impact of state medical marijuana laws on teen use reach the following conclusion:

In conclusion, the results of this study showed no evidence for an increase in adolescent marijuana use after passage of state laws permitting use of marijuana

16. Morris, Et al. "The Effect of Medical Marijuana Laws on Crime: Evidence from State Panel Data, 1990-2006" PLoS One. 2014; 9(3): e92816. Accessible at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3966811/>

17. Hedden, Sarra, et al, Behavioral Health Trends in the United States: Results from the 2014 National Survey on Drug Use and Health, Supplemental Tables of Estimates for Behavioral Health Trends in the United States, Substance Abuse and Mental Health Services Administration, available at: <http://www.samhsa.gov/data/sites/default/files/NSDUH-FRR1-2014/NSDUH-FRR1-2014.htm#idtextanchor142>

18. Johnson, Rene, et al., Past 15-year trends in adolescent marijuana use: Differences by race/ethnicity and sex, Drug and Alcohol Dependence, Sept. 2015, available at: [http://www.drugandalcoholdependence.com/article/S0376-8716\(15\)01618-X/abstract](http://www.drugandalcoholdependence.com/article/S0376-8716(15)01618-X/abstract)

for medical purposes...However, concerns that increased adolescent marijuana use is an unintended effect of state medical marijuana laws seem unfounded.¹⁹

FEDERAL PREEMPTION DOES NOT IMPEDE STATE PROGRAMS

Ideally, federal, state, and local law would allow for patients to safely and legally obtain medical cannabis from a retail dispensary. However, the fact that federal law does not currently recognize medical cannabis does not preclude state and local governments from adopting and implementing their own medical cannabis programs. In fact, the federal Department of Justice (DOJ) is now forbidden by Congressional budgetary language known as the Rohrabacher-Farr Amendment²⁰ from taking action against state and local officials for attempting to implement their medical cannabis laws and regulations.

A report by the Congressional Research Service found that, “[s]tate laws that exempt from state criminal sanctions the cultivation, distribution, or possession of marijuana for medical purposes have generally not been preempted by federal law.”²¹ The report notes that the case of *Gonzales v. Raich*, which allows the federal government to enforce against intrastate medical cannabis production, was not a federal preemption case and is silent on the issue.²² The report goes on to demonstrate that the Tenth Amendment and the cases of *New York v. United States* and *Printz v. United States* clearly show that the federal government cannot commandeer state legislatures or administrative agencies. Therefore, Congress may not force state or local police to enforce the federal Controlled Substances Act.

Additionally, the DOJ has issued an internal memo in February 2015 regarding the Rohrabacher-Farr Amendment impact on the Department’s ability to prosecute in medical cannabis states. The legislative intent of the amendment is to prohibit DOJ from interfering with anyone participating in state-legal medical cannabis conduct. The Department concedes that the amendment, “prohibit the expenditure of the Department’s 2015 appropriations on civil litigation regarding State laws authorizing the medical use of marijuana where the State or State officials are a party.”²³

19. H.R. 83, 113 Cong. (enacted). Print. p. 213-214, available online at:

<http://docs.house.gov/billsthisweek/20141208/CPRT-113-HPRT-RU00-HR83sa.pdf>

20. Hasin, Deborah S. et al., Medical marijuana laws and adolescent marijuana use in the USA from 1991 to 2014: results from annual, repeated cross-sectional surveys, *The Lancet*, June 15, 2015, available at: [http://www.thelancet.com/pdfs/journals/lanpsy/PIIS2215-0366\(15\)00217-5.pdf](http://www.thelancet.com/pdfs/journals/lanpsy/PIIS2215-0366(15)00217-5.pdf)

21. Garvey, Todd, Medical Marijuana: The Supremacy Clause, Federalism, and the Interplay Between State and Federal Laws, Congressional Research Service, November 9, 2012. Available at: <https://www.fas.org/sgp/crs/misc/R42398.pdf>

22. In practice, the preponderance of cases related to federal preemption of state medical marijuana laws have ruled that the laws are not preempted. One case in Oregon held that a certain portion of the state law was preempted, but that proved to be more of a technical point, as the program was allowed to largely proceed without related hindrance after the ruling.

23. Guidance Regarding the Effect of Section 538 of the Consolidated and Further Continuing Appropriations Act of 2015 on Prosecutions and Civil Enforcement and Forfeiture Actions Under the Controlled Substances Act, U.S. Dept. of Justice memorandum to All Federal Prosecutors, February 27, 2015.

