

CITY OF OAKLAND



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June 23, 1998

**PUBLIC SAFETY COMMITTEE
OAKLAND CITY COUNCIL
Oakland, California**

Chairperson Miley and Members of the Committee:

SUBJECT: A Follow-Up Report from the Medical Marijuana Working Group regarding the City's Low Law Enforcement Policy towards Medical Marijuana.

EXECUTIVE SUMMARY

The Medical Marijuana Working Group recommends that this committee adopt a policy, which allows for the possession of a three-month supply of medical marijuana for each patient who grows their marijuana indoors or possesses processed marijuana, or a year supply for patients who grow outdoor marijuana. Medical marijuana caregivers should be allowed to possess the same amount for each patient for whom they can establish legitimate caregiver status.

The Police Department has agreed to implement a process, which does not seize processed marijuana or uproot/destroy plants when a credible claim to medical use or caregiver status is made.

BACKGROUND

On February 10, 1998, the Public Safety Committee received a Status Report on City's Implementation of Medical Marijuana Low Priority Policy prepared and presented by the Oakland Police Department. In the relevant part of the report it proposed:

Post-It® Fax Note	7871	Date	6/23/98	# of Pages	8
To	Jeff Jones	From	Darlene Hayward		
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Fax #	986-0534	Fax #			

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status may be cited and arrested and marijuana in their possession will be seized.

Several questions were raised by members of the Committee, and members of the Medical Marijuana Work Group expressed concern about adopting the one ounce and two plant standards suggested by the District Attorney and the Attorney General, respectively, for triggering law enforcement action. Those standards did not evidence consideration of any recommendation from the medical community concerning reasonable amounts necessary for legitimate medical use. The Medical Marijuana Working Group also objected to uprooting/destroying marijuana plants in cases in which the possessor claimed to be a patient or a caregiver but was unable to provide satisfactory proof at the time of encountering an officer. In addition they objected to a process which would force a legitimate patient or caregiver to obtain a court order to secure the return of their medicine.

This Committee directed the Medical Marijuana working group to address the above concerns and return to the Committee with appropriate recommendations. Specifically, the Committee requested medical input concerning reasonable amounts necessary for legitimate medical use.

DISCUSSION

The Medical Marijuana Working Group met four times in preparation for this report. The Group reached easy consensus that a three-month supply was a reasonable amount for a patient to possess. The Group wrestled with the difficulty of defining what would be a reasonable amount of marijuana for a three-month supply. The difficulty in determining this amount comes from the interplay of a variety of factors. The nature of the patient's illness bears strongly on the amount of marijuana they need to relieve symptoms. Some illnesses will require daily medication. Others may only require occasional medication. The type of marijuana available to the patient is another factor. Some types are stronger than others are. Some can only be baked in other foods. That requires more marijuana than the type that can be smoked. Even within the same types of marijuana, there are qualitative differences in separate harvests.

Dr. Mikuriya offered the following *Method for Calculating Actual Usable Amount*:

- Total number of plants (T)
- Number of Immature plants (I)
- Number of Unsuitable plants (u)
- =Usable number x Height in centimeters (H) x Width (W) divided by
Density (D)
- water (w)
- lower leaves and stems (L)
- seeds (S)

The Police Services Agency implements the low-priority policy as follows:

1. The Police Services Agency does not target medical Marijuana-related activities. The Agency Investigates and becomes involved in marijuana-related activities (1) as a result of citizen complaints, (2) incident to law enforcement activities related to violation of laws unrelated to marijuana activities, or (3) due to public activity involving marijuana that provides probable cause for investigation.
2. Persons who come into contact with law enforcement will not be cited or arrested and marijuana in their possession will not be seized if all of the following conditions are met:
 - a. The person establishes medicinal use or primary care giver status to the satisfaction of the officer who makes the initial contact. A Command Officer shall be summoned to the scene prior to any enforcement action.
 - b. The person possesses less than one ounce of marijuana in particle form or no more than two grown plants; and
 - c. The person is not taken into custody for violation of laws unrelated to marijuana activities.
3. An individual may be cited and/or arrested and marijuana in his/her possession will be seized, submitted to the Police Services Agency's criminalistics' division and returned to the possessor only pursuant to court order if:
 - a. The person does not establish medicinal use or primary care giver status; or
 - b. The person possesses more than two grown plants or an ounce or more of marijuana in particle form; or
 - c. The person is taken into custody and marijuana is seized and turned into criminalistics' Division in accordance with standard police procedure.
4. Consistent with the low-priority policy, the agency does not pursue law enforcement activities with respect to the Cannabis Buyers' Cooperative's operations unless citizen complaints or other reports dictate such action.
5. Persons who do not establish personal medicinal use or primary caregiver