DIVERSION ADDRESSED THROUGH STATE REGULATION

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But cities where dispensaries are well regulated have not encountered such problems. In addition to being monitored by law enforcement, dispensaries typically have strict rules about how members are to behave in and around the facility. Many have "good neighbor" policies for their members that emphasize sensitivity to the concerns of neighbors and prohibit the resale of cannabis.

"...[P]eople feel safer when they're walking down the street. The level of cannabis street sales has significantly reduced."

Lupe Schoenberger, Legislative Analyst, City of Oakland

Anyone violating that prohibition is typically banned from any further contact with the dispensary and can be barred from the state program all together.

Each state has addressed the issue of diversion of medical cannabis to some

extent. This component became more prominent in state medical cannabis laws following issuance of the 2013 U.S. Department of Justice memo on cannabis prosecutorial guidance, commonly referred to as the 2013 Cole Memo.²⁴ Because this issue is addressed by the state law and regulations, it is unnecessary for municipal governments to take additional steps to ensure compliance with DOJ guidance. Most state regulations have specific requirements on labeling and product safety, such as child proof containers, that also play a role in addressing diversion.

CONCLUSION

Properly regulated medical cannabis dispensaries are an essential component of any successful state medical cannabis program. Community zoning determines how (and if) residents will be able to benefit from these laws. Experience shows that well-regulated dispensaries are responsible neighbors and valued members of the community. They bring jobs and increased economic activity while providing patients suffering from serious illnesses with an essential physician-recommended medicine.

In deciding where and how these businesses are allowed to operate, policymakers can look to the experience of other local governments to devise workable strategies. Decades of experience show the needs of legal patients and the community at large can be balanced. Cities and counties can zone and regulate access points in a win-win scenario. To do this, policy makers must be responsive all of the stakeholders and avoid making decisions based on bias and misinformation.

ASA works closely with lawmakers, regulators, and other stakeholders at every level of government to find solutions that work for patients and their communities. Contact ASA at policy@safeaccessnow.org or (202) 857-4272 for more information and assistance in implementing sensible zoning rules and regulations for your city or county.

24. Cole, J. (2013). Memorandum for all United States attorneys [Re:] Guidance Regarding Marijuana Enforcement. United States, Department of Justice, Office of Legal Counsel. available online at: <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>

MODEL LOCAL MEDICAL CANNABIS DISPENSARY ORDINANCE

The following is a generic ordinance developed by Americans for Safe Access. The contents have been derived from various city and/or county ordinances, as well as lessons from the experiences of cities and/or counties implementing laws of this nature nationwide. Some aspects of this ordinance may not apply to your jurisdiction; furthermore, there may be additional requirements established in state law. If you need additional support in drafting language, please contact us at policy@safaccessnow.org.

Purposes and Intent

(1) To implement the provisions of ____ (state law) with respect to local zoning and land use.

(2) To help ensure that seriously ill ____ (county/city) residents can obtain and use cannabis for medical purposes where that medical use has been deemed appropriate by a physician in accordance with ____ (state) law.

(3) To establish a new section in the ____ code pertaining to the permitted distribution of medical cannabis in ____ consistent with state law. Nothing in this Chapter purports to permit activities that are otherwise illegal under state or local law.

(4) Nothing in this Chapter is intended to reduce the rights of a Qualified Patient or Primary Caregiver otherwise authorized by ____ (state law) .

[for states that allow personal cultivation] (5) To help ensure that the Qualified Patients and their Primary Caregivers who obtain or cultivate cannabis solely for the Qualified Patient's medical treatment are not subject to arrest, criminal prosecution, or sanction.

(6) To prevent the diversion of medical cannabis for unlawful use and protect the safety and welfare of the community.

Definitions

The following phrases, when used in this Chapter, shall be construed as defined in ____ (state law):

"Medical Cannabis Dispensary"

"Primary Caregiver;" and

"Qualified Patient."

Location

The location at which an Medical Cannabis Dispensary distributes medical cannabis must meet the following requirements:

(1) The location must be in a Non-Residential Zone appropriate for Commercial, Manufacturing, or Retail uses, including health care use;

(2) The location

- (a) must not be within a 500-foot radius of a school, as measured from edge of the parameter, and
- (b) a school that opens after the date that a dispensary applies for licensure from the state, or a school that is permanently closed on the date the dispensary application to the state is submitted shall not be considered for the purposes of subsection (2)(a) of this section; and

(3) The location must not be within 1,000 feet of another Medical Cannabis Dispensary.