=Net Usable amount
divided by Number of strains (s)
=Actual Usable Amount (A) in grams

Thus: $A = \{ [T - (I + U)] \times (H \times W) / D - (w + L + S) \} / s$

Reasonable Amount of Processed Marijuana

The Group agreed that a case by case determination of what was a three-month supply would be an undue burden to place on the police department. It would require familiarity with treatment schedules for different diseases. It would also require an ability to differentiate between types as well as comparative efficiency within types. Rather than impose such an unwieldy burden on the Police Department, the Group agreed to reach a specific amount that could act as an operational rule of thumb.

The Food and Drug Administration is currently testing the medical uses of marijuana. In their experiments the patients are given a monthly ration of three hundred cigarettes, each weighing approximately .9 gram. This is approximately one half pound per month. The Group agreed to adopt this federal standard as a reasonable amount for medical marijuana patients to possess. Therefore a reasonable amount of processed marijuana for a patient to possess would be a three-month supply, at half a pound per month, for a total of one and a half pounds. A reasonable amount of processed marijuana for a caregiver to possess would be the number of substantiated patients times one and a half pounds.

Reasonable Amount of Marijuana Plants

The Group also discussed the difficulty of determining a reasonable number of plants to be possessed. Outdoor plants are harvested once a year while indoor plants can be harvested quarterly. Outdoor plants are typically larger and therefore generate a greater yield.

In determining the reasonable number of outdoor plants, the group considered the fact that they only produce once a year and that the reasonable harvest should be capable of yielding the annual supply of four three month supplies, six pounds. 30 adult plants should yield this harvest. An adult plant is one that has begun flowering. In order to assure that the patient is capable of producing 30 flowering plants they should be allowed to plant twice that number, 60 plants. They may maintain all 60 plants until they have 30 flowering plants. Once they have 30 flowering plants, they must destroy all the rest.

For indoor plants, it will take 48 plants to yield one and half pounds in a three-month period. As above, the patient should be allowed to plant twice the number, 96 plants, and maintain them until 48 are flowering. Once they have 48 flowering plants, they must destroy the rest of the flowering plants. However, they can continue, for the next cycle, to possess up to 96 non-flowering plants, for a cumulative total of 144 plants

Patients are equally free to grow a combination of indoor and outdoor plants so long as they do not exceed the individual (indoor or outdoor) limits described above, nor does their cumulative number of plants (indoor and outdoor) exceed 144.

The reasonable number of plants for a caregiver to possess would be a multiple of the number of substantiated patients being cared for times the type of plant, indoor or outdoor.

Alternative Process

To avoid the possibility of destroying the plants of legitimate medical marijuana patients and caregivers, the Police Department agreed to an alternative process to uprooting/confiscating plants in cases in which a credible claim to patient or caregiver status is made but not satisfactorily proven and there is no other collateral evidence indicating an intent to sell (e.g. sales records, intercepted conversations, informants, witnesses or scales and packaging materials beyond what is reasonable to the situation).

The police will not uproot/confiscate plants so long as the claimed patient/caregiver signs a statement declaring the number of plants, type of plants (i.e. marijuana) and ownership of the plants. The police may also take photographs of the plants and sample clippings from the bottom of the plants. The patient/caregiver must, within the next two business days, provide proof as to their status as patient or caregiver. If they fail to do so, within the time proscribed, the marijuana will be confiscated and treated as evidence under standard police procedures.

In cases where an individual possesses processed marijuana but cannot satisfactorily establish his/her patient or caregiver status, the police will confiscate the processed marijuana. The marijuana will be specially stored for two business days. If satisfactory proof of patient/caregiver status can be provided, within the proscribed time, the marijuana will be returned. If not, the marijuana will be treated as evidence and handled accordingly.

RECOMMENDATION

By consensus, the Medical Marijuana Working group recommends adoption of the following policy:

The Police Services Agency' implements the low-priority policy as follows:

- I. Marijuana-related activities are not targeted by the Police Services Agency. The Agency investigates and becomes involved in marijuana-related activities (1) as a result of citizen complaints, (2) incident to law enforcement activities related to violation of laws unrelated to marijuana.

activities, or (3) due to public safety involving marijuana that provides probable cause for investigation.

II. Persons who come into contact with law enforcement will not be cited or arrested and marijuana in their possession will not be seized if all of the following conditions are met:

A. Status as Caregiver or Patient

The person establishes medicinal use or primary care giver status to the satisfaction of the officer who makes the initial contact;

B. Amount of Marijuana

1. Particle Form

a. The medical marijuana patient possesses

(i) less than one and one-half pounds of marijuana in particle form, or

(ii) if he/she can prove he/she grew it him/herself, less than six pounds in particle form

b. The caregiver possesses no more than the amount specified above for each patient as to whom primary caregiver status is established to the officer's satisfaction.

2. Plants

a. The medical marijuana patient possesses

(i) Indoor Plants:

- no more than 48 plants if they are flowering

AND

- no more than 96 plants if the plants are indoors and less than 48 are flowering

(ii) Outdoor Plants:

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- no more than 30 plants if they are flowering

OR

- no more than 60 plants if less than 30 are flowering

(iii) Combination of Indoor and Outdoor Plants

- no more than a total of 144 plants, provided that the maximum amounts for indoor and outdoor plants specified above (i.e. 30 flowering outdoor plants and 48 flowering indoor plants), may not be exceeded.

b. The primary caregiver possesses no more than the amounts specified above for each of the patients for whom proof of primary caregiver status is established to the officer's satisfaction.

C. The person completes a statement admitting ownership, possession and amount

D. The person is not taken into custody for violation of laws unrelated to marijuana activities.

III. An individual will not be cited and/or arrested and marijuana in his/her possession will not be seized if:

A. The individual does not establish primary caregiver status or medicinal use status to the officer's satisfaction, but based on the totality of the circumstances the officer determines that there is no evidence of criminal activity (e.g., intent to sell, informants, witnesses, sales records, etc.) and that the individual's claim of medicinal use or primary caregiver status is credible.

B. The person completes a statement admitting ownership, possession and amount

C. The person is not taken into custody for violation of laws unrelated to marijuana activities.

D. The person provides proof of medicinal use or caregiver status to the satisfaction of the Police Department within two business days after the

police contact; and

- E. The person possesses less than the amounts specified in the applicable provision of II, above.
- IV. Consistent with the low-priority policy, the Police Department does not pursue law enforcement activities with respect to the Cannabis Buyers' Cooperative's operations unless citizen complaints or other reports or information dictate such action.
- V. Persons who fail to establish medicinal use or primary caregiver status to the satisfaction of the officer and whose claim of such status is not determined by the officer to be credible, may be cited and arrested and Marijuana in their possession may be seized and turned into Criminalistics Division in accordance with standard police procedure.
- VI. No law enforcement action will be taken without the consultation and approval of a Command Officer.
- VI. The purpose of the foregoing policy guidelines is to assist the Police Services Agency in implementing the City's low-priority policy. These policy guidelines are not intended to and shall not be interpreted to override an officer's judgment and discretion based on a case-by-case evaluation of the totality of the circumstances or to interfere with the officer's sworn duty to enforce applicable law. It is understood by the City's policymakers that the low-priority policy does not guarantee that every individual who is a patient or caregiver within the meaning of Proposition 215, will not be arrested, cited or have his/her marijuana seized.
- ~~VII. The Police Department will develop an appropriate training bulletin to implement the policies adopted by the Council.~~

Respectfully submitted,



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