Police Department Procedures and Training

Within six months of the date that this Chapter becomes effective, training materials, handbooks, and printed procedures of the Police Department shall be updated to reflect its provisions. These updated materials shall be made available to police officers in the regular course of their training and service.

(1) Qualified Patients and their Primary Caregivers who come into contact with law enforcement shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if they are in compliance with the provisions of this Chapter.

(2) Qualified Patients and their Primary Caregivers who come into contact with law enforcement and cannot establish or demonstrate their status as a Qualified Patient, Primary Caregiver, but are otherwise in compliance with the provisions of this Chapter, shall not be cited or arrested and dried cannabis or cannabis plants in their possession shall not be seized if

- (a) based on the activity and circumstances, the officer determines that there is no evidence of criminal activity;
- (b) the claim by a Qualified Patient or a Primary Caregiver is credible; or
- (c) proof of status as a Qualified Patient or Primary Caregiver can be provided to the Police Department within three (3) business days of the date of contact with law enforcement.

(3) The Police/Sheriff's Department and any agent or contractor acting on behalf of ____ (city/county) shall enforce all civil and criminal ordinances related to Medical Cannabis Dispensaries, employees, and clients in a manner that is consistent with other legally licensed/permitted businesses in the city/county. No additional restrictions other than defined in this Chapter shall be applied or enforced.

(4) Medical cannabis-related activities shall be the lowest possible priority of the ____ (City/County) Police/Sheriff's Department.

Medical Cannabis Dispensary Operational Standards

- (1) Medical Cannabis Dispensaries must obtain all necessary state and local license/permits before commencing operations and shall maintain a valid license/permit during any period of operation;
- (2) No Medical Cannabis Dispensary may provide medical cannabis to any persons other than Qualified Patients and Primary Caregivers whose status to possess cannabis pursuant to state law has been verified. No medical cannabis provided to a Primary Caregiver may be supplied to any person(s) other than the Qualified Patient(s) who designated the Primary Caregiver. No Medical Cannabis Dispensary shall provide medical cannabis to any Qualified Patient or Primary Caregiver if it is known that the Qualified Patient or Primary Caregiver is diverting medical cannabis for unlawful use;
- (3) Medical Cannabis Dispensaries must demonstrate compliance with state law in the areas of security plans, inventory records, patient records, product safety, product labeling, disposal protocols and recall strategies.
- (4) Medical Cannabis Dispensaries must establish "good-neighbor" policies for patients and Primary Caregivers visiting the location that includes at a minimum parking instructions and prohibition of using medicine on and around location. A copy of the policies must be posted in a conspicuous location inside the facility;
- (5) A Medical Cannabis Dispensary shall provide a neighborhood security guard patrol for a two-block radius surrounding the collective during all hours of operation;
- (6) Interior building lighting, exterior building lighting and parking area lighting must be in compliance with applicable regulations, and must be of sufficient brightness and color rendition so as to allow the ready identification of any individual committing a crime on site at a distance of no less than 40 feet (a distance that should allow a person reasonable reaction time upon recognition of a viable threat);
- (7) Absolutely no cannabis product may be visible from the building exterior;
- (8) No persons under the age of 18 shall be allowed on site, unless the individual is a Qualified Patient and accompanied by his or her parent or documented legal guardian;
- (9) [If cultivation at a Medical Cannabis Dispensary is allowed by state law] No outdoor cultivation shall occur at a Medical Cannabis Dispensary location unless it is: a) not visible from anywhere outside of the Medical Cannabis Dispensary property and b) secured from public access by means of a locked gate and any other security measures necessary to prevent unauthorized entry;
- (10) No Medical Cannabis Dispensary shall permit the sale or dispensing of alcoholic beverages for consumption on the premises or offsite of the premises;
- (11) No dried medical cannabis shall be stored in structures without at least four walls and a roof, or stored in an unlocked vault or safe, or other unsecured storage structure; nor shall any dried medical cannabis be stored in a safe or vault that is not bolted to the floor or structure of the facility;

(12) Operating hours for Medical Cannabis Dispensaries shall not exceed the hours between 6:00 AM and 10:00 PM daily; and

(13) Signs displayed on the exterior and interior of the property shall conform to state and city regulations.

Severability

If any section, sub-section, paragraph, sentence, or word of this Chapter is deemed to be invalid, the invalidity of such provision shall not affect the validity of any other sections, sub-sections, paragraphs, sentences, or words of this Chapter, or the application thereof; and to that end, the sections, sub-sections, paragraphs, sentences, and words of this Chapter shall be deemed severable.